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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 6th
day of January, 1998.

In the Matter of the Application of)
Southwestern Bell Telephone Company)
for Approval of Interconnection) CASE NO. TO-98-156
Agreement With AllTel Mobile)
Communications, Inc. Under the)
Telecommunications Act of 1996.)

ORDER APPROVING INTERCONNECTION AGREEMENT

Southwestern Bell Telephone Company (SWBT) filed an application with the Missouri Public Service Commission (Commission) on October 10, 1997, for approval of an Agreement For Interconnection and Reciprocal Compensation (the Agreement) between SWBT and AllTel Mobile Communications, Inc. (AllTel). 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 October 20 which established a deadline for applications to participate without intervention, and established a deadline for comments. The Mid-Missouri Group of Local Exchange Telephone Companies (the Mid-MO Group)¹, the Small Telephone Company Group (the STCG)², and Fidelity Telephone Company and

¹For purposes of this proceeding, the Mid-Missouri Group of Local Exchange Telephone Companies is comprised of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial Inc., Modern Telecommunications Company, Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

²For 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

Bourbeuse Telephone Company (collectively Fidelity) filed timely applications for participation, which were granted on November 18. The Mid-MO Group filed comments on November 24, and SWBT filed a reply on December 1. The STCG and Fidelity filed comments on December 1, and SWBT filed a reply on December 10. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on December 16.

Although comments were filed, no one requested a hearing. The requirement for a hearing is met when the opportunity for a 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 Mid-MO Group, the STCG, and Fidelity, along with Staff's 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 AllTel is a six-

Cooperation, 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.

month 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 AllTel 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. AllTel 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. As a result of the interLATA restrictions on SWBT, AllTel 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. The parties agree that the initial factor will be set at .05. However, AllTel is responsible for conducting a reasonable traffic study within 60 days after the effective date of the Agreement, in order to determine the actual interMTA factor. In addition, AllTel agrees to conduct a new traffic study every 12 months thereafter, to ensure that the MTA factor is accurate.

AllTel may order equal access trunks, such that traffic exchanged between AllTel's and SWBT's network will have switched access to interexchange carriers (IXCs), thus enabling AllTel's end users to access IXCs. AllTel shall provide appropriate call data to allow SWBT to bill IXCs for originating access. AllTel shall also pay SWBT switched access

charges for any traffic which crosses an MTA boundary.

With respect to third-party providers, AllTel 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 AllTel sends traffic through SWBT's network to a third-party provider with whom AllTel does not have a traffic interchange agreement, AllTel 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. AllTel may request Area Wide Calling Plan (AWCP) arrangements. SWBT will also provide Signaling System 7 (SS7) at AllTel's request. In addition, the Agreement provides for access to numbering resources, access to rights-of-way, and network maintenance. SWBT will make local dialing parity available to AllTel in accordance with the Act.

Finally, the Agreement provides that both parties shall provide each other with 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 ruling, provided that the true-up date occurs within 3 years from the effective date of the Agreement.

On November 24, the Mid-MO Group filed its comments. The Mid-MO Group states that its member companies have no way to track wireless

traffic which transits SWBT's tandem switch and terminates in the end offices of its member companies, and adds that neither SWBT nor AllTel has offered to provide its members with wireless usage reports. The Mid-MO Group further complains that the Agreement changes the relationship between SWBT and its member companies in a way that creates an administrative burden for its members. Thus, the Mid-MO Group believes that the Agreement is not in the public interest and discriminates against LECs not a party to the Agreement, and asks that the Commission carefully consider its approval of the Agreement. For a further explanation of its concerns, the Mid-MO Group refers to the Commission's decision in Case No. TC-96-112, and the testimony presented in Case No. TT-97-524, involving SWBT's proposed revision to its wireless interconnection tariff.

On December 1, the STCG and Fidelity filed their comments. The STCG 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 because the Agreement mandates a business relationship between wireless carriers and third-party providers which may not be in the economic interest of either party. For a more complete explanation of the concerns raised, the STCG and Fidelity refer the Commission to the rebuttal testimony of Mr. Robert Schoonmaker filed in Case No. TT-97-524. In conclusion, the STCG and Fidelity ask that the Commission state in its order approving the interconnection agreement that approval of the Agreement is conditioned upon the Commission's decision in Case No. TT-97-524, and that the Agreement must be interpreted in

accordance with the Commission's findings and conclusions in that case.

SWBT filed a reply to the comments of the Mid-MO Group on December 1, and a reply to the comments of the STCG and Fidelity on December 10. In response to the Mid-MO Group, SWBT states that any added administrative burden is the result of the requirements of the Act, and not any action on the part of SWBT. In addition, SWBT states that since the members of the Mid-MO Group are the ones providing the termination service and seeking to be paid for it, it is not unreasonable that they be the ones to negotiate their own rates and establish other terms of the service they will provide. In response to the STCG and Fidelity, SWBT maintains that the Agreement does not mandate a particular "business relationship" between AllTel and third-party providers; rather, the STCG's members and wireless carriers such as AllTel are free to negotiate their own arrangements relating to compensation, which can take into consideration and accommodate any unique economic interests they may have.

Staff filed its recommendation on December 16. With respect to the comments filed by the STCG, Fidelity, and the Mid-MO Group, Staff indicates that those issues will be addressed by the Commission in Case No. TT-97-524, and adds that Staff's position can be found in the testimony filed in that case, and in several previous staff recommendations. Staff describes in general terms the provisions of the Agreement, and notes that one particular provision has not previously appeared in an interconnection agreement between SWBT and a wireless carrier. Staff explains that the parties have agreed to a transiting traffic factor which represents the percentage of land to mobile minutes which will be considered transiting minutes. The factor agreed upon is .304, which will be applied to the total minutes delivered to AllTel from SWBT before the application of the interMTA factor, to determine the minutes subject to reciprocal

compensation. Practically applied, this factor assumes that 30.4% of traffic passed from SWBT to AllTel is originated by a third-party provider, thus 69.6% of such traffic would be subject to reciprocal compensation.

Staff maintains that the transiting traffic factor is merely a practical agreement between the parties and has no real bearing upon third-party providers. Since the parties agree that 30.4% of traffic passed from SWBT to AllTel is not subject to reciprocal compensation, SWBT would not be responsible for paying AllTel termination charges for that portion of the traffic. Theoretically, that means AllTel would seek compensation for that portion of the traffic from the third-party providers that originated it. However, Staff points out that the Agreement is not binding upon third-party providers as to the amount of traffic actually passed by them to AllTel. Staff claims that the reciprocal compensation agreements negotiated between wireless carriers and third-party providers will likely be based upon SWBT's Cellular Transiting Usage Summary Report (CTUSR), which contains the actual minutes of use (MOUs) passed between wireless carriers and third-party providers. Further, Staff states that if wireless carriers and third-party providers do use some type of factor in lieu of actual MOUs, they are free to negotiate the amount and application of the factor along with any other terms of interconnection.

Staff states that it has reviewed the proposed interconnection agreement and believes that the agreement between SWBT and AllTel 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 AllTel to submit any modifications or amendments to 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 has considered SWBT's application, the interconnection agreement, the comments of the Mid-MO Group, the STCG, and Fidelity, SWBT's replies, and Staff's recommendation. Based upon that review, the Commission finds that the interconnection agreement filed on October 10 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 has considered Staff's discussion of the transiting traffic factor contained in the Agreement. The Commission agrees with Staff that the transiting traffic factor contained in the Agreement is not binding upon third-party providers with regard to the amount of traffic actually passed by them to AllTel, and so finds. However, the Commission notes that the CTUSR report mentioned by Staff only contains MOUs that originate from wireless carriers and terminate in the exchanges of third-party providers, and does not contain MOUs that originate from third-party providers and terminate on the networks of wireless carriers. Nevertheless, third-party providers should be able to determine the actual MOUs that originate on their networks.

The Commission has also considered the concerns raised by the Mid-MO Group, the STCG, and Fidelity. Since the time that the comments and Staff's recommendation were filed, the Commission has issued its Report and

Order in Case No. TT-97-524. In that order, the Commission found that the CTUSR reports developed by SWBT will provide third-party providers with adequate information with which to bill wireless carriers. The Commission ordered SWBT to make its CTUSR report immediately available to the member companies of the Mid-MO Group, the STCG, Fidelity, and the wireless carriers. The Commission finds that its approval of the Agreement is conditioned upon its decision in Case No. TT-97-524, and that the Agreement must be interpreted in conformity with the Commission's findings and conclusions in that case.

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.

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 nonparty 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 AllTel, and its findings of fact, the Commission concludes that the interconnection agreement filed on October 10 is neither discriminatory nor inconsistent with the public interest, and should be approved.

The Commission also has the authority, after hearing upon its own motion or upon complaint, to determine whether the rules, regulations, or practices of any telecommunications company are unjust or unreasonable, and to determine the just, reasonable, adequate, efficient, and proper regulations, practices, and service to be observed and used by a telecommunications company. §392.240.2, RSMo 1994. The Commission has previously found in Case No. TT-97-524 that SWBT will be required to make available a CTUSR report that contains information sufficient to allow third-party providers to bill wireless carriers for wireless-originating traffic which terminates in the exchanges of those providers. This obligation applies equally to traffic originating on AllTel's network, which transits SWBT's network and terminates on the networks of third-party providers.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement filed on October 10, 1997 between Southwestern Bell Telephone Company and AllTel Mobile Communications, Inc. is approved.

2. That Southwestern Bell Telephone Company and AllTel Mobile Communications, Inc. 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 January 20, 1998.

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.

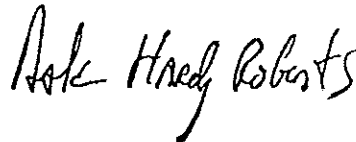
4. That Southwestern Bell Telephone Company is obligated to make available to the member companies of the Mid-Missouri Group of Local Exchange Companies, the Small Telephone Company Group, and Fidelity Telephone Company and Bourbeuse Telephone Company, its Cellular Transiting Usage Summary Report, consistent with the Commission's Report and Order in Case No. TT-97-524.

5. That the Commission, by approving this agreement, makes no finding as to whether Southwestern Bell Telephone Company has fulfilled the requirements of Section 271 of the Telecommunications Act of 1996, including the competitive checklist of any of the 14 items listed in Section 271(c)(2)(B).

6. That this Report and Order shall become effective on January 8, 1998.

7. That this case shall be closed on January 22, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Bensavage, Regulatory Law Judge