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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 3rd  
day of September, 1997.

In the Matter of the Application of Southwestern )  
Bell Telephone Company and QCC, Inc., for Approval ) **Case No. TO-97-539**  
of a Resale Agreement Under the Telecommunications )  
Act of 1996. )  
)

**ORDER APPROVING RESALE AGREEMENT**

On June 13, 1997, Southwestern Bell Telephone Company (SWBT) and QCC, Inc., (QCC) filed a Joint Application with the Missouri Public Service Commission (Commission) for approval of a resale agreement (the Agreement) between SWBT and QCC. 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. Previously, QCC filed an application on March 13 in Case No. TA-97-380 for a certificate of authority to resell basic local exchange and local exchange intrastate telecommunications service within the State of Missouri. QCC has not yet filed tariffs in that case, which is still pending before the Commission.

The Commission issued an order and notice in this case on June 23, which established a July 14 deadline for applications to intervene or participate without intervention. No applications for intervention or for participation without intervention were filed with the Commission, nor were comments or requests for hearing filed. The Commission Staff (Staff) filed a Memorandum on August 7 recommending approval of the Agreement. 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 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.

The resale agreement between SWBT and QCC is to become effective 10 days after Commission approval. The term of the contract is 90 days; thereafter, the Agreement remains in effect until one of the parties gives 60 days written notice of termination. Each party agrees to treat the other no less favorably than it treats other similarly situated local service providers with whom it has a Commission-approved resale agreement. The Agreement contemplates that QCC will provide service to its customers as a reseller of SWBT's services, and therefore the Agreement contains no provisions regarding interconnection of the parties' facilities.

The recurring and nonrecurring resale discounts for residential and business customers are found in Exhibit A and B to the resale agreement. Residential and business services will be discounted by SWBT at a 13.2 percent discount. Discounts will be provided for both recurring and nonrecurring rate elements. Two exceptions to the discount rate are

provided for in the Agreement. Company or Customer Initiated Suspension and Restoral Service will not be granted a discount. SWBT will charge QCC a per order conversion charge of \$25.00 for conversion of an end user currently receiving noncomplex service from SWBT's network. Complex conversion orders will be charged \$125.00.

SWBT agrees to make available to QCC's customers access to 911 and E911 (enhanced 911) service, with QCC responsible for collecting and remitting all applicable 911 surcharges on a per line basis to the appropriate public safety answering point, the 911 agency which handles the provisioning of that service.

In addition, SWBT has agreed to make available local dialing parity and intraLATA toll dialing parity in accordance with Section 251(b)(3) of the Act, as well as White Pages directory listing and distribution services, directory assistance, and operator services. The Agreement provides for the resale of mandatory extended area service (EAS) and optional metropolitan calling area (MCA). QCC will have the ability to report trouble to SWBT's trouble-reporting centers 24 hours a day, 7 days a week. 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 SWBT and QCC's Joint Application, the supporting documentation, and Staff's recommendation. Based on that review, the Commission finds that the resale agreement filed on June 13 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 further finds that mandatory MCA service is an essential part of basic local telecommunications service. Because the Agreement does not specifically mention the provision of mandatory MCA, the Commission will order that resale of mandatory MCA be permitted as a condition of the Commission's approval of the Agreement. Further, 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**

This Commission's first duty is to approve 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.

## **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 QCC, and its findings of fact, the Commission concludes that the resale agreement filed on June 13 is neither discriminatory nor inconsistent with the public interest, and should be approved.

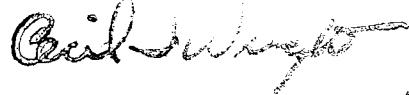
### **IT IS THEREFORE ORDERED:**

1. That the resale agreement between Southwestern Bell Telephone Company and QCC, Inc. filed on June 13, 1997, is approved.
2. That to the extent not explicitly provided for in the resale agreement, resale of mandatory metropolitan calling area (MCA) service is mandated as a condition of the Commission's approval in Ordered Paragraph 1.
3. That Southwestern Bell Telephone Company and QCC, Inc., shall file a copy of the resale agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner.
4. That any further changes or modifications to this Agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

5. 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.

6. That this order shall become effective on September 7, 1997.

**BY THE COMMISSION**



**Cecil I. Wright  
Executive Secretary**

( S E A L )

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

ALJ: Hennessey