STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held at its office in Jefferson City on the 19th day of May, 2005.

Application of Chariton Valley Communications Corporation, Inc., for Approval of an Interconnection Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri pursuant to Section 252(e) of the Telecommunications Act of 1996	)))))	**Case No. TK-2005-0300**

ORDER REJECTING INTERCONNECTION AGREEMENT

Issue Date: May 19, 2005 Effective Date: May 29, 2005

Syllabus: This order rejects the Interconnection Agreement executed by the parties and filed by Chariton Valley Communication Corporation, Inc.

Procedural History

On March 9, 2005, CVCI filed an application with the Commission for approval of an Interconnection Agreement with Southwestern Bell Telephone, L.P. d/b/a SBC Missouri. The Agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.[1] The Agreement would permit CVCI to interconnect its facilities with SBC Missouri. SBC Missouri holds a certificate of service authority to provide basic local exchange telecommunications services in Missouri.

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[1] See 47 U.S.C. § 251, et seq.

Although SBC Missouri is a party to the Agreement, it did not join in the application. On March 14, 2005, the Commission issued an order making SBC Missouri a party in this case and directing any party wishing to request a hearing to do so no later than April 4, 2005. No requests for hearing were filed.

On April 13, 2005, the Staff of the Commission recommended that the Commission reject the Agreement. Staff stated that it contacted CVCI and confirmed that the parties had entered into a separate agreement for transit traffic and did not intend to submit that agreement to the Commission for approval. Staff argued that transit traffic is an interconnection service and that an interconnection agreement omitting an interconnection service would be discriminatory and against the public interest because other carriers would not be able to adopt the "whole" interconnection agreement. Quoting the Federal Communications Commission, Staff further stated that indirect interconnection is a form of interconnection explicitly recognized and supported by the Telecommunications Act and that the availability of transit service is increasingly critical to establishing indirect interconnection.[2] Staff suggested that the Commission direct the parties to file the transiting agreement. Staff further suggested that if the parties do not file the transiting agreement then the Commission should reject the interconnection agreement.

Positions of CVCI and SBC

SBC Missouri argues that it is not obligated to provide transit service under the Telecommunications Act. Based on this premise, SBC Missouri argues that it does not have to file the transiting agreement between it and Chariton with the Commission.

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[2] In the Matter of Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, released March 3, 2005, at 126.

Although recognizing that the Act requires carriers to indirectly interconnect, SBC Missouri argues that the Act does not require carriers to *provide* indirect interconnection.

CVCI stated that it has no objection to filing the transit agreement with the Commission. CVCI further stated that when negotiating the interconnection agreement between it and SBC Missouri, SBC notified CVCI that it would not negotiate a transiting agreement unless CVCI agreed that the agreement was not subject to Commission approval. CVCI stated that it disagrees with that position, but complied in order to make transiting services available.

Discussion

As recognized by SBC Missouri, the Telecommunications Act requires companies to indirectly interconnect. If companies are required under the Act to indirectly connect, there must be an intermediary through which those companies connect indirectly. If the intermediary is not required under the Act transit the indirect traffic, then the purpose of the Act would be frustrated.

The Act requires that interconnection agreements be filed for approval with the state commission.[3] An interconnection agreement is any agreement, negotiated or arbitrated, that contains terms of interconnection. Transit service falls within the definition of interconnection service.[4] SBC and CVCI have an agreement covering transit service. Because the transit agreement is an interconnection service, it must be filed with the Commission for approval.

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[3] 47 U.S.C. §252(e).

[4] <u>Connecticut Telcom</u>, Docket No. 02-01-23, 2003 Conn. PUC Lexis 11 (January 15, 2003)

SBC and CVCI have filed an interconnection agreement that does not include provisions for transiting traffic. It is conceivable that an interconnection agreement need not contain transit services. However, in this matter, CVCI intends to use transiting as its method of indirect interconnection, but SBC and CVCI have failed to include transiting provisions in the interconnection agreement. This agreement is deficient in that it does not include all of the interconnection terms to which the parties have agreed. The Commission finds that it is against the public interest to approve only part of an interconnection agreement; the whole of which should be before the Commission and, if approved, subject to adoption by other carriers. Having found that it is against the public interest to approve the agreement between SBC and CVCI, the Commission will reject the agreement.

Conclusion

The Commission concludes that transit traffic is an interconnection service and is therefore subject to Commission approval. The Commission finds that it is against the public interest to approve an interconnection agreement when the parties have also entered into a transit traffic agreement that is not before the Commission. The Commission will therefore reject the interconnection agreement. The Commission, however, will not order SBC Missouri and CVCI file the transiting agreement. SBC Missouri and CVCI now know that the Commission will not approve an interconnection agreement when the parties have also entered into, but have not submitted for Commission approval, a transit traffic agreement.

If the parties subsequently file the interconnection agreement and associated transit traffic agreement for Commission approval, that filing will create a new case.

IT IS THEREFORE ORDERED:

1. That the Interconnection Agreement between Chariton Valley Communication Corporation, Inc. and Southwestern Bell Telephone, L.P. d/b/a SBC Missouri filed on March 9, 2005, is rejected.

2. That this order shall become effective on May 29, 2005.

3. That this case may be closed on May 30, 2005.

BY THE COMMISSION

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Gaw, Clayton and Appling, CC., concur
Murray, C., dissents, dissenting opinion attached

Pridgin, Regulatory Law Judge