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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 6th
day of November, 1997.

In the Matter of Adoption By TCG St. Louis of)
Interconnection Agreement Between Brooks Fiber)
and Southwestern Bell Telephone Company Pursuant) **Case No. TO-98-154**
to Section 252(i) of the Telecommunications Act)
of 1996.)
)

ORDER AND NOTICE

TCG St. Louis (TCG) filed a pleading entitled "Notice of Adoption by TCG St. Louis of Interconnection Agreement Between Brooks Fiber and Southwestern Bell Telephone Company Pursuant to Section 252(i) of the Telecommunications Act of 1996" on October 10, 1997. This notice alleges that TCG has adopted, in its entirety, the interconnection agreement between Brooks Fiber Communications of Missouri, Inc. (Brooks Fiber) and Southwestern Bell Telephone Company (SWBT), which was approved by the Commission on May 15 in Case No. TO-97-334. Together with this filing, TCG submitted an executed interconnection agreement with SWBT. TCG's notice purports to set out the differences between its agreement with SWBT and the Brooks Fiber agreement with SWBT. TCG asserts that the adopted interconnection agreement takes effect immediately under federal law and that no Commission approval is necessary.

SWBT filed an application to intervene on October 21, asserting that, as a party to the proposed interconnection agreement, it has an interest in the case that is different from other members of the public. SWBT also stated that it has an interest in the procedures to be used by

the Commission in reviewing interconnection agreements arrived at by adoption of previously approved interconnection agreements. SWBT suggested that, contrary to TCG's assertion, interconnection agreements arrived at by adoption should not take effect immediately. SWBT noted that Missouri law requires telecommunications companies to offer services pursuant to approved tariffs, and that TCG has not yet received such tariff approval.

On October 30, the Staff of the Commission (Staff) filed its recommendation to approve the interconnection agreement submitted by TCG. Staff acknowledged that SWBT has applied for intervention, but urged the Commission to approve the agreement "without further delay." Staff recommended that the Commission use a procedure in cases involving adoption of an existing interconnection agreement wherein the adopted agreement is filed with the Commission so that the Staff can review the agreement and the Commission can approve it. In this particular case, Staff stated that the differences between the agreement submitted by TCG and the agreement between TCG and Brooks Fiber are limited to those identified in TCG's notice. Staff recommended approval of the agreement, but suggested that TCG should be required to file a copy of its adopted agreement with the Staff with the pages numbered seriatim in the lower right-hand corner, and that TCG and SWBT should be required to submit any modifications or amendments to the Commission for approval.

The Commission has reviewed Section 252(i) of the federal Telecommunications Act of 1996 (the Act), 47 U.S.C. § 252(i), and has determined that the federal Act does not contemplate that adopted interconnection agreements will take effect immediately. The Act requires parties who have negotiated interconnection agreements to obtain State Commission approval, and allows State Commissions 90 days following

submission of an agreement to review it. 47 U.S.C. § 252(e)(1) and (4). Section 252 (i) mandates that a "local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." 47 U.S.C. § 252(i). The Act explicitly preserves State Commission authority to enforce state law in its review of agreements, including a State Commission's authority to ensure compliance with intrastate service quality standards or requirements. See 47 U.S.C. § 252(e)(3).

The Commission's authority over interconnection agreements arrived at through adoption is the same as for interconnection agreements arrived at through negotiation. Nothing in the federal Act suggests that state Commission approval is unnecessary or that a shorter time period should apply to voluntarily adopted interconnection agreements than to voluntarily negotiated agreements.

Moreover, it is in the public interest for the Commission's staff to have an opportunity to review a proposed adopted interconnection agreement to ensure that it does not contain terms that differ in substance from the agreement(s) allegedly being adopted. Interested parties should be permitted to participate or intervene and comment on a proposed adopted interconnection agreement so that any aspects of the proposal that are discriminatory or against the public interest may be brought to the Commission's attention.

TCG implicitly acknowledged that a new interconnection agreement reflecting the appropriate parties, contact persons and service areas needed to be filed to effectuate its intent when it submitted the agreement

executed with SWBT together with its notice. As with any other filing, the Commission must have an opportunity to review the filing for compliance with its statutes and rules. See §§ 386.200 and 386.320.1, RSMo Supp. 1996.

The Commission finds that proper persons should be allowed 10 days from the issuance of this order to file a motion for hearing or an application to participate without intervention. Participation may be permitted for the limited purpose of filing comments addressing whether this agreement meets the federal standards for approval of interconnection agreements. The requirement of a hearing is met when an opportunity to be heard 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). Therefore, if no party requests a hearing, the Commission may grant the relief requested based on the verified application.

The standards for approval are as follows:

§252(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) **GROUND FOR REJECTION.**- The State Commission may only reject -
 - (A) an agreement (or any portion thereof) adopted by negotiation under subsection (a) 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;

Section 252(e) (4) provides that if the Commission has not approved an agreement within ninety days after submission, the agreement shall be deemed approved. Therefore, the Commission will proceed with this case expeditiously and, if there are no requests for a hearing, relief may be granted based on the notice filed in this case. The Commission finds that notice of this application should be sent to all interexchange and local exchange telecommunications companies.

The Commission has reviewed the application for intervention filed by SWBT and finds that it is in substantial compliance with Commission rules regarding intervention and that SWBT has an interest in this matter which is different from that of the general public. The Commission concludes that SWBT's request for intervention should be granted.

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company's application to intervene is granted.
2. That the Records Department of the Commission shall send notice as described in this order.
3. That any party wishing to request a hearing or to participate without intervention in this matter shall file an application no later than November 17, 1997, with the Executive Secretary of the Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, and send copies to:

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4. That comments addressing whether this agreement meets the standards for approval of interconnection agreements must be filed no later than November 26, 1997.

5. That this order shall become effective on November 6, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

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

Randles, Regulatory Law Judge