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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 25th day of November, 1997.

In the Matter of the Joint Application of Southwestern Bell Telephone Company and CMT Partners for Approval of Interconnection Agreement under the Telecommunications Act of 1996. )  
Case No. TO-98-96)  
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**ORDER APPROVING INTERCONNECTION AGREEMENT**

Southwestern Bell Telephone Company (SWBT) and CMT Partners (CMT) filed a joint application with the Missouri Public Service Commission (Commission) on September 2, 1997, for approval of an interconnection agreement (the Agreement) between SWBT and CMT pursuant to Section 252(e)(1) of the Telecommunications Act of 1996 (the Act). See 47 U.S.C. § 251, et seq. Appended to the joint application was a copy of the Agreement, which identified an additional party to the interconnection agreement, St. Joseph Celltelco.

The Commission issued an Order and Notice on September 9 which established a deadline for applications to participate without intervention, and established a deadline for comments. In the Order and Notice, the Commission also asked CMT to provide copies of its fictitious name registration with the state and to more fully identify St. Joseph Celltelco and its relationship to the interconnection agreement between CMT and SWBT. CMT filed the documentation concerning its fictitious name on September 22. On September 24, CMT responded by letter to the Commission's request for information concerning St. Joseph Celltelco. CMT states that St. Joseph

Celltelco is a general partnership consisting of nine partners organized under the laws of the District of Columbia. CMT owns an 87 percent interest in St. Joseph Celltelco through its wholly owned subsidiary, McCaw Communications of St. Joseph, Inc. CMT states that it is presently in the process of completing and filing a registration of fictitious name for St. Joseph Celltelco with the Missouri Secretary of State. According to CMT's letter, St. Joseph Celltelco holds a license to provide commercial mobile radio service (CMRS), as defined by the Act, within both Andrew and Buchanan Counties in Missouri. CMT states that it operates and manages this license pursuant to an agreement with St. Joseph Celltelco. Under this management agreement, CMT is authorized to negotiate and enter into agreements (such as the present interconnection agreement) for St. Joseph Celltelco.

On October 14, the Small Telephone Company Group (STCG),<sup>1</sup> Fidelity Telephone Company (Fidelity) and Bourbeuse Telephone Company (Bourbeuse) (collectively referred to as the Participants) filed late applications for participation. The Commission granted participation to STCG, Fidelity and Bourbeuse on October 30, and these Participants jointly filed comments on November 5. SWBT filed a response to the comments on November 14. The Staff of the Commission (Staff) filed a Memorandum recommending approval of the Agreement on November 10.

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<sup>1</sup> The following companies comprise the Small Telephone Company Group: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

Although the Participants filed comments, they did not request a hearing. 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 requested a hearing in this case, the Commission may grant the relief requested based on the verified application. However, the Commission will consider the comments filed by the Participants, along with SWBT's reply and Staff's recommendation.

### **Discussion**

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

The initial term of the Agreement between SWBT and CMT is a one-year period from the effective date of the Agreement; thereafter, the Agreement shall continue in effect until one of the parties gives a 60-day written notice of termination. The Agreement states that the parties shall effectuate all terms of the Agreement upon final approval of the Agreement by the relevant state commission.

The Agreement states that CMT may interconnect with SWBT's network at any technically feasible point. The points of interconnection agreed to by the parties are listed in Appendix DCO. The Agreement also describes the network architectures which the parties may use to interconnect their networks. Either party may request physical collocation or virtual

collocation. CMT may collocate at a SWBT facility with a third party with whom SWBT has already contracted for collocation, and vice versa. Either party may also request SONET-based interconnection. In addition, the parties may share SWBT interconnection facilities. CMT shall provide SWBT with an annual forecast of intended mobile to land usage for each point of interconnection. As a result of the interLATA restrictions on SWBT, CMT agrees to interconnect with at least one SWBT facility in each LATA in which it desires to pass traffic to SWBT for transport and termination.

Further, the parties have agreed upon a factor for traffic which crosses a major trading area (MTA) boundary. This factor represents the percent of total minutes which will be billed access charges. The parties agree that the initial factor will be set at .03. However, CMT is responsible for conducting a reasonable traffic study after six months, and every twelve months thereafter, to ensure that the interMTA factor is accurate.

CMT may order equal access trunks, such that traffic exchanged between CMT's and SWBT's networks will have switched access to and from interexchange carriers (IXCs), thus enabling CMT's end users to access or be accessible to IXCs. CMT shall provide appropriate call data to allow SWBT to bill IXCs for originating access. CMT shall also pay SWBT switched access charges for any traffic which crosses an MTA boundary.

With respect to third-party providers, CMT and SWBT agree to compensate each other for traffic that transits their respective systems to any third-party provider. The parties also agree to enter into their own agreements with third-party providers within six months from the effective date of the Agreement. In the event that CMT sends traffic through SWBT's network to a third-party provider with whom CMT does not

have an interconnection agreement, CMT will indemnify SWBT for any termination charges rendered by a third-party provider for such traffic.

In addition, the Agreement provides for the transmission and routing of other types of traffic, such as 800/888 traffic, E911/911 traffic, operator services, and directory assistance. CMT may request area-wide calling plan (AWCP) arrangements. SWBT will also provide Signaling System 7 (SS7) at CMT's request. In addition, the Agreement provides for access to numbering resources, access to rights-of-way, and network maintenance. SWBT will make local and intraLATA dialing parity available to CMT in accordance with the Act.

Finally, the Agreement provides that both parties shall provide each other with reciprocal compensation for the transport and termination of local traffic at the rates specified in the Appendix PRICING. Because the parties recognize that the rates provided in the Agreement may be affected by subsequent rulings of state or federal legislative bodies, courts or regulatory agencies, the Agreement provides that in the event of a final, nonappealable ruling, the parties shall "true-up" the reciprocal compensation within 60 days of the effective date of the ruling.

STCG, Fidelity, and Bourbeuse filed their Comments Regarding Approval of the Interconnection Agreement on November 5. The Participants state that since the language in the present interconnection agreement is similar to the language in dispute in the tariff filed in case No. TT-97-524 (which has been suspended), they have concerns regarding the approval of the interconnection agreement before the resolution of that case. They also contend that the portion of the Agreement regarding compensation of third-party providers is not consistent with the public interest, convenience and necessity and may discriminate against companies

that are not a party to the Agreement by affecting the companies' ability to terminate calls originating from wireless providers, thus interrupting service to their customers. For a more complete explanation of the concerns raised, the Participants refer the Commission to the rebuttal testimony of Mr. Robert Schoonmaker filed in Case No. TT-97-524. In conclusion, the Participants ask that the Commission carefully consider its approval of the present interconnection agreement.

On November 14, SWBT filed a reply to the comments submitted by STCG, Fidelity and Bourbeuse. SWBT claims the Agreement makes clear that SWBT is only providing a transiting function with respect to calls destined for a third party provider's network, and also makes clear "in the strongest possible terms" that CMT is responsible for making arrangements directly with third-party carriers that will be terminating its calls. SWBT also contends that the Participants have not stated how the Agreement is discriminatory or contrary to the public interest. Finally, SWBT notes that in the event that CMT does not have an agreement with a particular third-party carrier, SWBT would continue to pass this traffic under the indemnification arrangement contained in the Agreement. SWBT asks that the Commission approve the Agreement in its entirety.

Staff filed its recommendation on November 10. With respect to the issues raised by the Participants, Staff makes reference to Case No. TT-97-524 and states that Staff's position is contained in the testimony filed in that case, as well as in several previous Staff recommendations.<sup>2</sup> Staff states that it has reviewed the proposed interconnection agreement and believes that the Agreement between SWBT and CMT meets the limited requirements of the Telecommunications Act of 1996.

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<sup>2</sup> See also Case No. TO-97-523 and Case No. TO-97-533.

Specifically, Staff states that the Agreement does not appear to discriminate against telecommunications carriers not a party to the interconnection agreement and does not appear to be against the public interest. Staff recommends that the Commission approve the interconnection agreement and direct SWBT and CMT to submit any modifications or amendments to the Commission for approval.

The Commission has considered the concerns raised by the STCG, Fidelity and Bourbeuse, but finds that those concerns can be better addressed in Case No. TT-97-524. A resolution in that docket may provide guidance for dealing with the issue on a statewide basis.

Under the provisions of Section 252(e)(1) of the federal Telecommunications Act of 1996, 47 U.S.C. § 252 (e)(1), the Commission 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 under Section 252(e)(2)(A). Based upon its review of the interconnection agreement between SWBT and CMT, the comments filed by STCG, Fidelity, Bourbeuse, SWBT's reply comments, and the Staff's recommendation, the Commission concludes that the interconnection agreement filed on September 2 is neither discriminatory to nonparties nor inconsistent with the public interest and should be approved.

### **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.

**THEREFORE, IT IS ORDERED:**

1. That the interconnection agreement filed on September 2, 1997, between Southwestern Bell Telephone Company and CMT Partners is approved.
2. That Southwestern Bell Telephone Company and CMT Partners shall file a copy of the interconnection agreement with the Staff of the Missouri Public Service Commission with the pages numbered seriatim in the lower right-hand corner.
3. 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.
4. That this order shall become effective on December 1, 1997.
5. That this case shall be closed on December 5, 1997.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

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

Hennessey, Regulatory Law Judge