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In the Matter of the Request of Southwestern)
Bell Telephone Company and Rock Port Telephone) Case No. TM-97-528
Company to Transfer South Hamburg Exchange to)
Rock Port Telephone Company.)

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The Commission issued an Order and Notice on June 13 that was sent to the publisher of each newspaper located in the County of Atchison, to members of the Missouri General Assembly representing the County of Atchison, to the presiding commissioner of Atchison County and to the mayors of all the municipalities within the South Hamburg Exchange. In its Order and Notice, the Commission established a deadline of July 14 for interested parties to intervene. No party requested intervention.

On October 31, SWBT and RPTC filed their First Amended Application. The Staff of the Commission (Staff) filed a response to the First Amended Application on November 14, in which it recommended approval of the application. On December 22, the Staff filed a Memorandum that recommended approval of the proposed sale of assets from SWBT to RPTC without further delay. The Office of the Public Counsel (OPC) filed Comments on December 23, suggesting that the Commission should not approve the proposed sale until it had either conducted a local public hearing or a survey of customers of the South Hamburg Exchange. The Commission conducted a local public hearing in Rock Port, Missouri on April 30, 1998.

Discussion

According to the application, as amended, SWBT currently operates the South Hamburg Exchange through U.S. West's Hamburg, Iowa central office (Hamburg Exchange) under a 1942 contract between SWBT and the predecessor of U.S. West. RPTC is a cooperative that operates two exchanges adjacent and to the south of the South Hamburg Exchange: the Rock Port Exchange and the Watson Exchange.

SWBT and RPTC attached copies of their contract and RPTC's balance sheet to show what effects the proposed sale would have on RPTC. According to the terms of the contract, RPTC would purchase the South Hamburg Exchange, including all of its assets, for the sum of \$65,000 and the transaction would be consummated only upon Commission approval. RPTC would then expend approximately \$150,000 to connect the South Hamburg Exchange to RPTC's Watson Exchange with digital fiber optic cable. RPTC projects income losses for three years as a result of the purchase and ensuing construction costs, but expects to maintain a positive cash flow.

SWBT and RPTC asserted that the proposed sale is in the public interest because the customers located in the South Hamburg Exchange have a community of interest with Rock Port, Missouri (Rock Port) and because the South Hamburg Exchange would be more economically and efficiently served by RPTC. Applicants stated that RPTC would continue to provide South Hamburg Exchange customers with emergency telephone service comparable to the emergency telephone service currently being provided to them through the Hamburg Exchange. SWBT and RPTC stated that the tax impact on Atchison County would be an initial loss of property tax of approximately \$21,000 and that this loss would be small in comparison to the county's 1996 total tax revenues of over \$3 million.

The applicants stated that they had obtained approval from the United States District Court for the District of Columbia for a transfer of the South Hamburg Exchange from the Omaha, Nebraska LATA to the Kansas City, Missouri LATA to facilitate efficient delivery of inter-exchange services to customers in the South Hamburg Exchange. SWBT and RPTC attached a copy of the court's January 6, 1995 order approving the transfer.

Moreover, SWBT and RPTC stated that they had filed a petition with the Federal Communications Commission (FCC) for a waiver of the definition of "study area" contained in Part 36 (Appendix-Glossary) of the FCC's rules. By requesting a waiver of the definition, SWBT and RPTC sought permission to alter the boundaries of their respective Missouri study areas to eliminate the South Hamburg Exchange from SWBT's Missouri study area and add the South Hamburg Exchange to RPTC's existing study area upon transfer of the exchange from SWBT to RPTC. The applicants stated that the FCC had

granted their waiver request on July 18, 1996 and attached a copy of the order approving the waiver¹.

Finally, the applicants asserted that RPTC proposes to charge customers of the South Hamburg Exchange the same rates for local exchange telecommunications service that RPTC currently charges to its own subscribers. This would have the effect of reducing the local exchange rate paid by South Hamburg Exchange residential one-party customers from the current SWBT rate of \$11.45 per line per month to the rate of \$5.90 per line per month. Business one-party customers' rates would drop from \$23.70 to \$8.90 per line per month. South Hamburg Exchange customers would no longer be able to call the community of Hamburg, Iowa (Hamburg) on a toll free basis, as they currently can. However, these customers would gain toll free calling to RPTC's existing Watson Exchange and Rock Port Exchange, including the community of Rock Port. South Hamburg Exchange customers would be permitted to become full members of the cooperative, participate in its governance, and share in future capital credits that may be allocated to members. Applicants stated that notice of the proposed transfer, changes in rates and local calling scopes had been sent to all customers of the South Hamburg Exchange on September 23, 1997.

Staff Recommendation

In its November 14 response to the applicants' First Amended Petition and in its December 22 Memorandum, the Staff recommended approval

¹ The FCC order also approved the applicants' request for a waiver of the FCC rule which would otherwise have required RPTC to switch from rate of return regulation to price cap regulation at the time of purchasing the exchange from SWBT, a price cap company. Thus, the proposed transaction would not affect the ratemaking treatment that the Commission gives to RPTC. The extent of the Commission's jurisdiction over RPTC's rates is discussed more fully below.

of the proposed transaction. Staff noted that RPTC is currently undergoing an earnings review, but nevertheless recommended approval.

In addition to reiterating the details of the proposed transaction that are set out above, Staff pointed out that if the South Hamburg Exchange is transferred to RPTC, its customers will be able to call the county seat of Atchison County toll free. Toll calls into Iowa would be rated as interstate, interLATA, which are the lowest cost type of toll calls. Staff also noted that Sprint-United currently provides intraLATA toll service for RPTC, and RPTC plans to utilize Sprint-United to carry the South Hamburg Exchange's intraLATA toll calls if the sale is approved. According to Staff, RPTC intends to charge access rates for the South Hamburg Exchange as set forth in its access tariff.

With respect to RPTC's proposed construction plans, Staff stated that RPTC intends to construct a fiber optic feeder facility extending from its Watson Exchange to a point in the northern area of the South Hamburg Exchange, where the cable will terminate to a digital loop carrier and connect with existing distribution facilities. RPTC intends to use existing distribution loops and related facilities where possible. The amount of net plant to be booked by RPTC is estimated at \$171,998,² and RPTC intends to book these accounts in accordance with the Uniform System of Accounts. Staff stated that the Commission's Accounting and Financial Analysis Departments have reviewed the proposed transaction and have expressed no objection to Commission approval.

² Staff did not explain the discrepancy between its figure and the \$150,000 figure in the First Amended Application. However, this discrepancy is not material and none of the parties disputed or otherwise responded to the figure cited by Staff, so the Commission will assume that Staff's figure is the most recent estimate of net plant to be booked by RPTC.

Staff also explained in its Memorandum that it had obtained data from U.S. West³ and RPTC on their residence and business repair intervals. For the months of August, September and October, 1997 for the South Hamburg Exchange, U.S. West kept an average of 69.23 percent of its trouble report commitments. By contrast, for the months of July, August and September, 1997, RPTC kept 100 percent of its trouble report commitments.

Staff brought to the Commission's attention the fact that the notice sent by applicants to South Hamburg Exchange customers stated that 911 calls would be routed to the Atchison County Sheriff's Department. Currently, customers in the northern part of the South Hamburg Exchange, who reside closer to Hamburg than to Rock Port and desire Iowa dispatching of emergency services, must dial a "1-800" number rather than 911 for emergencies, unless they dial the appropriate emergency services agency directly. The call is routed to an answering point in Iowa, and then to the appropriate emergency service entity. Fire and ambulance service for this area is dispatched out of Hamburg, while calls requiring police attention are routed to the Sheriff's Department of Fremont County, Iowa, where they are appropriately handled. Under the proposal to transfer the South Hamburg Exchange, when the exchange's customers dial 911, RPTC would route their calls to the Atchison County Sheriff's Department, who would route the calls to the emergency entity that could most appropriately and expediently handle the emergency. Calls from customers in the northern part of the exchange would be routed so that dispatching of the appropriate emergency response entity would be out of Iowa. Staff stated that there

³ SWBT is the certificate holder and SWBT is ultimately responsible for the provision of adequate service, even though it has contracted with U.S. West to actually carry out its functions as local service provider. Therefore, U.S. West's record of service for the South Hamburg Exchange is SWBT's record of service, as well.

would be no increase in emergency response times as a result of the proposed sale.

