

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 29th
day of April, 1998.

In the Matter of the Application of)
Southwestern Bell Telephone Company)
for Approval of Interconnection)
Agreement with Aerial Communications,)
Inc. under the Telecommunications Act)
of 1996.)

Case No. TO-98-322

**ORDER APPROVING INTERCONNECTION AND RECIPROCAL
COMPENSATION AGREEMENT**

Southwestern Bell Telephone Company (SWBT) filed an application with the Missouri Public Service Commission (Commission) on January 30, 1998, for approval of an Agreement for Interconnection and Reciprocal Compensation (the Agreement) between SWBT and Aerial Communications, Inc. (Aerial). 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 February 3 which established a deadline for applications to participate without intervention and hearing requests, and established a deadline for comments. No applications for participation without intervention were filed with the Commission. In addition, no comments or requests for hearing were filed. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on April 7. 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. Staff ex rel. Rex Deffenderder Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to participate or requested

a hearing in this case, the Commission may grant the relief requested based upon the verified application.

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 Aerial is a two-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 Aerial 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. Aerial 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. As a result of the interLATA restrictions on SWBT, Aerial 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 2 percent. However, Aerial is responsible for conducting a reasonable traffic study six months after the effective date of the Agreement, in order to determine the actual interMTA factor. In addition, Aerial agrees to conduct a new traffic study every six months thereafter, to ensure that the MTA factor is accurate.

Aerial may order equal access trunks, such that traffic exchanged between Aerial's and SWBT's network will have switched access to interexchange carriers (IXCs), thus enabling Aerial's end users to access IXCs. Aerial shall provide appropriate call data to allow SWBT to bill IXCs for originating access.

With respect to third-party providers, Aerial 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. SWBT agrees that it will not block traffic involving third-party providers with whom Aerial has not reached agreement. In the event that Aerial sends traffic through SWBT's network to a third-party provider with whom Aerial does not have a traffic interchange agreement, Aerial will indemnify SWBT 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, directory assistance, and DA call completion. Aerial may request Area Wide Calling Plan (AWCP) arrangements. SWBT will also provide Signaling System 7 (SS7) at Aerial'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 Aerial 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. The Agreement also provides for a "true-up" of local termination and transit rates based upon the permanent rates for tandem switching, transport and end office switching as determined by the Commission in Case No. TO-97-40.

Staff filed its recommendation on April 7. Staff states that it has reviewed the proposed Interconnection and Reciprocal Compensation Agreement and believes that the Agreement 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 Agreement.

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 SWBT's application, the Interconnection and Reciprocal Compensation Agreement, and Staff's recommendation. Based upon that review, the Commission finds that the Interconnection and Reciprocal Compensation Agreement filed on January 30 meets the requirements of the Act in that it does not unduly discriminate against a nonparty carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity.

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 nonparty 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 Aerial, and its findings of fact, the Commission concludes that the interconnection agreement filed on January 30 is neither discriminatory nor inconsistent with the public interest, and should be approved.

IT IS THEREFORE ORDERED:

1. That the Interconnection and Reciprocal Compensation Agreement filed on January 30, 1998 between Southwestern Bell Telephone Company and Aerial Communications, Inc. is approved.

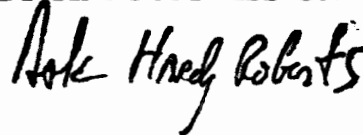
2. That Southwestern Bell Telephone Company and Aerial Communications, Inc. shall file a copy of the Interconnection and Reciprocal Compensation Agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner, no later than May 15, 1998.

3. That any changes or modifications to this Agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

4. That the Commission, by approving this Agreement, makes no finding as to whether Southwestern Bell Telephone Company has fulfilled the requirements of Section 271 of the Telecommunications Act of 1996, including the competitive checklist of any of the 14 items listed in Section 271(c)(2)(B).

5. That this Report and Order shall become effective on April 30, 1998.

BY THE COMMISSION



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

(S E A L)

Lumpe, Ch., Crumpton, and Schemenauer, CC., concur.

Bensavage, Regulatory Law Judge