STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY

SEPTEMBER 6, 1996

CASE NO: TO-96-440

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Linda K. Gardner, Senior Attorney, United Telephone Company of Missouri, 5454 W. 110th Street, 10th Floor, Overland Park, KS 66211
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Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, P.O. Box 7800, Jefferson City, MO 65102

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,

Cecil I. Wright

Cecil I. Wright
Executive Secretary

Exhibit No. 28
Date 1-24-01 Case No. TO-99-593
Reporter DL

Uncertified Copy:
James S. Hedges, Dial U.S., 333 Park Central East, Springfield, MO 65806
Mark Harper, United Telephone Company of Missouri, 5454 W. 110th Street, 10th Floor, Overland Park, KS 66211
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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement under the Telecommunications Act of 1996 With Communications Cable-Laying Company, d/b/a Dial US.	)))))	**Case No. TO-96-440**

APPEARANCES

Paul G. Lane, General Attorney-Missouri, and **Katherine C. Swaller**, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Mark W. Comley, Newman, Comley & Ruth P.C., 205 East Capitol Avenue, Post Office Box 537, Jefferson City, Missouri 65102-0537, for Communications Cable-Laying Company, d/b/a Dial US.

W.R. England, III, Brydon, Swearengen & England P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company (the "Small Telephone Company Group"); Fidelity Telephone Company and Bourbeuse Telephone Company.

Leland B. Curtis, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston Avenue, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications Corporation.

Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 301 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102-1438, for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc. (the "Mid-Missouri Group").

Julie Thomas Bowles, Attorney, Sprint Communications Company L.P., 8140 Ward Parkway, Kansas City, Missouri 64114, for Sprint Communications Company L.P.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement under the Telecommunications Act of 1996 With Communications Cable-Laying Company, d/b/a Dial US.	)))))	Case No. TO-96-440

REPORT AND ORDER

Issue Date: September 6, 1996

Effective Date: September 6, 1996

Linda K. Gardner, Senior Attorney, United Telephone Company of Missouri, 5454 West 110th Street, 10th Floor, Overland Park, Kansas 66211, for United Telephone Company of Missouri, d/b/a Sprint.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Eric B. Witte, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE LAW JUDGE: **Dale Hardy Roberts, Chief.**

REPORT AND ORDER

On June 17, 1996, Southwestern Bell Telephone Company (SWB) filed an application requesting that the Missouri Public Service Commission (Commission) approve an interconnection agreement between SWB and Communications Cable-Laying Company, d/b/a Dial US (Dial US). The agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996. See 47 U.S.C. § 251, *et seq.* Several interested companies sought intervention. By order issued June 26, 1996, the Commission granted the "Mid-Missouri Group of Local Exchange Telecommunications Companies" (Mid-Missouri Group)[1] participation without intervention. On July 18, 1996, the Commission granted participation without intervention to Sprint Communications Company L.P. (Sprint); United Telephone Company of Missouri (United); AT&T Communications of the Southwest, Inc. (AT&T); the "Small Telephone Company Group"; Fidelity Telephone Company and Bourbeuse Telephone Company (Fidelity); and MCI Telecommunications Corporation (MCI). On July 19, 1996, the Commission granted Farber Telephone Company's motion to

[1]The following companies comprise the Mid-Missouri Group: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, McKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

participate without intervention as a member of the Small Telephone Company Group.[2] Participants, including Commission Staff (Staff) and the Office of the Public Counsel (OPC), were allowed to file comments regarding the agreement, and a hearing was set.

The hearing was held on July 31, 1996, as scheduled. Initial briefs were then filed by the Mid-Missouri Group, MCI, OPC, and Staff; and reply briefs were filed by SWB and Dial US. This matter is now ripe for Commission decision. This is the first interconnection agreement filed with 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, under the provisions of Section 252(e) of the federal Telecommunications Act of 1996 (Act) has authority to approve an interconnection agreement negotiated between an incumbent local exchange company (LEC) and a new

[2]The following companies comprise the Small Telephone Company Group: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

provider of basic local exchange service unless the agreement does not meet two criteria. The criteria are:

> §252(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) 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; . . . .

