

2-
K6
PB

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 2nd
day of December, 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 APPROVING INTERCONNECTION AND RESALE AGREEMENT

TCG St. Louis (TCG) filed a pleading entitled "Notice of Adoption by TCG St. Louis of Interconnection Agreement Between Brooks Fiber [sic] and Southwestern Bell Telephone Company Pursuant to Section 252(i) of the Telecommunications Act of 1996" (Notice of Adoption) on October 10, 1997. TCG attached to its Notice of Adoption an interconnection and resale agreement (Agreement) that TCG and Southwestern Bell Telephone Company (SWBT) had executed¹. TCG alleged in its Notice of Adoption that the

¹ On November 26, TCG filed a pleading entitled "Petition Clarifying Ownership of TCG St. Louis" in order to clarify inconsistencies created by the filing of the amended application on April 22 in Case No. TA-97-446. TCG created confusion about its status as a corporation or partnership and about the identity of the entity applying for relief in that case by stating that it was both a New York general partnership composed of TCG Partners and Teleport Communications Group, Inc. (Paragraph 6) and a Delaware corporation authorized to do business in the State of Missouri as a foreign corporation under the name TCG St. Louis, Inc. (Paragraph 3 and Attachment A). Case No. TA-97-446 involves an application for a certificate of service authority to provide telecommunications services in the territory of GTE Midwest Incorporated (GTE). The Commission notes that the Petition Clarifying Ownership of TCG St. Louis filed on November 26 in that case still does not clarify which entity is the applicant.

However, Case Nos. TO-98-154 and TA-96-345 can be disposed of without resolving the ambiguity in Case No. TA-97-446, because Case Nos. TO-98-154 and TA-96-345 concern TCG's ability to conduct business in the territories served by Southwestern Bell Telephone Company (SWBT) rather than GTE. Case
(continued...)

attached Agreement was identical in most respects to the agreement between SWBT and Brooks Fiber Communications of Missouri, Inc. (Brooks Fiber) that was executed on February 10 and approved by the Commission on May 15 in Case No. TO-97-334. TCG listed the differences between its Agreement with SWBT and Brooks Fiber's agreement with SWBT (Brooks Fiber/SWBT agreement) within the body of the Notice of Adoption. On October 28, TCG filed two pages that had been inadvertently omitted from the Agreement attached to its Notice of Adoption, indicating that these two pages were a part of the Brooks Fiber/SWBT agreement as well.

TCG is certificated to provide interexchange, basic local exchange and local exchange telecommunications services in Missouri. The Agreement provides a means for TCG to resell basic local exchange service to residential and business end users and to provide such service over its own facilities in St. Louis LATA No. 520.

The Commission, by its Order and Notice issued November 6, established a deadline of November 17 for proper parties to request permission to participate without intervention or to request a hearing, and granted intervention to SWBT. No parties other than SWBT requested to intervene or participate, and no parties requested a hearing. The Commission's Order and Notice also directed parties wishing to file comments to do so by November 26. No comments were filed. The Commission Staff (Staff) filed a Memorandum on October 30, recommending that the

¹(...continued)

Nos. TA-96-345 and TO-98-154 are interrelated because TCG needs a certificate of service authority, an approved interconnection or resale agreement, and an approved tariff before it can offer services in SWBT's territory. The Petition Clarifying Ownership of TCG St. Louis filed in this case does clarify the relationship of the applicant in this case to its owners and the status of TCG St. Louis as a partnership, and the pleadings in Case Nos. TA-96-345 and TO-98-154 consistently refer to "TCG St. Louis" as the entity applying for relief.

Agreement be approved. 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. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

The Commission, under the provisions of Section 252(e) and (i) of the Federal Telecommunications Act of 1996, has authority to approve an interconnection or resale agreement between an incumbent local exchange company (ILEC) and a new provider of basic local exchange service, regardless of whether the agreement is arrived at through adoption of a previously negotiated agreement or through new negotiations. The Commission may reject an interconnection agreement only if the agreement is discriminatory or is inconsistent with the public interest, convenience and necessity:

§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) GROUNDS 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;

Staff stated in its Memorandum that the terms of this Agreement are the same as the terms of the Brooks Fiber/SWBT agreement, except for the changes mentioned by TCG in its Notice of Adoption. Staff also stated that these changes are minor and are necessary to make the Agreement meaningful and applicable to TCG. Staff noted that the Agreement contains a resale appendix similar to the modified resale appendix between Brooks Fiber and SWBT that was submitted on September 15 in Case No. TO-97-334. The Agreement between SWBT and TCG is to become effective upon Commission approval and will expire on December 31, 1998.

Findings of Fact

The Missouri Public Service Commission, having considered the joint application of the parties, including the agreement and its appendices, and the Staff's memorandum, 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 interconnection and resale Agreement 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.

The Commission finds that the Agreement is substantially similar to the Brooks Fiber/SWBT agreement and should be approved. The Commission further finds that approval of the Agreement 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

This Commission's first duty is to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act. 47 U.S.C. § 252. In order for the Commission's role of review and approval to be effective, the Commission must also review and approve modifications to these agreements. The Commission has a further duty to make a copy of every resale and interconnection agreement available for public inspection. 47 U.S.C. § 252(h). 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. 4 CSR 240-30.010.

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, whether the modification arises through negotiation, arbitration, or by means of alternative dispute resolution procedures.

The parties shall provide the Telecommunications Staff with a copy of the resale or interconnection agreement with the pages numbered consecutively in the lower right-hand corner. Modifications to an agreement must be submitted to the Staff for review. When approved 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 the original agreement and all the modifications made will be maintained by the Telecommunications Staff in the Commission's tariff room.

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 modification will be approved once Staff has verified that the provision is an approved provision, and prepared a recommendation advising approval. 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, 47 U.S.C. 252(e)(1), is required to review negotiated interconnection and resale 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 and resale Agreement between SWBT and TCG and

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

IT IS THEREFORE ORDERED:

1. That the interconnection and resale agreement between Southwestern Bell Telephone Company and TCG St. Louis filed on October 10, 1997, is approved.

2. That TCG St. Louis 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.

3. That any changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedures 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 fourteen items listed in Section 271(c)(92)(B).

5. That this order shall become effective on December 12, 1997.

6. That this case shall be closed on December 16, 1997.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Randles, Regulatory Law Judge