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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 31st
day of December, 1997.

In the Matter of the Interconnection)	
and Resale Agreement of United Telephone)	
Company of Missouri d/b/a Sprint and)	<u>Case No. TO-98-145</u>
Digital Teleport, Inc.)	

ORDER APPROVING INTERCONNECTION AND RESALE AGREEMENT

On October 6, 1997, United Telephone Company of Missouri d/b/a Sprint (Sprint) and Digital Teleport, Inc. (Digital) filed with the Missouri Public Service Commission (Commission) a joint application for approval of an interconnection and resale agreement (the Agreement) between Sprint and Digital pursuant to Section 252 (e)(1) of the Telecommunications Act of 1996 (the Act). See 47 U.S.C. §251, *et seq.* Appended to the joint application was a copy of the Agreement.¹

The Commission issued an Order and Notice on October 10 which established an October 30 deadline for applications to participate without intervention and established a December 3 deadline for comments. On November 24, the Mid-Missouri Group of Local Exchange Telephone Companies (Mid-Mo Group)² applied out-of-time for participation without intervention. The Mid-Mo Group filed its Comments simultaneously with its application to

¹A missing page of Table 1 of the Agreement detailing the agreed upon resale discounts was subsequently filed by letter on December 4.

²The Mid-Missouri Group of Local Exchange Telephone Companies consists of the following entities: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

participate out-of-time. On December 9, the Commission issued an Order Granting Participation to the Mid-Mo Group and accepted their Comments as filed.

On December 15, the parties submitted an Amendment to Master Resale Agreement which contains certain "fall-back" provisions for Sprint to assume end-user accounts in the event Digital goes out of business. The Staff of the Commission (Staff) filed a Memorandum on December 22 recommending approval of the Agreement as amended.

Although the participants filed comments, they did not request a hearing. 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 requested a hearing in this case, the Commission may grant the relief requested based on the verified application. However, the Commission will consider the comments filed by the participants, along with Staff's recommendation.

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 other telecommunications carriers. 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.

In its recommendation, Staff summarizes the major provisions of the Agreement, which is to become effective on Commission approval. The initial term of the Agreement between Sprint and Digital is a one-year

period from the effective date of the Agreement; thereafter, the Agreement shall continue in effect until one of the parties gives a 180-day written notice of termination.

Staff notes that Digital will have considerable flexibility under the Agreement in deciding how best to serve its customers. In compliance with the terms of the Act, Sprint will make available to Digital for resale all telecommunications services that Sprint currently provides or may provide in the future to its own customers. Therefore, Digital may provide service through one hundred percent resold services, or it may bundle elements purchased from Sprint and establish its own facilities on a piecemeal basis.

The Agreement states that Digital may interconnect with Sprint's network at any technically feasible point. The Agreement also describes the network architectures which the parties may use to interconnect their networks. Digital may request either physical or virtual collocation, and Digital may collocate and interconnect at a Sprint facility with a third-party with whom Sprint has already contracted for collocation. Digital may request SONET-based interconnection where Sprint has the technology available. The parties agreed to provide each other with intercompany trunk quantity forecast information on an annual basis to ensure adequate facilities are available for traffic between the parties.

The Agreement provides that the parties shall reciprocally terminate local traffic and intraLATA/interLATA toll calls originating on each others' network. The Agreement further provides for the transmission and routing of other types of traffic, such as 800/888 traffic, E911/911 traffic, operator services and directory assistance. In addition, the Agreement provides interim number portability, access to numbering resources, access to rights-of-way, and network maintenance.

Staff states the Agreement defines and describes the standards and technical requirements by which Sprint will unbundle and separately price network elements. The initial set of network elements which Digital may purchase include: local loop, network interface devices, local and tandem switching capability, dedicated and common interoffice transmission facilities, signaling networks (including Signaling System 7 (SS7)), call-related databases, operations support systems, operator assistance and directory assistance. The Agreement states that each unbundled network element provided by Sprint to Digital shall be at parity with the quality of design, performance, features, functions, capabilities and other characteristics of the facilities that Sprint provides to itself, its customers, affiliates or any other entity. This parity requirement includes, but is not limited to, levels and types of redundant equipment and facilities for power, diversity and security.