Public Input

Staff's Memorandum and OPC's Comments discussed the fact that customer notices were mailed by RPTC to all 65 of the customers of the South Hamburg Exchange and that 17 customers had responded; 10 positively and 7 negatively. In response to OPC's Comments, the Commission scheduled a local public hearing to take place in Rock Port on April 6, 1998. At the April 6 local public hearing, 26 citizens who were not affiliated with either SWBT or RPTC⁴ spoke to the Commission concerning the proposed sale. The citizens were evenly divided concerning the sale, with 13 speaking in its favor and 13 speaking against it. Several of the speakers were residents of Iowa but had farms, other businesses or friends and family in the South Hamburg Exchange.

Nine of the citizens who spoke in favor of the sale were customers of SWBT and had received poor service from U.S. West, SWBT's contract service provider. These citizens cited fifteen examples of service problems, including lack of directory assistance and operator services for callers attempting to reach these customers, failure to print these customers' numbers in any telephone directory, failure to provide service for days, weeks and months on end, and repeated billing problems. Some of those who had experienced difficulty with SWBT's service had previously obtained service from RPTC and felt that RPTC's service was better than SWBT's. Others who spoke in favor of the sale expressed that they share

⁴ The president of RPTC, who spoke in favor of the proposed sale, is not included in this figure.

a community of interest with Rock Port, and would therefore benefit from a local calling scope that includes Rock Port.

By contrast, most of the citizens who opposed the proposed sale stated that their community of interest is with Hamburg rather than Rock Port. Hamburg lies only a few miles from the South Hamburg Exchange. These citizens would like to retain the current one-way Extended Area Service (EAS) into the Hamburg Exchange. Three of the opponents stated that they have received good service from SWBT and one opponent stated that she had experienced no problems with directory assistance. Some of the opponents also expressed concern over the effect that the proposed transaction might have on 911 service. Currently, the South Hamburg Exchange does not have 911 service. Customers in the South Hamburg Exchange can place a local call to the appropriate emergency service centers in Hamburg if they choose. Many customers would rather use emergency services from Hamburg than Rock Port because they are located much closer to Hamburg than to Rock Port and the response times are concomitantly shorter. These citizens expressed concern that if they are served by RPTC, they will have no choice but to dial 911 and be served by emergency personnel from Rock Port. However, most of those citizens stated that they would not oppose the sale on 911 grounds if they could continue to call emergency personnel in Iowa directly and if their Atchison County 911 calls could be dispatched to appropriate emergency response centers in Iowa.

At the hearing, one citizen introduced a petition into evidence that had been circulated in Missouri and Iowa in opposition to the sale. (Exh. 1). The sponsoring citizen explained that many of the signers were identified specifically as Iowa residents and that some of those identified

as having Missouri addresses might actually be Iowa residents who used their work addresses in Missouri. The sponsoring citizen could not identify with certainty which of the signers were Missouri residents and had not checked to see whether there were any duplicate signatures. Several of the signatures appeared to be those of individuals who also appeared and testified at the local public hearing.

Findings of Fact

The Missouri Public Service Commission has considered all of the competent and substantial evidence upon the whole record in order to make the following findings of fact. The Commission has also considered the positions and arguments of all of the parties and members of the public who addressed the Commission at the local public hearing in making these findings. Failure to specifically address a particular item offered into evidence or a position or argument made by a party or citizen does not indicate that the Commission has not considered it. Rather, the omitted material was not dispositive of the issues before the Commission.

The Commission finds that the public interest will be served by the proposed sale of the South Hamburg Exchange from SWBT to RPTC. The Commission places great weight on the opinions of the customers located within the South Hamburg Exchange, as expressed at the April 6 local public hearing. The Commission places only minimal weight on the petition introduced as Exhibit 1 at the hearing, however. The circumstances surrounding its circulation and the identities and residences of the signatories are not reliable enough for the Commission to give the petition any significant weight in the Commission's deliberations.

The evidence concerning the benefit of calling scopes at the local public hearing was mixed; approximately the same number of customers

currently benefit from a local calling scope with Hamburg as would benefit from a local calling scope with Rock Port. However, the evidence also showed that rates for basic local service would be lower with RPTC than the rates currently charged by SWBT. Therefore, the customers who would be required to make toll calls to reach others within their community of interest if the sale were approved could offset their long distance bills to a certain degree by lower basic local service rates. In addition, if the sale is approved, those customers who have a community of interest with Hamburg would be making interstate, interLATA calls to reach numbers in Hamburg. Currently, South Hamburg Exchange customers who have a community of interest with Rock Port must make intrastate, intraLATA calls to reach numbers in Rock Port. Generally, interstate interLATA calls are the least expensive of all toll calls. Therefore, the balance of the evidence concerning calling scopes supports approval of the proposed sale.

