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April 25, 2003

FILED²

APR 25 2003

Secretary
Missouri Public Service Commission
P. O. Box 360
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Missouri Public
Service Commission

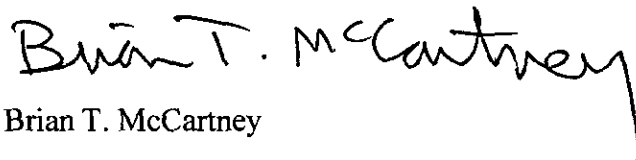
Re: Cases No. TK-2003-0315

Dear Mr. Roberts:

Enclosed for filing please find an original and eight copies of the Response to Order Directing Filing on behalf of Miller Telephone Company.

Please see that this filing is brought to the attention of the appropriate Commission personnel. Copies of the attached are being provided to parties of record.

Sincerely,


Brian T. McCartney

BTM/da
Enclosure
cc: Parties of Record

Missouri Public
Service Commission

RESPONSE TO ORDER DIRECTING FILING

I. SUMMARY

3. **Authority.** The Commission may correct mistakes in its orders *nunc pro tunc* pursuant to 4 CSR 240-2.160.

II. AUTHORITY FOR RELIEF

4. The Commission has authority to correct errors in its orders *nunc pro tunc* under 4 CSR 240-2.160. For example the Commission issued a *Notice of Correction* earlier this month. See Attachment A (*In the Matter of the Application of Missouri RSA No. 7 L.P. d/b/a Mid-Missouri Cellular for Designation as a Telecommunications Carrier Eligible for Federal Universal Service Support*, Case No. TO-2003-0288, *Notice of Correction*, issued April 8, 2003).

III. PROCEDURAL HISTORY

5. On March 10, 2003, Miller filed its *Application for Approval of a Traffic Termination Agreement*.

6. On April 7, 2003, the Commission issued an *Order Approving Interconnection Agreement* in this case. The Commission's *Order* refers to the agreement between Miller and Verizon Wireless as an "Interconnection" Agreement rather than a "Traffic Termination" Agreement.

7. On April 9, 2003, Miller filed its *Motion for Correction* which noted various errors in the Commission's *Order*.

8. On April 11, 2003, Miller filed its *Second Motion for Correction* which noted an additional error in the Commission's *Order*.

9. On April 17, 2003, the Commission issued an *Order Directing Filing* which directed Miller to "file a pleading to explain its understanding of the difference between an interconnection agreement and traffic termination agreement, including a specific reference to the statutory provision or other authority under which it requested relief."

In addition, the Commission directed Miller to explain the negative effect on Miller if the Commission does not alter its order.

IV. DISCUSSION

10. **There is no direct interconnection between Miller and Verizon**

Wireless. Although there is no direct interconnection between Miller and Verizon Wireless, "local"¹ wireless traffic may be delivered indirectly to Miller through the facilities of another local exchange carrier. In other words, local wireless traffic "terminates" to Miller's exchanges in the absence of a direct interconnection or an interconnection agreement. See Agreement (page 1 of 20). The Traffic Termination Agreement establishes the terms and conditions for local telecommunications traffic that is exchanged between the two companies in the absence of a direct interconnection.

11. **Reciprocal Compensation for termination of traffic under 251(b)(5).**

The Telecommunications Act of 1996 ("the Act") requires all local exchange carriers, such as Miller, to establish reciprocal compensation arrangements for the transport and termination of local telecommunications. 47 U.S.C. § 251(b)(5). The Traffic Termination Agreement satisfies this requirement by establishing the terms and conditions for local wireless traffic originated by, and under the responsibility of one of the parties and terminated to the other party without direct interconnection.

¹ The FCC has defined the "local" calling area for the exchange of CMRS/landline traffic as the Major Trading Area (MTA) as defined in 47 C.F.R. 24. See Agreement, §2.7-2.8.

12. **Prior Commission Orders have approved Traffic Termination**

Agreements. For example:

A. **BPS.** On February 3, 2003, the Commission issued an *Order Approving Traffic Termination Agreement* in response to BPS Telephone Company's *Application* for approval of its Traffic Termination Agreement with Verizon Wireless.² In the BPS case, the Commission correctly recognized that Traffic Termination Agreements "**cover traffic originated by, and under the responsibility of one of the parties and terminated to the other party without direct interconnection of the parties' networks.**"³

B. **Rock Port.** On March 4, 2003, the Commission issued an *Order Approving Traffic Termination Agreement* in response to Rock Port Telephone Company's *Application* for approval of its Traffic Termination Agreement with Verizon Wireless.⁴

13. **Miller's Application expressly seeks approval of a Traffic Termination Agreement.** The caption, title, first sentence, and conclusion of Miller's *Application* all seek approval of a "Traffic Termination" Agreement. Miller's *Application* explained that

² See Attachment C – *Application of BPS Telephone Miller for Approval of a Traffic Termination Agreement under the Telecommunications Act of 1996*, Case No. IO-2003-0207, *Order Approving Traffic Termination Agreement* issued Feb. 3, 2003.

³ *Id.*

⁴ See Attachment B – *Application of Rock Port Telephone Company for Approval of a Traffic Termination Agreement under the Telecommunications Act of 1996*, Case No. IK-2003-0259, *Order Approving Traffic Termination Agreement*, issued March 4, 2003.

the Traffic Termination Agreement “is not an interconnection agreement under Section 251(c), and [Miller] has not waived its Section 251(f)(1) rural exemption.”

14. **The express terms of the Traffic Termination Agreement establish that it is not an Interconnection Agreement under Section 251(c) of the Act.** The Traffic Termination Agreement between Miller and Verizon Wireless expressly states:

This Agreement is not an interconnection agreement under 47 U.S.C. 251(c). The Parties acknowledge that [Miller] may be entitled to a rural exemption as provided by 47 USC 251(f), and [Miller] does not waive such exemption by entering into this Agreement.

Section 20.1 (page 17 of 20) (emphasis supplied).

15. **Miller has not waived its rural exemption.** Miller is a “Rural Telephone Company” as defined by federal law, and the Act establishes an exemption for Miller from the interconnection requirements of Section 251(c). Miller and Verizon Wireless sought to highlight in Section 20.1 of their Agreement that the Traffic Termination Agreement is not an interconnection agreement under Section 251(c), and Miller has not waived its Section 251(f)(1) rural exemption. Because Miller seeks to maintain its rural exemption, the distinction between an Interconnection Agreement and a Traffic Termination Agreement is important to Miller.

16. **Other state commissions have issued orders approving “traffic termination” agreements.** For example, the Florida Public Service Commission has issued a number of orders that approve traffic termination agreements. See e.g. Attachment D (*In re: Request by Vista-United Telecommunications for Approval of an*

Interim Traffic Termination and Billing Agreement with 2nd Century Communications, Docket No. 000188-TP, Order Approving Interim Traffic Termination and Billing Agreement, issued April 21, 2000).

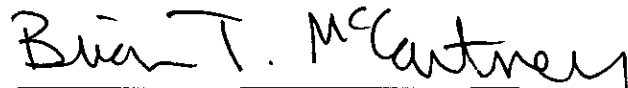
17. **Consistency of Decisions.** Granting Miller's *Motion for Correction* will further consistency among Commission decisions such as the BPS and Rock Port *Orders Approving Traffic Termination Agreements.*

V. CONCLUSION

WHEREFORE, Miller respectfully requests that the Commission: (1) issue an *Order Approving Traffic Termination Agreement* similar to Order issued for BPS Telephone Company in Case No. IO-2003-0207; and (2) grant such other relief as is reasonable in the circumstances.

Respectfully submitted,

By



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CERTIFICATE OF SERVICE

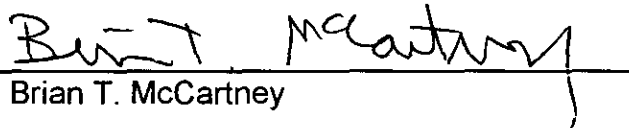
I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 25th day of April, 2003, to the following parties:

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Walnut Creek, CA 94598


Brian T. McCartney

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri RSA)
No. 7 Limited Partnership d/b/a Mid-Missouri)
Cellular for Designation as a Telecommunications)
Carrier Eligible for Federal Universal Service) **Case No. TO-2003-0288**
Support Pursuant to Section 254)
of the Telecommunications Act of 1996)

NOTICE OF CORRECTION

In the order setting prehearing conference and requiring the filing of a procedural schedule issued by the Missouri Public Service Commission on April 3, 2003, the next-to-the last sentence in the second paragraph reads: "Public Counsel filed a response concurring with Staff's motion on April 1, 2003." The sentence, however, should read: "On April 1, 2003, Public Counsel filed its Concurrence in Opposition to Motion to Dismiss that stated, 'The Office of the Public Counsel respectfully states to the Missouri Public Service Commission that it concurs in the Response of Spectra Communications Group and CenturyTel of Missouri in Opposition to the Staff's Motion to Dismiss and opposes dismissal based on the same grounds.'"

BY THE COMMISSION

(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Dated at Jefferson City, Missouri,
on this 8th day of April, 2003.

Bill Hopkins, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Application of Rock Port Telephone Company
for Approval of a Traffic Termination Agreement
under the Telecommunications Act of 1996

} **Case No. IK-2003-0259**
}

ORDER APPROVING TRAFFIC TERMINATION AGREEMENT

This order approves the Traffic Termination Agreement executed by the parties and filed by Rock Port Telephone Company.

On January 30, 2003, Rock Port filed an application with the Commission for approval of a Traffic Termination Agreement with Verizon Wireless, LLC; St. Joseph CellTelco; and Cellco Partnership (all d/b/a Verizon Wireless). The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.¹ The Agreement would permit Verizon Wireless to terminate traffic originated by its end user customers through the local exchange carrier network to Rock Port. Rock Port's tariffs provide that Rock Port may originate traffic that terminates through the local exchange carrier network in Missouri to Verizon Wireless. Rock Port holds certificates of service authority to provide basic local exchange and local exchange telecommunications services in Missouri. Verizon Wireless is a commercial radio service carrier operating in Missouri.

Although Verizon Wireless is a party to the Agreement, it did not join in the application. On January 31, 2003, the Commission issued an order making Verizon

¹ See 47 U.S.C. § 251, *et seq.*

Wireless a party in this case and directing any party wishing to request a hearing to do so no later than February 20, 2003. No requests for hearing were filed.

The Staff of the Commission filed a memorandum and recommendation on February 27, 2003, recommending that the Agreement be approved.

Discussion

Under Section 252(e) of the Act, any interconnection agreement adopted by negotiation must be submitted to the Commission for approval. The Commission may reject an agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity.

The Staff memorandum recommends that the Agreement be approved and notes that the Agreement meets the limited requirements of the Act in that it is not discriminatory toward nonparties and is not against the public interest. Staff recommends that the Commission direct the parties to submit any further modifications or amendments to the Commission for approval.

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 concludes that the Agreement 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 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

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

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, 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

² 47 U.S.C. § 252.

³ 47 U.S.C. § 252(h).

⁴ 4 CSR 240-30.010.

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 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 1996,⁵ is required to review negotiated interconnection 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.⁶ Based upon its review of the Agreement between

⁵ 47 U.S.C. § 252(e)(1).

⁶ 47 U.S.C. § 252(e)(2)(A).

Rock Port and Verizon Wireless and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

The Commission notes that prior to 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 telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

IT IS THEREFORE ORDERED:

1. That the Traffic Termination Agreement between Rock Port Telephone Company and Verizon Wireless, LLC; St. Joseph CellTelco; and Cellco Partnership (all d/b/a Verizon Wireless), filed on January 30, 2003, is approved.
2. That any changes or modifications to this Agreement shall be filed with the Commission pursuant to the procedure outlined in this order.
3. That this order shall become effective on March 14, 2003.
4. That this case may be closed on March 15, 2003.

BY THE COMMISSION

(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Bill Hopkins, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000,
as currently supplemented.

Dated at Jefferson City, Missouri,
on this 4th day of March, 2003.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

Application of BPS Telephone Company for)
for Approval of a Traffic Termination Agreement) **Case No. IO-2003-0207**
under the Telecommunications Act of 1996.)

ORDER APPROVING TRAFFIC TERMINATION AGREEMENT

This order approves the Traffic Termination Agreement executed by the parties and filed by BPS Telephone Company.

On December 18, 2002, BPS Telephone Company filed an application with the Commission for approval of a Traffic Termination Agreement with Verizon Wireless, LLC. The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.¹ The Agreement will cover traffic originated by, and under the responsibility of one of the parties and terminated to the other party without direct interconnection of the parties' networks. BPS holds a certificate of service authority to provide basic local telecommunications services in Missouri.

Although Verizon is a party to the Agreement, it did not join in the application. On December 20, 2003, the Commission issued an order making Verizon a party in this case and directing that any party wishing to request a hearing do so no later than January 9, 2003. No requests for hearing were filed.

The Staff of the Commission filed a memorandum on January 24, 2003, recommending that the Agreement be approved.

¹ See 47 U.S.C. §251, et seq.

Discussion

Under Section 252(e) of the Act, any interconnection agreement adopted by negotiation must be submitted to the Commission for approval. The Commission may reject an agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity.

The Staff of the Commission recommends in its memorandum that the Agreement be approved and notes that the Agreement meets the limited requirements of the Act in that it is not discriminatory toward nonparties and is not against the public interest. Staff recommends that the Commission direct the parties to submit any further modifications of amendments to the Commission for approval.

Findings of Fact

The Missouri Public Service Commission, having consider 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 concludes that the Agreement 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 finds that approval of the Agreement should be conditioned upon the parties submitting any modifications of amendments to the Commission for approval pursuant to the procedure 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 modification to these agreements. The Commission has 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 or recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

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 modification made will be maintained in the Commission's Data Center.

² 47 U.S.C. §252.

³ 47 U.S.C. §252(h)

⁴ 4 CSR 240-30-010

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 and its effects 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.

Conclusion 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 1996,⁵ is required to review negotiated interconnection 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.⁶ Based upon its review of the Agreement between BPS and Verizon and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

⁵ 47 U.S.C. §252(e)(1).

⁶ 47 U.S.C. §252(e)(2)(A).

The Commission notes that prior to 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 telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

IT IS THEREFORE ORDERED:

1. That the Traffic Termination Agreement between BPS Telephone Company and Verizon Wireless, LLC, filed on December 18, 2002, shall be approved.
2. That any changes or modification to this Agreement shall be filed with the Commission pursuant to the procedure outlined in this order.
3. That this order shall become effective on February 13, 2003.
4. That this case may be closed on February 14, 2003.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Law Judge

(S E A L)

Kennard L. Jones, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 3rd day of February, 2003.

In re: Request by Vista-United Telecommunications for approval of interim traffic termination and billing agreement with 2nd Century Communications, Inc.

DOCKET NO. 000188-TP; ORDER NO. PSC-00-0790-FOF-TP

Florida Public Service Commission

2000 Fla. PUC LEXIS 497

00 FPSC 4:330

April 21, 2000

[*1] The following Commissioners participated in the disposition of this matter: JOE GARCIA, Chairman, J. TERRY DEASON, SUSAN F. CLARK, E. LEON JACOBS, JR., LILA A. JABER

OPINION: ORDER APPROVING INTERIM TRAFFIC TERMINATION AND BILLING AGREEMENT

BY THE COMMISSION:

On February 15, 2000, Vista-United Telecommunications (Vista-United) and 2nd Century Communications, Inc. (2nd Century Communications) filed a request for approval of an interim traffic and billing agreement pursuant to 47 U.S.C. § 252(e) of the Telecommunications Act of 1996 (the Act). The agreement is incorporated by reference herein. A copy of the agreement may be obtained from the official docket file by contacting our Division of Records and Reporting.

Both the Act and Chapter 364, Florida Statutes, encourage parties to enter into negotiated agreements to bring about local exchange competition as quickly as possible. Under the requirements of 47 U.S.C. § 252(e), negotiated agreements must be submitted to the state commission for approval. Section 252(e)(4) requires the state to reject or approve the agreement within 90 days after submission or it shall be deemed approved.

This agreement covers a two-year **[*2]** period and governs the relationship between the companies exchange of local traffic and toll traffic pursuant to 47 U.S.C. § 251. Under 47 U.S.C. § 252(a)(1), the agreement shall include a detailed schedule of itemized charges for interim traffic and billing and each service or network element included in the agreement.

Upon review of the proposed agreement, we believe that it complies with the Act; thus, we hereby approve it. Vista-United and 2nd Century Communications are also required to file any subsequent supplements or modifications to their agreement with the Commission for review under the provisions of 47 U.S.C. § 252(e).

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the interim traffic and billing agreement between Vista-United Telecommunications and 2nd Century Communications, Inc., is incorporated by reference in this Order, and is hereby approved. A copy of the agreement may be obtained as specified in the body of this Order. It is further

ORDERED that any supplements or modifications to this agreement must be filed with the Commission for review under the provisions of 47 U.S.C. § 252(e). It is further

ORDERED that this Docket shall **[*3]** be closed.

By ORDER of the Florida Public Service Commission, this 21st day of April, 2000.

BLANCA S. BAYO, Director

Division of Records and Reporting