

**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 July, 1997.

In the Matter of the Joint Application of )  
Southwestern Bell Telephone Company and Max-Tel )  
Communications, Inc. for Approval of Resale Agree- ) Case No. TO-97-501  
ment Under the Telecommunications Act of 1996. )  
)

## ORDER APPROVING RESALE AGREEMENT

Southwestern Bell Telephone Company (SWBT) and Max-Tel Communications, Inc. (Max-Tel) filed an application on May 15, 1997, for approval of a resale agreement (the Agreement) between them. The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, *et seq.* Max-Tel wants to resell basic local exchange services to residential and business end users pursuant to the certificate of service authority to provide such services granted on June 6, 1997 in Case No. TA-97-342.

The Commission issued an Order and Notice directing parties wishing to participate, to file comments, or to request a hearing to do so by June 9. No comments or requests for hearing were filed. The Commission Staff (Staff) filed a Memorandum on June 18, 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 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 stated in its recommendation that the terms of this Agreement are basically the same as other resale agreements previously approved by the Commission, though some rates may differ. The resale Agreement between SWBT and Max-Tel is to become effective ten days after Commission approval, and the initial term of the contract is ninety days. After the ninety days, the Agreement will remain in effect until one of the parties gives 60 days written notice of termination. 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.

SWBT agreed to make available to Max-Tel customers the same access to 911 and E911 (enhanced 911) that SWBT customers receive. SWBT also agreed to make available intraLATA toll dialing parity in accordance with Section 251(b)(3) of the Act. The Agreement provides for a \$25.00 inter-company conversion charge when a customer switches from SWBT to Max-Tel. 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 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 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 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**

First, all agreements, with any changes or modifications, should be accessible to the public at the Commission's offices. Second, the Act mandates that the Commission approve any changes or modifications to the resale agreement. To fulfill these objectives, the companies must have a complete and current resale agreement in the Commission's offices at all-

times, and all changes and modifications must be timely filed with the Commission for approval. This includes any changes or modifications which are arrived at through the arbitration procedures provided for in the agreement.

To enable the Commission to maintain a complete record of any changes and modifications, the Commission will request SWBT and Max-Tel to provide Staff with a copy of the resale Agreement with the pages numbered consecutively in the lower right-hand corner. The Commission will then keep this case open for the filing by SWBT and Max-Tel of any modifications or changes to the Agreement. These changes or modifications will be substituted in the Agreement, which should contain in the lower right corner the number of the page being replaced. Commission Staff will then date-stamp the pages when they are inserted into the Agreement. The official record of what changes or modifications have occurred will be the Commission's case file.

The Commission does not intend that a full proceeding will occur every time a change or modification is agreed to by the parties. Where the change or modification has been previously approved by the Commission in another agreement, Staff need only verify that the changes are contained in another agreement and file a memorandum to that effect. Such changes will then be approved. Where the changes or modifications are not contained in another agreement, Staff will file a memorandum concerning the change or modification and present its recommendation. The Commission, if necessary, will permit responses and then will rule on the pleadings unless it determines a hearing is necessary.

The above-described procedures should accomplish the two goals of the Commission and still allow for expeditious handling of changes or modifications to the agreements.

### **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 Max-Tel 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 between Southwestern Bell Telephone Company and Max-Tel Communications, Inc. filed on May 15, 1997, is approved.

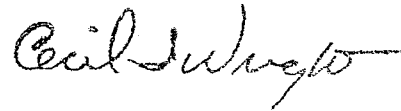
2. That Southwestern Bell Telephone Company and Max-Tel Communications, Inc. shall file a copy of this agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner.

3. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

4. That the Commission, by approving this agreement, makes no finding on the completion by Southwestern Bell Telephone Company of any of the requirements of the competitive checklist found in 47 U.S.C. Section 271.

5. That this order shall become effective on July 25, 1997.

**BY THE COMMISSION**

A handwritten signature in cursive script, appearing to read "Cecil I. Wright".

**Cecil I. Wright  
Executive Secretary**

( S E A L )

Zobrist, Chm., Crumpton,  
Drainer, Murray and Lumpe,  
CC., concur.

ALJ: Wickliffe