

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Interconnection Agreement)
between Southwestern Bell Telephone, L.P., d/b/a)
SBC Missouri and Birch Telecom of Missouri, Inc.,) **Case No. TK-2006-0048**
and ionex communications, Inc., Arbitrated as a)
Successor Interconnection Agreement to the)
Missouri 271 Agreement ("M2A").)

ORDER APPROVING ARBITRATED INTERCONNECTION AGREEMENT

Issue Date: August 12, 2005

Effective Date: August 13, 2005

Procedural History:

On March 30, 2005, Southwestern Bell Telephone, L.P., doing business as SBC Missouri, filed its Petition for Arbitration with the Commission pursuant to Section 4.2 of the Missouri 271 Agreement ("M2A"), Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code ("the Act"), and Commission Rule 4 CSR 240-36.040. SBC petitioned the Commission to arbitrate unresolved issues in the negotiation of interconnection agreements between SBC and various competitive local exchange carriers ("CLECs") to replace the M2A, the generally available interconnection agreement approved by the Commission on March 15, 2001, in conjunction with its recommendation to the United States Federal Communications Commission ("FCC") that SBC be approved to provide in-region long

distance service in Missouri pursuant to Section 271 of the Act.¹ The Commission docketed SBC's Petition as Case No. TO-2005-0336.

The Commission appointed an Arbitrator and proceedings were held pursuant to Commission Rule 4 CSR 240-36.040, concerning Arbitrations under the Telecommunications Act of 1996. The Arbitrator issued his Final Arbitrator's Report on June 21, 2005. After receiving comments from the parties on June 24 and hearing oral argument on June 29 and 30, the Commission issued its Arbitration Order on July 11, 2005. Pursuant to the timeline established by the M2A and the procedural schedule adopted by the Arbitrator, the Commission directed the parties to file their conformed interconnection agreements by July 13. By order of July 14 and with the agreement of all of the parties, this deadline was extended to August 3. The order also amended by interlineation the existing interconnection agreements based on the M2A to extend their expiration from July 19 to August 10.

On August 2, in order to facilitate the adoption by other carriers of the several interconnection agreements resulting from the arbitration in Case No. TO-2005-0336, the Commission established nine spin-off dockets, numbered from TK-2006-0042 through TK-2006-0050. Each of these dockets will serve as the vehicle for further proceedings regarding one of the interconnection agreements arbitrated in Case No. TO-2005-0336.

The present case concerns the arbitrated interconnection agreement between SBC and Birch Telecom of Missouri, Inc., and ionex communications, Inc., members of the CLEC Coalition. The Staff of the Commission filed its Memorandum and Recommendation

¹ *In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227, (Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A), issued March 15, 2001).*

concerning all the CLEC Coalition companies on August 8, 2005, in Case No. TK-2006-0049, stating that the parties' interconnection agreement conforms to the Commission's Arbitration Order of July 11 and meets the requirements of § 251 of the Act, including the implementing regulations prescribed by the F.C.C., as well as the pricing standards in § 252(d). Staff recommended that the arbitrated interconnection agreement be approved. Staff also recommended that the Commission direct the parties to submit any future amendments to the Commission for approval. The parties filed their conformed interconnection agreement in this case on August 9, 2005.

Discussion:

Section 252(e) of the Telecommunications Act provides:

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject -

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that –

(I) the agreement (or 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; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant

to section 251 of this title, or the standards set forth in subsection (d) of this section.²

Under § 252(e)(1) of the Act, every interconnection agreement must be submitted to the Commission for approval. The Commission may reject a negotiated agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity. The Commission may reject an arbitrated agreement if it finds that the agreement does not meet the requirements of § 251 of the Act, including the F.C.C.'s implementing regulations, or the pricing standards in § 252(d) of the Act. In the present case, it is the latter standard that applies.

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 conformed interconnection agreement and Staff's recommendation. Based upon that review, the Commission concludes that the parties' agreement conforms to the Commission's Arbitration Order of July 11. The Commission finds that approval of the agreement should be conditioned upon the parties submitting any amendments to the Commission for approval pursuant to the procedure set out below.

Amendment 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.³ In order for the Commission's role of review and approval to be effective, the Commission must also

² Subsection (d) contains pricing standards.

³ 47 U.S.C. § 252.

review and approve or recognize amendments to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.⁴ 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.⁵

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all amendments, in the Commission's offices. Any proposed amendment must be submitted pursuant to Commission Rule 4 CSR 240-3.513(6).

Conclusions of Law:

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of § 252(e) of the Telecommunications Act of 1996,⁶ is required to review interconnection agreements. It may only reject an arbitrated agreement if it finds that the agreement does not meet the requirements of § 251 of the Act, including the F.C.C.'s implementing regulations, or the pricing standards in § 252(d) of the Act. Based upon its review of the agreement between SBC and Birch Telecom of Missouri, Inc., and ionex communications, Inc., and Staff's Memorandum and Recommendation, the Commission concludes that the agreement meets the requirements of § 251 of the Act, including the F.C.C.'s implementing regulations and the pricing standards at § 252(d) of the Act, and should therefore be approved.

⁴ 47 U.S.C. § 252(h).

⁵ 4 CSR 240-3.545.

⁶ 47 U.S.C. § 252(e)(1).

IT IS THEREFORE ORDERED:

1. That the Interconnection Agreement of Southwestern Bell Telephone, L.P., doing business as SBC Missouri, and Birch Telecom of Missouri, Inc., and ionex communications, Inc., filed on August 9, 2005, is approved.
2. That any changes or amendments to this Interconnection Agreement shall be submitted to the Commission for approval in compliance with Commission Rule 4 CSR 240-3.513(6).
3. That this order shall become effective on August 13, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to Section 386.240,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 12th day of August, 2005.