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**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of )  
Southwestern Bell Telephone Company and Fast )  
Connections, Inc., for Approval of Interconnec- )  
tion Agreement Under the Telecommunications Act )  
Telecommunications Act of 1996. )  
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Case No. TO-97-147

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**REPORT AND ORDER**

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**Issue Date:**

December 27, 1996

**Effective Date:**

January 7, 1997

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**APPEARANCES**

**Diana J. Harter**, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

**Kyle Dickson**, Rouner & Associates, 17225 El Camino Real, Suite 344, Houston, Texas 77058,

and

**William M. Shansey**, French & Stewart Law Offices, 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for Fast Connections, Inc.

**W.R. England, III**, Brydon, Swearengen & 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.

**Elaine M. Walsh**, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston Avenue, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications Corporation.

**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.

**Colleen M. Dale**, Deputy 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:** Elaine E. Bensavage.

## REPORT AND ORDER

Southwestern Bell Telephone Company (SWBT) and Fast Connections, Inc. (Fast Connections) filed a joint application on October 10, 1996, requesting that the Missouri Public Service Commission (Commission) approve an interconnection agreement between SWBT and Fast Connections (the Agreement). 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.* Fast Connections is not currently certificated in the State of Missouri, but has filed an application for a certificate to provide basic local telecommunications service on November 15, 1996, in Case No. TA-97-196, which is currently pending. Fast Connections wants to resell local exchange service to end users in the most heavily urbanized areas of SWBT's service area, specifically St. Louis and Kansas City and their suburbs. Fast Connections currently has no plans beyond that point, but would likely move on to the next most heavily urbanized area in the future.

Several interested entities sought participation without intervention. By order issued November 8, 1996, the Commission granted participation without intervention to MCI Telecommunication Corporation (MCI), the Small Telephone Company Group<sup>1</sup>, Fidelity Telephone Company and

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<sup>1</sup>The 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.

Bourbeuse Telephone Company (Fidelity), and the Mid-Missouri Group of Local Exchange Telephone Companies<sup>2</sup> (Mid-Missouri Group).

The Staff of the Commission (Staff), the Office of the Public Counsel (OPC), and participants were given an opportunity to file comments. Staff and OPC both filed comments regarding the Agreement on November 19, 1996, recommending approval of the Agreement. The Commission conducted a hearing on December 3, 1996, at which time the parties made presentations to the Commission regarding the Interconnection Agreement and answered Commission questions.<sup>3</sup> A copy of the Interconnection Agreement was admitted into the record as Exhibit 1. Also offered was a chart depicting the negotiated contract prices between SWBT and the four local service providers (LSPs) with which it has entered into an interconnection agreement, which was admitted into the record as Exhibit 2. Pursuant to a motion filed by Staff, the Commission issued an order on December 6, 1996 which dispensed with the requirements for the filing of briefs, and therefore no briefs were filed.

### **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 has authority to approve an

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<sup>2</sup>The 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.

<sup>3</sup>The Mid-Missouri Group was not represented at the hearing of this matter.

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:

§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; . . . .

SWBT stated at hearing that this Interconnection Agreement is shorter and less complex than the other interconnection agreements previously submitted to the Commission, since it deals solely with the resale of SWBT's services, and therefore no questions of unbundled elements or interconnection of networks arose. The Interconnection Agreement between SWBT and Fast Connections is to become effective ten days after Commission approval. The term of the contract is 90 days; thereafter the

Agreement remains in effect until one of the parties gives a 60-day notice of termination. Each party agreed to treat the other no less favorably than it treats other similarly situated local service providers (LSPs) with whom it has a Commission approved interconnection agreement. The Agreement contemplates Fast Connections will provide service to its customers as a reseller of SWBT's services.

SWBT agreed to make available to Fast Connections customers access to 911 and E911 (enhanced 911) service, with Fast Connection responsible for collecting and remitting all applicable 911 surcharges on a per-line basis to the appropriate Public Safety Answering Point, the 911 agency which handles the provisioning of that service.

OPC raised in its comments the issue of the agreed upon \$28.00 conversion charge when a customer switches from SWBT to Fast Connections, questioning whether this charge could present a barrier to entry into the local exchange market. SWBT explained at the hearing that the \$28.00 charge is based on a cost study, and is high compared with the \$5.00 cost of providing a change in primary interexchange carrier (PIC) because SWBT does not yet have a mechanized interface capable of providing that service, although it anticipates that once the process is mechanized, the price will probably go down. Fast Connections concurred that the nonmechanized process takes a great deal of time, and that the \$28.00 charge was reasonable. Further, Fast Connections assured OPC and the Commission that the conversion charge would not assessed to the end user.

OPC also voiced a concern about a \$50.00 investigation fee which would be charged by SWBT to Fast Connections when SWBT agrees to

investigate an allegation of slamming<sup>4</sup> on behalf of Fast Connections. The parties to the Agreement explained at the hearing that the \$50.00 charge was unlikely to be incurred very often because it would only apply if Fast Connections asked SWBT to, in effect, intervene in a dispute between Fast Connections and a third-party LSP. Ordinarily Fast Connections and the third-party LSP should have access to all the documentation necessary to resolve the dispute between them. The \$50.00 charge is for the time it would take SWBT to review the necessary paperwork. The charge would not apply to a slamming dispute between Fast Connections and SWBT itself, and applies only to slamming complaints between competitive LSPs, and not interexchange (IXC) carriers.

In addition, the parties to the Agreement stated that it was their intention that Fast Connections be allowed to resell all mandatory and optional expanded local calling plans offered by SWBT, including both types of metropolitan calling area (MCA) plans. Staff expressed some concern that mandatory MCA was not specifically mentioned in the Interconnection Agreement, probably due to an oversight. Staff asked that the Commission clarify in its order that mandatory MCA be available for resale. Based upon the representations OF SWBT and Fast Connections that the resale of expanded calling plans would be allowed, neither Staff, OPC, MCI, the Small Telephone Company Group, or Fidelity objected to the agreement.

The Commission has considered the comments of the parties and the responses to questions at the hearing, as well as the Interconnection Agreement itself. Based upon that review the Commission has reached the conclusion that the Interconnection Agreement meets the requirements of the

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<sup>4</sup>"Slamming" is the practice of switching a telephone customer's local service provider without obtaining permission from the customer.

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 also specifically finds that OPC's concerns regarding the \$28.00 conversion charge and the \$50.00 fee for investigation of slamming complaints were adequately addressed at the hearing. The Commission is convinced based upon the representations of SWBT and Fast Connections at the hearing that resale of mandatory MCA service is intended to be allowed under the Interconnection Agreement, but because of the potential ambiguity raised by Staff, the Commission will order that resale of mandatory MCA service be permitted as a condition of the Commission's approval of the Interconnection Agreement.

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 Fast Connections 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 Fast



Connections 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 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 an agreement upon a finding that its implementation would be discriminatory to a nonparty or inconsistent with the public interest, convenience and necessity. Based upon its review of the Interconnection Agreement between SWBT and Fast Connections 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 Interconnection Agreement between Southwestern Bell Telephone Company and Fast Connections, Inc. filed on October 10, 1996, is hereby approved.

2. That to the extent not explicitly provided for in the Interconnection Agreement, resale of mandatory metropolitan calling area (MCA) service is hereby mandated as a condition of the Commission's approval in Ordered Paragraph 1.

3. That Southwestern Bell Telephone Company and Fast Connections, Inc. are hereby directed to 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.

4. That any changes or modifications to this agreement shall be filed with the Commission for approval.

5. 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.

6. That this Report And Order shall become effective on January 7, 1997.

**BY THE COMMISSION**



**Cecil I. Wright  
Executive Secretary**

( S E A L )

McClure, Kincheloe, Crumpton and  
Drainer, CC., concur.  
Zobrist, Chm., not participating.

Dated at Jefferson City, Missouri,  
on this 27th day of December, 1996.