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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 23rd day of September, 1998.

In the Matter of the Joint Application of)
Southwestern Bell Telephone Company and)
Buy-Tel Communications, Inc. for Approval of) Case No. TO-99-3
Resale Agreement Under the Telecommunications)
Act of 1996.)
)

ORDER APPROVING RE SALE AGREEMENT
AND ORDER DENYING MOTION TO DISMISS

Southwestern Bell Telephone Company (SWBT) and Buy-Tel Communications, Inc. (Buy-Tel) filed a Joint Application for Approval of Resale Agreement on July 1, 1998. The agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 (the Act). Buy-Tel wants to resell basic local exchange service.

The Commission issued an Order and Notice on July 10, 1998, setting a deadline of July 30, 1998, for parties to request a hearing, to file an application to participate without intervention, or to file comments. No requests for hearing, applications to participate without intervention or comments were filed.

The Staff of the Missouri Public Service Commission (Staff) filed a Motion to Dismiss Application on July 15, 1998. The Motion to Dismiss alleged that the proposed resale agreement between Buy-Tel and SWBT was "null and no longer valid" because, by its own terms, the agreement was null if it was not filed within 30 days after both parties signed the agreement. The relevant provision from the agreement reads as follows:

Unless otherwise agreed, if the designated Party fails to file the jointly signed agreement with the Commission within thirty (30) days of both Parties signatures, then the signed agreement is null and no longer valid. If the contract becomes null, either Party can initiate negotiations to a new agreement.

The resale agreement was signed by Buy-Tel on May 12 and by SWBT on May 26. The Application for Approval of Resale Agreement was filed jointly by the parties on July 1, which was more than 30 days after the agreement was signed.

The Commission issued a Notice Regarding Motion to Dismiss on August 11, which indicated that if any party wished to file a response to Staff's Motion to Dismiss, it must do so by August 18. On August 17, 1998, Buy-Tel filed a Response to Motion to Dismiss Application. This response noted that neither Buy-Tel nor SWBT agreed with Staff's interpretation of the terms of the proposed resale agreement. Buy-Tel indicated that the provision which contained the language regarding the 30-day filing requirement indicates that this provision could be waived if both parties agreed. Buy-Tel's response noted that this position was based on the phrase "[u]nless otherwise agreed" at the beginning of the provision in question. Buy-Tel also pointed out that the application was filed jointly with SWBT and with the verification of SWBT's authorized representative.

On August 25, SWBT and Buy-Tel filed a Joint Amended Application of Southwestern Bell Telephone Company and Buy-Tel Communications, Inc. for the Approval of Resale Agreement Under the Telecommunications Act of 1996. This agreement was executed on August 18. The document notes that it is identical to the May 26, 1998, Resale Agreement except for the execution date, and which the parties submitted as an Amended Attachment I. The parties noted that they submitted Amended Attachment I

solely for the purpose of clearing up any concern the Commission or its Staff might have regarding the existence of a valid agreement between the parties.

The Staff filed a Memorandum on September 1, 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.

The resale agreement between SWBT and Buy-Tel is to become effective 10 days after Commission approval and the initial term of the contract is 90 days. After the initial 90-day period, the agreement will remain in effect until terminated by either party.

SWBT agreed to make available to Buy-Tel 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

Buy-Tel. 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 amended agreement (filed August 25) 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 amended 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

It is this Commission's duty 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 Buy-Tel 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 Buy-Tel Communications, Inc. and Southwestern Bell Telephone Company filed on August 25, 1998, is approved.

2. That Buy-Tel Communications, Inc. and Southwestern Bell Telephone Company shall file a copy of this agreement with the Staff of the Missouri Public Service Commission, with the pages numbered serially in the lower right-hand corner no later than September 28, 1998. The parties shall file on the same date a notice in the official case file advising the Commission that the agreement has been submitted to Staff as required.

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. Section 271.

5. That this order shall become effective on September 28, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Ruth, Regulatory Law Judge