

OK
DS

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of November, 1998.

In the Matter of the Adoption by TCG Kansas City)
of Interconnection Agreement Between Brooks Fiber)
Communications of Missouri, Inc. and Southwestern) Case No. TO-99-71
Bell Telephone Company Pursuant to Section 252(i))
of the Telecommunications Act of 1996.)

ORDER APPROVING INTERCONNECTION AGREEMENT

TCG Kansas City/AT&T Corporation (TCG-KC) and Southwestern Bell Telephone Company (SWBT) filed a Notice of Adoption with the Commission on August 20, 1998, wherein TCG-KC proposes to adopt the interconnection agreement between Brooks Fiber Communications of Missouri, Inc. (Brooks) and Southwestern Bell Telephone Company (SWBT), which was approved by the Commission in Case No. TO-97-334. TCG-KC's affiliate, TCG St. Louis, adopted the Brooks/SWBT agreement in Case No. TO-98-154. TCG-KC included with its application a copy of the Brooks/SWBT agreement, executed by TCG-KC and SWBT.

TCG-KC was granted certification of service authority to provide basic local, nonswitched local exchange and interexchange telecommunications services by the Commission on June 17, 1998, in Case No. TM-98-253.

The Commission issued an Order and Notice on September 1 setting deadlines for parties wishing to participate without intervention to file applications to do so, or to file comments. On September 16, SWBT filed its Application to Intervene. On September 23, the Commission issued an Order Granting Intervention.

The Staff of the Commission (Staff) filed a Memorandum on October 29, 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). No parties other than SWBT requested permission to intervene, and no party requested a hearing. Since no one 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 Act, has authority to approve an interconnection agreement negotiated between an incumbent local exchange company 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 indicates in its recommendation that the terms of this agreement are the same as the Brooks/SWBT interconnection agreement with the following minor exceptions: 1) the name "TCG Kansas City" has been substituted for Brooks; 2) TCG-KC's serving territory has been substituted for Brooks' territory; 3) TCG-KC's contact person has been substituted for Brooks' contact person; 4) TCG-KC's 911 contact person has been substituted for Brooks' contact person; 5) textual revisions have been made for the purpose of clarification; and 6) the Appendix White Pages adds pricing for Kansas City directories at the same price identified for St. Louis directories. The parties specifically state

that TCG-KC adopts the Brooks/SWBT interconnection agreement "upon these same terms and conditions as those provided in the agreement."

The Staff indicates 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 are submitted to the Commission for approval.

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, and Staff's recommendation. Based upon that review the Commission has reached the conclusion that the proposed interconnection 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 concludes that approval of the agreement should be conditioned upon the parties submitting any further modifications or amendments to the Commission for approval pursuant to the procedure set out below.

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 interconnection agreement between TCG-KC and SWBT 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 interconnection agreement between TCG Kansas City/AT&T Corporation and Southwestern Bell Telephone Company filed on August 20, 1998, is approved.

2. That the parties shall file a compliant copy of the agreement with the Staff of the Missouri Public Service Commission, with the pages

numbered seriatim at the bottom of the pages, no later than November 24, 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.

3. That any 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 November 24, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Ruth, Regulatory Law Judge

RECEIVED

NOV 13 1998

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION