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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 21st
day of July, 1998.

In the Matter of the Interconnection and Resale)
Agreement of Sprint Missouri, Inc. and Tin Can) Case No. TO-98-528
Communications Company, LLC.)
)

ORDER APPROVING RESALE AGREEMENT

Sprint Missouri, Inc. (Sprint) and Tin Can Communications Company, LLC (Tin Can) filed an application on May 22, 1998, for approval of a resale agreement (the Agreement) between them. 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., and would permit Tin Can to resell basic local exchange service to residential and business end users.

The Commission issued an order and notice on June 2 setting deadlines for parties wishing to participate without intervention to file applications to do so, or to file comments. However, no applications to participate or comments were filed. The Staff of the Commission (Staff) filed a Memorandum on July 1, recommending that the Agreement be approved. 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 asked permission to participate or

requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve an interconnection agreement negotiated between an incumbent local exchange company 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.

Tin Can was granted a certificate of service authority to provide basic local exchange services on June 3, 1997 in Case No. TA-98-231. The Master Resale Agreement between Sprint and Tin Can, executed in February of 1998, is to become effective upon Commission approval, and the initial term of the contract is from the date of approval until March, 2000. The Agreement will remain in effect until one of the parties gives 90 days written notice of termination.

The Agreement provides for a discount for every Sprint regulated retail service rate, including promotions of more than 90 days, discounts, and option plans. Certain specified Sprint services are not available for resale under the Agreement. Emergency 911/E911 service will be available to Tin Can end users. Where Sprint is the owner or operator of the 911/E911 database, Sprint will maintain the database and will update information related to Tin Can's end users. Sprint has also agreed to allow Tin Can customers to retain their current telephone number when technically feasible, and both parties will protect confidential end-user information.

The Agreement provides that Tin Can will have the ability to order all available features on its switches at parity with the features Sprint offers to its own end-user customers. In addition, Sprint will follow industry standards for electronic interfaces for ordering and pre-ordering transactions, as established by the Ordering and Billing Forum. Sprint has agreed to develop, and make available, other elements of the Operational Support System in keeping with applicable industry or Commission standards. The Agreement establishes minimal procedures for the parties to resolve disputes, but leaves to the Commission the resolution of differences that the parties are unable to settle successfully on an informal basis.

The Agreement includes provisions to maintain end-user service should Tin Can default on its payments to Sprint. Sprint has agreed to notify all affected end users within five days of a default by Tin Can and transfer all those end users to Sprint's service. Sprint will also notify customers that they have 30 days to select a local service provider. Sprint will notify the Commission of the names of any end users who fail to select a service provider and whose service is terminated.

The Staff stated in its recommendation 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 recommended approval of the Agreement provided that all modifications to the Agreement are submitted 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 has reached the conclusion that the Master Resale 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

This Commission's first duty is 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 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, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

The parties shall provide the Telecommunications Staff with a copy of the resale or interconnection agreement with the pages numbered consecutively in the lower right-hand corner. Modifications to an agreement must be submitted to the Staff for review. When approved 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 modification will be approved once Staff has verified that the provision is an approved provision, and prepared a recommendation advising approval. 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 resale Agreement between Sprint and Tin Can 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 Master Resale Agreement between Sprint Missouri, Inc. and Tin Can Communications Company, LLC filed on May 22, 1998, is approved.
2. That the parties shall file a copy of the Agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner no later than July 31, 1998.
3. That any changes or modifications to this Agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

4. That this order shall become effective on July 31, 1998.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Drainer,
Murray and Schemenauer, CC.,
concur.

Wickliffe, Deputy Chief Regulatory Law Judge