

W/H

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 14th
day of January, 1999.

In the Matter of the Application of GTE Midwest)
Incorporated and GTE Arkansas Incorporated for)
Approval of Interconnection Agreement With) Case No. TO-99-185
Navigator Telecommunications, LLC Pursuant to)
Section 252(e) of the Telecommunications Act of)
1996.)

ORDER APPROVING RESALE AGREEMENT

GTE Midwest Incorporated and GTE Arkansas Incorporated
(collectively referred to as "GTE") filed an application on October 28,
1998, for approval of an interconnection agreement (the Agreement)
between GTE and Navigator Telecommunications, LLC (Navigator). The
Agreement was filed pursuant to Section 252(e)(1) of the Telecommunica-
tions Act of 1996 (the Act). See 47 U.S.C. § 251, et seq. Navigator
wants to resell basic local exchange service to residential and business
end users.

The Commission issued an Order and Notice on November 3 directing
any party wishing to request a hearing or to participate without
intervention to file an application no later than November 23. No
comments or requests for hearing were filed. The Commission Staff
(Staff) filed a Memorandum on December 28, recommending that the Agree-
ment be approved. 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 asked permission to participate or requested a hearing, the Commission may grant the relief requested based on 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 (LEC) and a new provider of basic local exchange service. The Commission may reject an interconnection agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity.

Staff stated in its recommendation that the terms of this Agreement are substantially similar to those contained in the resale agreement between GTE and USA eXchange LLC, d/b/a Omniplex Communications Group in Case No. TO-98-193. The resale agreement between GTE and Navigator is to become effective ten business days after Commission approval and the initial term of the contract is two years. After the initial term, the Agreement will remain in effect until one of the parties gives ninety days written notice of termination. Each party has agreed to treat the other no less favorably than it treats other similarly situated local service providers with whom it has a Commission-approved interconnection agreement.

The Agreement provides for GTE to make available for resale certain telecommunications services and unbundled network elements. GTE will provide to Navigator for resale local exchange service, extended area service (EAS), metropolitan calling area (MCA) plan, custom calling services, digital channel services, switched data service, integrated services digital network (ISDN), call restriction services, customized number services, CentraNet services, intraLATA long distance message telecommunications service, community optional service (COS), outstate calling area (OCA) plan, wide area telecommunications service (WATS), business and residential line 800 services, intraLATA private line and digital data services, digital data transmission services and frame relay service.

Where GTE is the provider of 911 or E911 service, the parties agree to provide access to 911 or E911 in a manner that is transparent to the end user. GTE will charge Navigator \$47.25 per order for an initial service order, and \$24.00 per order for any subsequent service orders. GTE will also charge Navigator \$14.00 for the installation of new lines, and GTE's tariffed rates for outside facility connections.

The Staff memorandum notes that the Agreement contains the same "snap-back" language that has appeared in other GTE interconnection and resale agreements (e.g. Case No. TO-98-410). The Agreement states that if Navigator fails to pay undisputed charges and GTE disconnects Navigator, Navigator is to notify its customers that their service may be disconnected and that they must choose a new provider. The Agreement further states that if Navigator fails to provide notice to its

customers, or if any of Navigator's customers fail to choose another service provider, GTE may provide local exchange services to Navigator's customers at GTE's tariffed rates. The memorandum indicates that in previous cases, the Commission has required the filing of an amendment by interlineation to include language requiring GTE to notify the Commission as well as the defaulting party's customers that service has been switched to GTE.

The Staff stated in its recommendation that the Agreement meets the limited requirements of the Telecommunications Act of 1996 in that it does not appear to discriminate against telecommunications carriers not party to the Agreement, and does not appear to be against the public interest, convenience and necessity. Staff recommended approval provided that all modifications to the Agreement be submitted to the Commission for approval. Staff also recommended that the Commission direct GTE and Navigator to submit a copy of the executed resale agreement with the pages numbered seriatim, and to submit an amendment by interlineation regarding the notification of customers in the event of default by Navigator.

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 has reached the conclusion that the resale agreement 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. The Commission finds that approval of the Agreement should be conditioned upon GTE submitting a copy of the executed agreement with the pages numbered seriatim in the lower right-hand corner and that any modifications or amendments be submitted to the Commission for approval pursuant to the procedure set out below.

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 1996, 47 U.S.C. 252(e)(1), is required to review negotiated resale 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 resale agreement between GTE and Navigator and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

IT IS THEREFORE ORDERED:

1. That the resale agreement between GTE Midwest Incorporated and GTE Arkansas Incorporated (GTE) and Navigator Telecommunications, LLC, filed on October 28, 1998, is approved.

2. That GTE and Navigator Telecommunications, LLC, shall file a copy of this Agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner no later than [10 days]. The parties shall file on the same date a notice in the official case file advising the Commission that the agreement has been submitted to Staff as required.

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 this order shall become effective on January 20, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dippell, Senior Regulatory Law Judge

RECEIVED

JAN 14 1999

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION