# BEFORE THE PUBLIC SERVICE COMMISSION

# OF THE STATE OF MISSOURI

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| In the Matter of the Application of GTE Midwest Incorporated and GTE Arkansas Incorporated for Approval of an Inter-Connection Agreement with Missouri State Discount Telephone Pursuant to Section 252(e) of the Telecommunications Act of 1996. | ) ) ) ) ) ) ) | Case No. TO-99-610 |

## ORDER APPROVING INTERCONNECTION AGREEMENT

GTE Midwest Incorporated and GTE Arkansas Incorporated (GTE) filed a petition with the Commission on June 25, 1999, for approval of an interconnection agreement (the Agreement) between GTE and Missouri State Discount Telephone (MSDT) under the provisions of the federal Telecommunications Act of 1996 (the Act). Although MSDT is a party to the Agreement, it did not join in the application. On July 12, the Commission issued an order making MSDT a party in this case and directing any party wishing to request a hearing or to participate without intervention to do so no later than August 2, 1999. No applications to participate or requests for hearing were filed.

In addition, the Commission ordered the Staff of the Public Service Commission (Staff) to file a memorandum advising either approval or rejection of this Agreement and giving its reasons therefor no later than September 3, 1999. Staff filed its memorandum on August 18 recommending 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 requested permission to participate or requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

The Commission requested additional information from the parties regarding MSDT, its affiliation with the State of Missouri, type of certification held, PSC case number of certification application, legal name of company, brief character of business and name, address and phone number of contact person for the business. The Commission requested this additional information be filed no later than September 7. The requested information was provided by MSDT on September 1. MSDT indicated that it has no affiliation with the State of Missouri, that it does not hold certification in the State of Missouri at this time, that MSDT has filed its Fictitious Name Registration with the Missouri Secretary of State's Office on August 30, 1999. MSDT stated that Harry Thielepape is the President and contact person and its address is 804 Elkins Lake, Huntsville, Texas 77340.

## 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 inter-

connection 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 and rate of this Agreement are similar to those contained and approved in other interconnection agreements, with a specific reference to Case No. TO-99-55, the interconnection agreement between GTE and Buy-Tel Communications, Inc.

The Staff stated in its recommendation that the Agreement meets the limited requirements of the Act in that it does not appear to be discriminatory toward nonparties, and does not appear to be against the public interest, convenience or necessity. Staff recommended approval of the Agreement provided that all modifications to the Agreement be submitted to the Commission for approval. This condition has been applied in prior cases where the Commission has approved similar agreements.

## 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 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.

## 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 Telecommunications Staff will maintain the official record of the original agreement and all the modifications made 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 or 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 Agreement between GTE and MSDT, 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 approval of this interconnection agreement does not authorize MSDT to operate in Missouri until it has obtained a certificate as required by law.

**IT IS THEREFORE ORDERED:**

1. That the interconnection agreement between GTE Midwest Incorporated and GTE Arkansas Incorporated and Missouri State Discount Telephone filed on June 25, 1999 is approved.

2. That GTE Midwest Incorporated and GTE Arkansas Incorporated and Missouri State Discount Telephone 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 no later than October 1, 1999. GTE Midwest Incorporated and GTE Arkansas Incorporated and Missouri State Discount Telephone shall also file on the same date a notice in the official 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 the Commission, by approving this agreement, makes no finding on the completion by GTE Midwest Incorporated and GTE Arkansas

Incorporated of any of the requirements of the competitive checklist found in 47 U.S.C. § 271.

5. That this order shall become effective on September 23, 1999.

**BY THE COMMISSION**

Dale Hardy Roberts

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

(S E A L)

Shelly A. Register, Regulatory Law Judge, by delegation of authority pursuant to 4 CSR 240-2.120(1), (November 30, 1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri, on this 21st day of September, 1999.