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In the Matter of the Joint Application)
of GTE Midwest Incorporated, GTE Arkansas)
Incorporated and Digital Teleport, Inc. for) CASE NO. TO-98-388
Approval of Interconnection, Resale and)
Unbundling Agreement Under the)
Telecommunications Act of 1996.)

The Commission conditionally granted DTI a certificate of service authority to provide basic local and local exchange telecommunications services in the portions of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT), GTE-MI and Sprint Missouri, Inc. (Sprint) on February 28, 1997 in Case No. TA-96-406. DTI's certificate will not become effective until it has obtained Commission approval for tariffs that it will file to establish the rates, terms and conditions of its services.

The Commission, by its Order and Notice issued March 17, 1998, established a deadline of April 6 for proper parties to request permission to participate without intervention or to request a hearing. No parties requested to participate without intervention or requested a hearing. The Commission's Order and Notice also directed parties wishing to file comments to do so by May 10 and directed the Commission Staff (Staff) to file a memorandum advising the Commission of its recommendation by May 20. No comments were filed. Staff filed a Memorandum on May 20, recommending that the Agreement be approved. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to participate or requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

The Commission, under the provisions of Section 252(e) of the Federal Telecommunications Act of 1996 has authority to approve an interconnection or resale agreement negotiated between an incumbent local exchange company (LEC) and a new provider of basic local exchange service. The Commission may reject an interconnection agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity.

The Agreement describes the interconnection facilities and methods with which the parties may interconnect their networks and contains provisions for the transmission and routing of telephone exchange service, exchange access service, and other types of traffic including E911 traffic.

The Agreement also provides for binding arbitration of disputes between the parties.

The Agreement between GTE and DTI is to become effective ten days after Commission approval. The term of the contract is two years from the effective date; thereafter the Agreement will be automatically renewed unless one of the parties gives notice 90 days prior to the end of the term that it wishes to terminate the Agreement. The Agreement contemplates three ways for DTI to provide service: as a reseller, as a facilities-based provider, or as a mixed-mode provider combining resold and facilities-based elements.

The Agreement permits several methods of interconnection, including mid-span fiber meet, physical and virtual collocation, and Special Access arrangement and/or Switched Transport for originating and terminating calls between the two parties. The Agreement provides for reciprocal compensation for transport and termination of local traffic, optional extended area service (EAS) traffic, intraLATA toll and jointly provided interexchange traffic originating on each others' networks. The parties agreed that compensation rates for origination and termination of traffic to or from interexchange carriers would be based on DTI's and GTE's access service tariffs.

GTE has agreed to make nondiscriminatory access to 911 service available for DTI. GTE has also agreed to make available number portability and to comply with all federal, state and local statutes, regulations, rules, ordinances, judicial decisions and administrative rulings applicable to its performance under this Agreement.

The Agreement also contains provisions which apply a rate to all minutes of originated tandem switched traffic between either GTE or DTI

end users and the end users of third parties. The parties have agreed that the originating party will be responsible for compensation to the terminating party at rates set forth in the Agreement. The parties have also agreed that the originating party will not send local traffic to the other party that is destined for the network of a third party until the originating party has entered into a compensation agreement with the third party.

The Agreement states that GTE will provide access to the following categories of unbundled network elements (UNEs) to DTI: Network Interface Devices (NIDs), Loop Elements, DTI Cross Connect Systems, Port and Local Switching Elements, Transport Elements, Signaling Elements and Data Switching.

GTE will provide to DTI for resale multiple business and residential services including local exchange service, extended area service (EAS) and metropolitan calling area (MCA) plans, and integrated services digital network services. Most of these services will be provided at a discount of 15.33 percent. The Agreement provides for a \$41.50 service charge per order when customers initially switch service from GTE to DTI. Subsequent service orders are charged at rate of \$24.00 per order.

