

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Bell Telephone Company	:	
(Ameritech Illinois) and Choctaw	:	
Communications, L.C. d/b/a	:	
Smoke Signal Communications	:	
	:	
Joint Petition for Approval of	:	02-0782
Negotiated Interconnection	:	
Agreement dated September 17,	:	
2002, pursuant to 47 U.S.C. §252.	:	(Cons.)
	:	
Joint Petition Regarding First	:	03-0088
Amendment to Negotiated	:	
Interconnection Agreement pursuant	:	
to 47 U.S.C. §252.	:	

ORDER

By the Commission:

I. PROCEDURAL HISTORY

On November 25, 2002, Illinois Bell Telephone Company (“Ameritech”) and Choctaw Communications, LC d/b/a Smoke Signal Communications (“Choctaw”) (Ameritech and Choctaw are referred to collectively as “Petitioners”) filed with the Illinois Commerce Commission (“Commission”) a verified joint petition seeking the Commission’s approval of a negotiated interconnection agreement (“Agreement”) dated September 17, 2002, pursuant to Sections 252(a)(1) and 252(e) of the federal Telecommunications Act of 1996 (“TA96”), 47 U.S.C. 151 *et seq.* A copy of the Agreement was filed with the joint petition. Also accompanying the joint petition is a statement in support of the joint petition from Eric Larsen, Director-Negotiations for Southwestern Bell Telephone, LP, d/b/a Southwestern Bell Telephone Company/ Illinois Bell Telephone Company Negotiations and Interconnection. Petitioners’ November 25th filing was docketed as Docket No. 02-0782.

On February 7, 2003, Petitioners filed a verified joint petition seeking the Commission’s approval of the first amendment to the aforementioned Agreement. A copy of the amendment as well as a statement in support of the amendment from Kimberly Nations, Director-Witness/Negotiations for Southwestern Bell Telephone Company/Illinois Bell Telephone Company Negotiations and Interconnection, accompanied the joint petition. The amendment specifically modifies the underlying Agreement by replacing the Appendix

Performance Measurements in the underlying Agreement. Petitioners' February 7th filing was docketed as Docket No. 03-0088.

Pursuant to due notice, this matter came on for hearing before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on December 13 and December 18, 2002 and January 13, February 4, and February 11, 2003. Appearances were entered by counsel on behalf of Ameritech, Choctaw, and Commission Staff ("Staff"). Docket Nos. 02-0782 and 03-0088 were consolidated at the request of Ameritech. At the conclusion of the February 11th hearing the record was marked "Heard and Taken." No petitions to intervene were received.

II. SECTION 252 OF TA96

Section 252(a)(1) of TA96 allows parties to enter into negotiated agreements regarding requests for interconnection, services, or network elements pursuant to Section 251. Section 252(a) of TA96 provides, in part, that "[a]ny interconnection agreement adopted by negotiation . . . shall be submitted for approval to the State commission." Section 252(e)(1) provides that a state commission to which such an agreement is submitted "shall approve or reject the agreement, with written findings as to any deficiencies." Section 252(e)(2) provides that the state commission may only reject the negotiated agreement if it finds that "the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement" or that "the implementation of such agreement (or portion thereof) is not consistent with the public interest, convenience, and necessity." Section 252(e)(3) adds, however, that nothing in paragraph (2) "shall prohibit a State commission from establishing or enforcing other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements."

Section 252(e)(4) provides that the agreement shall be deemed approved if the state commission fails to act within 90 days after submission by the parties. This provision further states that "[n]o State court shall have jurisdiction to review the action of a State commission in approving or rejecting an agreement under this section." Section 252(e)(5) provides for preemption by the Federal Communications Commission ("FCC") if a state commission fails to carry out its responsibility and Section 252(e)(6) provides that any party aggrieved by a state commission's determination on a negotiated agreement may bring an action in an appropriate federal district court.

Section 252(h) requires a state commission to make a copy of each agreement approved under subsection (e) "available for public inspection and copying within 10 days after the agreement or statement is approved." Section 252(i) requires a local exchange carrier to "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."

III. THE AGREEMENT AND AMENDMENT

The Agreement establishes certain financial and operational terms for: physical interconnection between the Petitioners' networks based on mutual unbundled access to Ameritech's network elements, including Ameritech's operations support systems functions; collocation; resale; and a variety of other business relationships. The Agreement expires October 23, 2003. Absent the receipt by one party of written notice from the other party at least within 180 days prior to the expiration of the initial term to the effect that such party does not intend to extend the initial term, the Agreement shall remain in full force and effect on and after the expiration of the initial term until terminated by either party.

As indicated above, the amendment to the Agreement specifically modifies the underlying Agreement by replacing the Appendix Performance Measurements in the underlying Agreement. The new Appendix Performance Measurements incorporates by reference the performance measurements, performance remedy plan, and associated business rules developed pursuant to the merger conditions, including the modifications to the performance remedy plan ordered by this Commission in its July 10, 2002 Order in Docket No. 01-0120, otherwise known as the Illinois Remedy Plan. Except as modified in the amendment, all other terms and conditions of the underlying Agreement remain unchanged and in full force and effect, including the existing expiration date of the Agreement.

IV. STAFF POSITION

Initially, Staff raised three issues with respect to the Agreement. The first concerned the Appendix Performance Measurements in the filed Agreement. Staff objected to the contents of the Appendix Performance Measurements on the grounds that it was less stringent than the remedy plan adopted by the Commission in Docket No. 01-0120. Choctaw, however, subsequently expressed its preference to operate under the remedy plan adopted in Docket No. 01-0120. The amendment that is the subject of Docket No. 03-0088 reflects Choctaw's preference and resolves Staff's concerns regarding this issue.

The second issue pertained to language in Section 21.1 of the Agreement stating that Ameritech did not waive any of its legal rights with respect to certain court and FCC actions. Staff noted that prior versions of the Agreement provided that neither Ameritech nor the competitive local exchange carrier waived any of its rights. In light of the change in the language, Staff was concerned that the revised language might imply that Choctaw has in fact waived certain rights where Ameritech did not. During the January 13th hearing, however, counsel for Ameritech and Choctaw stated that neither company was waiving any rights under Section 21.1. This representation alleviated Staff's concerns.

The final issue raised by Staff concerns Section 23.1 of the Agreement. This section states in part, "Each Party covenants and agrees to fully support approval of this Agreement by the Commission or the FCC under Section 252 of [TA96] without modification." Staff considers this requirement to be against the public interest because it could be read to prohibit Choctaw from making statements or taking positions contrary to Ameritech's position during the proceeding reviewing the Agreement. Because, however,

Petitioners are offering the amendment to the Agreement, Staff believes that the quoted language is not being interpreted as Staff fears it could be. Therefore, Staff has chosen not to maintain its objections to the language in this proceeding.

In all other respects, Staff counsel indicates that Staff finds the Agreement and amendment in compliance with the applicable statutes and rules.

V. COMMISSION CONCLUSION

In light of the representations made on the record, the Commission finds the Agreement and amendment thereto reasonable and acceptable. Accordingly, the Agreement and amendment should be approved. Concerning the implementation of the Agreement and amendment, the Commission will impose the same implementation requirements imposed in other interconnection agreement dockets. Therefore, within five days from the date the Agreement and amendment are approved, Ameritech shall modify its tariffs to reference the Agreement and amendment for each service. Such reference shall be included in the following section of Ameritech's tariff: Agreements with Telecommunications Carriers (ICC No. 21, Section 19.15). In addition, Ameritech must file a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement and amendment are the same as the Agreement and amendment filed in these consolidated dockets with the respective verified joint petitions. The Chief Clerk shall place the Agreement and amendment on the Commission's web site under "Interconnection Agreements." These requirements are consistent with the Commission's orders in previous interconnection agreement dockets and allow interested parties access to the Agreement and amendment.

VI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Ameritech and Choctaw are telecommunications carriers as defined in Section 13-202 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., which provide telecommunications services as defined in Section 13-203 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) the Agreement and amendment do not discriminate against a telecommunications carrier not a party to the Agreement and amendment and are not contrary to the public interest; nor are the Agreement and

amendment inequitable, inconsistent with past Commission orders, or in violation of state or federal law;

- (5) in order to assure that the implementation of the Agreement and amendment is in the public interest, Ameritech should implement the Agreement and amendment by filing a verified statement with the Chief Clerk of the Commission, within five days of approval by the Commission, that the approved Agreement and amendment are the same as the Agreement and amendment filed in these consolidated dockets with the respective verified joint petitions; the Chief Clerk should place the Agreement and amendment on the Commission's web site under "Interconnection Agreements";
- (6) within five days of the entry of this Order, Ameritech should modify its tariffs to reference the Agreement and amendment in the manner described in the prefatory portion of this Order above;
- (7) the Agreement and amendment should be approved as hereinafter set forth;
- (8) approval of the Agreement and amendment does not have any precedential affect on any future interconnection agreements or Commission orders.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the Agreement between Illinois Bell Telephone Company and Choctaw Communications, LC d/b/a Smoke Signal Communications is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that the first amendment to the Agreement between Illinois Bell Telephone Company and Choctaw Communications, LC d/b/a Smoke Signal Communications is hereby approved pursuant to Section 252(e) of the Telecommunications Act of 1996.

IT IS FURTHER ORDERED that Illinois Bell Telephone Company shall comply with Findings (5) and (6) hereinabove.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By order of the Commission this 20th day of February, 2003.

(SIGNED) KEVIN K. WRIGHT

Chairman