STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 16th day of October, 1997.

Joint Application of Southwestern Bell Telephone Company and U S WEST Interprise America, Inc., d/b/a !NTERPRISE America, Inc. for Approval of Interconnection Agreement Under the Telecommunications Act of 1996.	)	**Case No. TO-98-42**

ORDER APPROVING INTERCONNECTION AND RESALE AGREEMENT

Southwestern Bell Telephone Company (SWBT) and U S WEST Interprise America, Inc., d/b/a !NTERPRISE America, Inc. ("Interprise") filed a joint application on July 29, 1997, requesting that the Missouri Public Service Commission approve an interconnection and resale agreement between SWBT and Interprise (Agreement). The Agreement was filed pursuant to Section 252(e)(1) of the Federal Telecommunications Act of 1996 (the Act). *See* 47 U.S.C. § 251, *et seq.* Interprise is a certificated provider of interexchange and nonswitched private line local exchange telecommunications services in Missouri. Interprise wants to resell basic local exchange service to residential and business end users and to provide such service over its own facilities. The Commission notes that Interprise has not filed an application for a certificate of service authority to provide basic local exchange telecommunications services to date, and that approval of a certificate is an essential precondition for filing or obtaining approval of tariffs.

The Commission, by its Order and Notice issued August 6, established a deadline of August 26 for proper parties to request

permission to participate without intervention. No parties requested to participate without intervention. The Commission's Order and Notice also directed parties wishing to file comments to do so by September 26, and directed parties desiring to request a hearing to do so by August 26. No comments or requests for hearing were filed. The Commission Staff (Staff) filed a Memorandum on September 15, 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 Federal Telecommunications Act of 1996 has authority to approve an interconnection or resale 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
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> (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 --
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> (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --
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> (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
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> (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; . . . .

Staff stated in its memorandum that the terms of this Agreement are basically the same as the other interconnection and resale agreements previously submitted to the Commission, though some rates may differ. The Agreement between SWBT and Interprise is to become effective ten days after Commission approval. The term of the contract is one year from the date the parties executed the contract; thereafter the Agreement remains in effect unless one of the parties notifies the other party 60 days prior to the end of the initial term that the contract will not be extended, or until one of the parties gives 90-day notice of termination following the conclusion of the initial term. 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 Interprise 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 permits several methods of interconnection, including mid-span fiber, physical and virtual collocation, SONET-based and

leased facility interconnection 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 origination and termination of traffic to or from interexchange carriers would be based on Interprise's and SWBT's access service tariffs.

SWBT agreed to make available to Interprise customers the same access to 911 and E911 (enhanced 911) that SWBT customers receive. SWBT also agreed to make available intraLATA toll dialing parity in accordance with Section 251(b)(3) of the Act.

The Agreement provides for a $25.00 intercompany conversion charge when a resale customer switches service from SWBT to Interprise and the conversion is noncomplex. The charge is $125.00 when the conversion is complex. The Agreement also provides for certain simple and complex service order charges for unbundled network elements, including charges for ordering new service, changing service, and disconnecting service, without defining the terms "simple" and "complex."

The Agreement also contains provisions which apply a transit traffic element rate to all minutes of use between either SWBT or Interprise and third party networks that transit the other party's tandem switch, if the calls do not originate with or terminate to SWBT's or Interprise's (the transit party's) end user. The originating party is responsible for negotiating appropriate rates with the terminating party. Neither SWBT nor Interprise will send local traffic to the other party that is destined for the network of a third party unless and until SWBT or Interprise, as the case may be, has the authority to exchange traffic with the third party.

Furthermore, Staff noted in its memorandum that the Agreement provides for disconnection of end users if Interprise fails to pay charges due SWBT, but only after Interprise, and then SWBT, notify the end users that they will be disconnected if they do not select a new local service provider within 30 days after SWBT takes over their service from Interprise.

The Agreement permits each party to define its own local calling areas for purposes of providing telecommunications services to its end users, and establishes intercompany charges for transiting traffic within mandatory and optional local calling areas. In SWBT and Dial U.S., Case No. TO-96-440, Report and Order issued September 6, 1996, 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 Interprise 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. The Commission further finds that, in each metropolitan exchange in which Interprise provides basic local service, it should serve the same mandatory calling area as SWBT. The signatories remain subject to the jurisdiction of the Commission and to existing rules, laws, and tariffs.

Findings of Fact

The Missouri Public Service Commission, having considered the joint application of the parties, including the agreement and its

appendices, and the Staff's memorandum, 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 interconnection and 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 approve 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 interconnection and 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 interconnection and resale Agreement between SWBT and Interprise 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 interconnection and resale agreement between Southwestern Bell Telephone Company and U S WEST Interprise America, Inc., d/b/a !NTERPRISE America, Inc., filed on July 29, 1997, is approved.

2. That Southwestern Bell Telephone Company and U S WEST Interprise America, Inc., d/b/a !NTERPRISE America, Inc. 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.

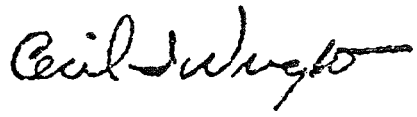
3. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedures outlined in this order.

4. That the Commission, by approving this agreement, makes no finding as to whether Southwestern Bell Telephone Company has fulfilled the requirements of Section 271 of the Telecommunications Act of 1996, including the competitive checklist of any of the fourteen items listed in Section 271(c)92)(B).

5. That this order shall become effective on October 26, 1997.

6. That this case shall be closed on October 27, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Lumpe, Ch., Drainer and Murray,
CC., concur.
Crumpton, C., absent.

Randles, Regulatory Law Judge