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

Joint Application of Southwestern Bell Telephone)
Company and U.S. Long Distance, Inc. for Approval) Case No. TO-97-94
of Interconnection Agreement Under the)
Telecommunications Act of 1996.)

REPORT AND ORDER

Issue Date: December 2, 1996

Effective Date: December 2, 1996

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APPEARANCES

Leo J. Bub, Attorney at Law, and Katherine Swaller, Attorney at Law, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Mark W. Comley, Newman, Comley & Ruth, P.C., 205 East Capitol Avenue, Post Office Box 537, Jefferson City, Missouri, 65102-0537, for US Long Distance, Inc.

W.R. England, III, and Sondra B. Morgan, Brydon, Swearengen & England P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom 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., and Stoutland Telephone Company (the "Small Telephone Company Group"); Fidelity Telephone Company and Bourbeuse Telephone Company.

Elaine Walsh, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston Avenue, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications Corporation.

Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 301 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102-1438, for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc. (the "Mid-Missouri Group").

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

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) and US Long Distance, Inc. (USLD) filed a joint application on September 9, 1996, requesting that the Missouri Public Service Commission approve an interconnection agreement between SWBT and USLD (the Agreement). 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.* USLD is a certificated provider of inter-exchange telecommunications services in Missouri. USLD wants to resell local exchange service to residential and business end users and eventually provide such service over its own facilities.

Several interested entities sought intervention and, by order issued October 25, 1996, the Commission granted participation without intervention to MCI Telecommunication Corporation (MCI), the Small Telephone Company Group¹, Fidelity Telephone Company and Bourbeuse

¹The following companies comprise the Small Telephone Company Group: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom 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., and Stoutland Telephone Company.

Telephone Company (Fidelity), and the Mid-Missouri Group of Local Exchange Telephone Companies² (Mid-Missouri Group).

Participants filed comments regarding the Agreement and the Commission Staff (Staff) filed a Memorandum on October 24, 1996, recommending approval of the Agreement. The Commission conducted a hearing on November 7, 1996, where the parties made presentations to the Commission regarding the interconnection Agreement and answered Commission questions. Exhibit number 2 was reserved for SWBT's late-filed exhibit, an executed copy of the interconnection Agreement. No objections to Exhibit 2 were filed and it will be admitted into evidence. USLD filed a post-hearing brief.

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:

²The following companies comprise the Mid-Missouri Group: Alma Telephone Company, Chariton Valley Telephone Company, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

§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;

SWBT stated at hearing that the terms of this Agreement are basically the same as the other interconnection agreements previously submitted to the Commission, though some rates may differ. The interconnection Agreement between SWBT and USLD is to become effective ten days after Commission approval. The term of the contract is one year from the date USLD completes its first commercial call; thereafter the Agreement remains in effect until one of the parties gives 60-days' notice of termination. Each party 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. The Agreement

contemplates three ways for USLD to provide service: as a reseller, as a facilities-based provider, or as a mixed-mode provider combining resold and facilities-based elements.

The Agreement provides for interconnection of the two companies' long distance networks at mutually agreed-upon points, the initial point of interconnection to be in Kansas City. The Agreement permits several methods of interconnection, including mid-span fiber interconnection for interoffice trunking for originating and terminating calls between the two parties. The Agreement provides for reciprocal compensation for termination of local traffic and for Optional EAS (extended area service). The parties agreed that compensation rates for termination of MTS (Message Telephone Service) and 800 number service would be based on USLD's and SWBT's access service tariffs and that they would establish meet point billing arrangements for interLATA interexchange traffic.

SWBT agreed to make available to USLD customers nondiscriminatory access to 911 and E911 (enhanced 911) service in all communities where there is a public service answering point available for connection of the service. In response to questions at the hearing, SWBT's counsel stated that the 911 tandem and databases will be exactly the same, and provide exactly the same service that SWBT provides to its own customers. USLD will provide the trunks over which 911 service will reach its own basic local customers.

