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July 17, 2002

Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²

JUL 17 2002

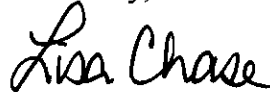
Re: Consolidated Case No. TC-2002-57 Missouri Public Service Commission

Dear Secretary:

Enclosed for filing please find an original and eight (8) copies each of Petitioner's Motion Requesting Commission Take Official Notice of Documents in the above cited case. A copy has been sent to all attorneys of record listed below.

Thank you for seeing this filed.

Sincerely,



Lisa Cole Chase

LCC:sw

Enc.

cc: MITG Managers
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BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²
JUL 17 2002

Missouri Public
Service Commission

Northeast Missouri Rural Telephone Company)
And Modern Telecommunications Company, et al.)
)
Petitioners,)
)
vs.)
)
Southwestern Bell Telephone Company,)
Southwestern Bell Wireless (Cingular),)
Voice Stream Wireless (Western Wireless))
Aerial Communications, Inc., CMT Partners,)
(Verizon Wireless), Sprint Spectrum, LP,)
United States Cellular Corp., and Ameritech)
Mobile Communications, Inc., et al.)
)
Respondents.)

Case No. TC-2002-57
Case No. TC-2002-113
Case No. TC-2002-114
Case No. TC-2002-167
Case No. TC-2002-181
Case No. TC-2002-182
Consolidated

**PETITIONER’S MOTION REQUESTING COMMISSION TAKE OFFICIAL NOTICE
OF DOCUMENTS**

COMES NOW Petitioners, Mid-Missouri Telephone Company, Alma Telephone Company, Northeast Missouri Rural Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., Choctaw Telephone Company, and Chariton Valley Telephone Company, (“MITG Companies”) and pursuant to § 536.070(6) RSMo and 4 CSR 240-2.130(2), hereby request the Missouri Public Service Commission (“Commission”) to take official notice of the referenced portions of the following interconnection agreement, and the Commission order approving same:

1. The interconnection agreement between Southwestern Bell Telephone Company and Western Wireless Corporation, which was submitted for approval pursuant to § 252(e)(1) of

the Telecommunications Act of 1996, 47 U.S.C. § 252(e)(1), and was approved by the Commission pursuant to § 252(e)(1) of the Act in case TO-98-12 on October 8, 1997.

2. After approval by the Commission, the interconnection agreement was duly filed with the Commission pursuant to 4 CSR 240-30.010. Upon filing, this interconnection agreement became a part of the law of the State of Missouri pursuant to § 392.220.1 RSMo. *Central Controls Co., Inc. v. AT & T Information Systems, Inc.*, 746 S.W.2d 150, 153 (Mo. App. E.D. 1988) (“*Central Controls*”).

3. Pursuant to §536.070(6) RSMo, an agency “shall take official notice of all matters of which the courts take judicial notice.” As the interconnection agreement is recognized as part of the law of Missouri, the Commission may take official notice of the interconnection agreement. *Central Controls*, 746 S.W.2d at 153.

4. This interconnection agreement is 50 or more pages in length. Producing the entire agreement as an exhibit, with the requisite number of copies, would be cumbersome and burdensome, as well as costly to reproduce. Petitioner’s recognize other parties may desire notice and use of other excerpts.

WHEREFORE Petitioners request that the Commission take official notice, for purposes of this proceeding, of the complete interconnection agreement cited above, and more specifically the attached Commission order in Case No. TO-98-12, which approved the interconnection agreement, and the following portions of said interconnection agreement: pages 1-5, 15-19, 42-43, 44, and 49.

Respectfully Submitted,

**ANDERECK, EVANS, MILNE,
PEACE & JOHNSON, L.L.C.**

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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 17th day of July, 2002, to all attorneys of record in this proceeding.

Lisa Chase

Lisa Cole Chase Mo Bar No. 51502

TO-98-12

FILED

OCT 20 1997

MISSOURI
PUBLIC SERVICE COMMISSION

MISSOURI

AGREEMENT FOR INTERCONNECTION
AND RECIPROCAL COMPENSATION

FILED²

JUL 17 2002

Missouri Public
Service Commission

by and between

WESTERN WIRELESS CORPORATION

and

SOUTHWESTERN BELL TELEPHONE COMPANY

000001

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GSA

DCO

PRICING

interconnect Carrier's point of interconnection with SWBT's point of interconnection. SWBT shall provision mobile to land connecting facilities for Carrier under the terms and conditions specified in Section 7 of the applicable interstate or intrastate Special Access Tariffs.

3.1.2 Land to Mobile Traffic

3.1.2.1 SWBT shall be responsible for the delivery of traffic from its network to the appropriate point of interconnection (within the serving wire center boundary of the end office in which the tandem, providing Type 2A Interconnection, is located, or within the serving wire center boundary of the end office providing Type 1 Interconnection) on its network for the transport and termination of such traffic by Carrier to the handset of a Carrier end user.

3.1.2.2 Unless SWBT elects to have Carrier or a third party provision facilities under section 2.4, SWBT shall provide the physical plant facilities that interconnect SWBT's point of interconnection with Carrier's point of interconnection. SWBT shall be responsible for the physical plant facility from its network to the appropriate point of interconnection within the serving wire center boundary of the end office in which the tandem, providing Type 2A Interconnection, is located, or within the serving wire center boundary of the end office providing Type 1 Interconnection.

3.1.3 Traffic To Third Party Providers

Carrier and SWBT shall compensate each other for traffic that transits their respective systems to any Third Party Provider, as specified in Appendix PRICING. The Parties agree to enter into their own agreements with Third Party Providers. In the event that Carrier sends traffic through SWBT's network to a Third Party Provider with whom Carrier does not have a traffic interchange agreement, then Carrier agrees to indemnify SWBT for any termination charges rendered by a Third Party Provider for such traffic.

3.2 **Reciprocal Compensation**

3.2.1 Rates

The Parties shall provide each other symmetrical, Reciprocal Compensation for the transport and termination of Local Traffic at the rates specified in

Appendix PRICING. SWBT shall compensate Carrier for the transport and termination of Local Traffic originating on SWBT's network; Carrier shall compensate SWBT for the transport and termination of Local Traffic originating on Carrier's network. Compensation shall vary based on the method of interconnection used by the Parties, as specified in Appendix PRICING. Additional charges may also apply (on a non-symmetrical, non-reciprocal basis) as provided for in this Agreement. The Parties acknowledge that the rates set forth in Appendix PRICING are interim and shall be replaced by final rates as adopted by the Commission or the FCC, based on a final and unappealable ruling, and as further described below and in section 14.

3.2.2 True Up

The Parties recognize that rates, among other things, provided for under this Agreement may be affected by subsequent ruling of state or federal legislative bodies, courts, or regulatory agencies of competent jurisdiction. Accordingly, the Parties agree that in the event of such a final, non-appealable ruling, the Parties shall true up the Reciprocal Compensation provided for in this section once the ruling, decision or other mandate becomes effective, final and non-appealable (the "True Up Date"). The Parties shall complete true up 60 days after the True Up Date. The Parties agree that such True Up will include the Reciprocal Compensation associated with the provisioning of an AWCP, as outlined in paragraph 5.5.2.

3.2.3 Exclusions

Reciprocal Compensation shall apply solely to the transport and termination of Local Traffic, and shall not apply to any other traffic or services, including without limitation:

- 3.2.3.1 interMTA traffic;
- 3.2.3.2 Transiting Traffic;
- 3.2.3.3 traffic which neither originates nor terminates on Carrier's network; and
- 3.2.3.4 Paging Traffic.

3.2.4 Measuring Calls as Local Traffic

In order to measure whether traffic is Local Traffic for purposes of calculating Reciprocal Compensation, the Parties agree as follows; for SWBT, the origination or termination point of a call shall be the end office

which serves, respectively, the calling or called party. For Carrier, the origination or termination point of a call shall be the cell site/base station which serves, respectively, the calling or called party at the time the call begins.

3.2.5 Conversation Time

For purposes of billing compensation for the interchange of Local Traffic, billed minutes will be based upon conversation time. Conversation time will be determined from actual usage recordings. Conversation time begins when the terminating Party's network receives answer supervision and ends when the terminating Party's network receives disconnect supervision.

3.3 **Additional Compensation**

In addition to any other charges specified in this Agreement, the following charges may be applicable as specified in this Agreement at the rates listed in Appendix PRICING. Charges listed are in addition to, not exclusive of, any other charges that may be applicable under this Agreement.