The Agreement describes disconnection procedures, as well. If DTI fails to pay any undisputed charges for calls originated or accepted at DTI's or DTI's end users' service locations for more than 45 business days after they are due, GTE will notify DTI in writing that it must pay all unpaid charges to GTE within seven business days. If DTI fails to pay any undisputed unpaid charges within this time, DTI will notify its end users within five business days that their service may be disconnected for DTI's failure to pay unpaid charges and that they must select a new provider of

basic local exchange services. If DTI fails to provide such notification or any of DTI's end users fail to select a new provider of services within the applicable time period, GTE will provide local exchange services to DTI's end users under GTE's applicable end user tariff at the then current charges for the services being provided. In this circumstance, otherwise applicable service establishment charges will not apply to DTI's end users, but will be assessed to DTI. The Agreement differs from Agreements filed by SWBT that have been approved by the Commission in the past in that GTE is not required to provide such customers notice that their service has defaulted to GTE and that they have a right to choose another carrier. Previously approved SWBT agreements require SWBT to notify defaulted customers' interexchange carriers (IXCs) and the Commission of the default, but this Agreement does not.

The Staff stated in its recommendation that the Agreement meets the limited requirements of the Act in that it does not appear to be discriminatory toward nonparties, and does not appear to be against the public interest. Staff recommended approval of the Agreement provided that all modifications to the Agreement be submitted to the Commission for approval. This condition has been applied in prior cases where the Commission has approved similar agreements.

Findings of Fact

The Missouri Public Service Commission, having considered the joint application of the parties, including the agreement and its appendices, and the Staff's memorandum, makes the following findings of fact.

The Commission has considered the application, the supporting documentation, and Staff's recommendation. Based upon that review the

Commission has reached the conclusion that the interconnection, resale and unbundling Agreement would meet the requirements of the Act in that it would not unduly discriminate against a nonparty carrier, and implementation of the Agreement would not be inconsistent with the public interest, convenience and necessity if the Agreement contained notice obligations for GTE that were similar to SWBT's notice obligations under its agreements.

Under the Agreement, if DTI fails to pay undisputed charges, then GTE disconnects DTI and provides service to DTI's customers without assessing service establishment charges. The Agreement requires DTI to inform customers of their right to choose a new basic local exchange carrier. However, the Agreement does not require GTE to notify the customers that GTE has taken over their service due to nonpayment by DTI, and that the customers may choose another basic local exchange carrier. If DTI failed to inform customers of their rights prior to default to GTE, then customers could be receiving service from GTE without knowing of their rights to choose another carrier. The Agreement also fails to require GTE to notify the Commission or the defaulted customers' interexchange carriers of the names of the customers whose service has been switched to GTE. The Commission finds that the Agreement will serve the public interest and does not discriminate against carriers that are not parties to the Agreement, with the exception of the disconnection procedures specified in paragraph 4 of article IV, on page IV-2, of the Agreement. Therefore, the Commission finds that approval of the Agreement should be conditioned on the parties amending the Agreement by interlineation to include language that provides for the type of notice described above. Such notice should be provided within five business days after customers are switched to GTE from DTI.

The Commission further finds that the Agreement does not address the parties' handling of traffic originating on a wireless carrier's network and terminating on the networks of third parties in situations where the wireless carrier does not have an agreement with the third parties. The Agreement merely states that such traffic shall not be delivered until compensation arrangements have been worked out.

In Case No. TO-97-533, the Commission approved an interconnection agreement between GTE-MI and Sprint Spectrum L.P. even though GTE had not yet developed a method for tracking such traffic. Small incumbent local exchange carriers (ILECs) had complained that they needed this information so that they could properly bill for calls once compensation arrangements had been made with wireless carriers. Following Commission approval of the agreement in Case No. TO-97-533, GTE developed a report similar to the Cellular Usage Summary Report (CUSR) that SWBT generates pursuant to the Commission's order in Case No. TT-97-524. The Commission has not yet determined whether to require GTE to provide its proposed summary to ILECs, or even whether GTE must provide any summary to ILECs, in Case No. TO-97-533.

The Commission finds that the proposed Agreement between GTE and DTI should be approved and that details concerning reporting of wireless carrier traffic should be worked out following approval, as the Commission found in its order of September 10, 1997, in Case No. TO-97-533. The Commission will keep this case open until the issue of wireless carrier usage reports is resolved.

The Commission finds that approval of the Agreement should be conditioned upon the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below.

