

B✓
Rb
PB
D-P

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 August, 1997.

In the Matter of the Application of Local)
Fone Service, Inc., for Approval of a)
Resale Agreement Under the Tele-)
communications Act of 1996.)

CASE NO. TO-97-519

ORDER APPROVING RESALE AGREEMENT

Local Fone Service, Inc. (Local Fone) filed an Application with the Missouri Public Service Commission (Commission) on June 3, 1997, for approval of a resale agreement between Southwestern Bell Telephone Company (SWBT) and Local Fone. 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. On July 8, in Case No. TA-97-411, the Commission conditionally granted to Local Fone a certificate to provide basic local and local exchange telecommunications services in the service territories of SWBT, GTE Midwest Incorporated, and United Telephone Company of Missouri d/b/a Sprint. Local Fone filed a tariff in the same case on July 18. The tariff bears an effective date of August 18, which was subsequently extended to October 2. The tariff has not yet been approved.

The Commission issued an order and notice in this case on June 4, which established a deadline for applications to participate without intervention. SWBT filed a timely application to intervene. Since SWBT is a party to the resale agreement, the Commission granted intervention rather than participation without intervention. No other applications for intervention or for participation without intervention

were filed with the Commission, nor were comments or requests for hearing filed. The Commission Staff (Staff) filed a memorandum containing its recommendations on August 21. 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 upon the verified application.

Discussion

The Commission, under the provisions of Section 252(e) of the Act, has authority to approve a resale agreement negotiated between an incumbent local exchange company (ILEC) and a new provider of basic local exchange service. The Commission may reject a resale agreement only if the agreement is discriminatory to a nonparty or is inconsistent with the public interest, convenience and necessity.

The resale agreement between SWBT and Local Fone is to become effective 10 days after Commission approval. The term of the contract is 90 days; thereafter, the agreement remains in effect until one of the parties gives a 60-day notice of termination. Each party agrees to treat the other no less favorably than it treats other similarly situated local service providers (LSPs) with whom it has a Commission-approved resale agreement. The agreement contemplates that Local Fone will provide service to its customers as a reseller of SWBT's services, and therefore the agreement contains no provisions regarding interconnection of the parties' facilities.

The recurring and nonrecurring resale discounts for residential

and business customers are found in Exhibit A and B to the resale agreement. SWBT will charge Local Fone a per order conversion charge of \$25.00 for conversion of an end user currently receiving noncomplex service from SWBT's network. Conversion orders processed and completed electronically will be charged \$5.00 per order on an interim basis. Complex conversion orders will be charged \$125.00.

SWBT agrees to make available to Local Fone's customers access to 911 and E911 (enhanced 911) service, with Local Fone responsible for collecting and remitting all applicable 911 surcharges on a per line basis to the appropriate public safety answering point, the 911 agency which handles the provisioning of that service.

In addition, SWBT has agreed to make available intraLATA toll dialing parity in accordance with Section 251(b)(3) of the Act, as well as White Pages directory listing and distribution services, directory assistance, and operator services. The agreement provides for the resale of mandatory extended area service (EAS) and optional metropolitan calling area (MCA). Local Fone will have the ability to report trouble to SWBT's trouble-reporting centers 24 hours a day, 7 days a week. The agreement also provides for negotiation and binding arbitration of disputes that arise between the signatories.

Staff states that it has reviewed the proposed resale agreement and believes that the agreement between SWBT and Local Fone 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 resale agreement and does not appear to be against the public interest. Staff recommends that the Commission approve the resale agreement and direct SWBT and Local Fone 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 Local Fone's application, the resale agreement, and Staff's recommendation. The Commission finds that the resale agreement filed on June 3 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 further finds that mandatory MCA service is an essential part of basic local telecommunications service. Because the agreement does not specifically mention the provision of mandatory MCA, the Commission will order that resale of mandatory MCA be permitted as a condition of the Commission's approval of the agreement. Further, the Commission 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 procedures set out below.

Modification Procedure

First, all agreements, with any changes or modifications, should be accessible to the public at the Commission's offices. Second, the Act mandates that the Commission approve any changes or modifications to the resale agreement. To fulfill these objectives, the companies must have a complete and current resale agreement in the Commission's offices at all times, and all changes and modifications must be timely filed with the Commission for approval. This includes any changes or modifications which are arrived at through the procedures provided for in the agreement.

To enable the Commission to maintain a complete record of any changes and modifications, the Commission will request SWBT and Local Fone to provide Staff with a copy of the resale agreement with the pages numbered consecutively in the lower right-hand corner. The parties must file for approval any modifications or changes to the agreement. The pages containing these changes or modifications will be substituted in the agreement, which should contain in the lower right corner the number of the page being replaced. Commission Staff will then date stamp the pages when they are inserted into the agreement. The official record of all changes or modifications will be in the Commission's case file.

The Commission does not intend that a full proceeding will occur every time a change or modification is agreed to by the parties. Where the change or modification has been previously approved by the Commission in another agreement, Staff need only verify that the changes are contained in another agreement and file a memorandum to that effect. Such changes will then be approved. Where the changes or modifications are not contained in another agreement, Staff will file a memorandum concerning the change or modification and present its recommendation. The Commission, if necessary, will permit responses and then will rule on the pleadings unless it determines a hearing is 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 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 agreement between SWBT and Local Fone, and its findings of fact, the Commission concludes that the resale agreement filed on June 3 is neither discriminatory nor inconsistent with the public interest, and shall be approved.

IT IS THEREFORE ORDERED:

1. That the resale agreement between Southwestern Bell Telephone Company and Local Fone Service, Inc. filed on June 3, 1997, is approved.

2. That to the extent not explicitly provided for in the resale agreement, resale of mandatory metropolitan calling area (MCA) service is mandated as a condition of the Commission's approval in ordered paragraph 1.

3. That Southwestern Bell Telephone Company and Local Fone Service, Inc. shall file a copy of the resale agreement with the Staff of the Missouri Public Service Commission, with the pages numbered seriatim in the lower right-hand corner.

4. That any further changes or modifications to this agreement shall be filed with the Commission for approval pursuant to the procedure outlined in this order.

5. That this order shall become effective on September 1,
1997.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Cecil I. Wright", with a stylized flourish at the end.

Cecil I. Wright
Executive Secretary

(S E A L)

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

ALJ: Bensavage