The agreement before the Commission is for service by Dial US statewide, although initially Dial US will only be providing basic local service in the Springfield, Missouri area. Under the agreement Dial US may resell SWB services, offer services over its own facilities, and offer service over a mix between its own facilities and those of SWB. The agreement provides certain discounts for reselling of SWB services, and provides rates for utilizing certain unbundled elements of SWB's facilities.

Because of the Commission's limited scope of review under the Act, many of the issues raised by the participants need not be addressed. The Commission

will address those issues which raised the issue of discrimination or raised concerns about the implementation of the agreement.

The Commission has considered the comments of the parties, the responses to questions at the hearing, and the briefs of the parties, as well as the interconnection agreement. That review was taken applying the two criteria established by the Act for considering whether to approve the interconnection agreement. Based upon that review the Commission has reached the conclusion that the interconnection agreement meets the requirements of the Act and does not violate the two criteria of the Act.

The Act is structured so as to encourage new entrants to negotiate interconnection with an incumbent LEC. Companies are free to negotiate agreements they find acceptable so long as the terms of the agreement do not discriminate against another carrier and the implementation of the agreement is consistent with the public interest.

The Commission believes that under the terms to be set out in this order, the implementation of the agreement is in the public interest. This is the first of many agreements the Commission expects to review. Dial US has negotiated this agreement to initially compete in the Springfield area. Although not comprehensive or completely definitive, Dial US believes the agreement meets its needs, and the Act allows Dial US the opportunity to negotiate the agreement and to implement it with very limited oversight from this Commission.

There is only one portion of the agreement which the Commission finds has raised the potential for discrimination. This area is MCA (Metropolitan Calling Area) service. This service was developed by the Commission in Case No. TO-92-306. ***In re Establishment of a Plan for Expanded Calling Scopes in Metropolitan and Outstate Areas***, 2 MPSC 3d 1 (Dec. 23, 1992). In that case the Commission established MCA service for the three metropolitan areas in Missouri:

St. Louis, Kansas City, and Springfield. The Commission mandated that the LECs provide the service on a mandatory basis in the metropolitan areas' central zones, in Tiers 1 and 2 in Kansas City and St. Louis, and Tier 1 in Springfield. As a mandatory service MCA became a part of basic local service in those zones and tiers. The Commission classified MCA service as a local service and established rates for the service utilizing a bill-and-keep intercompany compensation arrangement between the companies involved in handling MCA calls.

The existence of mandatory MCA service in the Springfield central zone and Tier 1 raises the issue of whether MCA service can be resold by Dial US and how other LECs besides SWB will be affected by Dial US's providing MCA service from its own facilities. Choctaw, which has one exchange inside the Springfield MCA, has raised these issues, as have other parties. Choctaw will be directly affected by the Commission's decision on this issue, and so the issue of discrimination is raised. Specifically, Choctaw raised the issue of the Commission's prohibition of the resale of MCA service in its Report And Order in TO-92-306 and the issue of compensation arrangements between Dial US and Choctaw for calls originating or terminating in Choctaw's exchange.

The Commission finds, first, that MCA service, where mandatory, is an essential part of basic local telecommunications service and as such is part of the service that LECs must provide to competitors under the Act. The Commission finds that resale of the service by Dial US does not discriminate against Choctaw or any other telecommunications carriers since all MCA arrangements would still be provided by SWB since it is still, in effect, SWB's service that is being provided. Compensation arrangements will be made under the terms of MCA service now offered by SWB.

The Commission finds further that resale of MCA service by Dial US is not prohibited by the Commission's Report And Order in TO-92-306. In that case

the issue of resale was raised by interexchange carriers (IXCs). Addressing that issue with regard to IXCs, the Commission held that resale was prohibited. The Commission decision, though, was made under the circumstance where there was only one provider of basic local telecommunications service and resellers were IXCs, not other basic LECs now seeking entry into the market. The Commission prohibition, then, is not determinative of the situation considered by the Commission in this case.

When Dial US becomes a facilities-based provider or a mixed-mode provider of basic local exchange service, then it must make arrangements with other LECs, such as Choctaw, to terminate calls to the other LECs' customers. Dial US is prohibited by the agreement from sending to SWB traffic that is "destined for the network of a third party unless and until compensation arrangements acceptable to Dial US and the third party have been reached." Interconnection Agreement at 15.XIII.A. The Commission finds that this provision protects other LECs and removes the potential for discrimination from the agreement. The agreement, therefore, does not discriminate against Choctaw.

Since this is the first interconnection agreement approved by the Commission, the procedures for maintaining the interconnection agreement and for approving any changes to the agreement must be addressed. First, all agreements, with any changes or modifications, should be accessible to the public at the Commission's offices. Second, the Act mandates that the Commission approve any changes or modifications to the interconnection agreement. To fulfil these objectives, the companies must have a complete and current interconnection agreement in the Commission's offices at all times, and all changes and modifications must be timely filed with the Commission for approval. This includes any changes or modifications which are arrived at through the arbitration procedures provided for in the agreement.

To enable the Commission to maintain a complete record of any changes and modifications, the Commission will request SWB and Dial US to provide Staff with a copy of the interconnection agreement with the pages numbered consecutively in the lower right-hand corner. The Commission will then keep this case open for the filing by SWB and Dial US of any modifications or changes to the agreement. These changes or modifications will be substituted in the agreement, so they should contain, in the lower right-hand corner, the number of the page being replaced. Commission Staff will then date-stamp the pages when they are inserted into the agreement. The official record of what changes or modifications have occurred will be the official case file.

The Commission does not intend that a full proceeding will occur every time a change or modification is agreed to by the parties. Where the change or modification has been previously approved by the Commission in another agreement, Staff need only verify that the changes are contained in another agreement and file a memorandum to that effect. Such changes will then be approved. Where the changes or modifications are not contained in another agreement, Staff will file a memorandum concerning the change or modification and make a recommendation. The Commission, if necessary, will allow for responses and then will rule on the pleadings unless it determines a hearing is necessary.

The above-described procedures should accomplish the two goals of the Commission and still allow for expeditious handling of changes or modifications to the agreements.

The participants raised the issue of whether the approval of this interconnection agreement would meet any of the items on the checklist found in Section 271 of the Act which would allow SWB to provide interLATA interexchange service. At the hearing SWB argued that a decision concerning the Section 271

checklist was premature. The Commission agrees that there is no need to make findings regarding SWB's compliance with the Section 271 checklist in this order.

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) and (2)(A) of the federal Telecommunications Act of 1996, 47 U.S.C. 252(a)-(e), is required to review negotiated interconnection agreements, and may only reject those agreements upon finding of one of two criteria which are set out earlier in this order. The Commission has reviewed the interconnection agreement between Dial US and SWB, and concludes that neither criterion is triggered and the agreement should therefore be approved.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement between Southwestern Bell Telephone Company and Communications Cable-Laying Company, d/b/a Dial US, as amended on June 27, 1996, is hereby approved.

2. That Southwestern Bell Telephone Company and Communications Cable-Laying Company, d/b/a Dial US, shall file a copy of this agreement with Commission Staff with the pages numbered seriatim in the lower right-hand corner.

3. That any changes or modifications to this agreement shall be filed with the Commission in this case for Commission approval.

4. That the Commission, by approving this agreement, makes no finding on the completion of Southwestern Bell Telephone Company of any of the fourteen items listed in 47 U.S.C. § 271.

5. That this Report And Order shall become effective on the date hereof.

BY THE COMMISSION

Cecil I. Wright
Executive Secretary

[S E A L]

Zobrist, Chm., McClure, Kincheloe, Crumpton and Drainer, CC., concur.

Dated at Jefferson City, Missouri, on this 6th day of September, 1996.

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 6 **day of** SEPTEMBER, **1996.**

Cecil I. Wright
Executive Secretary