

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

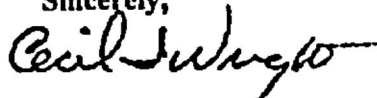
October 20, 1997

CASE NO: TO-98-41

James C. Stroo, 1000 GTE Drive, Wentzville, MO 63385
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Office of the Public Counsel, P. O. Box 7800, Jefferson City, MO 65102

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

Sincerely,



**Cecil I. Wright
Executive Secretary**

Uncertified Copy:

Joel Margolis, 1505 Farm Credit Drive, McClean, VA 22102

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 17th
day of October, 1997.

In the Matter of the Joint Application)
of GTE Midwest Incorporated and GTE)
Arkansas Incorporated and Dial Call, Inc.)
for Approval of Interconnection Agreement)
Under the Telecommunications Act of 1996.)
CASE NO. TO-98-41

ORDER REJECTING INTERCONNECTION AGREEMENT

GTE Midwest Incorporated and GTE Arkansas Incorporated
(collectively GTE) and Dial Call, Inc. (Nextel Communications) (Nextel)
filed a Joint Application on July 29, 1997, for approval of an
interconnection agreement (the Agreement) between GTE and Nextel. 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 Commission issued an order and notice on July 31, which
established a deadline for applications to participate without
intervention, and established a deadline for comments. The Small Telephone
Company Group¹ and Fidelity Telephone Company and Bourbeuse Telephone
Company (collectively Fidelity) filed timely applications for

¹For purposes of this proceeding, the Small Telephone Company Group is
comprised of BPS Telephone Company, Cass County Telephone Company, Citizens
Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone
Cooperative, Inc., Ellington Telephone Company, Grand River Mutual Telephone
Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo
Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop
Telephone Company, Mark Twain Rural Telephone Company, McDonald County
Telephone Company, Miller Telephone Company, New Florence Telephone Company,
New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers
Mutual Telephone Company, Steelville Telephone Exchange, Inc., Stoutland
Telephone Company.

participation, which were granted on August 26. The Small Telephone Company Group and Fidelity filed comments on September 15. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on October 3.

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 requested a hearing in this case, the Commission will proceed to make its determination based upon the verified application, the comments filed by the Small Telephone Company Group and Fidelity, and Staff's recommendation.

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

In the Order And Notice issued on July 31, 1997, the Commission stated: "The Commission notes that it is impossible to determine from the application with any degree of confidence whether Dial Call, Inc. is the legal name of the company with whom GTE has entered into an interconnection agreement, and whether Nexcel Communications is a properly registered

fictitious name of Dial Call, Inc. The Commission finds that Dial Call, Inc. should file a pleading containing the information required by 4 CSR 240-2.060(1)(A)." The Commission further ordered Nextel to file a pleading which specified the legal name of the company, and to provide evidence of the registration of any fictitious name with the Missouri Secretary of State, no later than September 2. No such pleading was filed.

Upon inquiry by the Commission, the Office of the Missouri Secretary of State has provided certification that it has no records which show that Dial Call, Inc. has ever been registered as a foreign or domestic corporation, limited partnership, limited liability company, limited liability partnership, limited liability limited partnership, or under the Fictitious Name Act. Further, the Office of the Missouri Secretary of State has provided certification that it has no records which show that Nextel Communications has ever been registered as a foreign or domestic corporation, limited partnership, limited liability company, or limited liability partnership. The certification also indicates that the name "Nextel Communications" has been registered as a fictitious name on February 21, 1995 by a Delaware corporation called Powerphone, Inc., and on October 21, 1996 by two New Jersey corporations called C-Call Corp. and ONECOMM Corporation, N.A., but has never been registered by a corporation by the name of Dial Call, Inc.

The Commission finds that it would not be appropriate to approve an interconnection agreement with an entity that does not appear to have properly registered its fictitious name in the State of Missouri. The Act explicitly preserves the ability of state commissions to enforce requirements of state law, so long as the requirements do not constitute a barrier to entry: "(3) Preservation of authority.--Notwithstanding paragraph (2), but subject to section 253, nothing in this section shall

prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements." 47 U.S.C. § 252(e)(3).

The Commission finds that the rejection of an interconnection agreement in which one of the parties to the agreement has not registered its fictitious name in the State of Missouri does not constitute a barrier to entry, since the registration requirement applies to all telecommunications companies, as well as other domestic and foreign corporations doing business in the State. See § 417.210, RSMo 1994. The Commission further finds that approval of an interconnection agreement in which one of the parties to the agreement is not registered to do business in the State of Missouri is not consistent with the public interest, convenience, and necessity. Thus the Commission will reject the Agreement.

Since the Act requires the Commission to either approve or reject the Agreement, the Commission has rejected the Agreement. However, the Commission finds that it would be appropriate for the Commission to hold this case open for a limited amount of time, in order to allow Nextel time to file the pleading and evidence required by the Commission's order of July 31. Upon compliance by Nextel, the Commission will process the application based upon the record before it.

Because the Commission has determined that the Agreement should be rejected, it is not necessary to detail the comments filed by the Small Telephone Company Group and Fidelity, or Staff's recommendation. Neither the comments nor Staff's recommendation addresses the deficiency found by the Commission. However, the Commission notes that the concerns raised in the comments are similar to those brought to the Commission's attention in Case No. TO-97-533, which involved an interconnection agreement between GTE

and another wireless carrier, Sprint Spectrum L.P. If Nextel corrects the deficiency found by the Commission, the Commission will consider the comments and Staff's recommendation in its review of the Agreement.

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 1997, 47 U.S.C. § 252(e)(1), is required to review negotiated interconnection agreements. It may only reject a negotiated agreement upon a finding that its implementation would be discriminatory to a non-party or inconsistent with the public interest, convenience and necessity under Section 252(e)(2)(A). Based upon its review of the interconnection agreement between GTE and Nextel, and its findings of fact, the Commission concludes that the interconnection agreement filed on July 29 is inconsistent with the public interest, and should be rejected.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement filed on July 29, 1997 between GTE Midwest Incorporated, GTE Arkansas Incorporated, and Dial Call, Inc. (Nextel Communications) is rejected.

2. This case shall remain open for a period of 30 days from the effective date of this order. The Commission will consider approval of the interconnection agreement filed on July 29, 1997, if Dial Call, Inc. (Nextel Communications) files a pleading within that time which specifies the legal name of the company, and which provides evidence of the registration of any fictitious name with the Missouri Secretary of State, in compliance with 4 CSR 240-2.060(1)(A).

3. That this order shall become effective on October 27,
1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Lumpe, Ch., Crumpton,
Murray, and Drainer,
CC., Concur.

Bensavage, Regulatory Law Judge

ALJ/Sec'y: Bennavage / Pridgin
10-16-97 10-98-41
Date Circulated CASE NO.

Lumpkin Chairman
Crumpton Commissioner
Murray Commissioner
Lumpkin Commissioner
Drainer Vice-Chair

10-17-97
Agenda Date

Action taken: 4-0 A S
Must Vote Not Later Than _____

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 20th day of October, 1997.

Cecil I. Wright
Cecil I. Wright
Executive Secretary