

B
PB
RD

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 15th day of May, 1997.

In the Matter of the Application of Brooks)
Fiber Communications of Missouri, Inc. for) CASE NO. TO-97-334
Approval of an Interconnection Agreement)
Under the Telecommunications Act of 1996.)

**ORDER CONDITIONALLY APPROVING INTERCONNECTION AGREEMENT
AND REJECTING RESALE APPENDIX**

Brooks Fiber Communications of Missouri, Inc. (Brooks) filed an application on February 19, 1997, for approval of an interconnection agreement (the Agreement) between Brooks and Southwestern Bell Telephone Company (SWBT). 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.* Brooks wants to resell local exchange service and provide facilities-based, or partially facilities-based services to residential, business and wholesale end users. Brooks filed supplemental agreements on March 26 providing for collocation at certain central offices.

SWBT filed an application to intervene which was granted on April 1. The Commission Staff (Staff) filed a Memorandum on May 9 recommending that the Agreement be approved. The Commission permitted interested parties an opportunity to participate and to file comments in this case. Other than SWBT, a signatory to the Agreement, no applications to participate were made and no comments were filed. Therefore, the Commission may act on the application without conducting a hearing. *State*

ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission,
776 S.W.2d 494, 496 (Mo. App. 1989).

Discussion

General Discussion:

Under the provisions of Section 252(e) of the Federal Telecommunications Act of 1996 the Commission 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.

Staff stated in its recommendation that the terms of this Agreement are basically the same as the interconnection agreement between SWBT and Intermedia Communications, Inc. approved by the Commission on March 7 in Case No. TO-97-260. The Agreement between Brooks and SWBT is to become effective on Commission approval and the initial term runs from approval until December 31, 1998. A party wishing to renegotiate the terms must make a written request for negotiation after March 31, 1998. The Agreement will remain in effect until a new agreement between the parties becomes effective, or until the Commission determines that interconnection shall be by tariff rather than contract and both parties have effective interconnection tariffs.

The Agreement permits Brooks to provide service as a reseller or as a facilities-based, or partially facilities-based, provider. The Agreement includes several interconnection possibilities: Mid-span Fiber, physical or virtual collocation, SONET-based interconnection, or leased

facilities. The Agreement permits the companies to institute other mutually agreed-upon means of interconnection in the future. The parties agree to methods of intercompany compensation for termination of local traffic, transit traffic, optional area traffic, and intraLATA and interLATA interexchange traffic, as defined by the Agreement.

SWBT agrees to make available to Brooks customers nondiscriminatory access to 911 and E911 (enhanced 911) service pursuant to Appendix 911 of the Agreement. SWBT also agrees to make available intraLATA toll dialing parity in accordance with Section 251(b)(3) of the Telecommunications Act. The Agreement provides for a \$25.00 intercompany conversion charge when a customer switches from SWBT to Brooks, and for an informal dispute resolution process for issues that arise between the signatories.

The Staff stated in its recommendation that the Agreement meets the limited requirements of the Telecommunications Act of 1996 in that it does not appear to be discriminatory toward nonparties, and does not appear to be against the public interest, convenience or necessity. 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 to similar interconnection agreements.

Modification Procedure:

In previous cases the Commission has set out the procedures for maintaining an interconnection agreement and approving changes. 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 Brooks to provide Staff with a copy of the 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 Brooks 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.

Resale Appendix:

The Commission approved a Resale Agreement between Brooks and SWBT in Case No. TO-97-304 (First Resale Agreement). The parties submitted a Resale Appendix as a part of the Agreement at issue in this case which, according to its terms, would supersede the First Resale Agreement. The Commission's order in TO-97-304, issued on April 18, 1997, requires any changes or modifications to the First Resale Agreement to be approved by the Commission and sets out a procedure for that purpose. The Commission's goals in establishing the procedure were to make sure that all interconnection agreements, including any modifications, be made accessible to the public at Commission offices, and to enable the Commission to maintain a complete record of interconnection agreements and their modifications. Brooks and SWBT are attempting to modify substantially the Resale Agreement without submitting the modifications in the original case. While the parties may submit their modifications under Case No. TO-97-304 for Commission approval after review, it is inconsistent with the public interest to permit modification without following the established procedures. The Resale Appendix submitted in this case will not be approved or permitted to supersede the currently approved First Resale Agreement.

Name Change:

Brooks stated in a footnote to its application that it had changed its corporate name from "Brooks Fiber Communications of Kansas City, Inc." to "Brooks Fiber Communications of Missouri, Inc." Brooks used the new

name in the caption of this case. However, Brooks had made no filing with the Commission formally advising the Commission of, and alerting the public to, the change of name. Brooks filed a Motion for Approval of Change of Name in Case No. TA-96-438 on May 13, 1997. Approval of the interconnection Agreement must be contingent upon the Commission's ruling on that motion.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, finds:

A. That the negotiated interconnection agreement submitted by the parties, with the exception of the Resale Appendix, 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;

B. That the Resale Appendix, intended to supersede the Resale Agreement approved in Case No. TO-97-304, was improperly submitted and cannot be approved in the context of this case;

C. That approval of the interconnection agreement must be conditioned upon the Commission's ruling on the Motion for Approval of Change of Name filed by Brooks in Case No. TA-96-438;

D. That all modifications to the approved Agreement must be submitted for Commission approval following the procedures outlined in the Discussion section of this Order.

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 Brooks and SWBT and its findings of fact, the Commission concludes that the Agreement, with the exception of the Resale Appendix, is neither discriminatory nor inconsistent with the public interest and should be approved. Approval of the Resale Appendix would be inconsistent with the public interest and in contravention of the Commission's order in Case No. TO-97-304.

IT IS THEREFORE ORDERED:

1. That the interconnection agreement, with the exception of the Resale Appendix, between Brooks Fiber Communications of Missouri, Inc. and Southwestern Bell Telephone Company filed on February 19, 1997, is conditionally approved.

2. That the approval in Ordered Paragraph 1 is conditioned upon the Commission's ruling on the Motion for Approval of Change of Name filed in Case No. TA-96-438 filed by Brooks Fiber Communications of Kansas City, Inc. The parties shall not conduct business on the basis of the interconnection agreement approved herein until the Commission acknowledges the change of corporate name by order or notice.

3. That the Resale Appendix to the interconnection agreement is specifically not approved.

4. That Brooks Fiber Communications of Missouri, Inc. and Southwestern Bell Telephone Company shall file a copy of this agreement

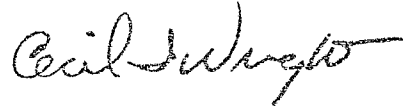
with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner.

5. That any changes or modifications to this agreement shall be filed with the Commission for approval as described in this Order.

6. 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.

7. That this Order shall become effective on May 28, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., Crumpton and
Drainer, CC., concur.

ALJ: Wickliffe