

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
October 26, 2000

CASE NO: TA-2000-783

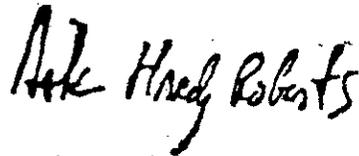
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Snappy)
Phone of Texas, Inc. d/b/a Snappy Phone, for)
a Certificate of Service Authority to Provide)
Basic Local Telecommunications Service in)
Portions of the State of Missouri and to)
Classify Said Services and the Company as)
Competitive.)

Case No. TA-2000-783

ORDER AMENDING CERTIFICATE OF AUTHORITY
TO PROVIDE BASIC LOCAL
TELECOMMUNICATIONS SERVICES

Procedural History and Discussion:

Snappy Phone of Texas, Inc., d/b/a Snappy Phone (Snappy Phone), applied to the Commission on May 23, 2000, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Chapter 392 of the Missouri Revised Statutes. Snappy Phone asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Section 392.420, RSMo.¹ Snappy Phone is a Texas corporation with principal offices located at 6901 West 70th Street, Post Office Box 29620, Shreveport, Louisiana 71149.

On May 26, 2000, Snappy Phone filed a Motion to Withdraw and Clarify. In order to avoid confusion, Snappy Phone withdrew the tariff it filed in this case on May 23, 2000, stating that it will

¹ All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 1994.

provide service in GTE's territory under the same tariff it filed in Case No. TA-2000-372, Tariff File No. 200001066, which was also filed on May 23, 2000.

The Commission issued a notice and schedule of applicants on June 6, 2000, directing interested parties wishing to intervene to do so by July 6, 2000. No parties applied for intervention.

On August 3, 2000, the Staff of the Missouri Public Service Commission (Staff) filed a Recommendation and Memorandum. Staff notes that in Case No. TA-2000-372, the Commission issued an order that granted Snappy Phone certificates of authority to provide resold basic local telecommunications services in areas of Missouri served by Southwestern Bell Telephone Company (SWBT) and to provide inter-exchange telecommunications services. Staff notes that Snappy Phone has complied with the conditions of that order and those certificates of authority are now effective. In Case No. TA-2000-372, the Commission also classified Snappy Phone as a competitive company and waived certain statutes and rules. In this case, Snappy Phone seeks a certificate of authority to provide resold basic local telecommunications services in areas of Missouri served by GTE Midwest, Inc. (GTE) and Sprint/United Telephone Company (Sprint).² The Staff notes that although Snappy Phone states it seeks competitive classification, in light of the fact that the Commission has already granted Snappy Phone

² The application also states that Snappy Phone also seeks authority to provide interexchange telecommunications services; however, the Commission has already granted Snappy Phone that authority.

that status in Case No. TA-2000-372, its request should be treated as a request to classify the additional services to be provided pursuant to this application as competitive and that Snappy Phone retain its classification as a competitive company.

In its Memorandum, Staff recommends that the Commission grant to Snappy Phone the requested modifications to its existing certificate of authority to provide basic local telecommunications services, thereby permitting it to expand these services to areas of Missouri served by GTE and Sprint. Staff notes that Section 392.430 requires that grants of authority to provide local exchange telecommunications services must be in the public interest as a precedent to obtaining a certificate of service authority. Section 392.530.1, *inter alia*, provides that the provisions of Chapter 392 are to be construed to "promote diversity in the supply of telecommunications services and products throughout the state of Missouri" and to "allow 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." Staff states that in light of these principles, the Commission should apply the public interest standard in determining whether to approve a modification of a certificate of authority to provide basic local service.

Staff indicates that pursuant to Section 392.410, RSMo Supp. 1999, the Commission has the authority to amend a telecommunications corporation certificate: "Any certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company

affected." Staff notes that "hearing" as used in this statute means "the opportunity for hearing" and, therefore, the Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

Staff states that the Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. Section 392.361.2. All the services a competitive company provides must be classified as competitive. Section 392.361.3. Snappy Phone is currently classified as a competitive company. Staff states that it has determined that the services that Snappy Phone will provide under the additional service authority it seeks are also competitive services.

Staff notes that in Case No. TA-2000-372, the Commission granted to Snappy Phone the waivers it has requested in the application filed in this case. The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392, RSMo. The Staff has no objection to these waivers being extended to include the services to be provided by Snappy Phone in areas of Missouri served by GTE and Sprint.

The Staff recommends that the Commission modify the conditions imposed on the certificate of authority to provide basic local service issued to Snappy Phone in Case No. TA-2000-372 to eliminate the

requirement that increases in switched access service rates be cost-justified, but leave all other conditions in place.

Staff states that the service area modifications to Snappy Phone's certificate of authority to provide basic local telecommunications services should become effective on the respective dates that Snappy Phone's tariffs implementing basic local service in Sprint's and GTE's exchanges become effective.

The Staff Memorandum indicates that Snappy Phone is not a new entrant into the Missouri telecommunications market. Therefore, although the application in this case seeks a new certificate of service authority, for reasons of administrative expedience and consistency, Staff recommends that the Commission issue an order that modifies Snappy Phone's existing certificate of service authority to provide basic local telecommunications service rather than granting to it a new certificate of service authority. Therefore, the Staff recommends that the Commission modify Snappy Phone's certificate of service authority to provide basic local telecommunications services granted in Case No. TA-2000-372 as follows:

1. Add authority to provide those services in Sprint Missouri, Inc.'s and GTE Midwest, Inc.'s exchanges. This additional authority should become effective on the date tariffs filed by Snappy Phone for implementing basic local service in Sprint Missouri, Inc.'s and GTE Midwest, Inc.'s exchanges become effective, respectively. The tariffs should be filed with 45-day effective dates.

2. Unless otherwise determined by the Commission, any increases in intrastate switched access service rates above the maximum switched access service rates shall be made pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230 and not Sections 392.500 and 392.510.

Staff states that it has reviewed the services that Snappy Phone proposes to provide in the exchanges of Sprint and GTE and finds that those services should be classified as competitive; therefore, Snappy Phone should retain its classification as a competitive telecommunications company. Staff notes that because it is recommending modification to the existing certificate and SWBT was a party in Case No. TA-2000-372, the Staff has served this recommendation upon SWBT.

Requirements of 4 CSR 240-2.060(4):

Snappy Phone wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by GTE and Sprint. Snappy Phone is not asking for certification in any area that is served by a small incumbent local exchange carrier (ILEC). Snappy Phone proposes to operate in all of the exchanges described in the local exchange tariffs of GTE and Sprint. Snappy Phone is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulations be waived.

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the

Secretary of State showing it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. Snappy Phone has provided all the required documentation except for the proposed tariff. See Exhibit A to Snappy Phone's Application.

Snappy Phone is already certificated to provide basic local telecommunications services in SWBT's Missouri exchanges and Snappy Phone has advised the Commission that it will provide services in the additional exchanges herein concerned under the same tariff. Whether Snappy Phone files new tariffs for the additional exchanges or amends its existing tariffs, the necessary sheets must be filed with a minimum 45-day effective date.

Basic Local Service Certification:

Section 392.455, RSMo Supp. 1999, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that the area follows 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. In addition, the Commission must give due

consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

Snappy Phone is not a new entrant; Snappy Phone is already certificated to provide basic local telecommunications services in Missouri and necessarily has already satisfied these requirements. Nonetheless, Snappy Phone filed as Exhibit C to its application certain financial documentation. Exhibit B to the application lists the names and qualifications of Snappy Phone's management team. Snappy Phone has posted a surety bond in the amount of \$100,000; see Exhibit D to Snappy Phone's Application. The Commission has reviewed and considered the material filed by Snappy Phone in support of its application and finds that Snappy Phone possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Snappy Phone 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. Snappy Phone wishes to be certificated to offer services in certain exchanges presently served by GTE and Sprint as described in their basic local tariffs. The Commission finds that Snappy Phone will offer services that meet the Commission's minimum standards and that Snappy Phone has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

Snappy Phone has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1999.

Competitive Classification:

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. Section 392.361.2. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. In the matter of the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, all the services a competitive company provides must be classified as competitive. Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Supra*, 1 Mo. P.S.C. 3rd at 487.

Snappy Phone, as noted above, is already certificated as a competitive provider of basic local telecommunications services. Therefore, the proper question here is whether the additional services

that Snappy Phone seeks to offer qualify as competitive services. These services differ from those already offered by Snappy Phone, and classified by this Commission as competitive services, only with respect to the geographic area where they will be offered. The Commission's Staff recommends that these services be classified as competitive services and that Snappy Phone retain its classification as a competitive telecommunications company.

As a condition of certification and of competitive classification, Snappy Phone's originating and terminating access rates in each exchange will be no greater than the corresponding Commission-approved access rates in effect at the date of certification for the large incumbent LEC within each such exchange, unless otherwise ordered by the Commission. Should the ILEC reduce its access rates in any exchange, Snappy Phone must file proposed tariff sheets implementing corresponding reductions within 30 days. The grant of service authority and competitive classification to Snappy Phone is expressly conditioned on the requirement that any increases in switched access services rates above the cap herein established must be made pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

The following provisions, waived in Case No. TA-2000-372, are also appropriate to waive here: Sections 392.210.2, 392.240(1), 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1999, and 392.340; 4 CSR 240-10.020, 4 CSR 240-30.010(2)(C), 4 CSR 240-30.040, 4 CSR 240-32.030(4)(C), 4 CSR 240-33.030 and 4 CSR 240-35.

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:

- A. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that Snappy Phone has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
- C. The Commission finds that Snappy Phone has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that Snappy Phone meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting Snappy Phone a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Snappy Phone's modified certificate shall become effective when its new tariff becomes effective.
- E. The Commission finds that the additional services to be offered by Snappy Phone are competitive services. Snappy

Phone, therefore, is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.

- F. The Commission finds that Snappy Phone's certification and competitive status should be expressly conditioned upon the requirement that any increases in switched access services rates above the cap in any exchange must be made pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

Conclusions of Law:

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

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. The Commission is also authorized to modify such certificates. Snappy Phone has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1999, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1999, were designed to institute competition in the basic local exchange telecommunications market in

order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1999.

Based upon the Commission's review of Snappy Phone's Application and supporting exhibits, as well as Staff's Memorandum and Recommendation, the Commission concludes that requested modification of Snappy Phone's certificate to provide basic local telecommunications services should be granted.

IT IS THEREFORE ORDERED:

1. That the certificate of service authority issued to Snappy Phone of Texas, Inc., d/b/a Snappy Phone, in Case No. TA-2000-372, is modified to allow Snappy Phone of Texas, Inc., d/b/a Snappy Phone, to also provide basic local telecommunications services in the exchanges of Sprint Missouri, Inc., and GTE Midwest, Inc. This additional authority shall become effective on the date tariffs filed by Snappy Phone of Texas, Inc., d/b/a Snappy Phone, for implementing basic local service in Sprint Missouri, Inc.'s and GTE Midwest, Inc.'s exchanges become effective, respectively. The tariffs must be filed with 45-day effective dates.

2. That the additional services herein concerned are classified as competitive services and that Snappy Phone of Texas, Inc., d/b/a Snappy Phone, shall retain its classification as a competitive company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2
392.240(1)
392.270
392.280
392.290
392.300.2
392.310
392.320
392.330
392.340

Commission Rules

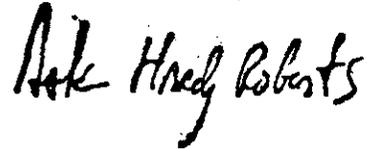
4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-32.030(4)(C)
4 CSR 240-33.030
4 CSR 240-35

3. That Snappy Phone of Texas, Inc., d/b/a Snappy Phone, shall file appropriate proposed tariffs within 30 days of the effective date of this order. The tariffs shall bear an effective date of no less than 45 days.

4. That the modified certification and competitive status herein granted to Snappy Phone of Texas, Inc., d/b/a Snappy Phone, is expressly conditioned upon the requirement that its originating and terminating switched access rates in any exchange shall be no higher than the corresponding access rates of the large LEC in any such exchange, as of the date of certification. In the event that the large LEC in any exchange shall reduce its switched access rates, Snappy Phone of Texas, Inc., d/b/a Snappy Phone, shall file appropriate proposed tariff sheets to implement a corresponding reduction in its switched access rates in that exchange within 30 days. Any increases in the switched access rates of Snappy Phone of Texas, Inc., d/b/a Snappy Phone, above the cap in any exchange must be made pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

5. That this order shall become effective on November 4,
2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Kevin A Thompson, Deputy Chief
Regulatory Law Judge, by delegation of
authority pursuant to Section 386.240,
RSMo 1994.

Dated at Jefferson City, Missouri,
on this 26th day of October, 2000.

FYI: To Be Issued By Delegation

ALJ/Sec'y: Thompson / Pope

10-24 Date Circulated
10-27 Return by 3 p.m.
10 a.m.

IA-2000-783
CASE NO.

[Signature] Lumpe, Chair
 [Signature] Drainer, Vice Chair
 [Signature] Murray, Commissioner
 [Signature] Schemenauer, Commissioner
 [Signature] Simmons, Commissioner

10, 11, 12
 10, 11, 12
 10, 11, 12

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 26th day of Oct. 2000.

[Signature: Dale Hardy Roberts]

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