3.3.1 Transiting Charge: Each Party shall compensate the other Party for traffic which transits the other Party's network destined to a Third Party Provider at rates specified in Appendix PRICING.

3.3.2 Facilities Charges: Each Party shall compensate the other (not on a reciprocal, symmetrical basis) for the use of the providing Party's facilities between Carrier and SWBT points of interconnection, in either direction, as the case may be.

3.3.3 Special Requests: All requests for (i) services covered by this Agreement for which facilities do not exist, (ii) facilities, equipment or technologies not in the providing Party's sole discretion, necessary to fulfill a request under this Agreement, or (iii) services not specifically enumerated in this Agreement, shall be handled as a Special Request, as described in Section 6.1.2.2. Special Requests under (ii) may include, without limitation, requests for fiber, microwave, alternate routing, redundant facilities and other non-standard facilities or services.

3.4 **Signaling**

SWBT will provide at Carrier's request Signaling System 7 ("SS7") in order to allow out of band signaling in conjunction with the exchange of traffic between the Parties' respective networks. SWBT shall provide such service at the rates specified in Appendix PRICING. This rate is for the use of multiple SWBT STPs in the provisioning of mobile to land traffic. Charges for STP Access Links and Port Terminations used to connect Carrier's MSC or STP (whichever is applicable) and SWBT's STP shall be shared by the Parties based on the proportional

(percentage) basis as specified in Appendix PRICING and at rates specified in Section 23 of FCC Tariff No. 73.

4. **TRANSMISSION AND ROUTING OF EXCHANGE ACCESS SERVICE PURSUANT TO SECTION 251(C)(2)**

This Section 4 provides the terms and conditions for the exchange of traffic between Carrier's network and SWBT's network for switched access to IXCs, thus enabling Carrier end users to access IXCs for the transmission and routing of interMTA and interLATA calls.

4.1 **General**

4.1.1 Carrier may order Equal Access Trunks in order to provide for access to IXCs through SWBT's network. Equal Access Trunks shall be used solely for the transmission and routing of Exchange Access to allow Carrier's end users to access IXCs, and shall not be used by Carrier for any other purpose.

4.1.2 For as long as SWBT may require, Carrier shall provide SWBT the appropriate call data to allow SWBT to bill IXCs for Originating Access (as defined below). Such data shall be provided in a form mutually agreed to by the Parties. SWBT shall notify Carrier in writing when it no longer requires Carrier to provide such data.

4.2 **Access Charges**

4.2.1 When Applicable

Carrier shall pay SWBT Switched Access charges (including Carrier Common Line, Local Switching and Transport) for any and all traffic which crosses an MTA boundary (as defined by the cell site/base station at which the call originates or terminates and the SWBT end user's serving wire center at which the call originates or terminates). Switched Access charges are specified in Appendix PRICING paragraph 5.2 as InterMTA rates.

Both Parties recognize that legislative and regulatory activities may impact the rates, terms and conditions associated with Switched Access services. The Parties agree that any rate changes associated with Switched Access services will flow through to the InterMTA rates specified in Appendix PRICING as stated in Section 14 of this Agreement.

If traffic is handed from SWBT directly to an IXC, from Carrier to an IXC via equal access trunks, or from an IXC directly to SWBT, access charges shall not apply to Carrier.

4.2.2 InterMTA Factor

The Parties have agreed upon the interMTA factor specified in Appendix PRICING, which represents the percent of total minutes to be billed access charges. Carrier represents that the factor is based on a reasonable traffic study conducted by Carrier, and shall make such study available to SWBT upon request. Six months after the effective date of this Agreement, and every six (6) months thereafter, Carrier shall conduct a study (available to SWBT on request) to ensure the Parties are using an accurate interMTA factor.

The Parties agree that if the percent of land to mobile interMTA traffic is less than 3% of total land to mobile traffic, then such traffic will be deemed as de minimis and the land to mobile factor will be set at 0%.

The Parties agree that the percent of land to mobile interMTA traffic is less than 3% of the total land to mobile traffic as of the effective date of this Agreement.

4.2.3 Examples

Following are two examples of traffic for which Carrier shall be required to pay access charges. They are examples only and in no way shall be deemed limiting or exhaustive of the applicability of access charges under this Agreement.

4.2.3.1 When a SWBT end user calls a Carrier end user (a land to mobile call), SWBT delivers the call to Carrier, and Carrier transports the call across MTA boundaries (either directly or through an IXC, access charges shall apply to Carrier ("Originating Access").

