

JW

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Buy-Tel)
Communications, Inc., for a Certificate)
of Service Authority to Provide Basic Local) Case No. TA-99-548
Telecommunications Services in Portions of) Tariff No. 9900866
the State of Missouri and to Classify Said)
Service as Competitive.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES
AND ORDER APPROVING TARIFF

Procedural History

On May 10, 1999, Buy-Tel Communications, Inc. (Applicant) filed an application with the Commission seeking a certificate of authority to provide basic local exchange telecommunications services in exchanges served by Southwestern Bell Telephone Company (SWBT), GTE Midwest Incorporated (GTE), and Sprint Missouri, Inc., doing business as Sprint (Sprint). Applicant is a Texas Corporation registered to transact business in Missouri, with its principal offices located at 6409 Colleyville Boulevard, P.O. Box 1170, Colleyville, Texas 76034. Applicant seeks classification as a competitive company and waiver of certain statutes and rules as authorized by Sections 392.361 and 392.420, RSMo¹.

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

Applicant also filed proposed tariff sheets for the Commission's approval.

The Commission issued a notice and schedule of applicants on May 18, 1999, directing interested parties wishing to intervene to do so by June 17, 1999. On May 26, 1999, SWBT timely filed an application to intervene, which the Commission granted on July 30, 1999.

Applicant, SWBT and the Staff of the Missouri Public Service Commission (Staff) entered into and filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment 1, on August 2, 1999. In the Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review.

The Staff filed *Suggestions in Support of the Stipulation and Agreement* on August 10, 1999. Staff filed a memorandum recommending approval of the proposed tariff, as amended, on September 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 requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

Applicant seeks certification to provide basic local exchange telecommunications services on a resold basis in portions of Missouri that are currently served by SWBT, GTE and Sprint. Applicant is not asking for certification in any area that is served by a small incumbent local exchange provider. Applicant proposes to provide service in the exchanges currently served by SWBT, GTE and Sprint as listed in those companies' Missouri local exchange tariffs. Applicant listed these exchanges in Appendix B to its application. The Staff's *Suggestions in Support*, filed on August 10, 1999, stated that the Commission approved Applicant's resale interconnection agreements with: SWBT, in Case No. TO-99-3; Sprint, in Case No. TO-99-586; and, GTE in Case No. TO-99-55.

Applicant is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

A. Requirements of 4 CSR 240-2.060(4)

Commission Rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services in Missouri to include in its application a certificate from the Missouri Secretary of State showing that 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 at least a 45-day effective date. Applicant has provided all the required documentation.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1998, 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 such 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.

Applicant submitted as Appendix D to its application a copy of its Balance Sheet and Profit and Loss Statement as of April 19, 1999. Appendix C to the application lists the names and qualifications of Applicant's principals. The principals have many years of business experience and experience in the telecommunications industry since November 1997. The parties agreed, and did not controvert, that Applicant presented evidence of sufficient technical, financial and

managerial resources and abilities to provide basic local telecommunications service.

Applicant 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. The parties agreed that Applicant proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Applicant wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint as described in the basic local exchange tariffs of those companies. The parties agreed that Applicant has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows the incumbent local exchange carrier's exchange boundaries and is no smaller than an exchange.

Applicant 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, RSMo Supp. 1998.

C. 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, RSMo. 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). 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. In addition, all the services a competitive company provides must be classified as competitive. Section 392.361.3, RSMo.

The parties have agreed that Applicant should be classified as a competitive telecommunications company. The parties have also agreed that Applicant's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Applicant's ability to charge for its access services.² Applicant has agreed that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the large incumbent LECs within those service areas in

² In fact, although the parties' Stipulation and Agreement refers extensively to switched access rates, Applicant's tariff does not provide for switched access services.

which Applicant seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Applicant should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1998, and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

D. Proposed Tariff

Applicant filed a proposed tariff in conjunction with its application, with an effective date of August 9, 1999. On July 28, 1999, August 19, 1999, and August 20, 1999, Applicant filed substitute tariff sheets. Also, on July 28, 1999, Applicant by letter, extended the effective date of its proposed tariff to August 20, 1999. Subsequently, Applicant twice again extended the effective date of its proposed tariff on August 16 and 31, 1999, with the last extension of the effective date to September 11, 1999.

Applicant's tariff describes the rates, rules, and regulations it intends to use, identifies it as a competitive company, and lists the

waivers requested. Applicant intends to provide resold basic local telecommunications services on a prepaid basis. Staff reviewed the provisions of the proposed tariff and found them to be similar to those of other prepaid basic local exchange service provider tariffs previously approved by the Commission. Staff stated that it had no objections to the Applicant's proposed tariff, MoPSC No.1, as amended. Staff recommended approval of the tariff sheets.

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 Applicant has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services.
- C. The Commission finds that Applicant 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 Applicant a certificate of service authority to provide basic local exchange telecommunications services is in the public

interest. Applicant's certificate shall become effective when its tariff becomes effective.

- D. The Commission finds that Applicant is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- E. The Commission finds that Applicant's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.
- F. The Commission finds that Applicant's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri carriers offering prepaid resold basic local telecommunications services. The Commission finds that the proposed tariff filed on May 10, 1999, and later amended, shall be approved as amended to become effective on September 11, 1999.

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. Applicant has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1997, 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. 1998, 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. 1998. The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998. Based upon the Commission's review of the applicable law and Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on August 2, 1999, is approved.
2. That Buy-Tel Communications, Inc., is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set

out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

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

Statutes

- 392.210.2 - uniform system of accounts
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290.1 - issuance of securities
- 392.300.2 - acquisition of stock
- 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 240-30.040 - uniform system of accounts
- 4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

4. That Buy-Tel Communications, Inc.'s, certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.

5. That the tariff filed by Buy-Tel Communications, Inc., on May 10, 1999, Tariff No. 9900866, is approved as amended, to become effective on September 11, 1999. The tariff approved is:

P.S.C. Mo. No. 1
Original Pages 1-37

6. That this order shall become effective on September 10, 1999.

7. That this case may be closed on September 11, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Keith Thornburg, 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 7th day of September, 1999.

RECEIVED

SEP 07 1999

COMMISSION ON
SERVICE COMMISSION