

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of 2nd Century)
Communications, Inc. for a Certificate of)
Service Authority to Provide Competitive Resold) Case No. TA-2000-324
Intrastate Interexchange Telecommunications) Tariff No. 200000602
Services and Non-Switched Basic)
Telecommunications Services within the State)
of Missouri)

**ORDER APPROVING INTEREXCHANGE AND NON-SWITCHED
LOCAL EXCHANGE CERTIFICATES OF SERVICE
AUTHORITY AND ORDER APPROVING TARIFF**

2nd Century Communications, Inc. (2nd Century) applied to the Missouri Public Service Commission (Commission) on November 9, 1999, for certificates of service authority to provide intrastate interexchange and non-switched local exchange telecommunications services in Missouri under Section 392.410-.450, RSMo 1994, and RSMo Supp. 1998¹. 2nd Century asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420, RSMo. 2nd Century is a Delaware corporation, with its principal office located at 7702 Woodland Center, Tampa, Florida 33614.

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

On that same date, 2nd Century filed a Motion for Protective Order, requesting that Exhibit E to the application, a copy of the financial statements of the privately held company, be subject to a protective order under the Commission's rules of practice and procedure². On November 18, 1999, the Commission granted this motion and issued a protective order.

On December 8, 1999, the Commission issued a notice of deficiency for 2nd Century's failure to make clear in its application whether it was requesting competitive classification for itself or for its services. On December 10, 1999, 2nd Century filed its response to the notice of deficiency. 2nd Century stated that its application should be amended by interlineation and should hereinafter read and be interpreted to mean that 2nd Century requests the Commission to find and determine that its proposed services are competitive and, in turn, classify 2nd Century itself as a competitive telecommunications company. The Commission has determined that 2nd Century's response has cured the deficiency.

Commission Rule 4 CSR 240-2.060(4)³ requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing that it is authorized to do business in Missouri, a description of the types of service it intends to provide,

² 2nd Century cited Commission Rule 4 CSR 240-2.085; there is no such rule. In this instance, the proper rule numbers dealing with protective orders which could have been cited are, *inter alia*, 4 CSR 240-2.080(13) and 4 CSR 240-2.130(15).

³ 2nd Century cites Commission Rule 4 CSR 240-2.060(6)(C), which is the incorrect rule.

a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. 2nd Century provided all the required documentation except for the proposed tariff⁴.

The Commission issued a Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene on November 16, 1999, directing parties wishing to intervene to file their requests by December 1, 1999. 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.

2nd Century filed a proposed tariff on December 29, 1999, and filed substitute sheets on January 25, 2000, extending the tariff's effective date to May 1, 2000. 2nd Century's tariff describes the rates, rules, and regulations it intends to use, identifies 2nd Century as a competitive company, and lists the waivers requested. 2nd Century intends to provide interexchange and non-switched local exchange telecommunications services including 1+, directory assistance, and operator assistance services.

In its memorandum filed on March 22, 2000, the Staff of the Commission (Staff) stated that 2nd Century's proposed services are similar to existing IXC offerings. Staff recommended that the

⁴ The corporate information was supplied by 2nd Century in its basic local certification case, number TA-2000-323.

Commission grant 2nd Century a certificate of interexchange service authority, and a certificate of service authority for local exchange telecommunication services on condition that this authority be restricted to providing dedicated, non-switched local exchange private line services. Staff recommended that the Commission grant 2nd Century competitive status, and waiver of the statutes and rules listed in the Notice. Staff recommended that the Commission approve the proposed tariff as amended to become effective on May 1, 2000.

Staff's recommendation did not indicate that 2nd Century would be offering private line services in its initial tariff, even though Staff had recommended that the Commission issue a certificate to 2nd Century to provide local exchange telecommunications services restricted to dedicated, private line services. Thus, on March 24, 2000, the Commission entered its order requesting that Staff explain this apparent contradiction. On March 28, 2000, Staff filed its response, explaining that 2nd Century had indeed requested and Staff had recommended that the Commission issue a certificate to 2nd Century to provide local exchange telecommunications services restricted to dedicated, private line services. However, explained Staff, 2nd Century does not wish to currently implement that authority and thus had not filed a tariff covering those particular services.

The Commission finds that competition in the intrastate interexchange and non-switched local exchange telecommunications markets is in the public interest and 2nd Century should be granted certificates of service authority. The Commission finds that the services 2nd Century proposes to offer are competitive and 2nd Century

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 2nd Century's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange and non-switched local exchange carriers. The Commission finds that the proposed tariff filed on December 29, 1999, as amended by substitute sheets filed January 25, 2000, shall be approved as amended to become effective on May 1, 2000.

IT IS THEREFORE ORDERED:

1. That 2nd Century Communications, Inc. is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above.

2. That 2nd Century Communications, Inc. is granted a certificate of service authority to provide local exchange telecommunications services in the state of Missouri limited to providing dedicated, non-switched local exchange private line services, subject to all applicable statutes and Commission rules except as specified in this order.

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

Statutes

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

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 240-33.030 - minimum charges rule
4 CSR 240-35 - bypass reporting

4. That the tariff filed by 2nd Century Communications, Inc. on December 29, 1999, and as amended by substitute sheets filed January 25, 2000, under tariff number 200000602, is approved as amended to become effective on May 1, 2000. The tariff approved is:

P.S.C. Mo. No. 2

5. That this order shall become effective on May 1, 2000.

6. That this case may be closed on May 2, 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 31st day of March, 2000.

R E C E I V E D

MAR 31 2000

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION