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**COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 27th day of January, 1998.

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In the Matter of the Interconnection Agreement)
of GTE Midwest Incorporated and GTE Arkansas) Case No. TO-98-193
Incorporated and USA eXchange, LLC, d/b/a Omniplex)
Communications Group.)
)

ORDER APPROVING RESALE AGREEMENT

On November 7, 1997, GTE Midwest Incorporated (GTE Midwest), GTE Arkansas Incorporated (GTE Arkansas) (collectively GTE) and USA eXchange, LLC, d/b/a Omniplex Communications Group (Omniplex) filed a joint application for approval of an interconnection agreement (the Agreement) between GTE and Omniplex under the provisions of the Federal Telecommunications Act of 1996 (the Act). See 47 U.S.C. §§ 251, et seq.

The Missouri Public Service Commission (Commission) issued an Order and Notice on November 18, which established a December 15 deadline for applications to participate without intervention and a January 6, 1998, deadline for comments. The Order and Notice also directed the parties to file a pleading clarifying whether the request for approval applied to GTE Arkansas. On December 5, 1997, GTE filed a response showing that GTE Arkansas is a party to the Agreement and provides telecommunications services to customers in two Missouri exchanges. GTE's pleading clarified that GTE Arkansas and GTE Midwest both seek approval of the Agreement.

No comments, requests for hearing or requests for participation without intervention were filed. The Commission Staff (Staff) filed a

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Memorandum on January 12, 1998, 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 requested a hearing in this case, the Commission may grant the relief requested based on the verified application and the Staff's Memorandum.

Discussion

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve a resale agreement negotiated between an incumbent local exchange company (ILEC) and other telecommunications carriers. The Commission may reject a resale agreement only if the agreement is discriminatory to a nonparty or is inconsistent with the public interest, convenience, and necessity.

The Agreement between GTE and Omniplex is to become effective ten days after Commission approval. The term of the Agreement is two years from the effective date of the Agreement; thereafter, the Agreement shall continue in effect for consecutive one-year terms until either party gives the other party at least ninety (90) days' written notice of termination.

GTE will provide to Omniplex for resale multiple business services including business local exchange service, business extended area service (EAS) and metropolitan calling area (MCA) plans, integrated services digital network, and digital data transmission services. These services will be provided at a discount; ICB (individual case basis) priced and contract services will be provided without a discount. GTE will also

provide Lifeline, services for the disabled, special access, operator services, and directory assistance.

GTE agreed to make available to Omniplex customers the same access to 911 and E911 (enhanced 911) that GTE customers receive. The Agreement provides for a \$41.50 initial service order charge and a \$24.00 per order charge for any subsequent service orders. The Agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories.

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. Staff also stated that the general provisions of the Agreement, including disconnection procedures, are substantially similar to those contained in the interconnection agreement between GTE and Communications Cable-Laying Company, Inc. d/b/a Dial U.S. that was approved by the Commission in Case No. TO-97-297, except that the GTE and Omniplex Agreement covers only resold services. 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 resale Agreement meets the

requirements of the Act in that it does not unduly discriminate against a nonparty carrier, and that 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 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.

IT IS THEREFORE ORDERED:

1. That the resale agreement filed on November 7, 1997, between GTE Midwest Incorporated, GTE Arkansas Incorporated and USA eXchange, LLC, d/b/a Omniplex Communications Group is approved.

2. That GTE Midwest Incorporated, GTE Arkansas Incorporated and USA eXchange, LLC, d/b/a Omniplex Communications Group shall file a copy of the resale agreement with the Staff of the Missouri Public Service Commission with the pages numbered seriatim in the lower right-hand corner no later than March 9, 1998.

3. That approval of the resale agreement is conditioned on GTE Midwest Incorporated making available to USA eXchange, LLC, d/b/a Omniplex Communications Group for resale all expanded calling plans that are available to GTE end users, under such terms and conditions as will allow Omniplex to offer the same services to its customers that GTE offers to its own end users.

4. 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.

5. That this order shall become effective on February 5, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Randles, Regulatory Law Judge