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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 18th  
day of March, 1998.

In the Matter of the Joint Application )  
of Southwestern Bell Telephone Company and )  
WinStar Wireless of Missouri, Inc. for ) CASE NO. TO-98-249  
Approval of Interconnection Agreement )  
Under the Telecommunications Act of 1996. )

**ORDER APPROVING INTERCONNECTION**  
**AND RESALE AGREEMENT**

Southwestern Bell Telephone Company (SWBT) and WinStar Wireless of Missouri, Inc. (WinStar) filed a Joint Application on December 19, 1997 requesting that the Missouri Public Service Commission approve an interconnection and resale agreement (Agreement) between SWBT and WinStar. The Agreement, which addresses interconnection, resale and reciprocal compensation, 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. The Commission conditionally granted WinStar a certificate of service authority to provide basic local telecommunications services in the portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE) and Sprint Missouri, Inc. (Sprint) on December 18 in Case No. TA-97-438. WinStar's certificate will not become effective until it has obtained Commission approval for tariffs that it will file to establish the rates, terms and conditions of its services.

The Commission, by its Order and Notice issued December 24, established a deadline of January 13, 1998 for proper parties to request permission to participate without intervention or to request a hearing. No parties requested to participate without intervention or requested a hearing. The Commission's Order and Notice also directed parties wishing

to file comments to do so by February 17 and directed the Commission Staff (Staff) to file a memorandum advising the Commission of its recommendation by February 27. No comments were filed. Staff filed a Memorandum on February 27, 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**

- (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) **GROUND FOR REJECTION.**--The State commission may only reject --
  - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) if it finds that --

- (i) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; . . . .

The Agreement describes the interconnection facilities and methods with which the parties may interconnect their networks and contains provisions for the transmission and routing of telephone exchange service, exchange access service, and other types of traffic including E911 traffic.

The Agreement between SWBT and WinStar is to become effective ten days after Commission approval. The term of the contract is two years from the effective date; thereafter the Agreement remains in effect unless one of the parties gives notice 60 days prior to the end of the term that it does not wish to continue. If the Agreement continues in effect after the initial term, it is terminable by either party upon 90 days' notice. Each party has 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 WinStar 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, leased facility, wireless fiber, physical and virtual collocation, and SONET-based interconnection for originating and terminating calls between the two parties. The Agreement provides for reciprocal compensation for termination of local traffic, transit traffic,

optional calling area traffic, intraLATA and interLATA interexchange traffic, and Feature Group A (FGA) traffic. The parties agreed that compensation rates for origination and termination of traffic to or from interexchange carriers would be based on WinStar's and SWBT's access service tariffs.

SWBT has agreed to make nondiscriminatory access to 911 service available for WinStar. SWBT has also agreed to make available number portability, and to make available local dialing parity and intraLATA toll dialing parity in accordance with Sections 251(b)(3) and 271(e)(2) of the Act.

The Agreement also contains provisions which apply a transit traffic element rate to all minutes of use between either SWBT or WinStar and third party networks that transit the other party's system, if the calls do not originate with or terminate to SWBT's or WinStar's (the transiting party's) end user. The parties have agreed that the originating party will not send local traffic to the other party that is destined for the network of a third party until the originating party has made all reasonable efforts to obtain necessary authority with the third party. Nevertheless, if traffic is passed without the proper authority, the originating party will indemnify the transiting party for such traffic if the third party demands compensation from the transiting party.

The Agreement states that SWBT will provide access to the following unbundled network elements (UNEs) to WinStar: Network Interface Devices, Local Loops, Cross-connects, Local Switching/Switch Port, Tandem Switching, Advanced Intelligent Network and Operating Support Systems functions. SWBT will not separate requested network elements that SWBT currently combines unless WinStar requests separation.

SWBT will provide to WinStar for resale multiple business and residential services including local exchange service, extended area service (EAS) and metropolitan calling area (MCA) plans, and integrated services digital network services. Most of these services will be provided at a discount of 13.2 percent. SWBT will also provide Lifeline, Link Up and directory assistance services.

The Agreement provides for a \$25.00 non-complex conversion charge per order when customers switch service from SWBT to WinStar. WinStar will incur a charge of \$125.00 per order for complex conversions. The disconnection procedures in the Agreement are substantially similar to those contained in other interconnection agreements that have been approved by the Commission.

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 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.

### **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.

The Commission further finds that the Agreement addresses the parties' handling of traffic originating on a wireless carrier's network and terminating on the networks of third parties in situations where the wireless carrier does not have an agreement with the third parties, as did the tariff in Case No. TT-97-524. The Commission finds that approval of the Agreement should be conditioned upon its decision in Case No. TT-97-524, and that the Agreement must be interpreted in conformity with the Commission's findings and conclusions in that case.

### **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 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 WinStar and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

The Commission also has the authority to determine whether the rules, regulations or practices of any telecommunications company are unjust or unreasonable, and to determine the just, reasonable, adequate, efficient, and proper regulations, practices, and service to be observed and used by a telecommunications company. § 392.240.2, RSMo 1994. The Commission has previously found in Case No. TT-97-524 that SWBT will be required to make available a Cellular Usage Summary Report that contains information sufficient to allow third-party providers to bill wireless carriers for wireless-originating traffic which terminates in the exchanges of those providers. This obligation applies equally to traffic originating on WinStar's network which transits SWBT's network and terminates on the networks of third-party providers, or traffic originating on SWBT's network which transits WinStar's network and terminates on the networks of third-party providers.



**IT IS THEREFORE ORDERED:**

1. That the interconnection and resale agreement between Southwestern Bell Telephone Company and WinStar Wireless of Missouri, Inc., filed on December 19, 1997 is approved.

2. That Southwestern Bell Telephone Company and WinStar Wireless of Missouri, Inc. shall 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 Southwestern Bell Telephone Company is obligated to make available to any requesting third-party carrier its Cellular Usage Summary Report, consistent with the Commission's Report and Order in Case No. TT-97-524.

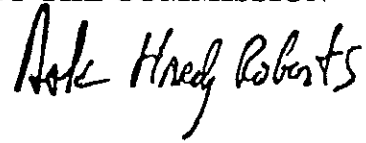
5. That WinStar Wireless of Missouri, Inc., is obligated to make available to any requesting third-party carrier a report similar to the Cellular Usage Summary Report generated by Southwestern Bell Telephone Company if cellular traffic is transmitted by WinStar Wireless of Missouri, Inc. to terminate on a third-party provider's network, consistent with the Commission's Report and Order in Case No. TT-97-524.

6. 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).

7. That this order shall become effective on March 19, 1998.

8. That this case shall be closed on March 20, 1998.

**BY THE COMMISSION**

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

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

( S E A L )

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

Randles, Regulatory Law Judge