

BV  
RO  
PB

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

In the Matter of the Application of Southwestern )  
Bell Telephone Company for Approval of Resale )  
Agreement With Tlc Communications, Inc., Under ) Case No. TO-97-192  
the Telecommunications Act of 1996. )  
)

---

---

**REPORT AND ORDER**

---

---

**Issue Date:** February 4, 1997

**Effective Date:** February 14, 1997

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

In the Matter of the Application of Southwestern )  
Bell Telephone Company for Approval of Resale )  
Agreement With Tie Communications, Inc., Under ) Case No. TO-97-192  
the Telecommunications Act of 1996. )  
)

**APPEARANCES**

Diana J. Harter, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Charles Brent Stewart, French & Stewart Law Offices, 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for Tie Communications, Inc.

Penny G. Baker, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

**ADMINISTRATIVE**

**LAW JUDGE:** L. Anne Wickliffe, Deputy Chief.

**REPORT AND ORDER**

Southwestern Bell Telephone Company (SWBT) filed an application on November 13, 1996, requesting that the Missouri Public Service Commission approve a Resale Agreement between SWBT and Tie Communications, Inc. (Tie), a Delaware corporation. The Resale 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.* Tie wants to resell local exchange service, including ISDN (integrated services digital network), to business end users. MCI Telecommunication Corporation (MCI) sought permission to participate which was granted by Commission order on December 23, 1996.

The Office of the Public Counsel (OPC) filed comments regarding the Agreement and the Commission Staff (Staff) filed a Memorandum on January 6, 1997, recommending approval of the Resale Agreement with conditions. Staff proposed that the Commission clarify that all expanded calling plans offered by SWBT to its end users must also be made available to Tie for resale to Tie's end users. Staff also proposed that the parties be required to submit any modifications or amendments of the Agreement to the Commission for approval. The Commission conducted a hearing on January 15, 1997, where the parties made presentations to the Commission regarding the Resale Agreement and were available to answer Commission questions. Exhibit number 1 was reserved for SWBT's late-filed exhibit, an executed copy of the Resale Agreement which was filed on January 15, 1997. No objections to Exhibit 1 were filed and it will be admitted into evidence.

### **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 federal Telecommunications Act of 1996, 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:

§252(e) APPROVAL BY STATE COMMISSION

- (1) APPROVAL REQUIRED.--Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.
- (2) GROUNDS FOR REJECTION.--The State commission may only reject --
  - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --
    - (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
    - (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; . . . .

Although OPC raised some concerns in its Comments, OPC's counsel was excused from appearance at the hearing because of inclement weather. No one appeared on behalf of MCI or asked permission to be excused. SWBT stated at the hearing that the terms of this Agreement are very similar to the resale agreement approved by the Commission between SWBT and Fast Connections Inc. *In re Fast Connections, Inc.*, Case No. TO-97-147 (Dec. 27, 1996). The Resale Agreement between SWBT and Tie is to become effective ten days after Commission approval. The term of the contract is 90 days; thereafter, the Agreement remains in effect until one of the parties gives 60-day notice of termination.

The parties agreed that Tie may only resell services to the same class of end users to whom SWBT sells the services. The Agreement provides

for 911 service to Tie's customers, local dialing parity, and nondiscriminatory access to SWBT's White Pages directory listing and distribution services. The parties agreed to a per-order conversion charge of \$25.00 for each customer that changes its LSP (local service provider) from SWBT to Tie. The conversion charge is based on a manual system for handling LSP changes, but SWBT has now made available a mechanized system. Tie can eventually reduce its conversion charge to \$5.00 by taking advantage of the mechanized system for processing conversions. Both parties will continue to be subject to Commission rules regarding disconnections, including customer notice requirements. Tie's counsel stated at the hearing that Tie is not certificated to provide telecommunications services in Missouri but will be filing an application for certification in the near future.

The Commission has considered OPC's comments and the responses to questions at the hearing, as well as the Resale Agreement. 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 non-party carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity.

