

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
May 29, 2001**

CASE NO: TO-2001-589

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

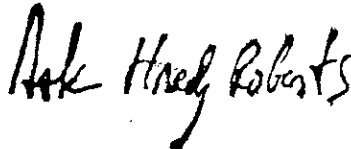
Thomas R. Parker
Verizon Midwest
601 Monroe Street, Suite 304
Jefferson City, MO 65101

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Direct2Internet Corporation
Attn: Chris Bilander
3701 FAU Blvd., Suite 210
Boca Raton, FL 33431

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 GTE
Midwest Incorporated d/b/a Verizon Midwest
for Approval of an Interconnection Agreement
with Direct2Internet Corporation, Pursuant
to Section 252(e) of the Telecommunications)

Case No. TO-2001-589

ORDER APPROVING INTERCONNECTION AGREEMENT

On April 20, 2001, GTE Midwest Incorporated d/b/a Verizon Midwest (Verizon) filed an application with the Commission for approval of an interconnection agreement (Agreement) with Direct2Internet Corporation (Direct2). 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.* The Agreement would permit Direct2 to resell local telecommunications services. GTE is authorized to provide telecommunications services in Missouri. Direct2 does not presently hold a certificate of convenience and necessity.

Although Direct2 is a party to the Agreement, it did not join in the application. On April 27, 2001, the Commission issued an order making Direct2 a party in this case and directing any party wishing to request a hearing to do so no later than May 10, 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. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d

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494, 496 (Mo. App. 1989). Since no one has requested a hearing, the Commission may grant the relief requested based on the application.

The Staff of the Commission (Staff) filed a memorandum and recommendation on May 16, 2001, 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 does not appear to be discriminatory toward nonparties, and does not appear to be against the public interest. Staff recommends that the Commission direct the parties to submit any further modifications or amendments to the Commission for approval.

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. 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 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. 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 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 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 Commission will take notice of the modification once Staff has verified that the provision is an approved provision and 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, 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 Agreement between Verizon and Direct2 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 GTE Midwest Incorporated d/b/a Verizon Midwest and Direct2Internet Corporation, filed on April 20, 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 this order shall become effective on June 8, 2001.
4. That this case may be closed on June 9, 2001.

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 29th day of May, 2001.

FYI: To Be Issued By Delegation.

ALJ/Secretary: Thornburg/Boye

Date Circulated 5-25 Return by 5-31 3-p.m.
1004

CASE NO. TD-2001-589

LT
Lumpe, Chair

DM
~~Deiner, Vice Chair~~

KS
Murray, Commissioner

7/7
Simmons, Commissioner

7/7
Gay, 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 29th day of May 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

