

In the Matter of the Post-TRO Remand Amendment)
to the Interconnection Agreement between South-) **Case No. TO-2005-0315**
western Bell Telephone, L.P., d/b/a SBC Missouri,)
and Nexus Communications, Inc., d/b/a TSI.)

Staff states in its application that the subject amendment is significant because it is the first such amendment submitted to the Commission following the F.C.C.'s TRO Remand Order of February 5, 2005, in which the F.C.C. substantially altered the obligations of incumbent local exchange carriers ("ILECs") such as SBC to provide certain unbundled

network elements ("UNEs") to competitive local exchange carriers ("CLECs") such as TSI.¹ The subject amendment provides that SBC will continue to provide the affected elements (Dark Fiber Loops, certain DS1/DS3 Loops, certain DS1/DS3 Transport, and Dark Fiber Transport) at existing rates plus 15 percent. The subject amendment states that it will become effective ten days after approval by the Commission or ten days after the date it is deemed approved by operation of law absent Commission action. Staff states that it anticipates the submission of similar amendments for other carriers and, for this reason, it has presented the first such amendment to the Commission for its review. Staff further points out that the M2A itself expired on March 6, 2005, and that it provides for a period of 135 days for the negotiation or arbitration of new interconnection agreements.²

Staff's Recommendation:

Unusually, Staff filed its Memorandum and Recommendation simultaneously with its application. Therein, Staff states that the subject amendment provides that TSI will not be permitted to obtain certain new unbundled high-capacity loop and dedicated transport elements ("the affected elements"), either alone or in combination: Dark Fiber Loops; DS1/DS3 Loops in excess of the caps or to any building served by a wire center described in Rule 51.319(a)(4) or 51.319(a)(5), as applicable; DS1/DS3 Transport in excess of the caps or between any pair of wire centers as described in Rule 51.319(e)(2)(ii) or 51.319(e)(2)(iii), as applicable; Dark Fiber Transport, between any pair of wire centers as described in Rule 51.319(e)(2)(iv). However, the amendment does provide that SBC will continue to provide the embedded base of the affected elements as ordered by TSI prior to

¹ Order on Remand, Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313, CC Docket No. 01-388, issued on Feb. 5, 2005.

² The 135th day is July 19, 2005.

March 11, 2005, at the existing rates plus 15 percent. Based on its review of the amendment, Staff states that "The proposed modification to the M2A does not discriminate against telecommunications carriers not party to the agreement and is not against the public interest, convenience and necessity. Therefore, since the parties have agreed to the amendment, and it meets the limited requirements of the Telecommunications Act of 1996, the Staff has no objections to the amendment."

Discussion:

Under Section 252(e) of the Act, any interconnection agreement adopted by negotiation must be submitted to the Commission for approval. The Commission may reject an agreement if it finds that the agreement is discriminatory or that it is not consistent with the public interest, convenience and necessity.

The Staff memorandum recommends that the Agreement be approved and notes that the Agreement meets the limited requirements of the Act in that it is not discriminatory toward nonparties and is not against the public interest. Staff recommends that the Commission direct the parties 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 the application, the supporting documentation, and Staff's recommendation. Based upon that review, the Commission concludes that the Agreement meets the requirements of the Act in that it does not 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 Agree-

ment should be conditioned upon the parties submitting any modifications or amendments to the Commission for approval pursuant to the procedure set out below.

Modification 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 modifications 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 modifications, in the Commission's offices. Any proposed modification must be submitted for Commission approval or recognition, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

Modifications to an agreement must be submitted to the Staff for review. When approved or recognized, 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

³ 47 U.S.C. § 252.

⁴ 47 U.S.C. § 252(h).

⁵ 4 CSR 240-3.545.

the original agreement and all the modifications made will be maintained in the Commission's Data Center.

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 Commission will take notice of the modification once Staff has verified that the provision is an approved provision and has prepared a recommendation. 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 1996,⁶ 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.⁷ Based upon its review of the Agreement between SBC and TSI and its

⁶ 47 U.S.C. § 252(e)(1).

⁷ 47 U.S.C. § 252(e)(2)(A).

findings of fact, the Commission concludes that the Agreement is neither discriminatory nor inconsistent with the public interest and should be approved.

The Commission notes that prior to providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

IT IS THEREFORE ORDERED:

1. That the Post-TRO Remand Amendment to the existing Interconnection Agreement between Southwestern Bell Telephone Company, L.P., doing business as SBC Missouri, and Nexus Communications, Inc., doing business as TSI, is hereby approved.
2. That any changes or modifications to this Agreement shall be filed with the Commission pursuant to the procedure outlined in this order.
3. That this order shall become effective on May 7, 2005.
4. That this case may be closed on May 8, 2005.

BY THE COMMISSION

(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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 27th day of April, 2005.