The Commission further finds that RPTC will provide adequate service to the customers of the South Hamburg Exchange. Nine of the citizens who attended the local public hearing described examples of the severe directory assistance, telephone listing, telephone service and billing problems that they experienced with SWBT. Only four of the citizens expressed that their service from SWBT has been acceptable. The record also shows that RPTC has kept a higher percentage of its trouble report commitments than SWBT.

Although some of the citizens expressed concerns about changes in 911 service, the Commission finds that the access to emergency services after the proposed sale will be at least as good as the access currently available to the customers in the affected exchange. Currently, South Hamburg Exchange customers who desire emergency service out of Iowa

have two choices: 1) dial the appropriate service such as hospital or fire department directly as a toll free call, 2) dial a ten-digit "1-800" number for dispatch to the appropriate service. If the sale is consummated, the customers will retain the first option, but the call will be long distance. Rather than the second option, the customers will have the option of dialing 911, only three digits, to have the Atchison County, Missouri Sheriff's Department route their call to the appropriate Iowa emergency response center. The Commission finds that the effects of the proposed sale on emergency services will be positive rather than negative.

The Commission does not make any findings concerning the prudence of RPTC's purchase of the South Hamburg Exchange or the construction expenditures that RPTC intends to incur to connect the exchange to its Watson Exchange. Case No. TR-98-349 has been established by the Commission to review the Staff's overearnings investigation of RPTC, and the Commission will not make any finding in this case that would affect the ratemaking treatment to be given to RPTC's expenditures in Case No. TR-98-349 or any subsequent rate case involving RPTC's access rates.

Conclusions of Law

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 does not have jurisdiction over the rates charged by RPTC, with the exception of access rates, because RPTC is a cooperative.

§ 386.250(2), RSMo Supp. 1997. Nevertheless, the Commission does have jurisdiction over the proposed sale because SWBT is a regulated telephone company and RPTC's service is regulated by the Commission. §§ 386.020(51) and 386.250(2), RSMo Supp. 1997.

The Commission will grant a request to transfer assets whenever the proposed transfer is in the public interest. § 392.300, RSMo 1994. The Commission concludes, based upon the verified application, as amended, the evidence, and its findings of fact, that the proposed sale is in the public interest and should be approved.

THEREFORE, IT IS ORDERED:

1. That the joint application of Southwestern Bell Telephone Company and Rock Port Telephone Company is approved as amended.

2. That Southwestern Bell Telephone Company and Rock Port Telephone Company are authorized to take any and all actions and to execute all instruments and other documents necessary to effectuate the transaction contemplated by the application, as amended, and this order.

3. That Southwestern Bell Telephone Company and Rock Port Telephone Company shall file tariff sheets with a minimum 30-day effective date in Case No. TM-97-528 to implement the sale described in their joint application, as amended, within 30 days after all necessary construction and technical changes that are required for Rock Port Telephone Company to serve the South Hamburg Exchange customers have been completed. Rock Port Telephone Company's proposed tariff sheets shall describe the rates, rules and regulations that Rock Port Telephone Company intends to employ for all of its intrastate services, including access services.

4. That Rock Port Telephone Company is directed to have all of the customers of the South Hamburg Exchange transferred to the tariffs of

Rock Port Telephone Company within 90 days after the effective date of its implementing tariffs.

5. That the certificate of service authority of Southwestern Bell Telephone Company is amended to exclude the South Hamburg Exchange, effective 90 days after the effective date of the implementing tariffs to be filed by Rock Port Telephone Company and approved by the Commission in accordance with Ordered Paragraph 3.

6. That the certificate of service authority of Rock Port Telephone Company is amended to include the South Hamburg Exchange as of the date that the implementing tariffs to be filed by Rock Port Telephone Company in accordance with Ordered Paragraph 3 will take effect.

7. That Southwestern Bell Telephone Company and Rock Port Telephone Company shall file a pleading with the Missouri Public Service Commission notifying the Commission of the sale's completion within ten days after the sale has been completed.

8. That the Commission's order shall not affect the ratemaking treatment to be given to Rock Port Telephone Company's expenditures for purposes of Case No. TR-98-349 or any subsequent case involving a review of the company's access rates.

9. That this order shall become effective on June 15, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Randles, Regulatory Law Judge

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JUN 03 1998

GENERAL COUNSEL
PUBLIC SERVICE COMMISSION