The Commission finds that the conditions proposed by Staff are reasonable and should be imposed upon the parties to the agreement. All expanded calling plans available to SWBT end users should be made available to Tie's end users on a resale basis. This condition is consistent with the Commission's order approving the Resale Agreement between SWBT and Fast Connections, Inc. *Id.*

The Commission finds that all modifications and amendments to this Agreement should be submitted for approval according to the following

procedures. First, all agreements, with any changes or modifications, should be accessible to the public at the Commission's offices. Second, the Act mandates that the Commission approve any changes or modifications to the Resale Agreement. To fulfill these objectives, the companies must have a complete and current copy of the Agreement in the Commission's offices at all times, and all changes and modifications must be timely filed with the Commission for approval. This includes any changes or modifications which are arrived at through the arbitration procedures provided for in the Agreement.

To enable the Commission to maintain a complete record of any changes and modifications, the Commission will request SWBT and Tie to provide Staff with a copy of the Resale Agreement with the pages numbered consecutively in the lower right-hand corner. The Commission will then keep this case open for the filing by SWBT and Tie of any modifications or changes to the Agreement. These changes or modifications will be substituted in the Agreement, so they should contain, in the lower right-hand corner, the number of the page being replaced. Commission Staff will then date-stamp the pages when they are inserted into the Agreement. The official record of what changes or modifications have occurred will be the official case file.

The Commission does not intend that a full proceeding will occur every time a change or modification is agreed to by the parties. Where the change or modification has been previously approved by the Commission in another agreement, Staff need only verify that the changes are contained in another agreement and file a memorandum to that effect. Such changes will then be approved. Where the changes or modifications are not contained in another agreement, Staff will file a memorandum concerning the

change or modification and make a recommendation. The Commission, if necessary, will allow for responses and then will rule on the pleadings unless it determines a hearing is necessary.

The above-described procedures should accomplish the two goals of the Commission and still allow for expeditious handling of changes or modifications to the agreements.

The Commission finds that the negotiated Resale Agreement does not discriminate against any telecommunications carrier not a party to the Agreement. The Commission also finds no provisions of the Agreement which are inconsistent with the public interest, convenience and necessity.

### **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) and (2)(A) of the federal Telecommunications Act of 1996, 47 U.S.C. 252(a)-(e), is required to review negotiated interconnection agreements, and may only reject an agreement upon a finding that its implementation would be discriminatory to a non-party or inconsistent with the public interest, convenience and necessity. Based upon its review of the Resale Agreement between SWBT and Tie 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 late-filed Exhibit 1 is admitted into evidence.

2. That the Resale Agreement between Southwestern Bell Telephone Company and Tie Communications, Inc. filed on November 13, 1996, is approved subject to the conditions set out in Ordered Paragraphs 3 and 4.

3. That Tie Communications, Inc. shall not provide telecommunications services under the Resale Agreement approved in Ordered Paragraph 2 until the effective date of a Commission order certifying it to provide services in Missouri.

4. That approval of the Resale Agreement is conditioned upon Southwestern Bell Telephone Company making available to Tie Communications, Inc. for resale all expanded calling plans that are available to Southwestern Bell Telephone Company end users, under terms and conditions so as to allow Tie Communications, Inc. to offer the same services to Tie end users that SWBT offersto its end users.

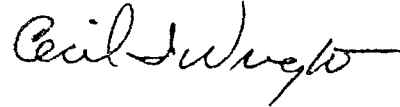
5. That Southwestern Bell Telephone Company and Tie Communications, Inc. shall file a copy of this agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner.

6. That any changes or modifications to this Agreement shall be filed with the Commission for approval.

7. That the Commission, by approving this Agreement, makes no finding on the completion by Southwestern Bell Telephone Company of any of the fourteen items listed in 47 U.S.C. § 271.

8. That this Report And Order shall become effective on February 14, 1997.

**BY THE COMMISSION**

A handwritten signature in cursive script, appearing to read "Cecil I. Wright".

**Cecil I. Wright  
Executive Secretary**

( S E A L )

Zobrist, Chm., McClure, Kincheloe,  
Crompton and Drainer, CC., concur.

Dated at Jefferson City, Missouri,  
on this 4th day of February, 1997.