

MS

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 25th
day of November, 1998.

In the Matter of the Adoption of the)
GTE/Communications Cable-Laying Company, Inc.,)
d/b/a Dial U.S. Interconnection Agreement by) Case No. TO-99-94
Teleport Communications Group, Inc. Pursuant)
to Section 252(i) of the Telecommunications)
Act of 1996.)

ORDER DENYING MOTION TO REJECT AND APPROVING
INTERCONNECTION AGREEMENT

GTE Midwest Incorporated and GTE Arkansas Incorporated (GTE) filed a Notice of Adoption with the Commission on September 2, 1998. GTE advised the Commission that Teleport Communications Group, Inc. (TCG) had notified GTE that it desired to adopt the terms of the interconnection agreement between GTE and Communications Cable-Laying Company, Inc., d/b/a Dial U.S., approved by the Commission in Case No. TO-97-297. The document filed by GTE purports to inform the Commission that the interconnection agreement has been adopted but does not request that the Commission approve the interconnection agreement.

The Commission issued an Order and Notice on October 14, 1998, setting deadlines for parties to request a hearing or wishing to participate without intervention to file applications to do so no later than November 3. No requests for hearing or applications to participate without intervention were filed. 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.

The Commission staff (Staff) filed a Motion to Reject Interconnection Agreement on November 12. In this Motion, Staff argues that the interconnection agreement between GTE and TCG should be rejected because the Adoption of Interconnection Agreement document filed by GTE does not actually submit the interconnection agreement to the Commission for approval under Section 252(e) of the Act. Staff contends that GTE has not properly satisfied this section of the Act because of GTE's failure to submit an interconnection agreement signed by GTE and TCG for Commission approval.

Staff further contends that GTE and TCG do not have an interconnection agreement since the GTE/TCG Adoption of Interconnection Agreement was not properly submitted to this Commission for approval. Therefore, Staff concludes that the 90-day time period referenced in Section 252(e)(4), has not commenced. This section states in part, "If the State commission does not act to approve or reject the agreement within 90 days after submission after submission by the parties . . . the agreement shall be deemed approved."

On November 20, GTE filed a document entitled Response of GTE to Staff's "Motion for Reject Interconnection Agreement [sic]". GTE argues

that interconnection agreements adopted under Section 252(i) of the Act do not need to be submitted to the Commission for approval. GTE states that Section 252(i) permits any competitive local exchange carrier to adopt by operation of law the terms of any interconnection agreement created pursuant to Section 252(e). GTE also requests that the Commission deny Staff's Motion to Reject Interconnection Agreement.

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 (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.

Staff's Motion to Reject Interconnection Agreement correctly states that GTE has failed to actually submit the interconnection agreement to the Commission for approval. Instead, GTE seems to take the position that because TCG is adopting the terms of an agreement that has already been approved by the Commission, it is not necessary to submit the agreement to the Commission again. The Commission does not support GTE's position.

GTE correctly notes that Section 252(i) of the Act requires a local exchange carrier to make its previously executed interconnection agreements available to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

However, nothing in 252(i) would override Section 252(e)(1) of the Act, which requires that interconnection agreements be submitted for approval to the state commission.

While Staff's motion to reject correctly states that GTE is required to submit the proposed interconnection agreement to the Commission for approval, Staff's suggestion that the interconnection agreement be rejected is not accepted. No purpose would be served by rejecting the interconnection agreement for GTE's failure to use the correct words when submitting the agreement to the Commission. Regardless of what GTE's intent may have been when submitting this agreement to the Commission, the agreement will be reviewed by the Commission under Section 252(e) of the Act.

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. The agreement will be approved provided that the agreement and all modifications to the agreement shall be submitted to the Commission for approval. This condition has been applied in prior cases where the Commission has approved similar agreements.

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 and the supporting documentation. Based upon that review, the Commission has reached the conclusion that the interconnection 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

The Commission has a duty 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 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 pages 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 public interest, convenience and necessity under Section 252(e)(2)(A). Based on its review of the Adoption of Interconnection Agreement between GTE and TCG, 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 Staff's Motion to Reject Interconnection Agreement is denied.

2. That the Interconnection and Resale Agreement between GTE Midwest Incorporated and GTE Arkansas Incorporated and Teleport Communications Group, Inc. filed on September 2, 1998, is approved.

3. That GTE Midwest Incorporated and GTE Arkansas Incorporated and Teleport Communications Group, Inc. shall file a copy of the agreement which they are adopting with the Staff of the Missouri Public Service Commission, with the pages numbered serially in the lower right-hand corner no later than December 7, 1998. The parties shall file

on the same date a notice in the official case file advising the Commission that the agreement has been submitted to Staff as required.

4. That any 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 December 1, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Ruth, Regulatory Law Judge

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION