

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application for Approval of)
Adoption of and Amendments to the Interconnection)
Agreement between DIECA Communications, Inc.,)
d/b/a Covad Communications Company and)
Southwestern Bell Telephone, L.P. d/b/a AT&T)
Missouri)

Case No. TK-2008-0264

ORDER RECOGNIZING ADOPTION
OF AND APPROVING AMENDMENTS TO
INTERCONNECTION AGREEMENT

Issue Date: March 26, 2008

Effective Date: April 5, 2008

Syllabus: This order recognizes the adoption by DIECA Communications, Inc., d/b/a Covad Communications Company (Covad) of an interconnection agreement previously approved by the Commission, and the amendments to the adopted interconnection agreement between the parties.

Procedural History

On February 13, 2008, Covad filed a pleading entitled Application for Approval of Adoption of and Amendments to Interconnection Agreement. Covad notified Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri (AT&T Missouri) that it desired to adopt the same terms of the interconnection agreement between AT&T Missouri and NuVox Communications of Missouri, Inc., approved by the Commission in Case No. TK-2006-0072 on October 25, 2005. In addition, Covad's application requested the approval of certain

amendments to the interconnection agreement. The amendments were filed pursuant to Section 252(e)(1) of the Telecommunications Act of 1996.¹ The amendments concern the parties' agreement as to the impact of certain federal court proceedings on the adopted Agreement, as well as changes to provisions concerning loops, DSL, number portability, and coordinated hot cuts. Both Covad and AT&T Missouri hold certificates of service authority to provide basic local exchange telecommunications services in Missouri.

Although AT&T Missouri is a party to the Agreement, it did not join in the application. On February 19, 2008, the Commission issued an order directing notice of the adoption to all interexchange and local exchange telecommunication companies and making AT&T Missouri a party. The notice stated that any party wishing to request a hearing shall do so no later than March 10, 2008. No requests for hearing were filed.

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.

On March 14, 2008, the Staff of the Missouri Public Service Commission recommended that the Commission take notice of the adoption. The Staff memorandum also recommended that the amendments to 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 further amendments to the Commission for approval.

¹ See 47 U.S.C. § 251, *et seq.*

Findings of Fact

After reviewing the file, the Commission finds that Covad notified AT&T Missouri of its desire to adopt the same terms and conditions of the interconnection agreement between AT&T Missouri and NuVox Communications of Missouri, Inc., approved by the Commission in Case No. TK-2006-0072 on October 25, 2005. No objections have been received. Therefore, the Commission will take notice of the adoption and concludes the amended Agreement meets the requirements of the act in that it does not discriminate against a nonparty carrier and implementation of the Agreement as amended is not inconsistent with the public interest, convenience and necessity. The Commission finds that approval of the Agreement, as amended, shall be conditioned upon the parties submitting any further amendments to the Commission for approval pursuant to the procedure set out below.

Amendment Procedure

The Staff recommended that the parties be directed to file any amendments to the interconnection agreement with the Commission for approval. The Commission has a duty to review all resale and interconnection agreements, whether arrived at through negotiation or arbitration, as mandated by the Act.² 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.³ This

² 47 U.S.C. § 252.

³ 47 U.S.C. § 252(h).

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

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 adoption of the terms and conditions of a previously approved interconnection agreement is authorized by Section 252(i) of the federal Telecommunications Act of 1996.⁵ Section 252(i) states:

(i) Availability to Other Telecommunications Carriers. –

A local exchange carrier shall make available any interconnection, services, 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.

Federal rule 51.809 (Rule 809) was promulgated to implement Section 252(i) of the Act. Rule 809 provides that the incumbent local exchange company must provide the interconnection, network elements, or services to a requesting telecommunications carrier that notifies the ILEC that it wishes to adopt the interconnection, network elements, or services from a Commission-approved interconnection agreement unless stated conditions are proven to the Commission. An ILEC can deny an adoption if it proves that (1) the cost of providing a particular interconnection, service, or element to the requesting telecom-

⁴ 4 CSR 240-3.545.

⁵ See 47 U.S.C. § 251, *et seq.*

munications carriers is greater than the cost of providing it to the telecommunications carrier that originally negotiated the agreement, or (2) the provision of the particular interconnection, service, or element to the requesting carrier is not technically feasible.⁶

The Commission, under the provisions of Section 252(e)(1) of the federal Telecommunications Act of 1996,⁷ 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.⁸ Based upon its review of the amendments to the adopted Agreement between Covad and AT&T Missouri and its findings of fact, the Commission concludes that the adopted Agreement as amended is neither discriminatory nor inconsistent with the public interest and shall 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 ORDERED THAT:

1. DIECA Communications, Inc., d/b/a Covad Communications Company's adoption of the terms and conditions contained in the interconnection agreement between NuVox Communications of Missouri, Inc., and Southwestern Bell Telephone, L.P. d/b/a

⁶ 47 C.F.R. § 51.809(b).

⁷ 47 U.S.C. § 252(e)(1).

⁸ 47 U.S.C. § 252(e)(2)(A).

AT&T Missouri, pursuant to Section 252(i) of the Telecommunications Act of 1996, is hereby recognized.

2. The amendments to the Interconnection Agreement between DIECA Communications, Inc., d/b/a Covad Communications Company and Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri, filed on February 13, 2008, are approved.

3. Any changes or amendments to this agreement shall be submitted in compliance with 4 CSR 240-3.513(6).

4. This order shall become effective on April 5, 2008.

5. This case may be closed on April 6, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Colleen M. Dale, Chief Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 26th day of March, 2008.