Modification Procedure

This Commission's first duty is to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act. 47 U.S.C. § 252. In order for the Commission's role of review and approval to be effective, the Commission must also review and approve modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection. 47 U.S.C. § 252(h). This duty is in keeping with the Commission's practice under its own rules of requiring telecommunications companies to keep their rate schedules on file with the Commission. 4 CSR 240-30.010.

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

The parties shall provide the Telecommunications Staff with a copy of the resale or interconnection agreement with the pages numbered consecutively in the lower right-hand corner. Modifications to an agreement must be submitted to the Staff for review. When approved the modified pages will be substituted in the agreement which should contain the number of the page being replaced in the lower right-hand corner. Staff will date-stamp the pages when they are inserted into the Agreement. The official record of the original agreement and all the modifications made will be maintained by the Telecommunications Staff in the Commission's tariff room.

The Commission does not intend to conduct a full proceeding each time the parties agree to a modification. Where a proposed modification is identical to a provision that has been approved by the Commission in another agreement, the modification will be approved once Staff has verified that the provision is an approved provision, and prepared a recommendation advising approval. Where a proposed modification is not contained in another approved agreement, Staff will review the modification and its effects and prepare a recommendation advising the Commission whether the modification should be approved. The Commission may approve the modification based on the Staff recommendation. If the Commission chooses not to approve the modification, the Commission will establish a case, give notice to interested parties and permit responses. The Commission may conduct a hearing if it is deemed necessary.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of Section 252(e)(1) of the Federal Telecommunications Act of 1996, 47 U.S.C. 252(e)(1), is required to review negotiated interconnection and resale agreements. It may only reject a negotiated agreement upon a finding that its implementation would be discriminatory to a nonparty or inconsistent with the public interest, convenience and necessity under Section 252(e)(2)(A). Based upon its review of the interconnection and resale Agreement between GTE and DTI and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest, with the exception of the lack of notice by GTE in circumstances where DTI customers are switched by default to GTE. Therefore, the Commission concludes that

it should approve the Agreement but condition its approval on the parties filing an amendment by interlineation that includes the required notices to former DTI customers, their IXCs and the Commission.

The Commission also has the authority to determine whether the rules, regulations or practices of any telecommunications company are unjust or unreasonable, and to determine the just, reasonable, adequate, efficient, and proper regulations, practices, and service to be observed and used by a telecommunications company. § 392.240.2, RSMo 1994. The Commission has previously found in Case No. TT-97-524 that SWBT will be required to make available a Cellular Usage Summary Report that contains information sufficient to allow third-party providers to bill wireless carriers for wireless-originating traffic which terminates in the exchanges of those providers. The Commission is currently examining whether this obligation should apply equally to wireless traffic transiting GTE's network in Case No. TO-97-533. The Commission concludes that GTE and DTI should file written responses within 30 days of the effective date of this order, addressing possible solutions to the problem raised in the comments in Case No. TO-97-533 for wireless traffic transiting either GTE's or DTI's networks under the Agreement. The parties may respond simply by adopting the pleadings filed following the Commission's September 20, 1997 order in Case No. TO-97-533, or may add to those responses.

IT IS THEREFORE ORDERED:

1. That the interconnection, resale and unbundling agreement between GTE Midwest Incorporated, GTE Arkansas Incorporated and Digital Teleport, Inc. filed on March 11, 1998 is approved.

2. That the approval granted in Ordered Paragraph 1 is conditioned on the parties amending their Agreement by interlineation no

later than June 15, 1998, to include the notice provisions described in this order.

3. That GTE Midwest Incorporated, GTE Arkansas Incorporated and Digital Teleport, Inc. shall file a copy of the Agreement, as finally approved, with the Staff of the Missouri Public Service Commission. The copy shall have the pages numbered seriatim in the lower right-hand corner, and shall be filed no later than 10 days after Commission approval of the amendment to be filed in accordance with Ordered Paragraph 2.

4. That any further changes or modifications to this Agreement shall be filed with the Commission for approval pursuant to the procedures outlined in this order.

5. That the parties shall file pleadings no later than July 6, 1998, that address how the Commission should resolve the issue of traffic reporting and compensation to incumbent local exchange carriers for wireless carrier traffic that transits the parties' networks.

6. That this order shall become effective on June 9, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray
and Schemenauer, CC., concur.
Crumpton, C., absent.

Randles, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMM