STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY

July 31, 1997

CASE NO: TO-97-487

Charles Brent Stewart, French & Stewart, 1001 E. Cherry St., Suite 302, Columbia, MO 65201-7931
Paul G. Lane, Diana J. Harter, Leo J. Bub, Anthony K. Conroy, Southwestern Bell Telephone Company, 100 N. Tucker Blvd., Room 630, St. Louis, MO 63101

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

Sincerely,

Cecil I. Wright
Executive Secretary

Uncertified Copy:

Office of the Public Counsel, P.O. Box 7800, Jefferson City, MO 65102
W. R. England, Brydon, Swearengen & England, 312 East Capitol Avenue, P. O. Box 456, Jefferson City, MO 65102-0456

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 31st day of July, 1997.

In the Matter of the Joint Application of American Communications Services, Inc. and SWBT for Approval of Interconnection Agreement Under the Telecommunications Act of 1996.	)))))	CASE NO. TO-97-487

ORDER APPROVING INTERCONNECTION AGREEMENT

American Communications Services, Inc. (ACSI) and Southwestern Bell Telephone Company (SWBT) filed a joint application on May 6, 1997, for approval of an interconnection agreement (the Agreement) between ACSI and SWBT. 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.* On March 19 in Case No. TA-96-455, the Missouri Public Service Commission (Commission) conditionally granted to ACSI a certificate to provide basic local telecommunications service in the service territories of SWBT, GTE Midwest Incorporated (GTE) and United Telephone Company of Missouri d/b/a Sprint (Sprint-United). ACSI filed a tariff in the same case on July 28. The tariff bears an effective date of August 27.

The Commission issued an Order and Notice on May 13, which established a deadline for applications to participate without intervention. Also on May 13, ACSI filed a motion for expedited consideration, requesting that the Commission approve its interconnection agreement by May 30. On May 22 the Commission issued its Order Denying Motion for Expedited Consideration. No applications for participation

without intervention were filed with the Commission. In addition, no comments or requests for hearing were filed. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on July 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 asked permission to participate or requested a hearing in this case, the Commission may grant the relief requested based upon the verified application. However, because of certain concerns which were raised, the Commission scheduled a hearing on July 30 for Commissioners' questions.

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 (ILEC) and a new provider of basic local exchange service. 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.

The initial term of the contract is for a one year period from the date of execution; thereafter, the Agreement remains in effect until one of the parties gives a 90-day written notice of termination.

The Agreement provides that ACSI will at a minimum interconnect its network facilities to each SWBT access tandem, and to either each SWBT local tandem or each SWBT end office subtending that local tandem. Additional interconnection or special trunking will be required for interconnection to ancillary services. The parties may use the following interconnection methods: physical collocation interconnection, virtual

collocation interconnection, SONET-based interconnection, leased facility interconnection, mid-span fiber interconnection or another interconnection method that may be determined to be technically feasible in the future. The Agreement also provides for the classification of traffic for the purposes of compensation as either local, transit, optional calling area, intraLATA interexchange, interLATA interexchange or Feature Group A (FGA) traffic.

In addition, the Agreement contains provisions for the transmission and routing of exchange access traffic, as well as the transport and termination of other types of traffic. SWBT agrees to provide ACSI access to unbundled network elements for the provision of telecommunications services. SWBT will resell its retail telecommunications services to ACSI at wholesale rates, for sale by ACSI to its end users. The parties agree to provide each other with local dialing parity, and SWBT agrees to provide ACSI with intraLATA dialing parity in accordance with Section 271(e)(2) of the Act. Further, SWBT agrees to make nondiscriminatory access available to ACSI for the following services: databases and associated signaling necessary for call routing and completion, white pages, 911 and E-911 type services, directory assistance, operator services, and operations support systems (OSS).

The Agreement also indicates that the prices, terms and conditions in the Agreement do not currently reflect the results of the AT&T, MCI and MFS arbitrations before the Commission, but that such arbitration awards shall be available to ACSI upon written request on the same terms and conditions. The recurring and nonrecurring resale discounts for residential and business customers are found in Exhibit A of the Resale Appendix to the Agreement. SWBT will charge ACSI a per order conversion charge of $25 for conversion of an end user currently receiving noncomplex

service from SWBT's network. Complex conversion orders will be charged $125. The Agreement provides for the resale of Mandatory Extended Area Service (EAS) and Optional Metropolitan Calling Area (MCA).

Finally, the Agreement contains disconnection procedures for nonpayment of charges by ACSI to SWBT. On the fortieth day past the due date, ACSI is required to notify its end users that SWBT will assume the end users' accounts at the end of five days unless the end user affirmatively selects a new local service provider within that five-day period. If no selection is made within the five-day period, the end users will be transferred to SWBT. Within five days of the transfer, SWBT will notify all affected users that it is now providing their service. SWBT will also notify these end users that they have 30 days to select a local service provider. If an end user fails to select a local service provider within 30 days of the change of providers, SWBT may terminate the end user's service, and will notify the Commission of the names of all end users whose service has been terminated. The Agreement further states that nothing in the Agreement shall be interpreted to obligate SWBT to continue to provide service to any such end users.

In the memorandum filed by Staff, Staff states that it believes the agreement between SWBT and ACSI meets the limited requirements of the Telecommunications Act of 1996. Specifically, Staff states that the Agreement does not appear to discriminate against telecommunications carriers not a party to the interconnection agreement and does not appear to be against the public interest. Staff recommends that the Commission approve the interconnection agreement, and direct SWBT and ACSI to submit any modifications or amendments of the Agreement to the Commission for approval.

The Commission scheduled a hearing on July 30 to allow an opportunity for Commissioner questions regarding certain provisions contained in Section 6.0 of the Resale Appendix to the Interconnection Agreement. Those provisions detail what will happen to ACSI's end users in the event that SWBT terminates service to ACSI for nonpayment by ACSI of amounts owned to SWBT. The hearing commenced as scheduled with all parties present.

Findings of Fact

The 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 joint application, the interconnection agreement, Staff's recommendation, and information elicited at the July 30 hearing. Based upon that consideration, the Commission finds that the interconnection agreement filed on May 6 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 initially had concerns that Section 6.0 of the Resale Appendix to the Agreement contained provisions on the termination of end-user service which might be inconsistent with the public interest. In light of the information presented at the July 30 hearing, as well as the Commission's past approval of other interconnection agreements that contain identical or similar provisions to Section 6.0, the Commission finds that its concerns are more appropriately addressed in a separate rulemaking proceeding.

The Commission further finds that mandatory MCA service is an essential part of basic local telecommunications service. Because the

Agreement does not specifically mention the provision of mandatory MCA, the Commission will order that resale of mandatory MCA be permitted as a condition of the Commission's approval of the Agreement. Further, 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 procedures set out below.

Modification Procedure

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 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 ACSI 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 ACSI of any modifications or changes to the Agreement. These changes or modifications will be substituted in the Agreement, which should contain in the lower right 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 in the Commission's 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 present its recommendation. The Commission, if necessary, will permit responses and then will rule on the pleadings unless it determines a hearing is necessary.

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

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 interconnection 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 interconnection agreement between SWBT and ACSI, and its findings of fact, the Commission concludes that the interconnection agreement filed on May 6 is neither discriminatory nor inconsistent with the public interest, and should be approved.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement between Southwestern Bell Telephone Company and American Communication Services, Inc. filed on May 6, 1997 is approved.

2. That to the extent not explicitly provided for in the interconnection agreement, resale of mandatory metropolitan calling area (MCA) service is hereby mandated as a condition of the Commission's approval in Ordered Paragraph 1.

3. That Southwestern Bell Telephone Company and American Communication Services, Inc. shall file a copy of the interconnection agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner.

4. That any further changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

5. That this order shall become effective on August 4, 1997.

BY THE COMMISSION

Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton,
Drainer, Murray and Lumpe,
CC., concur.

ALJ: Bensavage

ALJ/Sec'y: Rob -s

Date Circulated

TO-97-487
CASE NO.

Zobrist, Chairman

Crumpton, Commissioner

Murray, Commissioner

Lumpe, Commissioner

Drainer, Vice-Chair

Agenda Date

Action taken:

Must Vote Not Later Than

ALJ/Sec'y: Bensavage / Bridgin

7-30-97
Date Circulated

TO-97-487
CASE NO.

Zobrist, Chairman 7.30.97

Crumpton, Commissioner

Murray, Commissioner

Lumpe, Commissioner

Drainer, Vice-Chair

7-31-97
Agenda Date

Action taken: S-O, A/Dm

Must Vote Not Later Than 7/31/97

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 31st day of JULY, 1997.

Cecil I. Wright
Executive Secretary