

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 7th
day of October, 1997.

In the Matter of the Joint Application of)
Southwestern Bell Telephone Company and)
Western Wireless Corporation for Approval)
of Interconnection Agreement under the)
Telecommunications Act of 1996.)

CASE NO. TO-98-12

ORDER APPROVING INTERCONNECTION AGREEMENT

Southwestern Bell Telephone Company (SWBT) and Western Wireless Corporation (Western) filed a joint application with the Missouri Public Service Commission (Commission) on July 10, 1997, for approval of an interconnection agreement (the Agreement) between SWBT and Western. 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 July 11 which established a deadline for applications to participate without intervention, and established a deadline for comments. The Small Telephone Company Group¹ and Fidelity Telephone Company and Bourbeuse Telephone Company (collectively Fidelity) filed timely applications for participation, which were granted on August 25. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on August 26, prior to the deadline for comments. The Small Telephone Company

¹ For purposes of this proceeding, the Small Telephone Company Group is comprised of BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, Kingdom Telephone Company, KLM Telephone Company, Lathrop Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Steelville Telephone Exchange, Inc., Stoutland Telephone Company.

Group filed comments on September 5. SWBT filed a response to the comments on September 12. Staff subsequently filed a supplemental recommendation on September 15.

Although the Small Telephone Company Group filed comments, it did not request a hearing. 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 a hearing in this case, the Commission may grant the relief requested based upon the verified application. However, the Commission will consider the comments filed by the Small Telephone Company Group and Fidelity, along with SWBT's reply and Staff's recommendation and supplemental recommendation.

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 Western is a one-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 the parties shall effectuate all the terms of the Agreement as of April 1, 1997, in conjunction with final approval of the Agreement by the relevant State Commission.

The Agreement states that Western 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. Western 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. Western shall provide SWBT with an annual forecast of intended mobile to land usage for each point of interconnection. As a result of the interLATA restrictions on SWBT, Western 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. If the percent of land to mobile traffic which crosses an MTA boundary is less than 3% of the total land to mobile traffic, then such traffic will be deemed de minimus, and the land to mobile factor will be set at zero percent. The parties agree that the initial factor will be set at zero percent. However, Western is responsible for conducting a reasonable traffic study every six months, to ensure that the interMTA factor is accurate.

Western may order equal access facilities, such that traffic exchanged between Western's and SWBT's networks will have switched access to interexchange carriers (IXCs), thus enabling Western's end users to access IXCs. Western shall provide appropriate call data to allow SWBT to

bill IXCs for originating access. Western shall also pay SWBT switched access charges for any traffic which crosses an MTA boundary.

With respect to third-party providers, Western 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. In the event that Western sends traffic through SWBT's network to a third-party provider with whom Western does not have an interconnection agreement, Western will indemnify SWBT for any termination charges rendered by a third-party provider 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, and directory assistance. Western may request area-wide calling plan (AWCP) arrangements. SWBT will provision connecting facilities using multi-frequency signaling. SWBT will also provide signaling systems 7 (SS7) at Western'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 Western in accordance with the Act.

Finally, the Agreement provides that both parties shall provide each other with symmetrical, reciprocal compensation for the transport and termination of local traffic at the rates specified in the appendix PRICING. Because the parties recognize that the rates provided in the Agreement may be affected by subsequent rulings of state or federal legislative bodies, courts, or regulatory agencies, the Agreement provides that in the event of a final, non-appealable ruling, the parties shall "true-up" the reciprocal compensation within 60 days of the date of the ruling.

Staff filed its original recommendation on August 26. Staff states that it has reviewed the proposed interconnection agreement and believes that the Agreement between SWBT and Western 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 interconnection agreement and direct SWBT and Western to submit any modifications or amendments to the Commission for approval.

On September 5, the Small Telephone Company Group and Fidelity filed their comments. The Small Telephone Company Group and Fidelity state that since the language in the present interconnection agreement is similar to the language in dispute in the tariff filed in Case No. TT-97-524, which has been suspended, they have concerns regarding the approval of the interconnection agreement before the resolution of that case. They also contend that the portion of the Agreement regarding compensation of third-party providers may discriminate against companies that are not a party to the Agreement by affecting the companies' ability to terminate calls originating from wireless providers, thus interrupting service to their customers. For a more complete explanation of the concerns raised, the Small Telephone Company Group and Fidelity refer the Commission to the rebuttal testimony of Mr. Robert Schoonmaker filed in Case No. TT-97-524. In conclusion, the Small Telephone Company Group and Fidelity asks that the Commission carefully consider its approval of the present interconnection agreement.

On September 12, SWBT filed a reply to the comments submitted by the Small Telephone Company Group and Fidelity. SWBT claims that the

Agreement makes clear that SWBT is only providing a transiting function with respect to calls destined for a third-party provider's network, and also makes clear in the strongest possible terms that Western is responsible for making arrangements directly with third-party carriers. SWBT also contends that the Small Telephone Company Group and Fidelity have not stated how the Agreement is discriminatory or contrary to the public interest. Finally, SWBT notes that in the event Western does not have an agreement with a particular third-party carrier, SWBT would continue to pass this traffic under the indemnification arrangement contained in the Agreement. SWBT asks that the Commission approve the Agreement in its entirety.

On September 15 Staff filed a supplemental recommendation which addresses the comments filed by the Small Telephone Company Group and Fidelity. Staff contends that the indemnification language contained in the Agreement should provide an incentive for wireless carriers to negotiate reciprocal compensation agreements with third-party LECs. Staff also maintains that the Cellular Summary Usage Report which SWBT has agreed to provide will contain sufficient information for third-party LECs to track, identify, and bill for traffic sent to the LEC by wireless carriers through SWBT's network. In addition, Staff also notes that the Commission has already approved several interconnection agreements with wireless carriers in Case Nos. TO-97-474 and TO-97-523, and points out that Case No. TO-97-523 was approved well after SWBT's tariff was suspended in Case No. TT-97-524.

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 joint application, the interconnection agreement, the comments of the Small Telephone Company Group and Fidelity, SWBT's reply, and Staff's original and supplemental recommendations. Based upon that review, the Commission finds that the interconnection agreement filed on July 10 meets the requirements of the Act in that it does not unduly discriminate against a non-party carrier, and implementation of the Agreement is not inconsistent with the public interest, convenience and necessity.

The Commission has considered the concerns raised by the Small Telephone Company Group and Fidelity, but finds that those concerns can be better addressed in Case No. TT-97-524. In addition, it may also be possible to address this matter in the primary toll carrier (PTC) docket, Case No. TO-97-217. A resolution in either of these dockets may provide guidance for dealing with the issue on a statewide basis.

Modification Procedure

This Commission's first duty is to approve 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 non-party 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 Western, and its findings of fact, the Commission concludes that the interconnection agreement filed on July 10 is neither discriminatory nor inconsistent with the public interest, and should be approved.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement filed on July 10, 1997 between Southwestern Bell Telephone Company and Western Wireless Corporation is approved.

2. That Southwestern Bell Telephone Company and Western Wireless Corporation 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.

3. That any further 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 October 8, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Lumpe, Chm., Crumpton,
Murray, and Drainer,
CC., Concur.

Bensavage, Regulatory Law Judge