OPC raised the issue of the agreed upon \$28.00 conversion charge when a customer switches from SWBT to USLD. The signatories assured OPC and the Commission that that charge is an intercompany charge that is not assessed to the end user. How USLD will recover that charge in rates is

a matter for the Commission to consider in the context of a tariff filing. SWBT stated that the amount of the charge is cost-based and represents SWBT's disconnect charge. Both parties will continue to be subject to Commission rules regarding disconnections, including customer notice requirements.

Staff raised the issue of the use of FCC tariff rates for virtual and SONET-based collocation. SWBT responded at the hearing that the parties do not consider the FCC tariffed rates binding in Missouri but that the rates were agreed to in the course of negotiation. The rates existing at the time of the Agreement are those that will apply for the term of the contract; changes in the FCC tariffs will not automatically work a change in the Agreement. As to Staff's objections to the references in the Agreement to Texas tariffs, the parties responded that the Texas tariffs were not intended to apply in Missouri but only appear in the Agreement as a result of its being a five-state agreement. The loop rates for Missouri appear in a Missouri-specific price schedule attached to the Agreement. Staff also expressed concern about portions of the Agreement that were incomplete, lacking specific terms or rates. The parties agreed on the record to submit all modifications to the Commission for approval.

Counsel for the Small Telephone Company Group and Fidelity, and counsel for the Mid-Missouri Group raised questions concerning the sale of Metropolitan Calling Area (MCA) service. These specific issues were raised and discussed in prior interconnection cases, including *SWBT and MFS*, Case No. TO-97-27, Report and Order issued October 18, 1996; and *SWBT and Dial U.S.*, Case No. TO-96-440, Report and Order issued September 6, 1996. In TO-96-440 the Commission approved an interconnection agreement between

SWBT and Dial U.S. and indicated that MCA service, where mandatory, is an essential part of basic local telecommunication service. Mandatory MCA is part of the service that local exchange companies (LECs) must provide to competitors under the Act. The Commission further approved the resale of MCA service. The Commission finds that resale of MCA service by USLD does not discriminate against any other telecommunications carrier since all MCA arrangements will be provided by SWBT and it is still, in effect, SWBT's service that is being provided.

Counsel for the Mid-Missouri Group also raised an issue regarding one of the contract terms stating that SWBT and USLD can each define its own local calling scope. The parties responded that the provision was only to apply as between SWBT and USLD; nothing in the Agreement is intended to sidestep Commission rules or Commission review regarding local calling scope. The signatories understand that both of them will remain subject to the jurisdiction of the Commission and to existing rules, laws, and tariffs.

The Commission has considered the comments of the parties, the responses to questions at the hearing, and the post-hearing brief, as well as the interconnection Agreement. Based upon that review the Commission has reached the conclusion that the interconnection 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 it should set out the procedures for maintaining the interconnection Agreement and for approving any changes to the Agreement. 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 interconnection Agreement. To fulfill these objectives, the companies must have a complete and current interconnection 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. The Commission makes no finding on the propriety of contract terms which are not explicitly included in the Agreement as filed. Any missing terms shall be treated as modifications to the contract and submitted to the Commission for approval under the procedures described below.

To enable the Commission to maintain a complete record of any changes and modifications, the Commission will request SWBT and USLD to provide Staff with a copy of the interconnection 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 USLD 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 Agreement, as proposed by the parties herein, 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 interconnection Agreement between SWBT and USLD and its findings of fact, the Commission

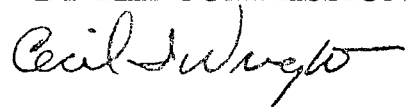
concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That late-filed Exhibit 2 is admitted into evidence.
2. That the interconnection agreement between Southwestern Bell Telephone Company and US Long Distance, Inc. filed on September 9, 1996, is approved.
3. That Southwestern Bell Telephone Company and US Long Distance, 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.
4. That any changes or modifications to this Agreement shall be filed with the Commission for approval.
5. 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.
6. That this Report And Order shall become effective on the date hereof.

(S E A L)

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

Zobrist, Chm., Kincheloe and
Drainer, CC., concur.
McClure and Crumpton, CC.,
absent.

Dated at Jefferson City, Missouri,
on this 2nd day of December, 1996.