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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 3rd
day of June, 1998.

In the Matter of the Joint Application of)
NOW Communications, Inc. and Southwestern Bell)
Telephone Company for Approval of a Resale) Case No. TO-98-387
Agreement Under the Telecommunications Act of)
1996.)
)

ORDER APPROVING RESALE AGREEMENT

Southwestern Bell Telephone Company (SWBT) and NOW Communications, Inc. (NOW) filed an application on March 11, 1998, for approval of a resale agreement (the Agreement) between them.¹ The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, *et seq.* NOW wants to resell basic local exchange service to residential and business end users. NOW has applied for a certificate of service authority to provide basic local telecommunications services, and that application is pending before the Commission in Case No. TA-98-390².

The Commission issued an Order and Notice on March 18, directing interested parties to file applications to participate no later than April 7, and to file comments by May 10. No applications to participate or comments were filed. The Commission Staff (Staff) filed a Memorandum

¹ Appendix OSS-Resale to the to the Agreement was inadvertently omitted from the original filing, but was filed on May 6.

² NOW will not have authority to provide telecommunications service unless and until a certificate is granted and tariff sheets are approved in Case No. TA-98-390.

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 Act, has authority to approve an interconnection 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.

Staff stated in its recommendation that the terms of this Agreement are nearly identical to the terms of the resale agreement approved by the Commission in Case No. TO-98-240. The resale Agreement between SWBT and NOW is to become effective ten days after Commission approval and the initial term of the contract is ninety days. After the ninety days, the Agreement will remain in effect until one of the parties gives sixty days written notice of termination. Each party has agreed to treat the other no less favorably than it treats other similarly situated local service providers with whom it has a Commission-approved interconnection or resale agreement.

SWBT agreed to make available to NOW customers the same access to 911 and E911 (enhanced 911) that SWBT customers receive. SWBT also agreed to make available intraLATA toll dialing parity in accordance with

Section 251(b)(3) of the Act. The Agreement provides for a \$25.00 intercompany conversion charge when a customer switches from SWBT to NOW. The Agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories.

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 all of the competent and substantial evidence upon the whole record, 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 resale Agreement meets the requirements of the Act in that it does not unduly discriminate against a nonparty carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity. 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

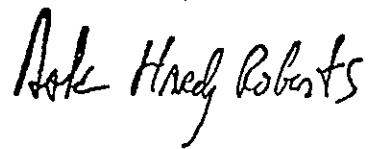
The Missouri Public Service Commission has arrived at the following conclusions of law.

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 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 resale Agreement between SWBT and NOW and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the resale agreement between NOW Communications, Inc. and Southwestern Bell Telephone Company filed on March 11, 1998 and supplemented on May 6, 1998 is approved.
2. That the parties shall file an executed copy of this agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner no later than June 15, 1998.
3. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.
4. That the Commission, by approving this agreement, makes no finding on the completion by Southwestern Bell Telephone Company of any of the requirements of the competitive checklist found in 47 U.S.C. § 271.
5. That this order shall become effective on June 9, 1998.
6. That this case shall be closed on June 16, 1998.

BY THE COMMISSION

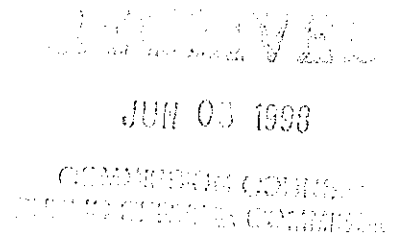


**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

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

Randles, Regulatory Law Judge



JUN 03 1998
MISSOURI PUBLIC SERVICE COMMISSION