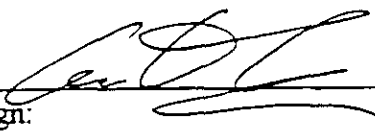
4.2.3.2 When a Carrier end user calls a SWBT end user (a mobile to land call), the call crosses MTA boundaries, and Carrier transports the call across MTA boundaries, access charges shall apply to Carrier ("Terminating Access").

5. TRANSMISSION AND ROUTING OF OTHER TYPES OF TRAFFIC

This Section 5 provides the terms for the exchange of 800/888 traffic, 911/E911 traffic, and Directory Assistance traffic from an end user on Carrier's network to SWBT's network.

If this Agreement is acceptable to Carrier and SWBT, both Parties will sign in the space provided below. This Agreement shall not bind Carrier and SWBT until executed by both parties.

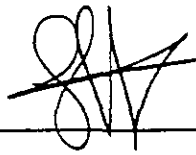
THIS AGREEMENT CONTAINS A BINDING ARBITRATION AGREEMENT.


Sign: _____

Gene DeJordy
Print Name:

Director of Regulatory Affairs
Position/Title
Western Wireless Corporation

April 10, 1997
Date:


Sign: _____

STEPHEN M. CARTER
Print Name:

Vice President & General Manager
Position/Title
Southwestern Bell Telephone Company

April 8, 1997
Date:-

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APPENDIX GSA

<u>State</u>	<u>Licensee</u>	<u>Licensed Area</u>	<u>Switch Locations in the State</u>
Missouri	GCC License Corporation	MO-9	Salina, KS

000043

MISSOURI
APPENDIX PRICING

1.0 Mobile to Land Interconnection Rates Per Minute of Use

Type 2A	Type 1	Type 2B	Transiting
\$.01	\$.01	\$.004	\$.004

2.0 Land to Mobile Interconnection Rates Per Minute of Use

All Interconnection Types	Transiting
\$.01	\$.004

3.0 Carrier facilities will be provided at rates, terms, and conditions developed on an individual case basis.

4.0 Shared Facility (1)(2)

4.1 Shared Facility Factor - Carrier .80

4.2 Shared Facility Factor - SWBT .20

5.0 Inter MTA Traffic (2)

5.1 Inter MTA Traffic Factor

Land to Mobile: if less than 3% is reported then factor will be set at 0%, if greater than 3% then factor will be actual percentage reported

Mobile to Land: 0%

5.2 Inter MTA Rates (to be paid to SWBT by Carrier on applicable Inter MTA calls)

Land to Mobile (originating)	\$.023971
Mobile to Land (terminating)	\$.023971

(1) These factors represent the percentage of the facility rate that each Party will pay for each shared connecting facility.

(2) This is an interim factor agreed to by Carrier and SWBT. This factor is to be verified within six (6) months of the Effective Date of this Agreement.

APPENDIX DCO
WESTERN WIRELESS POIs

MTSO	CLLI	ADDRESS	TELEPHONE
MTSO1		3119 Arnold, Avenue, Salina, KS. 67410	(913) 823-5074
MTSO2		4533 Enterprise Drive, Oklahoma City, OK. 73128	(405) 270-5600
MTSO3		25 Butterfield Trail, El Paso, TX. 79908	(915) 783-4000
MTSO4		1912 Warehouse Road, Midland, TX. 79703	(915) 520-0273
MTSO5		Metro Tower 1220-Broadway, Ste. 1703 Lubbock, TX. 79401	(806) 763-3253

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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 7th

day of October, 1997.

FILED²

JUL 17 2002

Missouri Public
Service Commission

In the Matter of the Joint Application of)
Southwestern Bell Telephone Company and)
Western Wireless Corporation for Approval) CASE NO. TO-98-12
of Interconnection Agreement under the)
Telecommunications Act of 1996.)

ORDER APPROVING INTERCONNECTION AGREEMENT

Southwestern Bell Telephone Company (SWBT) and Western Wireless Corporation (Western) filed a joint application with the Missouri Public Service Commission (Commission) on July 10, 1997, for approval of an interconnection agreement (the Agreement) between SWBT and Western. 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.

The Commission issued an order and notice on July 11 which established a deadline for applications to participate without intervention, and established a deadline for comments. The Small Telephone Company Group and Fidelity Telephone Company and Bourbeuse Telephone Company (collectively Fidelity) filed timely applications for participation, which were granted on August 25. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on August 26, prior to the deadline for comments. The Small Telephone Company Group filed comments on September 5. SWBT filed a response to the comments on September 12. Staff subsequently filed a supplemental recommendation on September 15.

Although the Small Telephone Company Group filed comments, it did not request a hearing. 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 requested a hearing in this case, the Commission may grant the relief requested based upon the verified application. However, the Commission will consider the comments filed by the Small Telephone Company Group and Fidelity, along with SWBT=s reply and Staff=s recommendation and supplemental recommendation.

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 (ILEC) and other telecommunications carriers. The Commission may reject an interconnection agreement only if the agreement is discriminatory to a nonparty or is inconsistent with the public interest, convenience and necessity.

The initial term of the Agreement between SWBT and Western is a one-year period from the effective date of the Agreement; thereafter, the Agreement shall continue in effect until one of the parties gives a 60-day written notice of termination. The Agreement states that the parties shall effectuate all the terms of the Agreement as of April 1, 1997, in conjunction with final approval of the Agreement by the relevant State Commission.

The Agreement states that Western may interconnect with SWBT=s network at any technically feasible point. The points of interconnection agreed to by the parties are listed in Appendix DCO. The Agreement also describes the network architectures which the parties may use to interconnect their networks. Either party may request physical collocation or virtual collocation. Western may collocate at a SWBT facility with a third party with whom SWBT has already contracted for collocation, and vice versa. Either party may also request SONET-based interconnection. In addition, the parties may share SWBT interconnection facilities. Western shall provide SWBT with an annual forecast of intended mobile to land usage for each point of interconnection. As a result of the interLATA restrictions on SWBT, Western agrees to interconnect with at least one SWBT facility in each LATA in which it desires to pass traffic to SWBT for transport and termination.

Further, the parties have agreed upon a factor for traffic which crosses a major trading area (MTA) boundary. This factor represents the percent of total minutes which will be billed access charges. If the percent of land to mobile traffic which crosses an MTA boundary is less than 3% of the total land to mobile traffic, then such traffic will be deemed de minimus, and the land to mobile factor will be set at zero percent. The parties agree that the initial factor will be set at zero percent. However, Western is responsible for conducting a reasonable traffic study every six months, to ensure that the interMTA factor is accurate.

Western may order equal access facilities, such that traffic

exchanged between Western=s and SWBT=s networks will have switched access to interexchange carriers (IXCs), thus enabling Western=s end users to access IXCs. Western shall provide appropriate call data to allow SWBT to bill IXCs for originating access. Western shall also pay SWBT switched access charges for any traffic which crosses an MTA boundary.

With respect to third-party providers, Western and SWBT agree to compensate each other for traffic that transits their respective systems to any third-party provider. The parties also agree to enter into their own agreements with third-party providers. In the event that Western sends traffic through SWBT=s network to a third-party provider with whom Western does not have an interconnection agreement, Western will indemnify SWBT for any termination charges rendered by a third-party provider for such traffic.

In addition, the Agreement provides for the transmission and routing of other types of traffic, such as 800/888 traffic, E911/911 traffic, operator services, and directory assistance. Western may request area-wide calling plan (AWCP) arrangements. SWBT will provision connecting facilities using multi-frequency signaling. SWBT will also provide signaling systems 7 (SS7) at Western=s request. In addition, the Agreement provides for access to numbering resources, access to rights-of-way, and network maintenance. SWBT will make local and intraLATA toll dialing parity available to Western in accordance with the Act.

Finally, the Agreement provides that both parties shall provide each other with symmetrical, reciprocal compensation for the transport and termination of local traffic at the rates specified in the appendix PRICING. Because the parties recognize that the rates provided in the Agreement may be affected by subsequent rulings of state or federal legislative bodies, courts, or regulatory agencies, the Agreement provides that in the event of a final, non-appealable ruling, the parties shall Atrue-up@ the reciprocal compensation within 60 days of the date of the ruling.

Staff filed its original recommendation on August 26. Staff states that it has reviewed the proposed interconnection agreement and believes that the Agreement between SWBT and Western meets the limited requirements of the Telecommunications Act of 1996. Specifically, Staff states that the Agreement does not appear to discriminate against telecommunications carriers not a party to the interconnection agreement and does not appear to be against the public interest. Staff recommends that the Commission approve the interconnection agreement and direct SWBT and Western to submit any modifications or amendments to the Commission for approval.

On September 5, the Small Telephone Company Group and Fidelity filed their comments. The Small Telephone Company Group and Fidelity state that since the language in the present interconnection agreement is similar to the language in dispute in the tariff filed in Case No. TT-97-524, which has been suspended, they have concerns regarding the approval of the interconnection agreement before the resolution of that case. They also contend

that the portion of the Agreement regarding compensation of third-party providers may discriminate against companies that are not a party to the Agreement by affecting the companies' ability to terminate calls originating from wireless providers, thus interrupting service to their customers. For a more complete explanation of the concerns raised, the Small Telephone Company Group and Fidelity refer the Commission to the rebuttal testimony of Mr. Robert Schoonmaker filed in Case No. TT-97-524. In conclusion, the Small Telephone Company Group and Fidelity asks that the Commission carefully consider its approval of the present interconnection agreement.

On September 12, SWBT filed a reply to the comments submitted by the Small Telephone Company Group and Fidelity. SWBT claims that the Agreement makes clear that SWBT is only providing a transiting function with respect to calls destined for a third-party provider's network, and also makes clear in the strongest possible terms that Western is responsible for making arrangements directly with third-party carriers. SWBT also contends that the Small Telephone Company Group and Fidelity have not stated how the Agreement is discriminatory or contrary to the public interest. Finally, SWBT notes that in the event Western does not have an agreement with a particular third-party carrier, SWBT would continue to pass this traffic under the indemnification arrangement contained in the Agreement. SWBT asks that the Commission approve the Agreement in its entirety.

On September 15 Staff filed a supplemental recommendation which addresses the comments filed by the Small Telephone Company Group and Fidelity. Staff contends that the indemnification language contained in the Agreement should provide an incentive for wireless carriers to negotiate reciprocal compensation agreements with third-party LECs. Staff also maintains that the Cellular Summary Usage Report which SWBT has agreed to provide will contain sufficient information for third-party LECs to track, identify, and bill for traffic sent to the LEC by wireless carriers through SWBT's network. In addition, Staff also notes that the Commission has already approved several interconnection agreements with wireless carriers in Case Nos. TO-97-474 and TO-97-523, and points out that Case No. TO-97-523 was approved well after SWBT's tariff was suspended in Case No. TT-97-524.

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 joint application, the interconnection agreement, the comments of the Small Telephone Company Group and Fidelity, SWBT's reply, and Staff's original and supplemental recommendations. Based upon that review, the Commission finds that the interconnection agreement filed on July 10 meets the requirements of the Act in that it does not unduly discriminate against a non-party carrier, and implementation of the

Agreement is not inconsistent with the public interest, convenience and necessity.

The Commission has considered the concerns raised by the Small Telephone Company Group and Fidelity, but finds that those concerns can be better addressed in Case No. TT-97-524. In addition, it may also be possible to address this matter in the primary toll carrier (PTC) docket, Case No. TO-97-217. A resolution in either of these dockets may provide guidance for dealing with the issue on a statewide basis.

Modification Procedure

This Commission's first duty is to approve 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 1997, 47 U.S.C. ' 252 (e) (1), 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 non-party or inconsistent with the public interest, convenience and necessity under Section 252 (e) (2) (A). Based upon its review of the interconnection agreement between SWBT and Western, and its findings of fact, the Commission concludes that the interconnection agreement filed on July 10 is neither discriminatory nor inconsistent with the public interest, and should be approved.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement filed on July 10, 1997 between Southwestern Bell Telephone Company and Western Wireless Corporation is approved.
2. That Southwestern Bell Telephone Company and Western Wireless Corporation shall file a copy of the interconnection agreement with the Staff of the Missouri Public Service Commission with the pages numbered seriatim in the lower right-hand corner.
3. That any further changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.
4. That this order shall become effective on October 8, 1997.

BY THE COMMISSION

Cecil I. Wright

Executive Secretary

(S E A L)

Lumpe, Chm., Crumpton,

Murray, and Drainer,

CC., Concur.

Bensavage, Regulatory Law Judge

STATE OF MISSOURI

PUBLIC SERVICE COMMISSION

At a Session of the Public Service

Commission held at its office

in Jefferson City on the 16th

day of October, 1997.

