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July 17, 2002

Secretary of PSC
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED²

JUL 17 2002

Re: Consolidated Case No. TC-2002-57

Dear Secretary:

**Missouri Public
Service Commission**

Enclosed for filing please find an original and eight (8) copies each of Petitioner's Motion Requesting Commission Take Official Notice of Documents in the above cited case. A copy has been sent to all attorneys of record listed below.

Thank you for seeing this filed.

Sincerely,


Lisa Cole Chase

LCC:sw

Enc.

cc: MITG Managers
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**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

FILED²
JUL 17 2002

*Missouri Public
Service Commission*

Northeast Missouri Rural Telephone Company)
And Modern Telecommunications Company, et al.)
)
Petitioners,)
)
vs.)
)
Southwestern Bell Telephone Company,)
Southwestern Bell Wireless (Cingular),)
Voice Stream Wireless (Western Wireless))
Aerial Communications, Inc., CMT Partners,)
(Verizon Wireless), Sprint Spectrum, LP,)
United States Cellular Corp., and Ameritech)
Mobile Communications, Inc., et al.)
)
Respondents.)

Case No. TC-2002-57
Case No. TC-2002-113
Case No. TC-2002-114
Case No. TC-2002-167
Case No. TC-2002-181
Case No. TC-2002-182
Consolidated

**PETITIONER'S MOTION REQUESTING COMMISSION TAKE OFFICIAL NOTICE
OF DOCUMENTS**

COMES NOW Petitioners, Mid-Missouri Telephone Company, Alma Telephone Company, Northeast Missouri Rural Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., Choctaw Telephone Company, and Chariton Valley Telephone Company, ("MITG Companies") and pursuant to § 536.070(6) RSMo and 4 CSR 240-2.130(2), hereby request the Missouri Public Service Commission ("Commission") take official notice of the referenced portions of the following interconnection agreement, and the Commission order approving same:

1. The interconnection agreement between Southwestern Bell Telephone Company and Aerial Communications, Inc., which was submitted for approval pursuant to § 252(e)(1) of

the Telecommunications Act of 1996, 47 U.S.C. § 252(e)(1), and was approved by the Commission pursuant to § 252(e)(1) of the Act in case TO-98-322 on April 29, 1998.

2. After approval by the Commission, the interconnection agreement was duly filed with the Commission pursuant to 4 CSR 240-30.010. Upon filing, this interconnection agreement became a part of the law of the State of Missouri pursuant to § 392.220.1 RSMo. *Central Controls Co., Inc. v. AT & T Information Systems, Inc.*, 746 S.W.2d 150, 153 (Mo. App. E.D. 1988) (“*Central Controls*”).

3. Pursuant to § 536.070(6) RSMo, an agency “shall take official notice of all matters of which the courts take judicial notice.” As the interconnection agreement is recognized as part of the law of Missouri, the Commission may take official notice of the interconnection agreement. *Central Controls*, 746 S.W.2d at 153.

4. This interconnection agreement is over 60 pages in length. Producing the entire agreement as an exhibit, with the requisite number of copies, would be cumbersome and burdensome, as well as costly to reproduce. Petitioner’s recognize other parties may desire notice and use of other excerpts.

WHEREFORE Petitioners request that the Commission take official notice, for purposes of this proceeding, of the complete interconnection agreement cited above, and more specifically the attached Commission order in Case No. TO-98-322, which approved the interconnection agreement, and the following portions of said interconnection agreement: pages 1-5, 11-12, 16-17, 27-29, 33, 35, 51-52, and 55.

Respectfully Submitted,

**ANDERECK, EVANS, MILNE,
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ATTORNEYS FOR PETITIONERS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 17th day of July, 2002, to all attorneys of record in this proceeding.

Lisa Chase

Lisa Cole Chase Mo Bar No. 51502

FILED

MAY 28 1998

PUBLIC UTILITY COMMISSION

MISSOURI

**AGREEMENT FOR INTERCONNECTION
AND RECIPROCAL COMPENSATION**

by and between

AERIAL COMMUNICATIONS, INC.

and

SOUTHWESTERN BELL TELEPHONE COMPANY

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APPENDICES

APPENDIX PRICING

APPENDIX DCO

- 2.1.3 Type 2B: Facilities which provide a trunk side connection between Aerial's MSC and a SWBT end office. Type 2B facilities provide the capability to access only subscribers served by that end office.
- 2.1.4 Type S: Facilities provisioned to provide out of band signaling between SWBT STPs and Aerial STPs.
- 2.1.5 Equal Access Facilities: One-way facilities which provide a trunk side connection between Aerial's MSC and a SWBT Access Tandem. Equal Access Trunks provide the capability to pass interexchange traffic to IXCs.
- 2.1.6 Miscellaneous Facilities: Facilities which provide for the transmission and routing of various types of traffic, such as, 800/888 traffic, 911/E911 traffic, Operator Services traffic and Directory Assistance traffic.
- 2.1.7 Aerial shall provide SWBT with an annual forecast of intended mobile to land usage for each point of interconnection. For land to mobile traffic, SWBT shall determine the number of trunks needed to handle the estimated traffic. Type 1 and Type 2A facilities may be either one-way, or two-way (when both Parties agree to share the facility); Type 2B facilities are restricted to one-way mobile to land. For either one-way or two-way facilities, terms and conditions will apply and recurring and nonrecurring charges will be paid by the Party requesting such facilities as specified in Section 7 of the applicable inter- or intrastate special access tariff. When both Parties agree to utilize a two-way facility, charges will be shared by the Parties on a proportional (percentage) basis as specified in Appendix PRICING. The Parties shall review actual billed minutes accrued on shared two-way facilities and modify, six months from the Effective Date and every six months thereafter, the percentages specified in Appendix PRICING.

2.2 Facility Locations

2.2.1 Technical Feasibility

- 2.2.1.1 As required by Section 251 of the Act, Aerial may interconnect with SWBT's network at any technically feasible point. The Parties acknowledge for purposes of this requirement that the locations listed in Appendix DCO constitute technically feasible points of interconnection for Aerial to pass traffic to SWBT for transport and termination by SWBT on its network or for transport to a Third Party Provider.

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2.2.1.2 If Aerial requires interconnection at a location not listed in Appendix DCO, then it shall submit a request pursuant to section 7.5.2.

2.2.1.3 The Parties recognize that SWBT, in its sole discretion, may remove a location from Appendix DCO in the normal course of its business, thus rendering interconnection at the location technically infeasible; provided, however, that SWBT shall provide Aerial at least 120 days written notice and shall work with Aerial to reestablish the interconnection at another SWBT location within the 120 days; provided, further, however, that Aerial shall be responsible for any costs associated with the reconfiguration of its own network (except for the re-homing of the facilities, which charge shall be borne by SWBT). In addition, SWBT may add a location to Appendix DCO at any time, and shall notify Aerial of such addition in writing, which shall be considered an amendment to Appendix DCO.

2.2.2 Per LATA Requirement

Aerial acknowledges that SWBT is restricted in its ability to pass traffic from one LATA to another under the Act. As a result, Aerial agrees to interconnect to at least one SWBT facility in each LATA in which it desires to pass traffic to SWBT for transport and termination within such LATA. This requirement shall remain in effect until SWBT, in its reasonable judgment, notifies Aerial in writing that it is no longer subject to InterLATA restrictions.

2.2.3 The parties acknowledge that the terms and conditions specified in this Agreement do not apply to the provision of services or facilities by SWBT in those areas where SWBT is not the incumbent LEC.

2.3 Interconnection Methods Available to Aerial

As set forth below, interconnection may be established by means of any, or any combination of (where technically feasible), the following options:

2.3.1 Where requested, and subject to mutually agreed upon terms, a physical network interface may be established between Aerial and SWBT at one or more Tandem(s), as mutually agreed, using one-way or two-way Type 2A Connecting Facilities for termination of all Wireless Calls destined for any SWBT End Office that subtends one of SWBT's Tandems in the LATA; or

2.3.2 Aerial may request that SWBT establish a direct MSC to End Office Connecting Facility where community of interest and traffic volumes between their networks reach sufficient levels to warrant such a direct

conditions specified in Section 7 of the applicable inter- or intrastate access tariff.

3.1.2 Land to Mobile Traffic

3.1.2.1 SWBT shall be responsible for the delivery of traffic from its network to the appropriate point of interconnection (within the serving wire center boundary of the end office in which the tandem, providing the Type 2A interconnection is located, or within the serving wire center boundary of the end office providing the Type 1 interconnection) on its network for the transport and termination of such traffic by Aerial to an Aerial end user.

3.1.2.2 Unless SWBT elects to have Aerial or a third party provision facilities, SWBT shall provide the physical plant facilities that interconnect SWBT's point of interconnection with Aerial's point of interconnection. SWBT shall be responsible for the physical plant facilities to the appropriate point of interconnection (within the serving wire center boundary of the end office in which the tandem, providing the Type 2A interconnection is located, or within the serving wire center boundary of the end office providing the Type 1 interconnection) on its network.

3.1.3 Traffic To Third Party Providers

Aerial and SWBT shall compensate each other for traffic that transits their respective systems to any Third Party Provider, as specified in Appendix PRICING. The Parties agree to enter into their own agreements with Third Party Providers. SWBT agrees that it will not block traffic involving Third Party Providers with whom Aerial has not reached agreement. In the event that Aerial does send traffic through SWBT's network to a Third Party Provider with whom Aerial does not have a traffic interchange agreement, then Aerial agrees to indemnify SWBT for such traffic pursuant to Section 18 of this Contract.

3.1.4 Transiting Traffic Factor

The Parties have agreed upon the land to mobile transiting traffic factor specified in Appendix PRICING paragraph 2.3, which represents the percentage of land to mobile minutes which will be considered as transiting minutes. The Parties have agreed to use the factor developed as a reasonable representation of the land to mobile traffic which is originated by a Third Party Provider and transits SWBT's network. This factor will be used to reduce the total minutes delivered to Aerial from SWBT, before

the application of the interMTA factor outlined in section 14.2, to determine the minutes subject to reciprocal compensation. SWBT agrees to review the factor upon Aerial request, but no more often than once every twelve (12) months after the effective date of this Agreement. SWBT will make the results of the factor development available to Aerial to ensure the Parties are using an accurate transiting traffic factor.

4. TRANSMISSION AND ROUTING OF EXCHANGE ACCESS SERVICE PURSUANT TO SECTION 251 (C)(2)

- 4.1 Aerial may order Equal Access Facilities for the exchange of traffic between Aerial's network and SWBT's network for switched access to IXC's, thus enabling Aerial end users to access IXC's.
- 4.2 Aerial shall provide SWBT the appropriate call data to allow SWBT to bill IXC's for Originating Access as mutually agreed to by the Parties under a separate agreement.

5. TRANSMISSION AND ROUTING OF OTHER TYPES OF TRAFFIC

This section 5 provides the terms for the exchange of 800/888 traffic, 911/E911 traffic, Directory Assistance traffic and Operator Services traffic from an end user on Aerial's network to SWBT's network. Miscellaneous (common) Facilities may be utilized for the routing of these types of traffic.

5.1 800/888 Traffic

Aerial may order from SWBT Miscellaneous Facilities in order to deliver 800/888 traffic from an Aerial end user to SWBT's network. Such Miscellaneous Facilities shall be used for the transmission and routing of 800/888 traffic to allow Aerial's end users to send calls to SWBT for completion to IXC's, LEC's other than SWBT, or SWBT.

5.2 E911/911 Traffic

With respect to all matters relating to E911/911 traffic, the Parties shall: (i) continue to handle such services as they do today; and (ii) work together to meet any and all applicable requirements mandated under law, including SWBT tariffs, and rules and regulations of the FCC. The Parties acknowledge and agree that as applicable requirements are met and implemented, additional charges for E911/911 traffic may apply and shall in no way delay implementation of such requirements. The Parties reserve the right to challenge unreasonable charges in any appropriate forum.

Carrier may provide its own facilities or purchase facilities from another carrier to connect its network with SWBT's 911 Wireless Tandem. Alternatively, Carrier may purchase Type 2C facilities from SWBT at rates found in Section 7 of SWBT's Intrastate Access Tariff. Type 2C facilities are one way terminating facilities which provide a trunk-side connection between Carrier's MSC and SWBT's 911 Wireless Tandem. Type 2C facilities provide the capability to access SWBT's 911 Tandems.

