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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 18th  
day of November, 1997.

In the Matter of the Application of Birch Telecom    )  
of Missouri, Inc., for Approval of an Interconnec-    ) Case No. TO-98-102  
tion Agreement under the Telecommunications Act of    )  
1996.    )

**ORDER APPROVING RESALE AGREEMENT**

Birch Telecom of Missouri, Inc. (BTM) filed an application on August 27, 1997, for approval of a resale agreement (the Agreement) between Southwestern Bell Telephone Company (SWBT) and BTM. 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. BTM wants to resell basic local exchange service to residential and business end users.

The Missouri Public Service Commission (Commission) granted BTM a certificate of service authority to provide basic local exchange telecommunications services in the territories currently served by SWBT, GTE Midwest Incorporated (GTE) and United Telephone Company of Missouri d/b/a Sprint (Sprint-United) on October 28. This certificate is conditional and will take effect only after BTM's tariff is approved by the Commission and becomes effective. While BTM stated in its application for a certificate that it intends to provide both resold and facilities-based services, the Agreement provides only for the resale of SWBT's services by BTM.

The Commission's Order and Notice of September 4 directed parties wishing to request participation without intervention or request a hearing

to do so by September 24. SWBT, a party to the Agreement, filed an application to intervene on September 19. By Order of October 28, the Commission permitted SWBT to participate without intervention. No other parties filed applications to participate. Comments addressing whether the Agreement meets the standards for approval were due on October 17. No comments or requests for hearing were filed. The Commission Staff (Staff) filed a Memorandum on October 31, 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 filed comments or requested a hearing, the Commission may grant the relief requested based on the verified application and the Staff's Memorandum.

### **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.

The resale Agreement between SWBT and BTM 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 BTM 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 intercompany conversion charge when a customer switches noncomplex service from SWBT to BTM. 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.

Staff also noted that the Agreement does not sufficiently address the availability to BTM of the various expanded local calling plans that are currently made available to SWBT end users. Staff recommended that all expanded calling plans available to SWBT end users should be made available to BTM's end users on a resale basis, under such terms and conditions as would allow BTM to offer those services to BTM end users in the same manner that SWBT provides such services to its end users. The Commission required SWBT to do this in Case No. TO-97-192.

## **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 that 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. The Commission further finds that SWBT should be required to provide expanded local calling plans to BTM in the manner recommended by Staff.

## **Modification Procedure**

This Commission's first duty is to review 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. The Commission may conduct a hearing if it is deemed necessary.

### **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 BTM 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 Birch Telecom of Missouri, Inc. and Southwestern Bell Telephone Company filed on August 27, 1997, is approved.

2. That Birch Telecom of Missouri, Inc. and Southwestern Bell Telephone Company 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, no later than November 25, 1997.

3. That approval of the resale agreement is conditioned on Southwestern Bell Telephone Company making available to Birch Telecom of Missouri, Inc., for resale, all expanded calling plans that are available to Southwestern Bell Telephone Company end users, under such terms and conditions as will allow Birch Telecom of Missouri, Inc. to offer the same

services to its customers that Southwestern Bell Telephone Company offers to its end users.

4. That any 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 November 25, 1997.

7. That this case shall be closed on November 26, 1997.

**BY THE COMMISSION**

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

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

Randles, Regulatory Law Judge