

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

TCG Kansas City, Inc., and Southwestern Bell Telephone, L.P., doing business as SBC Missouri's Application for Approval of an Interconnection Agreement and Amendment to an Interconnection Agreement Arrived at through Negotiation Pursuant to 4 CSR 240-3.513.)
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Case No. TK-2006-0056

ORDER APPROVING NEGOTIATED INTERCONNECTION AGREEMENT

Issue Date: August 8, 2005

Effective Date: August 10, 2005

Procedural History:

On March 30, 2005, Southwestern Bell Telephone, L.P., doing business as SBC Missouri, filed its Petition for Arbitration with the Commission pursuant to Section 4.2 of the Missouri 271 Agreement ("M2A"), Section 252 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code ("the Act"), and Commission Rule 4 CSR 240-36.040. SBC petitioned the Commission to arbitrate unresolved issues in the negotiation of interconnection agreements between SBC and various competitive local exchange carriers ("CLECs") to replace the M2A, the generally-available interconnection agreement approved by the Commission on March 15, 2001, in conjunction with its recommendation to the United States Federal Communications Commission ("FCC") that SBC be approved to provide in-region long

distance service in Missouri pursuant to Section 271 of the Act.¹ The Commission docketed SBC's Petition as Case No. TO-2005-0336.

The Commission appointed an Arbitrator and proceedings were held pursuant to Commission Rule 4 CSR 240-36.040, concerning Arbitrations under the Telecommunications Act of 1996. The Arbitrator issued his Final Arbitrator's Report on June 21, 2005. After receiving comments from the parties on June 24 and hearing oral argument on June 29 and 30, the Commission issued its Arbitration Order on July 11, 2005. Pursuant to the timeline established by the M2A and the procedural schedule adopted by the Arbitrator, the Commission directed the parties to file their conformed interconnection agreements by July 13. By order of July 14 and with the agreement of all of the parties, this deadline was extended to August 3. The order also amended by interlineation the existing interconnection agreements based on the M2A to extend their expiration from July 19 to August 10.

On August 2, in order to facilitate the adoption by other carriers of the several interconnection agreements resulting from the arbitration in Case No. TO-2005-0336, the Commission established nine spin-off dockets, numbered from TK-2006-0042 through TK-2006-0050. Each of these dockets will serve as the vehicle for further proceedings regarding one of the interconnection agreements arbitrated in Case No. TO-2005-0336.

The present case concerns the negotiated interconnection agreement between SBC and TCG Kansas City, Inc. ("TCG"). Although TCG was a party to the arbitration described above, TCG and SBC continued negotiations after the Commission issued its

¹ *In the Matter of the Application of Southwestern Bell Telephone Company to Provide Notice of Intent to File an Application for Authorization to Provide In-region InterLATA Services Originating in Missouri Pursuant to Section 271 of the Telecommunications Act of 1996, Case No. TO-99-227, (Order Regarding Recommendation on 271 Application Pursuant to the Telecommunications Act of 1996 and Approving the Missouri Interconnection Agreement (M2A), issued March 15, 2001).*

Arbitration Order and have agreed to replace the arbitrated agreement with this negotiated agreement and amendment. The parties jointly filed their interconnection agreement and amendment on August 3. The Staff of the Commission filed its Memorandum and Recommendation on August 8, stating that the parties' interconnection agreement and amendment do not discriminate against any non-party carrier and that their implementation would be consistent with the public interest, convenience and necessity. Staff recommends that the interconnection agreement and amendment be approved. Staff also recommends that the Commission direct the parties to submit a serially-numbered copy of the agreement and amendment and submit any future amendments to the Commission for approval.

Discussion:

Section 252(e) of the Telecommunications Act provides:

(e) Approval by State commission

(1) Approval required

Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.

(2) Grounds for rejection

The State commission may only reject -

(A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) of this section if it finds that –

(I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or

(ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; or

(B) an agreement (or any portion thereof) adopted by arbitration under subsection (b) of this section if it finds that the agreement does not meet the requirements of section 251 of this title, including the regulations prescribed by the Commission pursuant to section 251 of this title, or the standards set forth in subsection (d) of this section.²

Under § 252(e)(1) of the Act, every interconnection agreement must be submitted to the Commission for approval. The Commission may reject a negotiated agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity. The Commission may reject an arbitrated agreement if it finds that the agreement does not meet the requirements of § 251 of the Act, including the F.C.C.'s implementing regulations, or the pricing standards in § 252(d) of the Act. In the present case, it is the former standard that applies.

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 parties' application, interconnection agreement, amendment and Staff's recommendation. Based upon that review, the Commission concludes that the parties' agreement and amendment do not discriminate against any non-party carrier and that their implementation is consistent with the public interest, convenience and necessity. The Commission finds that approval of the agreement and amendment should be conditioned upon the parties submitting a serially-numbered copy of the agreement and amendment and submitting any further amendments to the Commission for approval pursuant to the procedure set out below.

² Subsection (d) contains pricing standards.

Amendment Procedure:

The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.³ In order for the Commission's role of review and approval to be effective, the Commission must also review and approve or recognize amendments to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection.⁴ 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.⁵

The parties to each resale or interconnection agreement must maintain a complete and current copy of the agreement, together with all amendments, in the Commission's offices. Any proposed amendment must be submitted pursuant to Commission Rule 4 CSR 240-3.513(6).

Conclusions of Law:

The Missouri Public Service Commission has arrived at the following conclusions of law.

The Commission, under the provisions of § 252(e) of the Telecommunications Act of 1996,⁶ is required to review interconnection agreements. It may only reject a negotiated agreement if it finds that the agreement discriminates against a non-party carrier

³ 47 U.S.C. § 252.

⁴ 47 U.S.C. § 252(h).

⁵ 4 CSR 240-3.545.

⁶ 47 U.S.C. § 252(e)(1).

or that its implementation is contrary to the public interest, convenience and necessity. Based upon its review of the agreement and amendment between SBC and TCG, the parties' joint application, and Staff's Memorandum and Recommendation, the Commission concludes that the agreement and amendment do not discriminate against a non-party carrier and that their implementation is not contrary to the public interest, convenience and necessity, and that they should therefore be approved.

IT IS THEREFORE ORDERED:

1. That the Interconnection Agreement and Interconnection Agreement Amendment between Southwestern Bell Telephone, L.P., doing business as SBC Missouri, and TCG Kansas City, Inc., filed on August 3, 2005, are approved.

2. That any changes or amendments to this Interconnection Agreement shall be submitted to the Commission for approval in compliance with Commission Rule 4 CSR 240-3.513(6).

3. That no later than noon, August 9, 2005, the parties shall submit a copy of the Interconnection Agreement to the Staff of the Missouri Public Service Commission, with the pages sequentially numbered. On the same date, the parties shall file a notice in the official case file advising the Commission that they have complied with this order.

4. That this order shall become effective on August 10, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to Section 386.240,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 8th day of August, 2005.