

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Joint Application of Southwestern)
Bell Telephone Company and MFS Communications Company,) CASE NO. TO-97-27
Inc. for Approval of Interconnection Agreement Under)
Telecommunications Act of 1996.)

REPORT AND ORDER

Issue Date: October 18, 1996

Effective Date: October 18, 1996

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APPEARANCES

Leo J. Bub, Attorney at Law, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, and **Amy Rehm Hinderer**, General Attorney, One Bell Center, Room 3516, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Mark P. Sievers, Attorney at Law, Swidler & Berlin, 3000 K Street, N.W., Suite 300, Washington, D.C. 20007-5116, and **Charles Brent Stewart**, Attorney at Law, French & Stewart Law Offices, 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for MFS Communications Company, Inc.

W.R. England, III, Brydon, Swearngen & England P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom 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., and Stoutland Telephone Company (the "Small Telephone Company Group"); Fidelity Telephone Company and Bourbeuse Telephone Company.

Leland B. Curtis, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston Avenue, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications Corporation.

Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 301 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102-1438, for Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc. (the "Mid-Missouri Group").

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Roger W. Steiner, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: **Dale Hardy Roberts, Chief**

REPORT AND ORDER

On July 18, 1996, Southwestern Bell Telephone Company (SWBT) and MFS Communications Company, Inc. (MFS) filed a joint application requesting that the Missouri Public Service Commission (Commission) approve an interconnection agreement between SWBT and MFS. The agreement was filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996. *See* 47 U.S.C. § 251, *et seq.* Several interested companies sought intervention. By order issued August 16, 1996, the Commission granted participation without intervention to MCI Telecommunication Corporation (MCI), Sprint Communications Company L.P. (Sprint); United Telephone Company of Missouri (United); AT&T Communications of the Southwest, Inc. (AT&T), the Small Telephone Company Group¹, Fidelity Telephone Company and Bourbeuse Telephone Company (Fidelity). Participants, including Commission Staff (Staff) and the Office of the Public Counsel (OPC), were allowed to file comments regarding the agreement, and a hearing was set. On August 21, 1996, the Mid-Missouri Group of Local Exchange Telephone Companies² (Mid-Missouri Group) filed an application to participate, and the Commission

¹The following companies comprise the Small Telephone Company Group: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom 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., and Stoutland Telephone Company.

²The following companies comprise the Mid-Missouri Group: Alma Telephone Company, Chariton Valley Telephone Company, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

granted participation without intervention to the Mid-Missouri Group on the record at the time of the hearing on September 11, 1996.

The hearing was held on September 11, 1996, as scheduled. On September 16, 1996, SWBT filed a motion to late-file an exhibit which would compare the prices from SWBT's interconnection agreement with Communications Cable-Laying Company d/b/a Dial U.S. with the prices from SWBT's interconnection agreement with MFS. This exhibit was requested by the Commission at the time of the hearing, and Exhibit No. 2 was reserved for this late-filed exhibit. No objections have been filed to the admission of late-filed Exhibit No. 2, therefore, late-filed Exhibit No. 2 will be admitted into evidence. Initial briefs were filed by Staff and the Mid-Missouri Group on September 30, 1996, and a response was filed by SWBT on October 7, 1996. This matter is now ripe for Commission decision. This is the second interconnection agreement filed with the Commission for approval.

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, under the provisions of Section 252(e) of the federal Telecommunications Act of 1996 (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 unless the agreement does not meet two criteria. The criteria are:

§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;

The agreement before the Commission is for service by MFS in a Metropolitan Exchange Area (defined as a Metropolitan Exchange Local Calling Area) in St. Louis. Thus, MFS will initially only be providing basic local service in the St. Louis, Missouri area. However, additional Metropolitan Exchange Area may be from time to time added, upon the mutual agreement of the parties. Under the agreement MFS may resell SWBT services, offer services over its own facilities, and offer service over a mix between its own facilities and those of SWBT. The agreement provides certain discounts for reselling of SWBT services, and provides rates for utilizing certain unbundled elements of SWBT's facilities.

Because of the Commission's limited scope of review under the Act, many of the issues raised by the participants need not be addressed. The Commission

will address those issues which raised the issue of discrimination or raised concerns about the implementation of the agreement.

The Commission has considered the comments of the parties, the responses to questions at the hearing, and the briefs of the parties, as well as the interconnection agreement. That review was taken applying the two criteria established by the Act for considering whether to approve the interconnection agreement. Based upon that review the Commission has reached the conclusion that the interconnection agreement meets the requirements of the Act and does not violate the two criteria of the Act.

The Act is structured so as to encourage new entrants to negotiate interconnection with an incumbent LEC. Companies are free to negotiate agreements they find acceptable so long as the terms of the agreement do not unduly discriminate against another carrier, and the implementation of the agreement is consistent with the public interest.

The Commission finds that under the terms to be set out in this order, the implementation of the agreement is in the public interest. This is the first of many agreements the Commission expects to review. MFS has negotiated this agreement to initially compete in the St. Louis area. Although not comprehensive or completely definitive, MFS believes the agreement meets its needs, and the Act allows MFS the opportunity to negotiate the agreement and to implement it with very limited oversight from this Commission. The agreement contains most of what MFS needs in order to get into the business of providing basic local service, with two exceptions. SWBT and MFS were unable to reach an agreement regarding the price of an unbundled loop and an unbundled cross-connect. Since SWBT and MFS were unable to agree on these two elements, MFS filed a request for arbitration with the Commission in Case No. TO-97-23. At the hearing SWBT and

MFS indicated that they believed the Commission need not wait for a resolution of the arbitration proceeding, but could act on the interconnection agreement as submitted to the Commission. SWBT and MFS proposed that once a decision was made on the loop and cross-connect rates, those rates would be added to the agreement for unbundled network elements which was filed with the Commission in the arbitration case, and that agreement would be submitted to the Commission for its approval.

