

**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 February, 1998.

In the Matter of the Joint Application of)
Southwestern Bell Telephone Company and)
Southwestern Bell Wireless, Inc. for Approval of) Case No. TO-98-219
Interconnection Agreement Under the)
Telecommunications Act of 1996.)

**ORDER APPROVING INTERCONNECTION AND RECIPROCAL
COMPENSATION AGREEMENT**

Southwestern Bell Telephone Company (SWBT) and Southwestern Bell Wireless, Inc. (SWB Wireless) filed a joint application on November 25, 1997 requesting that the Missouri Public Service Commission approve an interconnection and reciprocal compensation agreement (Agreement) between SWBT and SWB Wireless. The Agreement was filed pursuant to Section 252(e)(1) of the Federal Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, et seq. SWB Wireless does not currently hold any certificates of service authority to provide interexchange, basic local exchange or nonswitched private line local exchange telecommunications services in Missouri. Wireless carriers are licensed by the Federal Communications Commission (FCC).

The Commission, by its Order and Notice issued December 10, established a deadline of December 30 for proper parties to request permission to participate without intervention or to request a hearing. No parties requested to participate without intervention or requested a hearing. The Commission's Order and Notice also directed parties wishing to file comments to do so by January 23, 1998 and directed the Commission Staff (Staff) to file a memorandum advising the Commission of its recommendation by February 3. No comments were filed. Staff filed a

Memorandum on February 5, recommending that the Agreement 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 in this case, the Commission may grant the relief requested based on the verified application.

Discussion

The Commission, under the provisions of Section 252(e) of the Federal Telecommunications Act of 1996 has authority to approve an interconnection or resale 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:

\$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;

Staff stated in its memorandum that the agreement appears to be similar to other approved agreements for wireless interconnection. The Agreement describes the interconnection facilities and methods with which the parties may interconnect their networks and contains provisions for the transmission and routing of telephone exchange service, exchange access service, and other types of traffic including 800/888 traffic, E911/911 traffic, Directory Assistance and Operator Services traffic.

The Agreement between SWBT and SWB Wireless is to become effective thirty days after Commission approval. The term of the contract is two years from the effective date; thereafter the Agreement remains in effect until one of the parties gives 60-day notice of termination. Each party 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 contemplates three ways for SWB Wireless to provide service: as a reseller, as a facilities-based provider, or as a mixed-mode provider combining resold and facilities-based elements.

The Agreement permits several methods of interconnection, including mid-span meet POI, physical and virtual collocation, and SONET-based interconnection for originating and terminating calls between the two parties. The Agreement provides for reciprocal compensation for termination of local traffic, interMTA traffic and Area Wide Calling Plan traffic. The parties agreed that compensation rates for origination and

termination of traffic to or from interexchange carriers would be based on SWB Wireless's and SWBT's access service tariffs.

SWBT agreed to work with SWB Wireless to meet all requirements mandated by applicable law for the handling of E911/911 traffic. SWBT also agreed to make available intraLATA toll dialing parity in accordance with Section 251(b)(3) of the Act.

The Agreement also contains provisions which apply a transit traffic element rate to all minutes of use between either SWBT or SWB Wireless and third party networks that transit the other party's system, if the calls do not originate with or terminate to SWBT's or SWB Wireless's (the transit party's) end user. The originating party is responsible for negotiating appropriate rates with the terminating party. SWBT has agreed not to block SWB Wireless traffic that is destined for the network of a third party even if SWB Wireless and the third party do not have an agreement. SWB Wireless will indemnify SWBT for such traffic if the third party demands compensation from SWBT.

Findings of Fact

The Missouri Public Service Commission, having considered the joint application of the parties, including the agreement and its appendices, and the Staff's memorandum, 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 interconnection and 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 the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below.

The Commission further finds that the Agreement addresses SWBT's handling of traffic originating on a wireless carrier's network and terminating on the networks of third parties in situations where the wireless carrier does not have an agreement with the third parties, as did the tariff in Case No. TT-97-524. The Commission finds that approval of the Agreement should be conditioned upon its decision in Case No. TT-97-524, and that the Agreement must be interpreted in conformity with the Commission's findings and conclusions in that case.

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 interconnection and 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 interconnection and resale Agreement between SWBT and SWB Wireless and its findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

The Commission also has the authority to determine whether the rules, regulations or practices of any telecommunications company are unjust or unreasonable, and to determine the just, reasonable, adequate, efficient, and proper regulations, practices, and service to be observed and used by a telecommunications company. § 392.240.2, RSMo 1994. The Commission has previously found in Case No. TT-97-524 that SWBT will be required to make available a Cellular Usage Summary Report that contains information sufficient to allow third-party providers to bill wireless carriers for wireless-originating traffic which terminates in the exchanges of those providers. This obligation applies equally to traffic originating on SWB Wireless's network, which transits SWBT's network and terminates on the networks of third-party providers.

IT IS THEREFORE ORDERED:

1. That the interconnection and reciprocal compensation agreement between Southwestern Bell Telephone Company and Southwestern Bell Wireless, Inc., filed on November 25, 1997, is approved.

2. That Southwestern Bell Telephone Company and Southwestern Bell Wireless, Inc. 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.

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

4. That Southwestern Bell Telephone Company is obligated to make available to any requesting third-party carrier its Cellular Usage Summary Report, consistent with the Commission's Report and Order in Case No. TT-97-524.

5. 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 fourteen items listed in Section 271(c)(92)(B).

6. That this order shall become effective on February 23, 1998.

7. That this case shall be closed on February 24, 1998.

BY THE COMMISSION

(S E A L)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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

Randles, Regulatory Law Judge