

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
January 9, 2002**

**CASE NO: TO-2002-257**

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**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

Sincerely,



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

**Uncertified Copies:**

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of SBC Advanced  
Solutions, Inc., for Approval of its Interconnection  
Agreement with New Edge Networks, Inc., d/b/a  
New Edge Networks under 47 U.S.C. §252

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**Case No. TO-2002-257**

**ORDER APPROVING INTERCONNECTION AGREEMENT**

This order approves the interconnection agreement executed by the parties and filed by SBC Advanced Solutions, Inc. (SBC-ASI).

On December 4, 2001, SBC-ASI filed an application with the Commission for approval of and resale and facilities-based interconnection agreement with New Edge Network, Inc. d/b/a New Edge Networks (New Edge). The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.<sup>1</sup> The Agreement would permit New Edge to resell local telecommunications services and to provide telecommunications services by interconnecting its facilities with those of SBC-ASI. Both SBC-ASI and New Edge hold certificates of service authority to provide basic local exchange telecommunications services in Missouri.

Although New Edge is a party to the Agreement, it did not join in the application. On December 10, 2001, the Commission issued an order making New Edge a party in this

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<sup>1</sup> See 47 U.S.C. § 251, et seq.

case and directing any party wishing to request a hearing to do so no later than December 30, 2001. No requests for hearing were filed.

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.<sup>2</sup> Since no one has requested a hearing, the Commission may grant the relief requested based on the application.

The Staff of the Commission filed a memorandum and recommendation on January 2, 2002, recommending that the Agreement be approved.

### **Discussion**

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

The Staff memorandum recommends that the Agreement be approved and notes that the Agreement meets the limited requirements of the Act in that it is not discriminatory toward nonparties and is not against the public interest. Staff recommends that the Commission direct the parties to submit any further modifications or amendments to the Commission for approval. Staff also recommends that the Commission order the parties to submit a sequentially numbered copy of the Agreement.

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<sup>2</sup> *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

## **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 concludes that the 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.<sup>3</sup> In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.<sup>4</sup> 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.<sup>5</sup>

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<sup>3</sup> 47 U.S.C. § 252.

<sup>4</sup> 47 U.S.C. § 252(h).

<sup>5</sup> 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 or recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, 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 Data Center.

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 Commission will take notice of the modification once Staff has verified that the provision is an approved provision and has prepared a recommendation. 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<sup>6</sup> 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.<sup>7</sup> Based upon its review of the Agreement between SBC-ASI and New Edge 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 interconnection agreement between SBC Advanced Solutions, Inc. and New Edge Network, Inc. d/b/a New Edge Networks, filed on December 4, 2001, is approved.
2. That any changes or modifications to this Agreement shall be filed with the Commission pursuant to the procedure outlined in this order.
3. That no later than January 24, 2002, SBC Advanced Solutions, Inc. shall submit a copy of the interconnection agreement to the Staff of the Missouri Public Service Commission, with the pages sequentially numbered. On the same date, SBC Advanced Solutions, Inc. shall file a notice in the official case file advising the Commission that it has complied with this order.

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<sup>6</sup> 47 U.S.C. § 252(e)(1).

<sup>7</sup> 47 U.S.C. § 252(e)(2)(A).

4. That this order shall become effective on January 19, 2002.
5. That this case may be closed on January 20, 2002.

**BY THE COMMISSION**



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

(SEAL)

Keith Thornburg, Regulatory Law Judge,  
by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 9th day of January, 2002.

FYI: To Be Issued By Delegation

ALJ/Secretary:

Thornburg/Boyle

Date Circulated

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Return Not Later Than

1-10

CASE NO.

10-2002-257

Simmons, Chair

Alvord

Murray, Commissioner

Can

Lumpe, Commissioner

7/8 - 10/2002

Gaw, Commissioner

10/2

Forbis, Commissioner

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 9<sup>th</sup> day of Jan. 2002 .

Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