At the hearing, counsel for the Small Telephone Company Group and the Mid-Missouri Group raised a number of questions concerning the sale of Metropolitan Calling Area (MCA) service. Counsel for the Small Telephone Company Group raised the issue of whether optional MCA service can or must be resold, and discussed some of the implication if optional MCA were not made available. As an example, counsel raised the issue of a possible discriminatory effect, which could occur if a customer in an exchange which is part of the optional MCA pays for that optional service, and attempts to make a call to another person who is now a customer of MFS rather than SWBT. Under the optional MCA, such an exchange as would be found in Tier 3 would pay SWBT nothing to transit or terminate the call. However, if the customer who is being called is now an MFS customer, a subscriber in a Tier 3 exchange would be required to pay SWBT a transiting charge to carry the traffic across SWBT's network, and a fee for MFS's termination of that call. Counsel for the Mid-Missouri Group also had concerns about this transiting charge, as well as many other questions pertaining to MCA service. Counsel for both the Small Telephone Company Group and the Mid-Missouri Group both requested that the Commission not take any action in its order which would prejudice these problems.

In the Commission's prior order in Case No. TO-96-440, approving the interconnection agreement between SWBT and Dial U.S., the Commission indicated that MCA service, where mandatory, is an essential part of basic local telecommunication service, and as such, is part of the service that local exchange companies (LECs) must provide to competitors under the Act. The Commission further approved the resale of MCA service.

The Commission finds that resale of the service by MFS does not discriminate against any other telecommunications carriers since all MCA arrangements would still be provided by SWBT since it is still, in effect, SWBT's service that is being provided. Compensation arrangements will be made under the terms of MCA service now offered by SWBT.

The Commission finds that it should set out the procedures for maintaining the interconnection agreement and for approving any changes to the agreement. First, all agreements, with any changes or modifications, should be accessible to the public at the Commission's offices. Second, the Act mandates that the Commission approve any changes or modifications to the interconnection agreement. To fulfill these objectives, the companies must have a complete and current interconnection agreement in the Commission's offices at all times, and all changes and modifications must be timely filed with the Commission for approval. This includes any changes or modifications which are arrived at through the arbitration procedures provided for in the agreement.

To enable the Commission to maintain a complete record of any changes and modifications, the Commission will request SWBT and MFS to provide Staff with a copy of the interconnection agreement with the pages numbered consecutively in the lower right-hand corner. The Commission will then keep this case open for the filing by SWBT and MFS of any modifications or changes to the agreement.

These changes or modifications will be substituted in the agreement, so they should contain, in the lower right-hand corner, the number of the page being replaced. Commission Staff will then date-stamp the pages when they are inserted into the agreement. The official record of what changes or modifications have occurred will be the official case file.

The Commission does not intend that a full proceeding will occur every time a change or modification is agreed to by the parties. Where the change or modification has been previously approved by the Commission in another agreement, Staff need only verify that the changes are contained in another agreement and file a memorandum to that effect. Such changes will then be approved. Where the changes or modifications are not contained in another agreement, Staff will file a memorandum concerning the change or modification and make a recommendation. The Commission, if necessary, will allow for responses and then will rule on the pleadings unless it determines a hearing is necessary.

The above-described procedures should accomplish the two goals of the Commission and still allow for expeditious handling of changes or modifications to the agreements.

The participants raised the issue of whether the approval of this interconnection agreement would meet any of the items on the checklist found in Section 271 of the Act which would allow SWBT to provide interLATA interexchange service. At the hearing SWBT argued that a decision concerning the Section 271 checklist was premature. The Commission agrees that there is no need to make findings regarding SWBT's compliance with the Section 271 checklist in this order.

The Commission finds that the negotiated agreement, as proposed by the parties herein, does not discriminate against any telecommunications carrier not

a party to the agreement. The Commission also finds no provisions of the agreement which are inconsistent with the public interest, convenience and necessity.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

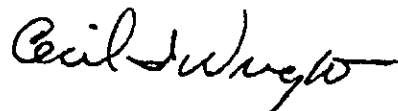
The Commission, under the provisions of Section 252(e)(1) and (2)(A) of the federal Telecommunications Act of 1996, 47 U.S.C. 252(a)-(e), is required to review negotiated interconnection agreements, and may only reject those agreements upon a finding of at least one of two criteria which are set out earlier in this order. The Commission has reviewed the interconnection agreement between SWBT and MFS, and concludes that neither criterion is triggered, and the agreement should therefore be approved.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement between Southwestern Bell Telephone Company and MFS Communications Company, Inc. filed on July 18, 1996, is hereby approved.
2. That Southwestern Bell Telephone Company and MFS Communications Company, 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 in this case for Commission approval.
4. That the Commission, by approving this agreement, makes no finding on the completion by Southwestern Bell Telephone Company of any of the fourteen items listed in 47 U.S.C. § 271.

5. That this Report And Order shall become effective on the date hereof.

BY THE COMMISSION

A handwritten signature in cursive script, appearing to read "Cecil I. Wright".

**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., McClure, Crumpton,
and Drainer, CC., Concur.
Kincheloe, C., Absent.

Dated at Jefferson City, Missouri,
on this 18th day of October, 1996.