In the Matter of the Joint Application of)

Southwestern Bell Telephone Company and)

U.S. Cellular Corporation for Approval of) CASE NO. TO-98-37

Interconnection Agreement Under the)

Telecommunications Act of 1996.)

ORDER APPROVING INTERCONNECTION AGREEMENT

Southwestern Bell Telephone Company (SWBT) and U.S. Cellular Corporation (U.S. Cellular) filed a joint application with the Missouri Public Service Commission (Commission) on July 28, 1997, for approval of an interconnection agreement (the Agreement) between SWBT and U.S. Cellular. 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.

The Commission issued an order and notice on July 30 which established a deadline for applications to participate without intervention, and established a deadline for comments. The Small Telephone Company Group and Fidelity Telephone Company and Bourbeuse Telephone Company (collectively Fidelity) filed timely applications for participation, which were granted on August 26. The Small Telephone Company Group filed comments on September 15. SWBT filed a response to the comments on September 25. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on October 2.

Although the Small Telephone Company Group filed comments, it did not request a hearing. 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 requested a hearing in this case, the Commission may grant the relief requested based upon the verified application. However, the Commission will consider the comments filed by the Small Telephone Company Group and Fidelity, along with SWBT=s reply and Staff=s recommendation.

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 (ILEC) and other telecommunications carriers. The Commission may reject an interconnection agreement only if the agreement is discriminatory to a nonparty or is inconsistent with the public interest, convenience and necessity.

The initial term of the Agreement between SWBT and U.S. Cellular is a one-year period from the effective date of the Agreement; thereafter, the Agreement shall continue in effect until one of the parties gives a 60-day written notice of termination. The Agreement states that the parties shall effectuate all the terms of the Agreement upon final approval of the Agreement by the relevant State Commission.

The Agreement states that U.S. Cellular may interconnect with SWBT=s network at any technically feasible point. The points of interconnection agreed to by the parties are listed in Appendix DCO. The Agreement also describes the network architectures which the parties may use to interconnect their networks. Either party may request physical collocation or virtual collocation. U.S. Cellular may collocate at a SWBT facility with a third party with whom SWBT has already contracted for collocation, and vice versa. Either party may also request SONET-based interconnection. In addition, the parties may share SWBT interconnection facilities. U.S. Cellular shall provide SWBT with an annual forecast of intended mobile to land usage for each point of interconnection. As a result of the interLATA restrictions on SWBT, U.S. Cellular agrees to interconnect with at least one SWBT facility in each LATA in which it desires to pass traffic to SWBT for transport and termination.

Further, the parties have agreed upon a factor for traffic which crosses a major trading area (MTA) boundary. This factor represents the percent of total minutes which will be billed access charges. The parties agree that the initial factor will be set at .05. However, U.S. Cellular is responsible for conducting a reasonable traffic study after six months and every twelve months thereafter, to ensure that the interMTA factor is accurate.

U.S. Cellular may order equal access trunks, such that traffic exchanged between U.S. Cellular=s and SWBT=s networks will have switched access to and from interexchange carriers (IXCs), thus enabling U.S. Cellular=s end users to access or be accessible to IXCs. U.S. Cellular shall provide appropriate call data to allow SWBT to bill IXCs for originating access. U.S. Cellular shall also

pay SWBT switched access charges for any traffic which crosses an MTA boundary.

With respect to third-party providers, U.S. Cellular and SWBT agree to compensate each other for traffic that transits their respective systems to any third-party provider. The parties also agree to enter into their own agreements with third-party providers. In the event that U.S. Cellular sends traffic through SWBT's network to a third-party provider with whom U.S. Cellular does not have an interconnection agreement, U.S. Cellular will indemnify SWBT for any termination charges rendered by a third-party provider for such traffic.

In addition, the Agreement provides for the transmission and routing of other types of traffic, such as 800/888 traffic, E911/911 traffic, operator services, and directory assistance. U.S. Cellular may request area-wide calling plan (AWCP) arrangements. SWBT will also provide signaling system 7 (SS7) at U.S. Cellular's request. In addition, the Agreement provides for access to numbering resources, access to rights-of-way, and network maintenance. SWBT will make local and intraLATA toll dialing parity available to U.S. Cellular in accordance with the Act.

Finally, the Agreement provides that both parties shall provide each other with reciprocal compensation for the transport and termination of local traffic at the rates specified in the appendix PRICING. Because the parties recognize that the rates provided in the Agreement may be affected by subsequent rulings of state or federal legislative bodies, courts, or regulatory agencies, the Agreement provides that in the event of a final, non-appealable ruling, the parties shall Atrue-up@ the reciprocal compensation within 60 days of the effective date of the ruling. On September 15, the Small Telephone Company Group and Fidelity filed their comments. The Small Telephone Company Group and Fidelity state that since the language in the present interconnection agreement is similar to the language in dispute in the tariff filed in Case No. TT-97-524, which has been suspended, they have concerns regarding the approval of the interconnection agreement before the resolution of that case. They also contend that the portion of the Agreement regarding compensation of third-party providers may discriminate against companies that are not a party to the Agreement by affecting the companies' ability to terminate calls originating from wireless providers, thus interrupting service to their customers. For a more complete explanation of the concerns raised, the Small Telephone Company Group and Fidelity refer the Commission to the rebuttal testimony of Mr. Robert Schoonmaker filed in Case No. TT-97-524. In conclusion, the Small Telephone Company Group and Fidelity ask that the Commission carefully consider its approval of the present interconnection agreement.

On September 25, SWBT filed a reply to the comments submitted by the Small Telephone Company Group and Fidelity. SWBT claims that the Agreement makes clear that SWBT is only providing a transiting function with respect to calls destined for a third-party provider's network, and also makes clear A in the strongest possible

terms@ that U.S. Cellular is responsible for making arrangements directly with third-party carriers. SWBT also contends that the Small Telephone Company Group and Fidelity have not stated how the Agreement is discriminatory or contrary to the public interest. Finally, SWBT notes that in the event U.S. Cellular does not have an agreement with a particular third-party carrier, SWBT would continue to pass this traffic under the indemnification arrangement contained in the Agreement. SWBT asks that the Commission approve the Agreement in its entirety.

Staff filed its recommendation on October 2. With respect to the comments filed by the Small Telephone Company Group and Fidelity, Staff makes reference to Case No. TT-97-524, and adds that Staff's position can be found in its recommendation in this case. Staff states that it has reviewed the proposed interconnection agreement and believes that the Agreement between SWBT and U.S. Cellular meets the limited requirements of the Telecommunications Act of 1996. Specifically, Staff states that the Agreement does not appear to discriminate against telecommunications carriers not a party to the interconnection agreement and does not appear to be against the public interest. Staff recommends that the Commission approve the interconnection agreement and direct SWBT and U.S. Cellular to submit any 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 joint application, the interconnection agreement, the comments of the Small Telephone Company Group and Fidelity, SWBT's reply, and Staff's recommendation. Based upon that review, the Commission finds that the interconnection agreement filed on July 28 meets the requirements of the Act in that it does not unduly discriminate against a non-party carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity.

The Commission has considered the concerns raised by the Small Telephone Company Group and Fidelity, but finds that those concerns can be better addressed in Case No. TT-97-524. In addition, it may also be possible to address this matter in the primary toll carrier (PTC) docket, Case No. TO-97-217. A resolution in either of these dockets may provide guidance for dealing with the issue on a statewide basis.

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 1997, 47 U.S.C. ' 252 (e) (1), 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 non-party or inconsistent with the public interest, convenience and necessity under Section 252 (e) (2) (A). Based upon its review of the interconnection agreement between SWBT and U.S. Cellular, and its findings of fact, the Commission concludes that the interconnection

agreement filed on July 28 is neither discriminatory nor inconsistent with the public interest, and should be approved.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement filed on July 28, 1997 between Southwestern Bell Telephone Company and U.S. Cellular Corporation is approved.
2. That Southwestern Bell Telephone Company and U.S. Cellular Corporation shall file a copy of the interconnection agreement with the Staff of the Missouri Public Service Commission with the pages numbered serially in the lower right-hand corner.
3. That any further changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.
4. That this order shall become effective on October 26, 1997.
5. That this case shall be closed on October 27, 1997.

BY THE COMMISSION

Cecil I. Wright

Executive Secretary

(S E A L)

Lumpe, Ch., Crumpton,

Murray, and Drainer,

CC., Concur.

Bensavage, Regulatory Law Judge