Staff states that Part C-Attachment I, Price Schedule, of the Agreement contains a variety of rates for local interconnection, local resale, and unbundled network elements. Most of the services or options made available by Sprint for resale by Digital are discounted 13.85 percent from Sprint's tariffed rates. Directory assistance and operator assistance, however, will be available to Digital at a 41.44 percent discount. Staff notes that operational support systems will initially be priced at individual case basis (ICB) rates and rates will be added to the Agreement price list as they are developed.

Staff notes that the Agreement has one provision not previously seen in Missouri. Under this provision, Digital agrees to pay Sprint intrastate access charges if Digital supplies service through Sprint's unbundled switching element. Staff states it is not aware that any competitive LEC in Missouri has previously agreed to pay access charges when provisioning

service through unbundled switching. Staff indicates it does not believe that many competitive companies will voluntarily pay access charges when using unbundled switching. However, Staff indicates it does not believe that this arrangement rises to the level of being against the public interest.

The Comments filed by the Mid-Mo Group reflect concerns over the termination of traffic to a third-party LEC through Sprint's tandem switch under the interconnection agreement. The Mid-Mo Group states that traffic from competitive LECs (CLECs), such as Digital, is indistinguishable from other traffic which Sprint terminates to third-party LECs through its common trunk group. Thus, the third-party LEC has no way of knowing which CLEC is responsible for what portion of terminating minutes. Therefore, it cannot be determined what amount to bill or to whom a bill should be sent. The Mid-Mo Group's second concern regards the potential for discrimination in toll charges billed to CLECs for calls made within a metropolitan calling area (MCA), when an incumbent LEC would not incur charges for the same call under the MCA plan. The Mid-Mo Group's final concern deals with the growing administrative burden of billing requirements which will be imposed on small incumbent LECs as the number of CLECs proliferate. The Mid-Mo Group did not request a hearing or ask the Commission to reject the interconnection agreement.

In its Memorandum, Staff notes these issues are similar to issues the Mid-Mo Group has raised in other cases involving approval of interconnection agreements. Staff makes reference to Case No. TT-97-524 and indicates that Staff's position is contained in the testimony filed in that case. Staff states that it has reviewed the proposed interconnection and resale agreement and believes the Agreement between Sprint and Digital meets the limited requirements of the Telecommunications Act of 1996.

Specifically, Staff states 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 Sprint and Digital to submit any modifications or amendments to the Commission for approval. Staff also recommends the Commission direct Sprint and Digital to submit a copy of the Agreement to the Commission with the pages sequentially numbered in the lower right hand corner, including the Price List following sheet 33.

Under the provisions of Section 252(e)(1) of the federal Telecommunications Act of 1996, 47 U.S.C. § 252 (e)(1), the Commission 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 and resale agreement between Sprint and Digital, the Amendment to Master Resale Agreement, the comments filed by the Mid-Mo Group, and Staff's recommendation, the Commission concludes that the interconnection and resale agreement filed on October 6 is neither discriminatory to nonparties nor inconsistent with the public interest and should be approved as amended.

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.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement filed on October 6, 1997, between United Telephone Company of Missouri d/b/a Sprint and Digital Teleport, Inc., is approved.

2. That United Telephone Company of Missouri d/b/a Sprint and Digital Teleport, Inc., shall file a copy of the interconnection and resale agreement, including the Price List following page 33 and the Amendment to Master Resale Agreement, with the Staff of the Missouri Public Service Commission with the pages numbered seriatim in the lower right-hand corner.

3. 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.

4. That this order shall become effective on January 4, 1998.

5. That this case shall be closed on January 12, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, and Drainer, CC., concur.
Crumpton, C., not participating.

Hennessey, Regulatory Law Judge