

C-20 Binder

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the application of Kansas City )  
Cable Partners for a certificate of service )  
authority to provide intrastate private line, ) Case No. TA-88-232  
high-speed telecommunications service. )  
)

APPEARANCES: Mark P. Johnson, Spencer, Fane, Britt & Browne, 1400 Commerce  
Bank Building, 1000 Walnut Street, Kansas City, Missouri  
64106, for Kansas City Cable Partners.

Paula J. Fulks, Attorney, Southwestern Bell Telephone  
Company, 100 North Tucker Boulevard, Room 630, St. Louis,  
Missouri 63101, for Southwestern Bell Telephone Company.

HEARING

EXAMINER: Cecil I. Wright.

REPORT AND ORDER

On December 28, 1987, Kansas City Cable Partners (KCCP) filed an application requesting a certificate of service authority from the Commission to provide intrastate private line, high-speed telecommunications services of a point-to-point and point-to-multipoint nature, and to construct, control, manage, operate and maintain facilities necessary to the provision of this service. KCCP requested that the Commission classify this service as a competitive service pursuant to Section 392.361.4, R.S.Mo. (Supp. 1987), and exercise a lesser degree of regulation over the service. KCCP states in the application that it is not requesting certification to provide switched voice service and it is not seeking to provide basic telecommunications service.

The Commission docketed the application to be classified as a competitive service as Case No. TO-88-177 and suspended that case until the issues concerning competitive services are resolved in Case No. TO-88-142. The Commission then established Case No. TA-88-232 to consider the application for service authority.

The Commission issued an Order And Notice on March 29, 1988, directing its Secretary to send notice of the application for service authority. Interested persons or entities were directed to intervene on or before April 28, 1988. On May 19, 1988, Southwestern Bell Telephone Company (SWB) filed an application to intervene. SWB had orally requested an extension of the time to intervene until SWB could discuss with the Commission Staff whether Commission Staff would address SWB's concerns in Staff's recommendation. Commission Staff filed its recommendation on May 12, 1988. Public Counsel did not file any pleading. On May 31, 1988, KCCP filed suggestions in opposition to SWB's application to intervene.

On June 2, 1988, KCCP filed its financial statement demonstrating its financial condition, in compliance with the Commission's Order And Notice.

#### 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.

KCCP is a partnership organized under the laws of Colorado and authorized to do business in the state of Missouri. KCCP is the holder and operator of several municipal cable television franchises in the Kansas City, Missouri, metropolitan area. By this application KCCP is requesting the Commission grant KCCP a certificate of service authority to provide intrastate private line, high speed telecommunications service. This application was filed in conjunction with an application to have the service classified as a competitive service in Case No. TO-88-177, and to be subject to reduced regulation. The application to have the service classified as a competitive telecommunications service was suspended pending a decision in Case No. TO-88-142. KCCP's request for reduced regulation if its service is determined to be competitive will be addressed in TO-88-177 since both are requested pursuant to Section 392.361. The Commission has previously determined what it considers the

regulatory requirements for resellers of intrastate telecommunications service, and KCCP will be subject to those requirements, which are set out below.

SWB states two reasons for its application to intervene. First, SWB wants to ensure any certificate of service authority granted KCCP is limited to high speed data transmission and does not authorize switched voice service. Second, SWB states that any waivers of Commission rules or statutory requirements should be addressed in Case No. TO-88-142.

KCCP objected to the granting of SWB's intervention. KCCP argues, first, that SWB's procedural discussion with the hearing examiner concerning an extension of time to file an application to intervene was somehow improper or an ex parte communication. The Commission rejects KCCP's assertions. Requests for extensions of procedural schedules are not ex parte communications. 4 CSR 240-4.020 prohibits communications as to the merits of a case. KCCP additionally points out that it is not seeking authority to provide switched voice service, thus mooted SWB's concern.

The Commission has determined that SWB's application for intervention should be granted. SWB has raised legitimate issues about KCCP's application. The Commission, though, has determined that the issues raised by SWB are resolved and therefore there is no contested issue in this case. First, KCCP is only seeking an application to provide high speed data service, and second, the Commission has determined the issue of reduced regulation related to competitive classification should be addressed in Case No. TO-88-177, KCCP's application for classification as a competitive service. Since there are no contested issues, otherwise, in this case, the Commission has determined no hearing is necessary.

Commission Staff filed a memorandum recommending approval of the application once KCCP filed its financial information as required by the Commission's Order And Notice issued March 29, 1988. KCCP indicated that it had failed to file this financial information because of SWB's application for intervention filed May 19. Although the point has no influence on the outcome of this proceeding, the Commission

believes that KCCP should accept responsibility for the failure to file the financial information as ordered on March 29 rather than blame SWB's application. The Commission did not make the filing of the financial information contingent on whether any party sought to intervene. The financial information is necessary so Staff can make a complete evaluation of the application.

In its memorandum Staff recommended that the certificate not become effective until KCCP's tariffs are approved by the Commission. Staff stated that since KCCP only proposes to provide private line, high speed telecommunications service, KCCP should not be required to file percentage of interstate use and intrastate intralata use reports.

The Commission, in considering whether to grant an application for service authority, must determine whether the proposed service is in the public interest. Section 392.410, .430, .440, R.S.Mo. (Supp. 1987). The Commission has previously adopted standards for applications for service authority for both interLATA and intr-LATA toll service. Re: TO-84-222, et al., 28 Mo. P.S.C. (N.S.) 535 (1986).

Based upon the verified statements of KCCP and the recommendations of the its Staff, the Commission finds that KCCP has complied with the Commission's standards and is qualified to perform the service proposed. In Case No. TX-85-10 the Commission stated that if an applicant is found to be fit pursuant to the Commission's standards, then the Commission will assume that additional competition in the interLATA market is in the public interest and a certificate of service authority should be granted. Since the intraLATA toll market has been opened for competition, the Commission did not deem it necessary in Case No. TO-84-222, et al., to determine a public need for each reseller's services as the market would eliminate any reseller for which there was no public need. The Commission has determined that the same reasoning is appropriate in this case. Consequently, a grant of authority to provide interexchange high speed private line service will be deemed to be in the public interest in accordance with Sections 392.430 and 392.440, R.S.Mo. (Supp. 1987).

The Commission in Case No. TO-84-222, et al., determined that certain regulatory requirements should be imposed upon resellers which were authorized to provide intrastate interLATA and intraLATA telecommunications services in Missouri. Therefore the Commission finds that the following regulatory requirements should be imposed upon KCCP as reasonable and necessary conditions of certification:

- (1) KCCP is required to comply with reasonable requests by the Staff for financial and operating data to allow Staff to monitor the intraLATA toll market pursuant to Section 392.390(3), R.S.Mo. (Supp. 1987);
- (2) KCCP is required to file tariffs containing rules and regulations applicable to customers, a description of the service provided and a list of rates associated with the services pursuant to Section 392.220, R.S.Mo. (Supp. 1987), and 4 CSR 240-30.010;
- (3) KCCP is precluded from unjustly discriminating between and among its customers pursuant to Section 392.200, R.S.Mo. (Supp. 1987), and Section 392.400, R.S.Mo. (Supp. 1987);
- (4) Under Section 392.510, R.S.Mo. (Supp. 1987), master schedules with minimum-maximum ranges are only available for competitive or transitionally competitive telecommunications services or for companies for which a range or band of rates existed at the time of the effective date of House Bill 360. Since KCCP is presently a noncompetitive company and KCCP did not have master schedules with minimum-maximum ranges approved by the Commission prior to the effective date of House Bill 360, KCCP cannot lawfully file master schedules with minimum-maximum ranges;
- (5) KCCP is required by Sections 386.570 and 392.360, R.S.Mo. (Supp. 1987), to comply with all applicable Commission rules except those which are specifically waived by the Commission pursuant to Section 392.420, R.S.Mo. (Supp. 1987);

(6) KCCP is required to file a Missouri-specific annual report pursuant to Section 392.210, R.S.Mo. (Supp. 1987), and Section 392.390.1, R.S.Mo. (Supp. 1987);

(7) Pursuant to Section 392.390(3), R.S.Mo. (Supp. 1987), KCCP is required to comply with the jurisdictional reporting requirements as set out in each local exchange company's access services tariff.

The Commission finds that KCCP should file appropriate tariffs within 30 days of the effective date of this Report And Order. Staff in its memorandum recommended that the certificate of authority not become effective until KCCP had filed the tariffs required to provide service and those tariffs are approved by the Commission. The Commission finds that Staff's recommendation is reasonable.

#### Conclusions

The Missouri Public Service Commission has arrived at the following conclusions.

Kansas City Cable Partners proposes to provide service to the public as a public utility subject to the Commission's jurisdiction pursuant to Chapters 386 and 392, R.S.Mo. (Supp. 1987).

Based upon the verified application of KCCP, the Commission has found that KCCP has complied with the Commission's standards pertaining to applications requesting authority to provide private line, high speed telecommunications services and is qualified to perform said services. The Commission has concluded that additional competition in the intrastate private line market is in the public interest and the certificate of service authority should be granted for that purpose. If KCCP in the future wishes to provide additional service, it must file an application to provide that additional service.

It is, therefore,

ORDERED: 1. That Kansas City Cable Partners be, and hereby is, granted a certificate of service authority to provide intrastate private line, high-speed

telecommunications services in Missouri. This certificate of service authority is subject to the conditions of certification set out herein and is effective upon the approval of this Commission of tariffs to provide service.

ORDERED: 2. That nothing contained herein shall be construed as a finding by the Commission of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the values placed upon said properties by Kansas City Cable Partners.

ORDERED: 3. That Kansas City Cable Partners shall file tariffs within thirty (30) days of the effective date of this Report and Order.

ORDERED: 4. That Southwestern Bell Telephone Company is granted intervention in this case.

ORDERED: 5. That this Report And Order shall become effective on the 12th day of July, 1988.

BY THE COMMISSION

(S E A L)



Harvey G. Hubbs  
Secretary

Steinmeier, Chm., Musgrave,  
Mueller, Hendren and Fischer,  
CC., Concur.

Dated at Jefferson City, Missouri,  
on this 10th day of June, 1988.

