

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Ironhorse, LLC)
for a Certificate of Service Authority to Provide Basic)
Local, Local and Interexchange Voice Service in)
Portions of the State of Missouri and to Classify said)
Services and the Company as Competitive.)

Case No. LA-2006-0067

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL,
LOCAL EXCHANGE AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES

Issue Date: October 20, 2005

Effective Date: October 30, 2005

This order grants a certificate of service authority to provide basic local, local exchange and interexchange telecommunications services in the state of Missouri, classifies those services and the company as competitive and waives certain statutes and regulations.

Procedural History

On August 8, 2005, Ironhorse, LLC, filed with the Missouri Public Service Commission an application for a certificate of service authority to provide basic local, nonswitched local and interexchange telecommunications services in the state of Missouri, and for competitive classification. On August 9, 2005, the Commission issued its Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene, establishing August 24, as the deadline for intervention. There were no requests to intervene.

On September 29, 2005, the Staff of the Commission filed its memorandum, recommending that the Commission grant Ironhorse a certificate to provide basic local, nonswitched local and interexchange telecommunications services. Staff also recommends that the Commission classify the company and its services as competitive and grant the certificate subject to certain conditions.

Discussion

Ironhorse seeks certification to provide basic local, local exchange and interexchange services in portions of Missouri served by Southwestern Bell Telephone Company.

The Commission may grant an application for a certificate of service authority to provide basic local telecommunications services upon a showing that: (1) the applicant as met the statutory requirements,¹ and (2) the grant of authority is in the public interest.² The applicant must also comply with the Commission's procedural rules.³

Ironhorse is also requesting that it and its services be classified as competitive and that the application of certain statutes and regulatory rules be waived.⁴ The Commission may classify a telecommunications services as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.⁵ The Commission may only classify a telecommunications carrier as

¹ See Sections 392.450, 392.451 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

² Sections 392.430 and 392.440.

³ See Chapter 2, 4 CSR 240.

⁴ Ironhorse requested waivers of Commission rules that have either been moved or rescinded. The Commission will not rule on the waivers of those rules.

⁵ Section 392.361.2

competitive if all of its services are co classified.⁶ The Commission may waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁷

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 positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission had failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Requirements of the Commission's Rules:

Commission rules 4 CSR 240-2.060(1) and (6) require that an entity seeking certification to provide basic local telecommunications services provide certain information to the Commission in its application, including: a description of the business organization of the applicant, supported by a certificate of the Missouri Secretary of State; names and addresses for contact purposes; a disclosure of any pending or final judgments or decisions against it from any state or federal agency or court involving customer service or rates; a verified statement that there are no outstanding annual reports or assessment fees owed to this Commission; if applicable, a request to be classified as a competitive telecommunications company; a description of the types of services the applicant intends to provide; the exchanges in which services are to be offered; and, a proposed tariff with an effective date which is not fewer than 45 days after its issue date.

⁶ Section 392.361.3

⁷ See Sections 392.185, 392.361.3 and 392.420.

Having reviewed the application and supporting materials filed by Ironhorse, the Commission finds that Ironhorse has complied with each of these requirements except for the proposed tariff. Ironhorse requests a temporary waiver of 4 CSR 240-2.060(6)(C)⁸ until it has entered into interconnection agreements and the Commission has approved such agreements. Ironhorse agrees to file tariffs after interconnection agreement have been obtained and will not provide service prior to any such tariffs being effective

Requirements of Section 392.450

Section 392.450.1 provides that the Commission may grant a basic local certificate only upon a finding, after notice and a hearing, that the applicant has complied with the certification process established under Section 392.455. Thus, an applicant's satisfaction of the requirements of the Commission's regulations and of Section 392.455 also satisfies Section 392.450.1. As explained below, the Commission does find that Ironhorse has satisfied the requirements of the Commission's regulations and of Section 392.455, and consequently finds that Ironhorse has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.

Section 392.450.2 provides that an applicant for a basic local certificate must (1) file and maintain tariffs with the Commission in the same manner as the incumbent local exchange carriers and (2) meet the minimum service standards, including quality of service and billing standards, that the Commission requires of the competing incumbent local exchange carriers.

Ironhorse did not file a proposed tariff in support of its application. However, Ironhorse stated that it would comply with all applicable Commission rules except those

⁸ This rule has been moved to 4 CSR 240-3.510(1)(C).

expressly waived by the Commission. Thus, Ironhorse has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. Staff recommends that the certificate be granted. Having reviewed Ironhorse's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Ironhorse has met the requirements of Section 392.450.2.

Requirements of Section 392.455

Section 392.455 authorizes the Commission to establish a process to grant basic local certification to new entrants and to grant certificates to new entrants to provide basic local telecommunications service on a common carriage basis. That section further requires that a new entrant: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications services; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographical area in which it proposes to offer service and demonstrate that such area follows the exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and, (4) offer basic local telecommunications service as a separate and distinct service. Finally, Section 392.455 also requires that the Commission give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

In support of its application, Ironhorse submitted Exhibit C to its application, the names and qualifications of its key personnel. Ironhorse also submitted financial projections as reflected in a balance sheet, an income statement and a statement of cash

flows. In its Memorandum, Staff indicated that Ironhorse has sufficient technical, financial and managerial resources and recommends that the application be granted.

Having reviewed Ironhorse's application and supporting materials, as well as Staff's Recommendation and Memorandum, the Commission finds that Ironhorse has met the requirements of Section 392.455(1) in that it has shown that it possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications services.

As previously noted, Ironhorse has stated that it will comply with all applicable Commission rules except those expressly waived by the Commission. Based on this statement, the Commission finds that Ironhorse has demonstrated that the services it proposes to offer satisfy the minimum standards promulgated in Section 392.455(2).

In its Application, Ironhorse seeks certification in the exchange or services areas of the incumbent local exchange companies of Southwestern Bell Telephone Company. Staff agrees that Ironhorse has sufficiently identified the exchange in which it seeks certification and recommends that the application be approved. Having reviewed Ironhorse's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Ironhorse has met the requirements of Section 392.455(3) in that it has set forth the geographic area in which it proposes to offer service and has demonstrated that such area follows the exchange boundaries of the incumbent local exchange telecommunications companies and is no smaller than an exchange.

In a separate pleading, filed on October 7, 2005, Ironhorse states that it will offer basic local service as a separate and distinct service. Based on this statement, the

Commission finds that Ironhorse has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

In its application, Ironhorse states that its “services will create and enhance competition and expand customer service options consistent with the legislative goals set forth in . . . Chapter 392 RSMo.” Section 392.455(5) requires the Commission to give consideration to equitable access for all Missourians, regardless of where they reside or their income, to affordable telecommunications service. Ironhorse’s statement furthers this requirement.

Requirement for Competitive Classification

If the requested certification is granted, Ironhorse will compete with an incumbent local exchange carrier in each exchange in which it provides basic local telecommunications service. The Commission finds that Ironhorse will thus be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Ironhorse will offer are thus qualified for classification as competitive services.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

Jurisdiction:

The Commission is authorized to create a process by which to certify new entrants to provide local exchange telecommunications services in Missouri as common carriers, and is further authorized to grant such certificates, after notice and a hearing, where it is in the best interest of the public.⁹ The Commission is also authorized to classify services and

⁹ Sections 392.430, 392.450 and 392.455.

companies as competitive or transitionally competitive and waive certain statutory provisions and Commission rules.¹⁰ The Commission may also impose and reasonable and necessary conditions upon telecommunications service providers if such conditions are in the public interest and consistent with the provisions and purposes of this chapter.¹¹

The Public Interest

Having found that Ironhorse has met all of the requirements for certification to provide basic local telecommunications services as a common carrier, it remains to be determined whether it is in the public interest to grant the requested certificate. It has been legislated¹² that “[t]he provisions of this chapter shall be construed to . . . promote diversity in the supply of telecommunications services and products throughout the state of Missouri; [and to] . . . [a]llow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest[.]” In consideration of the foregoing, and based upon its findings that Ironhorse has met all of the requirements for the requested certification, the Commission concludes that granting the requested certification is in the public interest. The Commission also finds that competition in the interexchange telecommunications market is in the public interest and Ironhorse should be granted a certificate of service authority to provide interexchange telecommunications services.

Competitive Classification

Ironhorse seeks competitive classification and the Commission has found that Ironhorse will be subject to a sufficient degree of competition to justify a lesser degree of

¹⁰ Section 392.361.

¹¹ Section 392.470.1.

¹² Section 392.180.

regulation. The Commission has further found that all of Ironhorse's services will be entitled to classification as competitive services. Therefore, the Commission may classify Ironhorse as a competitive telecommunications company if such lesser degree of regulation is consistent with the protection of ratepayers and promotes the public interest. In consideration of these findings and of the public interest, the Commission concludes that granting competitive classification to Ironhorse is consistent with the protection of ratepayers and promotes the public interest.

Waivers

The Commission may waive certain statutes and administrative rules for competitively classified carriers "if such waiver or modification is otherwise consistent with the other provisions of section 392.361 to 392.520 and the purposes of this chapter."¹³

The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange and interexchange carriers. The Commission will waive these provisions for Ironhorse because to do so furthers the purposes of Chapter 392 to foster and encourage the development of competition in the telecommunications industry.

Staff's recommendation indicates that Ironhorse should be classified as a competitive telecommunications company. Staff agrees that Ironhorse's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on Ironhorse's ability to charge for its access services. Those limitations are as follows:

1. Ironhorse's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for

¹³ Section 392.361.5 and 392.420.

each ILEC within whose service area Ironhorse seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230.

2. The Certificate and service classification for switched access services is conditioned on the continued applicability for Section 392.200, and the requirement that any increase in switched access service rates above the maximum switched access service rate set forth herein shall be made pursuant to Sections 392.220 and 392.230, and not Section 392.500 and 392.510.
3. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

The Commission has considered the conditions proposed by Staff and concludes that they are reasonably necessary to protect the public interest and should be adopted.

Compliance

The Commission places Ironhorse on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against. These obligations include, but are not limited to, the following:

A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 per day for each day that the violation continues. 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.

B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.

C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties

for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

D) The obligation to keep the Commission informed of its current address and telephone number.

Furthermore, the company is reminded that, if it is a corporation, non-attorneys may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice law in Missouri.

In addition, the company is reminded that Section 392.410.6, RSMo Supp 2003, renders the company's certificate of service authority null and void one year from the date of this order unless it has exercised its authority under that certificate.

IT IS THEREFORE ORDERED:

1. That Ironhorse, LLC, is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of Southwestern Bell Telephone Company, subject to the conditions and recommendations contained in the Staff of the Commission's Memorandum

2. That Ironhorse, LLC, is granted a certificate to provide nonswitched local exchange telecommunications service restricted to dedicated private line services.

3. That Ironhorse, LLC, is granted a certificate to provide interexchange telecommunications services.

4. That Ironhorse, LLC, is granted competitive classification.

5. That Ironhorse, LLC's certification and competitive status are expressly conditioned on the continued applicability for Section 392.200, and the requirement that any increase in switched access service rates above the maximum switched access service

rate set forth herein shall be made pursuant to Sections 392.220 and 392.230, and not Section 392.500 and 392.510.

6. That if the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

7. That application of the following statutes and Commission regulation is waived:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - just and reasonable rates
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules¹⁴

- 4 CSR 240-3.550(5)(C) - exchange boundaries
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts

8. That the requirement of 4 CSR 240-3.510(1)(C) is temporarily waived; however, prior to delivering services under its certificate of service authority, Ironhorse,

¹⁴ The Commission notes that 4 CSR 240-3.545(2)(C) no longer exists. And, that 4 CSR 240-33.030 has been rescinded.

LLC, shall file, in a separate case, tariff sheets with an effective date which is not fewer than 45 days from the issue date and which reflects the rates, rules, regulations and the services it will offer. The tariff shall also include a listing of the statutes and Commission rules waived above.

9. That this order shall become effective on October 30, 2005.

10. That this case may be closed on October 31, 2005.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Kennard L. Jones, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 20th day of October, 2005.