12.3 Local Dialing Parity and IntraLATA Toll Dialing Parity

SWBT agrees that local dialing parity will be available to Aerial in accordance with the Act. SWBT agrees to make IntraLATA toll dialing parity available in accordance with Section 271(e) of the Act.

13. ACCESS TO RIGHTS OF WAY

SWBT will provide Aerial nondiscriminatory access to poles, ducts, conduits, and rights-of-way on rates, terms, and conditions that are consistent with the Federal Telecommunications Act, and the Pole Attachment Act, 47 U.S.C. Section 224. SWBT has prepared a Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way so as to comply with the Pole Attachment Act and applicable rules, regulations and commission orders, including prior rulings of the Missouri Commission in interconnection arbitration proceedings. Aerial may execute the Master Agreement as a stand alone agreement or as an integral part of this interconnection Agreement. SWBT will continue to negotiate specific contract language with Aerial if Aerial elects to execute the Master Agreement on an interim basis only.

14. CHARGES FOR THE INTERCHANGE OF TRAFFIC

For purposes of this section, the determination of the location of the origination and termination points of a call shall be made by referencing the V and H Coordinates of the originating/terminating SWBT NPA/NXX (End Office) and the V and H Coordinates of the geographic location of Aerial's originating or terminating Cell Site.

14.1 Compensation for Local Traffic

The Parties shall provide each other symmetrical, Reciprocal Compensation for the transport and termination of Local Traffic (i.e., telecommunications traffic between a LEC and a CMRS provider that, at the beginning of the call, originates and terminates within the MTA) at the rates specified in Appendix PRICING. SWBT shall compensate Aerial for the transport and termination of Local Traffic originating on SWBT's network; Aerial shall compensate SWBT for the transport and termination of Local Traffic originating on Aerial's network.

14.1.1 Exclusions: Compensation for Local Traffic as described above shall not apply to any other traffic or services, including without limitation interMTA traffic; Transiting Traffic; traffic which neither originates nor terminates on Aerial's network; Area Wide Calling Plan traffic; and Paging Traffic.

14.2 InterMTA Traffic

For the interchange of interMTA traffic (i.e., for traffic that originates in one MTA and terminates in another), rates shall apply as follows:

14.2.1 For mobile to land interMTA traffic, Aerial shall pay SWBT the interMTA rates specified in Appendix Pricing. The Parties agree that any rate changes associated with interstate switched access services will flow through to the interMTA rates specified in Appendix Pricing.

14.2.2 When land to mobile interMTA traffic is less than 3% of the total land to mobile traffic, no compensation shall be due to either Party by the other. When land to mobile interMTA traffic exceeds 3%, Aerial agrees to compensate SWBT at the interMTA rates specified in Appendix Pricing for the actual percentage of traffic (including the initial 3%). The Parties agree that any rate changes associated with interstate switched access services will flow through to the interMTA rates specified in Appendix Pricing. Aerial makes this agreement without waiving argument in the future as to appropriate treatment of land to mobile interMTA traffic.

14.2.3 InterMTA Factor

The Parties have agreed upon the interMTA factor specified in Appendix PRICING, which represents the percent of total minutes to be billed interstate access charges. Aerial represents that the factor is based on a reasonable traffic analysis. Six (6) months after the Effective Date of this Agreement, and every six (6) months thereafter, Aerial shall conduct a reasonable traffic study (available to SWBT on request) to ensure the Parties are using an accurate interMTA factor.

14.2.3.1 Examples

Following are two examples of traffic for which Aerial shall be required to pay access charges. They are examples only and in no way shall be deemed limiting or exhaustive of the applicability of access charges under this Agreement.

14.2.3.1.1 When a SWBT end user calls an Aerial end user (a land to mobile call), SWBT delivers the call to Aerial, and Aerial transports the call across MTA boundaries (directly, or through an IXC where SWBT is not receiving access charges from the IXC), access charges shall apply to Aerial only if the total land to mobile interMTA traffic exceeds 3% in accordance

with Section 14.2.2. ("Originating Interstate Switched Access")

- 14.2.3.1.2 When an Aerial end user calls a SWBT end user (a mobile to land call), the call crosses MTA boundaries, and Aerial transports the call across MTA boundaries, access charges shall apply to Aerial ("Terminating Interstate Switched Access").

14.2.4 Limitation

If traffic is handed from SWBT directly to an IXC, or from an IXC directly to SWBT, access charges shall not apply to Aerial.

14.3 True Up

14.3.1 Local termination and transit rates

True up shall be based on the permanent rates for tandem switching, transport and end office switching to be determined by the Missouri PSC in the arbitration captioned: *Petition of AT&T Communications of the Southwest Inc.'s Petition for Arbitration to Establish an Interconnection Agreement With Southwestern Bell Telephone Company*, Case No. TO-97-40, et. al., and any ancillary proceedings that may arise from that proceeding. These rates shall be used to calculate rates to be charged for local terminations and transit under this Agreement for Type 1, Type 2A, and Type 2B according to the formula in the Appendix PRICING.

- 14.3.2 Subject to this paragraph, the change in rate shall take effect when the order adopted by the Commission setting the permanent rate elements in TO-97-40 becomes final and appealable. Further, the new rate shall be applied retroactively to the traffic exchanged between the Parties from and after the date this Agreement is signed by the Parties. The retroactive application of the rate shall be accomplished in one lump sum payment due 60 days after the order becomes final. The only circumstance under which true-up will be postponed is if SWBT appeals the Commission's order setting rate elements, and obtains an injunction or a stay. In such event, the true-up will occur at the culmination of any appeal on which the injunctive relief is premised. In that event, the ultimate result of the appeal shall be incorporated into the local termination and transit rates applicable under this Agreement, both prospectively and retroactively back to the effective date of this Agreement. If injunctive relief is neither sought nor obtained by SWBT, the true-up shall occur irrespective of the status or outcome of any appeals of the order.

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14.3.3 Other changes. In addition to any injunctive relief associated with an appeal of the Commission proceeding setting rates for AT&T and others, the Parties recognize that the law applicable to the local termination and transit rates established by this Agreement may change in the future due to changes in legislation or agency proceedings or rules. To the extent the Parties can agree that those changes are applicable to the rates established by this Agreement, the effect of the changes may be incorporated into the rates either prospectively, or retrospectively and prospectively, as the applicable change shall require.

