

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

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

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and states:

1. On December 16, 2005, Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (AT&T) filed an application for approval of an Interconnection Agreement between AT&T and Camarato Distributing, Inc. (Camarato). The Commission has until March 16, 2006 to either approve or reject the agreement.

2. The Commission's authority to approve or reject this interconnection agreement is pursuant to 47 U.S.C. § 252(e) of the Telecommunications Act. Under this section, the Commission may only reject an interconnection agreement adopted by negotiation if: 1) the Commission finds that the agreement discriminates against a telecommunications carrier not a party to the agreement; or 2) the implementation of such agreement is not consistent with the public interest, convenience or necessity.

3. The Interconnection Agreement between AT&T and Camarato does not include a transiting traffic provision. Transiting traffic is traffic delivered by Camarato to AT&T and transited by AT&T to a third-party carrier.

4. The Commission recently addressed the issue of transiting traffic provisions in interconnection agreements. In Case No. TK-2005-0300, *Application of Chariton Valley*

Communications Corporation, Inc., for Approval of an Interconnection Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri pursuant to Section 252(e) of the Telecommunications Act of 1996, the Commission rejected an interconnection agreement that did not include provisions for transiting traffic. The Commission's May 29, 2005 *Order Rejecting Interconnection Agreement* concluded:

The Commission concludes that transit traffic is an interconnection service and is therefore subject to Commission approval. The Commission finds that it is against the public interest to approve an interconnection agreement when the parties have also entered into a transit traffic agreement that is not before the Commission. The Commission will therefore reject the interconnection agreement. SBC Missouri and CVCi now know that the Commission will not approve an interconnection agreement when the parties have also entered into, but have not submitted for Commission approval, a transit traffic agreement.

5. The Staff has been unsuccessful in its attempts to determine whether the parties have entered into a separate transiting traffic agreement. The Staff recommends 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.

6. The FCC is currently considering the issue of whether transiting traffic provisions should be included in Interconnection Agreements. In the FCC's Further Notice of Proposed Rulemaking released on March 3, 2005 in CC Docket No. 01-92, *In the Matter of Developing a Unified Intercarrier Compensation Regime* ("FNPRM"), the FCC stated that "although many incumbent LECs, mostly BOCs, currently provide transit service pursuant to interconnection agreements, the [FCC] has not had occasion to determine whether carriers have a duty to provide transit service."¹ The FCC further stated:

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Further Notice of Proposed Rulemaking*, released March 3, 2005, at 120.

The record suggests that the availability of transit service is increasingly critical to establishing indirect interconnection - a form of interconnection explicitly recognized and supported by the Act. It is evident that competitive LECs, CMRS carriers, and rural LECs often rely upon transit service from the incumbent LECs to facilitate indirect interconnection with each other. Without the continued availability of transit service, carriers that are indirectly interconnected may have no efficient means by which to route traffic between their respective networks.²

Moreover, it appears that indirect interconnection via a transit service provider is an efficient way to interconnect when carriers do not exchange significant amounts of traffic. Competitive LECs and CMRS carriers claim that indirect interconnection via the incumbent LEC is an efficient form of interconnection where traffic levels do not justify establishing costly direct connections. As AT&T explains, “transiting lowers barriers to entry because two carriers avoid having to incur the costs of constructing the dedicated facilities necessary to link their networks directly.” This conclusion appears to be supported by the widespread use of transiting arrangements.³

Here the FCC recognizes that transit service is a form of interconnection “explicitly recognized and supported by the Act.” It is clear from the *FNPRM* that the FCC intends to directly address the issue in the near future.

7. The Staff believes an interconnection agreement is discriminatory and against the public interest if it intentionally omits an interconnection service and provides for that service in a separate agreement not submitted for Commission approval under Section 252. If AT&T and Camarato have entered into, or intend to enter into, an agreement for transiting traffic, other carriers may wish to opt into the AT&T/Camarato transit traffic provision under Section 252(i), which states:

A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

If AT&T and Camarato enter into a transiting traffic agreement but do not submit it for approval as an amendment to the interconnection agreement, carriers wishing to opt into those terms and

² *Id.* at 125.

³ *Id.* at 126.

conditions could be discriminated against if AT&T claims the transit service is not subject to the “opt-in” provision of Section 252(i). Furthermore, to the extent transit traffic service is subject to Section 252, the Staff is unable to determine whether the terms and conditions are discriminatory or against the public interest without reviewing the parties’ agreement on transit traffic. If the parties maintain that they have entered into a transit traffic provision that does not need to be filed with the Commission, the Staff recommends that the interconnection agreement be rejected for discriminating against third-party carriers unable to opt into the same terms and conditions agreed to between AT&T and Camarato.

WHEREFORE, the Staff respectfully recommends that the Commission determine whether the parties have entered into, or intend to enter into, a transiting traffic agreement before the Commission approves or rejects the Interconnection Agreement.

Respectfully submitted,

/s/ Marc Poston

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 8th day of February 2006.

/s/ Marc Poston
