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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 29th
day of September, 1998.

In the Matter of the Application of GTE Midwest)
Incorporated and GTE Arkansas Incorporated for)
Approval of Interconnection Agreement with Buy-Tel) Case No. TO-99-55
Communications, Inc. Pursuant to Section 252(e) of)
the Telecommunications Act of 1996.)
)

ORDER APPROVING RESALE AGREEMENT

GTE Midwest Incorporated and GTE Arkansas Incorporated (collectively GTE) filed an application on August 12, 1998, for approval of a Resale Agreement (the Agreement) between Buy-Tel Communications, Inc. (Buy-Tel) and GTE. 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.* Buy-Tel wants to resell basic local exchange service to residential and business end users.

The Commission issued an Order and Notice on August 18, directing any party wishing to request a hearing or participate without intervention to do so no later than September 8. No applications to participate or requests for hearing were filed. The Commission Staff (Staff) filed a Memorandum on September 17, 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 Resale Agreement between GTE and Buy-Tel is to become effective ten business days after Commission approval and the initial term of the contract is two years. After this initial two-year term, the Agreement will remain in effect for consecutive one-year terms until one of the parties gives 90 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 agreement.

GTE agreed to make available to Buy-Tel customers the same access to 911 and E911 (enhanced 911) that GTE customers receive. The Agreement also contains provisions for local number portability, service ordering, maintenance and billing. GTE and Buy-Tel agreed to provide each other a level of service in compliance with the nondiscrimination requirements of the Telecommunications Act of 1996. The Agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories.

Staff indicated the Agreement contained provisions detailing the liabilities and responsibilities of both GTE and Buy-Tel if an unauthorized service provider change ("slamming") occurred. Buy-Tel would be assessed a \$50.00 fee for reconnecting any end user if it was determined the end user had not authorized the change to Buy-Tel from the previous provider. The Agreement also contained procedures for how nonpayment of undisputed charges by Buy-Tel would be handled by GTE. This procedure contained notice provisions so the customer would be notified of the potential change in service provider from Buy-Tel to GTE, given an option of choosing a service provider other than GTE, and informed of the rates GTE would be charging.

Staff stated the Agreement contained a process to collect Universal Service Support surcharges but these charges were not currently going to be collected. Staff indicated the Agreement, at Section 45, disclosed that the rates, terms and conditions of the Agreement might be replaced with the rates, terms and conditions approved by the Commission in Case No. TO-97-63 on July 22. Case No. TO-97-63 involved an interconnection agreement between GTE and AT&T. The GTE/Buy-Tel Agreement provided that the GTE/AT&T rates, terms and conditions could be substituted for the present ones in the GTE/Buy-Tel Agreement at the option of Buy-Tel. Buy-Tel is required to give GTE written notice if it elects to take this option and the terms would not become effective until thirty days after GTE received the notice.

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

The Commission has a 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

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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

The Commission has a 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 GTE 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 GTE Midwest Incorporated and GTE Arkansas Incorporated and Buy-Tel Communications, Inc. filed on August 12, 1998, is approved.

2. That GTE Midwest Incorporated and GTE Arkansas Incorporated and Buy-Tel Communications, Inc. shall file a 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 October 9, 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 this Order shall become effective on October 9, 1998.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Harper, Regulatory Law Judge