14.4 Other Services. The charges for the following Other Services provided by SWBT to Aerial are set forth below.

14.4.1 911 and Enhanced 911: SWBT shall make its network available to Aerial for the termination of 911 calls at the same rate as for other telecommunications carriers. Enhanced 911 services, once required of Aerial, will be negotiated at that time and the terms and conditions for such services shall be described in a separate agreement to be mutually agreed upon between the Parties.

14.4.2 Intrastate Directory Assistance: Intrastate directory assistance shall be provided to Aerial at the rates specified in Appendix PRICING.

14.4.3 Call Completion: At Aerial's request, in connection with the provision of directory assistance service, SWBT will provide caller optional directory assistance call completion service at the rates specified in Appendix PRICING. Local interconnection rates apply for the duration of automatically completed calls.

14.4.4 Billed Number Screening: Billed Number Screening shall be available to prevent billing of inward calls to Aerial on a received-collect or third-number basis. There are no charges associated with this service.

14.4.5 Operator-Assisted Calls: SWBT shall make its network available to Aerial for operator-assisted calls, including "0+" and "0-" calls. SWBT shall collect whatever information is required to complete and provide billing data for such operator assisted calls.

14.4.6 Signaling: SWBT will provide at Aerial's request, Signaling System 7 ("SS7") in order to allow out of band signaling in conjunction with the exchange of traffic between the Parties' respective networks. Upon Aerial's request SWBT will provide, when available, SS7 Signaling in conjunction with Type 1 land to mobile traffic, with Type 2A and with Type 2B interconnecting facilities. When SWBT provides SS7 services directly to Aerial, SWBT shall provide such services at the rate specified in Appendix PRICING. This rate is for the use of SWBT's STP in the

17.2 Effective Date

The Parties shall effectuate all the terms of this Agreement within 30 days upon final approval of this Agreement by the relevant state Commission when it has determined that this Agreement is in compliance with Section 252 of the Act; provided, however, the Parties agree to make arrangements to pay one another for the period from the date of signing of this Agreement to the date on which both parties can implement changes in their respective billing system, not to exceed sixty days, and going forward consistent with this Agreement.

- 17.3 Termination Due to Breach: Either Party may terminate this Agreement upon thirty (30) days written notice of a breach of this Agreement by the other Party to this Agreement, which breach remains uncured for such thirty (30) day period after written notice of the breach by the non-breaching Party to the breaching Party.

18. **LIABILITY AND INDEMNITY**

- 18.1 Neither Party assumes any liability for any act or omission of the other in the furnishing of its service to its subscribers solely by virtue of entering into this Agreement.
- 18.2 To the extent not prohibited by law or inconsistent with the other terms of this Agreement, each Party shall indemnify the other Party and hold it harmless against any loss, costs (including, but not limited to reasonable attorneys fees and costs at trial and on appeal, if any), claims, injury, or liability relating to any third-party claim arising out of any act or omission of the indemnifying Party, or its employees, officers, agents, servants, or contractors in connection with the indemnifying party's performance under this Agreement, breach of any applicable law, rule or regulation, for actual or alleged infringement of any patent, trademark copyright, service mark, trade name, trade secret or intellectual property right, now known or later developed, or for failure to perform under this Agreement, regardless of the form or action ("Claims"). The indemnifying Party under this section shall defend any legal proceeding brought against the other Party, either individually or jointly with the indemnified Party, arising out of or relating to any such Claim.
- 18.3 The indemnified Party shall notify the other Party promptly, in writing, of any Claims, legal proceedings, or demands for which the other Party is responsible under this section and shall cooperate in every reasonable way to facilitate the defense or settlement of such Claims. The indemnifying Party shall not be liable under this section for settlement by the indemnified Party of any Claim, legal proceeding, or demand, if the indemnifying Party has not approved the settlement in advance, unless the indemnifying Party has had the defense of the Claim, legal proceeding, or demand tendered to it in writing, and has failed to assume such defense within thirty (30) days after defense is tendered to it by the indemnified

Party. In the event of such a failure to assume the defense, the indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the indemnifying Party, though such settlement may have been made by the indemnified Party without approval of the indemnifying Party, it being the Parties' intent that no settlement involving a nonmonetary concession by the indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the indemnifying Party.

- 18.4 To the extent described below, each Party also agrees to indemnify and save the other Party harmless from Claims, legal proceedings or demands that may be made by persons furnished by the indemnifying Party or by any of its subcontractors, under worker's compensation laws or similar statutes. The indemnified Party agrees to notify the indemnifying Party promptly, in writing, of any Claims, demands or legal proceedings for which it is claimed that the indemnifying Party is responsible and to cooperate in every reasonable way to facilitate defense or settlement of Claims. The indemnifying Party shall have complete control over defense of the case and over the terms of any proposed settlement or compromise thereof, provided that there is no liability by the indemnified Party.

18.5 OSHA Requirements

Aerial and SWBT agree to abide by and to undertake the duty of compliance on behalf of the other with all federal, state and local laws, safety and health regulations relating to one Party's activities at the other Party's facilities, and to indemnify and hold the other Party harmless for any judgments, citations, fines, or other penalties which are assessed against such Party as the result solely of the first Party's failure to comply with any of the foregoing.

18.6 NO CONSEQUENTIAL DAMAGES

NEITHER SWBT NOR CARRIER SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE, OR SPECIAL DAMAGES SUFFERED BY SUCH OTHER PARTY (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR HARM TO BUSINESS, LOST REVENUES, LOST SAVINGS, OR LOST PROFITS SUFFERED BY SUCH OTHER PARTY), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, WARRANTY, STRICT LIABILITY, OR TORT, INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OF ANY KIND WHETHER ACTIVE OR PASSIVE, AND REGARDLESS OF WHETHER THE PARTIES KNEW OF THE POSSIBILITY THAT SUCH DAMAGES COULD RESULT. EACH PARTY HEREBY RELEASES THE OTHER PARTY (AND SUCH OTHER PARTY'S SUBSIDIARIES AND AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) FROM ANY SUCH CLAIM. NOTHING CONTAINED IN THIS SECTION WILL LIMIT SWBT'S OR CARRIER'S LIABILITY TO THE OTHER FOR (i) WILLFUL OR INTENTIONAL

MISCONDUCT (INCLUDING GROSS NEGLIGENCE); OR (ii) BODILY INJURY, DEATH, OR DAMAGE TO TANGIBLE REAL OR TANGIBLE PERSONAL PROPERTY PROXIMATELY CAUSED BY SWBT OR CARRIER'S NEGLIGENT ACT OR OMISSION OR THAT OF THEIR RESPECTIVE AGENTS, SUBCONTRACTORS OR EMPLOYEES, NOR WILL ANYTHING CONTAINED IN THIS SECTION LIMIT THE PARTIES' INDEMNIFICATION OBLIGATIONS, AS SPECIFIED HEREIN.

