

OK

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 1st
day of October, 1998.

In the Matter of the Application of GTE Midwest)
Incorporated and GTE Arkansas Incorporated for)
Approval of Interconnection Agreement with Local) Case No. TO-99-13
Line America Pursuant to Section 252(e) of)
the Telecommunications Act of 1996.)

ORDER APPROVING INTERCONNECTION AGREEMENT

GTE Midwest Incorporated and GTE Arkansas Incorporated (collectively GTE) filed an application on July 7, 1998, for approval of an interconnection agreement (the Agreement) between GTE and Local Line America, Inc. (LLA). 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. LLA wants to resell basic local exchange service to residential and business end users.

The Commission issued an Order and Notice on July 10, directing any party wishing to request a hearing or to participate without intervention to do so no later than July 30. No applications to participate or requests for hearing were filed. The Commission Staff (Staff) filed a Memorandum on September 15, 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 has asked permission to participate or

requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

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 (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.

The Agreement between GTE and LLA is to become effective ten business days after Commission approval and the initial term of the Agreement is two years from the effective date. After the initial two-year term, the Agreement will remain in effect for consecutive one-year terms until one of the parties gives at least 90 days written notice of termination.

The Agreement states that the parties will meet all applicable quality of service standards and provide a level of service to each other that is in compliance with the nondiscriminatory requirements of the Act. The Agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories. GTE agreed to make available to LLA customers the same access to 911 and E911 (enhanced 911) that GTE customers receive. The Agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories.

The Staff stated that the Agreement contained procedures for how nonpayment of undisputed charges by LLA would be handled by GTE. This procedure contained notice provisions so the customer would be notified of the potential change in service provider from LLA to GTE, given an

option of choosing a service provider other than GTE, and informed of the rates GTE would be charging.

In its recommendation, Staff pointed out that the Agreement contained two errors. Staff characterized the first mistake as a typographical error. The Agreement, at page VI-2, stated "LLA shall not resell Basic Exchange Residential Service" while other portions of the Agreement made provisions for LLA reselling basic exchange residential services. The second error was that the Agreement referred to LLA as "Local Line America" when the company's Secretary of State information contained the name "Local Line America, Inc." Staff recommended that correction of these mistakes be ordered by the Commission and that the approval of the Agreement be conditioned upon these mistakes being corrected.

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 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.

On September 28, LLA submitted a response to Staff's recommendation. In this letter, LLA stated that the error regarding use of its proper registered name was an omission that would be corrected when a final copy of the Commission-approved Agreement was submitted. LLA indicated the other entry classified by Staff as an error was not, in fact, an error. LLA stated the term prohibiting resale of basic local service was currently a correct statement of the agreed-upon terms. LLA

indicated the Agreement also contained a provision that allowed it to adopt the terms of a GTE/AT&T Interconnection Agreement and if this option was exercised, then LLA would be permitted to resell basic local service under the Agreement. For this reason, LLA stated no correction of this term was required.

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 Agreement 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 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. In addition, approval of the Agreement will be conditioned upon LLA and GTE correcting the Agreement so that it correctly reflects LLA's name as it is registered with the Missouri Secretary of State. LLA has sufficiently resolved any questions surrounding the other error Staff alleged in the Agreement so no further action is required in that area.

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 1996, 47 U.S.C. 252(e)(1), is required to review negotiated resale 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 resale Agreement between GTE and LLA 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 resale agreement between GTE Midwest Incorporated and GTE Arkansas Incorporated and Local Line America, Inc. filed on July 7, 1998, is approved.

2. That the approval granted in Ordered Paragraph 1 is conditioned on the parties amending the Agreement by interlineation no later than October 14, 1998 so that the Agreement refers to Local Line America, Inc., by its company name as it is registered with the Missouri Secretary of State. The parties shall file on the same date a notice in the official case file advising the Commission that the Agreement has been corrected.

3. That GTE Midwest Incorporated and GTE Arkansas Incorporated and Local Line America, 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 no later than October 14, 1998. The parties shall file on the same date a notice in the official case file advising the Commission that the Agreement has been submitted to Staff as required.

4. That any 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 October 14, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Harper, Regulatory Law Judge

RECEIVED

OCT 02 1998

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION