

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 14th day
of March, 2006.

In the Matter of the Application for Approval)	
of a Section 251 Agreement Exclusively for)	
Intercarrier Compensation Between)	<u>Case No. TK-2006-0262</u>
Southwestern Bell Telephone, L.P., d/b/a)	
AT&T Missouri, and Camarato Distributing, Inc.)	

**ORDER APPROVING INTERCONNECTION AGREEMENT AND
DIRECTING PARTIES TO FILE THEIR TRANSITING TRAFFIC
AGREEMENT AS AN AMENDMENT TO THE INTERCONNECTION AGREEMENT**

Issue Date: March 14, 2006

Effective Date: March 16, 2006

This order approves the interconnection agreement filed by the parties. If the parties enter into a transiting traffic agreement, this order directs the parties to file the agreement with this Commission for approval.

On December 16, 2005, Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri filed an application with the Commission for approval of its Interconnection Agreement with Camarato Distributing, Inc. The agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.¹ Both AT&T and Camarato hold certificates of service authority to provide basic local telecommunications services in Missouri.

On January 9, 2006, the Commission issued an order directing that any party wishing to request a hearing do so no later than January 30, 2006. No requests for hearing

¹ See 47 U.S.C. §251 *et seq.*

were filed. In that same order, the Commission ordered its Staff to file a recommendation regarding approval or rejection of the agreement by February 8, 2006.

In its recommendation, filed on February 8, Staff expressed concern about the absence of specific provisions in the interconnection agreement regarding transiting traffic. Transitng traffic is traffic that passes between a Camarato customer and a customer of another local exchange carrier with which Camarato is not directly physically interconnected. Since there is not a direct physical interconnection, such transiting traffic may be passed through the switches and lines of AT&T before reaching its final destination.

Staff stated that it “has been unsuccessful in its attempts to determine whether the parties have entered into a separate transiting traffic agreement and recommended that the parties be given an opportunity to either file a transiting traffic amendment to the Interconnection Agreement, or explain why the Interconnection Agreement does not include a transiting traffic provision.” Staff recommended that if the parties have entered into a separate transiting agreement but it has not been submitted to the Commission for approval, then the Commission should reject the agreement.

On February 17, 2006, AT&T filed a response to Staff’s recommendation. AT&T informed the Commission that the Interconnection Agreement between it and Camarato does not contain a transiting traffic provision because they have not entered into such an agreement. AT&T further stated that it does not intend to enter into a transiting traffic agreement with Camarato because Camarato is not a facilities-based competitive local exchange carrier in Missouri.

Discussion

Under Section 252(e) of the Act, any interconnection agreement adopted by negotiation must be submitted to the Commission for approval. That section provides that the Commission may reject a submitted negotiated agreement only if:

- (i) the agreement (or a 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; . . .

Furthermore, the Act places tight time constraints on the Commission's actions. Section 252(e)(4) requires the Commission to act within 90 days after the agreement is filed. In this case, that means the Commission must approve or reject the agreement by March 16. If the Commission has not acted by that date, the agreement will be deemed approved.

In its recommendation, Staff does not object to the Interconnection Agreement but rather recommends that the Commission determine whether the parties have entered into a transiting agreement before rejecting or approving the interconnection agreement. AT&T has stated that it has not entered into a transiting agreement with Camarato. Staff did not respond to AT&T's pleading. It is therefore an uncontested fact that the parties have not entered into a transiting agreement. Hence, the Commission cannot order AT&T and Camarato to file such an agreement before March 16, when the Commission must act on the submitted interconnection agreement. The resulting question is therefore, whether the Commission should approve the submitted interconnection agreement without a transiting traffic amendment.

There is no reason to believe that an interconnection agreement must include specific provisions for transiting traffic in order to be approved. Presumably a company seeking to interconnect with AT&T could choose not to request the ability to transit traffic in its interconnection agreement and instead establish a direct physical interconnection with every other carrier. In that circumstance, an agreement that did not address transiting traffic clearly would not be discriminatory toward other carriers and would not be against the public interest. Similarly, this agreement, which includes only general terms regarding transiting traffic, cannot be said to be discriminatory toward other carriers. If AT&T and Camarato choose to do business under those general terms, and those terms are made available to other carriers, there is not unlawful discrimination. Therefore, the mere absence of specific transiting traffic provisions cannot justify the Commission's rejection of the agreement.

In its response to Staff's recommendation, AT&T points out that the Commission, in Case No. TK-2005-0285, approved an interconnection agreement between SBC and Level 3 that did not include terms regarding transiting traffic. Rather, the Commission directed the parties to file, as an amendment to the agreement, any transiting agreement later entered into.

Conclusion

The Commission concludes that the interconnection agreement, as submitted, meets the requirements of the Act in that it does not discriminate against a nonparty carrier and implementation of the agreement is not inconsistent with the public interest, convenience and necessity. The Commission notes that before providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved

by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunication services; and (3) except for wireless providers, a tariff approved by the Commission. 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 procedures set out below.

Modification Procedure

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.² In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.³ 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

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 of recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution.

² 47 U.S.C. § 252.

³ 47 U.S.C. §252(h).

⁴ 4 CSR 240-3.545.

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, the modified pages will be submitted 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 in the Commission's Data Center.

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 Commission will take notice of the modification once Staff has verified that the provision is an approved provision and has prepared a recommendation. 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 Staff's 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.

IT IS ORDERED THAT:

1. The Interconnection Agreement between Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri and Camarato Distributing, Inc., filed on December 16, 2005, is approved.
2. Any changes or modification to the approved agreement shall be filed with the Commission pursuant to the procedure outlined in this order.

3. If and when Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri and Camarato Distributing, Inc. enter into and finalize a transiting traffic agreement, they shall file it with the Commission for approval under Section 252(e) of the Telecommunications Act as an amendment to the Interconnection Agreement.

4. This order shall become effective on March 16, 2006.

5. This case may be closed on March 17, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton,
and Appling, CC., concur.
Murray, C., concurs, with separate
concurring opinion attached.

Jones, Regulatory Law Judge