18.7 Each Party agrees to reimburse the other for damage to premises or equipment resulting from the installation, maintenance or removal of facilities, services or arrangements if caused by other than normal wear and tear and if caused by negligence or willful misconduct of the indemnifying Party.

18.8 Except as otherwise provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

18.9 Limitation of Liability

With respect to any claim or suit for damages arising out of mistakes, omissions, defects in transmission, interruptions, failures, delays or errors occurring in the course of furnishing any service hereunder, the liability of the Party furnishing the affected service, if any, shall not exceed an amount equivalent to the proportionate charge to the other Party for the period of that particular service during which such mistake, omission, defect in transmission, interruption, failures, delay or error occurs and continues. No such limitation of liability shall apply, however, if the cause of the claim is due to the gross negligence or willful misconduct of the Party furnishing the service.

18.10 Aerial understands that it is responsible for obtaining any license or right-to-use agreement associated with a network element purchase from SWBT, and further agrees to provide SWBT, prior to using any such network elements, with either: (1) a copy of the applicable license or right-to-use agreement (or letter from the licensor attesting as such); or (2) an affidavit signed by Aerial attesting to the acquisition of any known and necessary licensing and right-to-use agreements. SWBT agrees to provide a list of all known and necessary licenses or right-to-use agreements applicable to the subject network element(s) within seven days of a request for such a list by Aerial. SWBT agrees to use its best efforts to facilitate the obtaining of any necessary license or right-to-use agreement. In the event such an agreement is not forthcoming for a network element ordered by Aerial, the parties commit to negotiate in good faith for the provision of alternative elements or services which shall be equivalent to the elements for which Aerial is unable to obtain such license or agreement.

Both Aerial and SWBT agree to defend at the other's request, to indemnify and hold each other harmless, together with each of its officers, directors, employees,

and agents (each, an "Indemnitee") against and in respect of any loss, debt, liability, damage, obligation, claim, demand, judgment, or settlement of any nature or kind, known or unknown, liquidated or applicable to the subject network element(s) within seven days of a request for such a list by Aerial. SWBT agrees to use its best efforts to facilitate the obtaining of any necessary license or right-to-use agreement. In the event such an agreement is not forthcoming for a network element ordered by Aerial, the parties commit to negotiate in good faith for the provision of alternative elements or services which shall be equivalent to the element for which Aerial is unable to obtain such license or agreement.

19. EXCUSABLE DELAYS (FORCE MAJEURE CONDITIONS)

Neither Party shall be responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the Party affected shall, upon giving prompt notice to the other Party, be excused from such performance on a day-to-day basis to the extent of such interference (and the other Party shall likewise be excused from performance of its obligations on a day-for-day basis to the extent such Party's obligations relate to the performance so interfered with). The affected Party shall use its best efforts to avoid or remove the cause of non-performance and both Parties shall proceed to perform with dispatch once the causes are removed or cease.

20. CONFIDENTIALITY AND PROPRIETARY INFORMATION

- 20.1 For the purposes of this Agreement, confidential information ("Confidential Information") means all information of a Party (the "Discloser") or another party whose information the Discloser has in its possession under obligations of confidentiality, in whatever form transmitted, relating to business plans or operations, network design, systems and procedures and/or the sale, purchase and use of services, and end user specific information, which is disclosed by the Discloser or its affiliates to the other Party (the "Recipient") or its affiliates. The Recipient agrees (i) to use Confidential Information only for the purpose of performing under this Agreement, (ii) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (iii) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's

Date"). The revised combined rate for transport and termination of local traffic using Type 1 and Type 2A connections shall be developed using the end office switching , tandem switching and transport prices from the proceeding referenced in Section 14.3.2 of the Interconnection Agreement, and applicable factors. The Type 2B rate shall be the end office switching price from the proceeding referenced in Section 14.3.2 of the Interconnection Agreement. The rate for Transiting Traffic shall be the sum of the transport and tandem switching prices from the proceeding referenced in Section 14.3.2 of the Interconnection Agreement multiplied by the applicable factors.

2.0 InterMTA Traffic

2.1 InterMTA Rates

2.1.1 InterMTA Rate to be paid to SWBT by Carrier on interMTA Mobile to Land calls:
\$.022463

2.1.2 InterMTA Rate to be paid to SWBT by Carrier on interMTA Land to Mobile calls only if and when the total percentage of Land to Mobile interMTA calls exceed 3%:
\$.022463

2.2 InterMTA Traffic Factor

2%

000051

2.3 Transiting Traffic Factor

5%

3.0 Directory Assistance

3.1 Directory Assistance Per Call Price

Per Call \$.2975

Transport Per Call

0-1 mile	\$.0028
>1 to 25 miles	\$.0060
>25 to 50 miles	\$.0222
>50 miles	\$.0351

3.2 Directory Assistance Call Completion

3.2.2 Per Completed Call \$.20

3.2.3 Operator Service Circuits

In addition to the Per Call Rates, Carrier must establish facilities between the Carrier MSC and SWBT's TOPS tandem. Prices can be found in Section 7 of Interstate/Intrastate Access Service Tariff.

4.0 Area Wide Calling Plan

4.1 AWCP per MOU

Local Switching \$.008480

Local Transport

0-1 mile	\$.0050
>1 to 25 miles	\$.0077
>25 to 50 miles	\$.0162
>25 miles	\$.0274

Carrier Common Line \$.01

4.2 A nonrecurring charge of \$3960.00 applies to arrange a new AWCP NXX code or to convert an existing NXX code to an AWCP.

