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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 15th  
day of April, 1998.

In the Matter of the Joint Application of )  
Southwestern Bell Telephone Company and Frontier )  
Telemanagement Inc. for Approval of a Resale ) Case No. TO-98-298  
Agreement Under the Telecommunications Act of )  
1996. )  
)

**ORDER APPROVING RESALE AGREEMENT**

On January 20, 1998, Southwestern Bell Telephone Company (SWBT) and Frontier Telemanagement, Inc. (Frontier) filed a joint application for approval of a resale agreement (the Agreement) between SWBT and Frontier under the provisions of the Federal Telecommunications Act of 1996 (the Act). See 47 U.S.C. §§ 251, et seq. Frontier has obtained a certificate of service authority to provide basic local and local exchange telecommunications service in Case No. TA-98-161, but its certificate will not become effective until Frontier obtains Commission approval of an interconnection or resale agreement and associated tariff sheets.

The Missouri Public Service Commission (Commission) issued an Order and Notice on January 28, which established a February 17 deadline for applications to participate without intervention and a March 20 deadline for comments.

No requests for hearing or requests for participation without intervention were filed. Frontier filed comments on March 20 restating its belief that the Agreement meets the standards for approval under the Act and, stating that the Commission has approved substantially identical

agreements in the past. The Commission Staff (Staff) filed a Memorandum on March 31, recommending that the Agreement be approved. Frontier filed a motion for expedited treatment on April 3, emphasizing that all parties recommended approval and that each day of delay would impact Frontier's competitive opportunities in Missouri. Frontier represented that it has drafted a tariff under which it is prepared to serve customers in Missouri.

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, Frontier's comments and the Staff's Memorandum. The Commission will grant Frontier's motion for expedited treatment so that Frontier may file its tariff sheets in Case No. TA-98-161 as soon as possible.

### **Discussion**

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve a resale agreement negotiated between an incumbent local exchange company (ILEC) and other telecommunications carriers. The Commission may reject a resale agreement only if the agreement is discriminatory to a nonparty or is inconsistent with the public interest, convenience, and necessity.

The Agreement between SWBT and Frontier is to become effective ten days after Commission approval. The term of the Agreement is 90 days from the effective date of the Agreement; thereafter, the Agreement shall continue in effect until either party gives the other party 60 days' written notice of termination.

SWBT will provide to Frontier for resale multiple residential and business services including "mandatory EAS" (extended area service) and optional metropolitan calling area (MCA) plans, directory listings and operator services. These services will be provided at a discount of 13.2 percent, with some exceptions. The Agreement provides for order charges of \$5.00, \$25.00 or \$125.00 to switch an existing SWBT customer to Frontier, depending on the complexity of the change and whether or not the change was done electronically.

SWBT agreed to make available to Frontier customers the same access to 911 and E911 (enhanced 911) that SWBT customers receive. SWBT further agrees to provide local dialing parity on the same basis as that provided to SWBT end users and intraLATA toll dialing parity in accordance with Section 251(b)(3) of the Act. SWBT and Frontier agree that neither party shall treat the other party any less favorably than it treats other similarly situated parties with whom such party has an approved interconnection or resale agreement. The Agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories.

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 also stated that the general provisions of the Agreement, including disconnection procedures, are substantially similar to those contained in other interconnection agreements previously approved by the Commission. Staff recommended approval of the Agreement provided that all modifications to the Agreement be submitted to the Commission for approval. This condition has been applied in prior cases where the

Commission has approved similar agreements. Finally, Staff recommended that language be included in any order approving the Agreement to clarify that SWBT must resell mandatory metropolitan calling area (MCA) service as a condition of approval of the Agreement.

### **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, Frontier's comments and Staff's recommendation. Based upon that review the Commission has reached the conclusion that the resale Agreement meets the requirements of the Act in that it does not unduly discriminate against a nonparty carrier, and that 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, and conditioned upon resale of mandatory MCA service by SWBT to Frontier, as recommended by Staff.

### **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 SWBT and Frontier 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 resale agreement filed on January 20, 1998, between Southwestern Bell Telephone Company and Frontier Telemanagement, Inc. is approved.

2. That Southwestern Bell Telephone Company and Frontier Telemanagement, Inc. shall file a copy of the resale agreement with the Staff of the Missouri Public Service Commission with the pages numbered seriatim in the lower right-hand corner no later than April 27, 1998.

3. That the Commission's approval of the resale agreement is conditioned on Southwestern Bell Telephone Company making available to

Frontier Telemanagement, Inc. the resale of mandatory metropolitan calling area (MCA) service under such terms and conditions as will allow Frontier Telemanagement, Inc. to offer the same mandatory MCA services to its customers that Southwestern Bell Telephone Company offers to its own end users.

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 April 20, 1998.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

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

Randles, Regulatory Law Judge



APR 21 1998

RECEIVED  
COMMUNICATIONS SECTION

**RECEIVED**

APR 15 1998

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION