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AUTHORITY AND ORDER APPROVING TARIFF

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¹ All statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

telecommunications services, including 1+, 800/888/877, Directory Assistance, and Travel Card services. Capsule stated that the proposed tariff was essentially identical to the tariff currently approved and on file with the Commission for US WATS, Capsule's parent company.

Capsule requested expedited service for the tariff with an effective date of March 31, 2000, and also expedited treatment for the grant of a certificate. The reasons given for the expedited treatment were "important internal business considerations." Among those business considerations were that Capsule and US WATS submitted a letter to the Commission on February 2, 2000, notifying it of a transaction whereby US WATS would engage in a *pro forma* reorganization by merging with and into its wholly owned subsidiary, Capsule. Further, Capsule stated that the reorganization will only result in a change in corporate name and state of incorporation of the company. Capsule stated that Commission approval was not required for the reorganization, based on Section 392.420, RSMo, and the waiver of Section 392.340, RSMo, granted thereunder. Capsule stated that the Commission waives the applicability of Section 392.340, RSMo, to competitive interexchange companies pursuant to its authority under Section 392.420, RSMo, and that US WATS was granted competitive interexchange company status on September 28, 1993, in case number TA-94-11. Capsule stated that it was of the understanding that the Commission would not transfer US WATS' certificate of authority and that Capsule must file an application for a certificate of service authority.

) The Commission found that Capsule's request for less than thirty (30)-day approval of its tariff and for expedited approval of its certificate stated good cause for such treatment. On March 9, 2000, the Commission issued its order requesting a response, ordering the Staff of the Commission (Staff) to respond to the order within five (5) days, stating in a pleading whether or not it would be able to handle the case in an expedited manner and, if so, giving suggested dates for the filing of a Staff report or recommendation.

The Commission issued a Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene on March 7, 2000, directing parties wishing to intervene to file their requests by March 22, 2000. 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 has asked permission to intervene or requested a hearing, the Commission may grant the relief requested based on the application.

On March 10, 2000, Capsule filed its amendment to its application wherein it changed a statute it requested be waived by the Commission from Section 392.240, RSMo, to Section 392.240.1, RSMo.

Staff responded to the Commission's order requesting response by filing its Memorandum on March 14, 2000. The Staff stated that Capsule's proposed services are similar to existing IXC offerings. Staff recommended that the Commission grant Capsule a certificate of interexchange service authority. Staff recommended that the

Commission grant Capsule's competitive status, and waiver of the statutes and rules listed in the Notice. Staff recommended that the Commission approve the proposed tariff to become effective on March 31, 2000².

The Commission finds that competition in the intrastate interexchange markets is in the public interest and Capsule should be granted a certificate of service authority. The Commission finds that the services Capsule proposes to offer are competitive and Capsule should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraph below is reasonable and not detrimental to the public interest.

The Commission finds that Capsule's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange carriers. The Commission finds that the proposed tariff filed on March 3, 2000 should be approved to become effective on March 31, 2000.

IT IS THEREFORE ORDERED:

1. That Capsule Communications, Inc. is granted a certificate of service authority to provide intrastate interexchange

² In the Staff's memorandum, it appeared that Staff was recommending that Capsule be allowed to provide private line services although Capsule had only requested authority to provide interexchange services. On March 16, 2000, the Commission issued an order requesting that Staff file a pleading stating whether or not this was correct. Both Staff and Capsule filed responses on March 22, 2000, indicating that this was a typographical error.

telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

2. That Capsule Communications, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.240.1 - ratemaking
392.270 - valuation of property (ratemaking)
392.280 - depreciation accounts
392.290 - issuance of securities
392.310 - stock and debt issuance
392.320 - stock dividend payment
392.340 - reorganization(s)
392.330, RSMo Supp. 1998 - issuance of securities,
debts and notes

Commission Rules

4 CSR 240-10.020 - depreciation fund income
4 CSR 240-30.010(2)(C) - rate schedules
4 CSR 240-30.040 - Uniform System of Accounts
4 CSR 240-32.030(1)(B) - exchange boundary maps
4 CSR 240-32.030(1)(C) - record-keeping
4 CSR 240-32.030(2) - in-state record-keeping
4 CSR 240-32.050(3) - local office record-keeping
4 CSR 240-32.050(4) - telephone directories
4 CSR 240-32.050(5) - call intercept
4 CSR 240-32.050(6) - telephone number changes
4 CSR 240-32.070(4) - public coin telephone
4 CSR 240-33.030 - minimum charges rule
4 CSR 240-33.040(5) - financing fees

3. That the tariff filed by Capsule Communications, Inc. on March 3, 2000, as tariff number 200000797, is approved to become effective on March 31, 2000. The tariff approved is:

P.S.C. Mo. No. 1

4. That this order shall become effective on March 31, 2000.

5. That this case may be closed on April 1, 2000.

BY THE COMMISSION



Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

(S E A L)

Bill Hopkins, Senior Regulatory Law Judge,
by delegation of authority pursuant
to 4 CSR 240-2.120(1) (November 30,
1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 24th day of March, 2000.