APPENDIX DCO

AERIAL COMMUNICATIONS INC. POIs

<u>CLLI</u>	<u>EQ TYPE</u>	<u>LATA</u>	<u>V-COORD</u>	<u>H-COORD</u>	<u>STREET ADDRESS</u>
HSTSTXHKIMD	DX 200 MSC	560	8936	3536	1700 Glaser St., Houston , TX 77009
KSCZMOVRIMD	DX 200MSC	524	7027	4202	2709 Cherry St., Kansas City, MO 64108

000055

APPENDIX DCO
SWBT TANDEM POIs

LATA/SECTOR	VCOORD	HCOORD	CLLI	TYPE
520 - SKESTON	7099	3220	SKSTMOGR04T	DMS100/200
520 - ST. LOUIS-JEFFERSON	6807	3490	STLSMO0501T	5ESS
520 - ST. LOUIS-LADUE	6818	3517	STLSMO2101T	5ESS
522 - SPRINGFIELD	7311	3833	SPFDMOTL02T	DMS200
524 - CHILLICOTHE	6820	4104	CHLCMOMI06T	DMS100/200
524 - KANSAS CITY	7049	4210	KSCYKSJO07T	DMS100/200
524 - KANSAS CITY	7207	4202	KSCYMO5503T	DMS100/200
524 - KIRKSVILLE	6874	3993	KKVLMOMO10T	DMS100/200
524 - MOBERLY	6817	3899	MBRLMOAM06T	5ESS
524 - ST. JOSEPH	6913	4301	STJSMODN03T	DMS100/200
528 - FAYETTEVILLE	7599	3872	FYVLARHI02T	DMS200
528 - FORT SMITH	7752	3855	FTSMARSU03T	DMS200
528 - JONESBORO	7388	3297	JNBOARMA02T	DMS100/200
528 - LITTLE ROCK	7721	3448	LTRKARFR02T	DMS200
530 - PINEBLUFF	7803	3358	PNBLARJE02T	DMS200
532 - DODGE CITY	7641	4958	DDCYKS0107T	DMS100/200
532 - HUTCHINSON	7453	4844	HTSNKS0207T	DMS100/200
532 - PARSONS	7422	4159	PRSSKSWA07T	DMS100/200
532 - WICHITA	7489	4520	WCHTKSBR07T	DMS200
534 - HAYS	7374	4932	HAYSKS1107T	DMS100/200
534 - SALINA	7275	4858	SALNKSTA07T	DMS100/200
534 - TOPEKA	7110	4379	TPKAKSJA07T	DMS100/200
538 - ALTUS	8230	4811	ALTSOKMA01T	5ESS
538 - ARDMORE	8180	4204	ARMROKMA01T	5ESS
538 - CLINTON	8030	4816	CLTNOKMA02T	DMS100/200
538 - DURANT	8185	4083	ORTNOKMA02T	DMS100/200
538 - ENID	7784	4507	ENIDOKMA02T	5ESS
538 - LAWTON	8178	4454	LWTNOKTB02T	DMS100/200
538 - OKLAHOMA CITY	7948	4372	OKCYOKCE13T	DMS200
538 - BARTLESVILLE	7589	4224	BRVLOKFE01T	DMS100/200
538 - TULSA	7708	4176	TULSOKTB03T	DMS100/200
540 - EL PASO	9231	5855	ELPSTXMA15T	DMS200
542 - MIDLAND	8934	4890	MDLDTXMU15T	DMS200
544 - LUBBOCK	8598	4982	LBCKTXPS15T	DMS100/200
548 - AMARILLO	8268	5075	AMRLTX0215T	DMS100/200
548 - WICHITA FALLS	8323	4412	WCFLTXNI04T	DMS100/200
550 - ABILENE	8698	4513	ABLNTXOR15T	DMS200
552 - DALLAS-RIVERSIDE	8437	4035	DLLSTXRI01T	5ESS
552 - DALLAS-TAYLOR	8432	4033	DLLSTXTA03T	4ESS
552 - FT. WORTH	8479	4123	FTWOTXED03T	DMS200
554 - LONGVIEW	8347	3861	LGWVTXPL03T	DMS200
558 - WACO	8705	3994	WACOTX0115T	DMS200
558 - AUSTIN	9004	3997	AUSTTXGR06T	DMS100/200
560 - HOUSTON	8947	3548	HSTNTX0801T	DMS200
560 - HOUSTON-JACKSON	8943	3540	HSTNTXJA04T	DMS200
562 - BEAUMONT	8777	3344	BUMTTXTE03T	DMS100/200
564 - CORPUS CHRISTI	9477	3738	CRCHTXTU03T	DMS200
568 - SAN ANTONIO	9225	4083	SNANTXCA03T	DMS200
568 - HARLINGEN	9819	3684	HRLNTXHG03T	DMS200

000056

APPENDIX DCO
SWBT MISSOURI EO POIs

CLLI	EXCHANGE	EQ TYPE	LATA	V-COORD	H-COORD	STREET ADDRESS
BLSPMOCADS0	BLUE SPRINGS	DGTL/D100	524	7023	4148	300 S 15TH ST., BLUE SPRINGS, MO. 64015
CHFDMO52DSA	CHESTERFIELD	DGTL/5ES	520	6831	3545	16752 WILD HORSE CRK RD, CHFD, MO 63017
CHLCMOMIDS0	CHILLICOTHE	DGTL/D1/2	524	6820	4104	501 CHERRY, CHILLICOTHE, MO. 64601
CPGRMOEDDSA	CAPE GIRARDEAU	DGTL/5ES	520	7012	3252	800 BROADWAY, CAPE GIRARDEAU, MO 63701
CRTHMOFLDS0	CARTHAGE	DGTL/D100	522	7390	3993	225 W 6TH, CARTHAGE, MO 64836
ELDNMOEXDSA	ELDON	DGTL/5ES	520	7036	3825	104 S OAK, ELDON, MO 65026
FLRVMOGEDSA	FLAT RIVER	DGTL/5ES	520	6982	3458	222 W MAIN, FLAT RIVER, MO 63601
FNTNMO54DS0	FENTON	DGTL/5ES	520	6847	3508	200 MAIN, FENTON, MO 63026
FSTSMOYEDS0	FESTUS	DGTL/D100	520	6901	3474	120 N SECOND ST, FESTUS, MO 63028
HNBLMOACDSA	HANNIBAL	DGTL/D1/2	520	6688	3763	820 BROADWAY, HANNIBAL, MO 63041
HVTRMO67DSA	HVSTR HARVESTER	DGTL/D100	520	6816	3557	111 TOELLE, HARVESTER, MO 63303
JPLNMOMACG0	JOPLIN	1SPC/1AAP	522	7422	4018	8TH & PEARL, JOPLIN, MO. 64801
KKVLMOMODS0	KIRKSVILLE	DGTL/D1/2	524	6674	3993	216 E. WASHINGTON, KIRKSVILLE, MO. 63501
KSCYMO01DS0	KC BENTON	DGTL/5ES	524	7024	4195	1123 CLEVELAND, KANSAS CITY, MO. 64127
KSCYMO02CG0	KC HILAND	1SPC/1AAP	524	7044	4194	6213 HOLMES, KANSAS CITY, MO. 64110
KSCYMO04CG0	KC WABASH	1SPC/1AAP	524	7034	4193	3901 MONTGALL, KANSAS CITY, MO 64130
KSCYMO05CG0	KC WESTPORT	1SPC/1AAP	524	7036	4199	107 E. 39TH ST., KANSAS CITY, MO 64111
KSCYMO20DS0	KC NASHUA	DGTL/D100	524	6998	4215	100 E. BARRY ROAD, KANSAS CITY, MO 64155
KSCYMO21DS0	KC GLADSTONE	DGTL/5ES	524	7008	4205	5112 ANTIOCH, GLADSTONE, MISSOURI 64119
KSCYMO22CG0	KC INDEPENDENCE	1SPC/1AAP	524	7018	4177	215 N. SPRING, INDEPENDENCE, MO 64050
KSCYMO23DS0	KC PARKVILLE	DGTL/5ES	524	7008	4221	6407 N.W. ROANRIDGE, KC, MO 64152
KSCYMO24CG0	KC RAYTOWN	1SPC/1AAP	524	7036	4176	5828 MAYWOOD, RAYTOWN, MO 64133
KSCYMO25DS0	KC SOUTH	DGTL/5ES	524	7058	4178	5903 REDBRIDGE, KANSAS CITY, MO 64134
KSCYMO40DS0	KC BELTON	DGTL/5ES	524	7081	4170	612 WALNUT, BELTON, MO. 64012
KSCYMO41CG0	KC LEES SUMMIT	1SPC/1AAP	524	7050	4154	202 E. 3RD ST., LEES SUMMIT, MO. 64063
KSCYMO42DS0	KC LIBERTY	DGTL/5ES	524	6987	4190	140 N. GALLATIN, LIBERTY, MO 64068
KSCYMO44DS0	KC EAST INDEPEN	DGTL/5ES	524	7007	4168	GUDGELL & BUNDSCHUA, INDEP, MO. 64050
KSCYMO45DS0	KC SOUTH WILLOW	DGTL/5ES	524	7062	4188	11021 HOLMES, KANSAS CITY, MO. 64131
KSCYMO48DS0	KC INDEP SOUTH	DGTL/5ES	524	7027	4166	16880 E. 40 HWY, INDEP. MO. 64055
KSCYMO55DS0	KC MCGEE	DGTL/D1/2	524	7027	4202	1101 MCGEE, KANSAS CITY, MO. 64106
KSCYMO55DS1	KC MCGEE	DGTL/D100	524	7027	4202	1101 MCGEE, KANSAS CITY, MO. 64106
KSCYMO55DS3	KC MCGEE TDM	DGTL/5ES	524	7027	4202	1101 MCGEE, KANSAS CITY, MO. 64106
MBRLMOAMDS0	MOBERLY	DGTL/5ES	524	6817	3899	225 W. COATES, MOBERLY, MO 65270
MNCHMO59CG0	MANCHESTER	1SPC/1AAP	520	6839	3532	200 MANCHESTER RD, MANCHESTER, MO 63011
MXVLMO60DSA	MAXVILLE	DGTL/5ES	520	6858	3494	1679 BIG BILL RD, MAXVILLE, MO 63128
PPBLMOSUDSA	POPLAR BLUFF	DGTL/5ES	520	7185	3335	601 VINE, POPLAR BLUFF, MO 63901
SKSTMOGRDSA	SIKESTON	DGTL/D1/2	520	7099	3220	121 E CENTER, SIKESTON, MO 63801
SPFDMOMCDS0	SPFD MCDANIEL	DGTL/D100	522	7311	3834	510 E. MCDANIEL, SPRINGFIELD, MO. 65806
SPFDMOMCDS1	SPFD MCDANIEL	DGTL/5ES	522	7311	3834	510 E. MCDANIEL, SPRINGFIELD, MO. 65806

000059

APPENDIX DCO
SWBT MISSOURI EO POIs

SPFDMOTLDS0	SPDF TDM	DGTL/D1/2	522			600 ST LOUIS, SPRINGFIELD MO
SPFDMOTUDS0	SPFD TUXEDO	DGTL/D100	522	7321	3826	3028 S. FREMONT, SPRINGFIELD, MO. 65806
STCHMO63DSA	ST CHARLES	DGTL/D100	520	6798	3542	402 N THIRD, ST CHARLES, MO 63301
STJSMODNDS0	ST JOSEPH DWTN	DGTL/D1/2	524	6913	4301	320 N. 10TH ST., ST JOSEPH, MO. 64501
STLSMO01DSA	STL CHESTNUT	DGTL/D100	520	6807	3483	1010 PINE, ST LOUIS, MO 63101
STLSMO01DSC	STL CHESTNUT	DGTL/D100	520	6807	3483	1010 PINE, ST LOUIS, MO 63101
STLSMO02CG0	STL EVERGREEN	1SPC/1AAP	520	6801	3500	3710 HAMILTON, ST LOUIS, MO 63120
STLSMO03CG0	STL FLANDERS	1SPC/1AAP	520	6823	3493	5410 JANUARY, ST LOUIS, MO 63019
STLSMO04CG0	STL FOREST	1SPC/1AAP	520	6808	3497	5189 DELMAR, ST LOUIS, MO 63130
STLSMO0501T	STL JEFFERSON	DGTL/5ES	520	6807	3490	3810 WASHINGTON, ST LOUIS, MO 63108
STLSMO05CG0	STL JEFFERSON	1SPC/1AAP	520	6807	3490	3810 WASHINGTON, ST LOUIS, MO 63108
STLSMO06CG0	STL MISSION	1SPC/1AAP	520	6819	3500	7216 LANHAM, ST LOUIS, MO 63143
STLSMO07CG0	STL PARKVIEW	1SPC/1AAP	520	6810	3502	6214 DELMAR, ST LOUIS, MO 63130
STLSMO07DSA	STL PARKVIEW	DGTL/D100	520	6810	3502	6214 DELMAR, ST LOUIS, MO 63130
STLSMO08CG0	STL PROSPECT	1SPC/1AAP	520	6814	3488	2317 S GRAND, ST LOUIS, MO 63104
STLSMO11DSA	STL MELROSE	DGTL/5ES	520	6829	3490	4325 WEBER RD, ST LOUIS, MO 63123
STLSMO20DSA	STL FERGUSON	DGTL/5ES	520	6792	3512	330 N FLORISSANT, FERGUSON, MO 63135
STLSMO2101T	STL LADUE	DGTL/5ES	520	6818	3517	135 N LINDBERGH, ST LOUIS, MO 63141
STLSMO21CG0	STL LADUE	1SPC/1AAP	520	6818	3517	135 N LINDBERGH, ST LOUIS, MO 63141
STLSMO21DS3	STL LADUE	DGTL/5ES	520	6818	3517	135 N LINDBERGH, ST LOUIS, MO 63141
STLSMO22CG0	STL MEHLVILLE	1SPC/1AAP	520	6842	3492	4321 LEMAY FERRY, MEHLVILLE, MO 63129
STLSMO23CG0	STL OVERLAND	1SPC/1AAP	520	6802	3517	3501 WOODSON RD, OVERLAND, MO 63114
STLSMO24CG0	STL RIVERVIEW	1SPC/1AAP	520	6787	3503	10024 DUKE DR, ST LOUIS, MO 63136
STLSMO25DSA	STL SAPPINGTON	DGTL/5ES	520	6839	3502	11640 GRAVOIS RD, SAPPINGTON, MO 63126
STLSMO26DSA	STL WEBSTER GR	DGTL/D100	520	6826	3505	5 W LOCKWOOD, WEBSTER GROVES, MO 63119
STLSMO27CG0	STL CREVE COEUR	1SPC/1AAP	520	6818	3532	12930 OLIVE ST RD, ST LOUIS, MO 63141
STLSMO40CG0	STL FLORISSANT	1SPC/1AAP	520	6784	3518	707 ST JOSEPH, FLORISSANT, MO 63031
STLSMO41CG0	STL KIRKWOOD	1SPC/1AAP	520	6831	3511	115 WEST ADAMS, KIRKWOOD, MO 63122
STLSMO42CG0	STL BRDGTN WEST	1SPC/1AAP	520	6800	3530	12397 ST CHAS ROCK RD, BDGTN, MO 63044
STLSMO43CG0	STL BRDGTN HZLWD	1SPC/1AAP	520	6793	3524	505 MCDONNELL BLVD, BRIDGETON, MO 63042
STLSMO45DSA	STL SPANISH LAKE	DGTL/5ES	520	6777	3504	1971 PARKER RD, SPANISH LK, MO 63033
VYPKMO64DS0	VALLEY PARK	DGTL/5ES	520	6844	3521	324 FOREST, VALLEY PARK, MO 63088

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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 29th
day of April, 1998.

In the Matter of the Application of)
Southwestern Bell Telephone Company)
for Approval of Interconnection) Case No. TO-98-322
Agreement with Aerial Communications,)
Inc. under the Telecommunications Act)
of 1996.)

ORDER APPROVING INTERCONNECTION AND RECIPROCAL**COMPENSATION AGREEMENT**

Southwestern Bell Telephone Company (SWBT) filed an application with the Missouri Public Service Commission (Commission) on January 30, 1998, for approval of an Agreement for Interconnection and Reciprocal Compensation (the Agreement) between SWBT and Aerial Communications, Inc. (Aerial). 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 February 3 which established a deadline for applications to participate without intervention and hearing requests, and established a deadline for comments. No applications for participation without intervention were filed with the Commission. In addition, no comments or requests for hearing were filed. The Staff of the Commission (Staff) filed a memorandum containing its recommendations on April 7. 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. Staff ex rel. Rex Deffenderder 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 upon 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 (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 Aerial is a two-year 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 Aerial 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. Aerial 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, Aerial 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 2 percent. However, Aerial is responsible for conducting a reasonable traffic study six months after the effective date of the Agreement, in order to determine the actual interMTA factor. In addition, Aerial agrees to conduct a new traffic study every six months thereafter, to ensure that the MTA factor is accurate.

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

With respect to third-party providers, Aerial 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. SWBT agrees that it will not block traffic involving third-party providers with whom Aerial has not reached agreement. In the event that Aerial sends traffic through SWBT's network to a third-party provider with whom Aerial does not have a traffic interchange agreement, Aerial will indemnify SWBT 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, directory assistance, and DA call completion. Aerial may request Area Wide Calling Plan (AWCP) arrangements. SWBT will also provide Signaling System 7 (SS7) at Aerial's request. In addition, the Agreement provides for access to numbering resources, access to rights-of-

way, and network maintenance. SWBT will make local and intraLATA toll dialing parity available to Aerial 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. The Agreement also provides for a true-up of local termination and transit rates based upon the permanent rates for tandem switching, transport and end office switching as determined by the Commission in Case No. TO- 97- 40. Staff filed its recommendation on April 7. Staff states that it has reviewed the proposed Interconnection and Reciprocal Compensation Agreement and believes that the Agreement 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 Agreement.

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 and Reciprocal Compensation Agreement, and Staff's recommendation. Based upon that review, the Commission finds that the Interconnection and Reciprocal Compensation Agreement filed on January 30 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.

Modification Procedure

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 Aerial, and its findings of fact, the Commission concludes that the interconnection agreement filed on January 30 is neither discriminatory nor inconsistent with the public interest, and should be approved.

IT IS THEREFORE ORDERED:

1. That the Interconnection and Reciprocal Compensation Agreement filed on January 30, 1998 between Southwestern Bell Telephone Company and Aerial Communications, Inc. is approved.

2. That Southwestern Bell Telephone Company and Aerial Communications, Inc. shall file a copy of the Interconnection and Reciprocal Compensation Agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner, no later than May 15, 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 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).

5. That this Report and Order shall become effective on April 30, 1998.

BY THE COMMISSION

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

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

Bensavage, Regulatory Law Judge