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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of Green Hills )  
Communications, Inc., for a Certificate of )  
Service Authority to Provide Local Exchange and )  
Intrastate Interexchange Telecommunications )  
Services Within the State of Missouri. )

Case No. TA-98-157

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**REPORT AND ORDER**

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**Issue Date: May 21, 1998**

**Effective Date: May 30, 1998**

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Service Authority to Provide Local Exchange and       )  
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Services Within the State of Missouri.                   )  
Case No. TA-98-157

**APPEARANCES**

Paul A. Boudreau, Attorney at Law, Brydon, Swearengen & England, P.C., 312 East Capitol Avenue, P.O. Box 456, Jefferson City, Missouri 65102, for Green Hills Communications, Inc.

Leo J. Bub, Attorney at Law, One Bell Center, Room 3518, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

Penny G. Baker, Deputy General Counsel, and Marc Poston, Assistant General Counsel, P.O. Box 360, Jefferson City, Missouri 65102, for Staff of the Missouri Public Service Commission.

**REGULATORY**

**LAW JUDGE:**           Elaine E. Bensavage.

**REPORT AND ORDER**

**Procedural History**

On October 10, 1997, Green Hills Communications, Inc. (Green Hills) filed an application requesting a certificate of service authority to provide intrastate interexchange and local exchange telecommunications services in the State of Missouri under Sections 392.410-.450 RSMo 1994 and RSMo Supp. 1997<sup>1</sup>. Green Hills asked the Missouri Public Service

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

Commission (Commission) to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. Applicant is a Missouri corporation, with its principal office located at 7926 N.E. State Route M, Breckenridge, Missouri 64625. Green Hills is a wholly-owned subsidiary of Green Hills Telephone Corporation (Green Hills Corp). The Commission issued a Notice of Applications and Opportunity to Intervene on October 28, which set a deadline of November 12 for intervention requests.

Southwestern Bell Telephone Company (SWBT) filed a timely application to intervene. The Commission issued its Order Granting Intervention and Suspending Tariff on November 18, which granted intervention to SWBT and suspended the tariff filed by Green Hills for a period of 120 days from November 24 to March 24, 1998. The order also set an early prehearing conference for November 3, which was held as scheduled. The Commission adopted a procedural schedule on December 15, which was subsequently modified. A Protective Order was issued on January 28, 1998. An evidentiary hearing was commenced on February 13. Thereafter one set of simultaneous briefs was filed by the various parties. The tariff was further suspended from March 24 to May 30.

### **Background**

SWBT raised a number of issues in its application for intervention, as follows: (1) Whether Green Hills' provision of the proposed services is governed by the Primary Toll Carrier (PTC) Plan; (2) whether a corporate affiliate of a local exchange company (LEC) operating as a secondary carrier (SC) under the PTC Plan should be permitted to offer services in competition with the PTC; (3) if so, what effect such competition will have on the PTCs offering toll services in those areas; (4) whether Green Hills should be reclassified as a PTC by virtue of its venture into the interexchange business; and (5) whether affiliate

transaction procedures similar to those required of SWBT should apply to Green Hills and its affiliate, Green Hills Corp. SWBT also alleged that the PTC Plan could be adversely affected, since Green Hills could be expected to serve the most profitable routes, while leaving SWBT or other PTC Plan participants with noncompensatory routes.

In suspending Green Hills' tariff, the Commission noted at least two prior cases in which SWBT raised similar concerns. Both cases were resolved without recourse to a hearing.

### **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. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Based upon the evidence presented by the parties, the ultimate question in this case is whether Green Hills should be granted both requested certificates, or whether the intrastate interexchange certificate should be restricted or conditioned. SWBT has argued that Green Hill's authority should be restricted to prohibit the provision of switched intraLATA interexchange services, or that the authority to provide switched intraLATA interexchange services should be conditioned upon SWBT being relieved of its PTC obligations prior to Green Hills' exercise of this authority.

Green Hills claims that it has met the requirements for the issuance of certificates to provide intrastate interexchange and nonswitched local exchange services, and thus should be granted all the relief it requested in its application. It claims that since the Commission has previously granted similar certificates to affiliates of LECs which are SCs, it would be inequitable for the Commission not to do so in this instance. Green Hills further maintains that SWBT's concerns have been rendered moot by its commitment to provide a copy of its tariff filing to SWBT should it seek to provide switched intraLATA interexchange services in the future, and by the Commission's decision in the PTC docket, Case No. TO-97-217.

The Staff of the Commission (Staff) concurs that Green Hills has met the requirements for the issuance of certificates to provide intrastate interexchange and local exchange services, and recommends that the Commission grant to Green Hills all the relief requested. The Office of the Public Counsel (Public Counsel) supports Staff's position.

SWBT requests that the Commission restrict the grant to Green Hills of a certificate for intraLATA interexchange services to nonswitched services, or in the alternative, that the Commission condition the grant of full interexchange authority on SWBT's being relieved of its PTC obligations prior to Green Hills exercising intraLATA toll service authority. SWBT claims that under the PTC Plan, it has historically paid out more in access payments than it has received in revenues from Green Hills Corp., which is an SC under the Plan. Thus it claims that its customers provide a subsidy to the customers of Green Hills Corp., which could be transferred to or made available for the support of Green Hills, a direct competitor of SWBT. This anomaly would be exacerbated by the fact

that Green Hills would not have to serve all the customers in the territory of Green Hills Corp., but could pick and choose the more profitable customers, since Green Hills Corp. has the billing records which would enable it to identify those customers. Green Hills could cherry-pick the more profitable customers in SWBT's territory as well.

SWBT maintains that the Commission has never addressed the question of whether it is in the public interest to permit an SC or its affiliate to offer services in competition with a PTC. SWBT distinguishes a number of cases cited by Green Hills for the opposite proposition. While SWBT acknowledges that Green Hills does not currently have a provision in its tariff for intraLATA toll services, SWBT contends that this certification proceeding is the proper vehicle to address any future request by Green Hills to provide intraLATA service. In addition, SWBT also stresses that although the Commission has issued a decision in the PTC docket, Case No. TO-97-217, that decision is subject to rehearing or appeal, and the PTC Plan will be dismantled over time.

The Commission finds that the application of Green Hills meets the requirements for the issuance of certificates of service authority to provide intrastate interexchange and nonswitched local exchange telecommunications services. SWBT does not generally dispute Green Hills' qualifications, but instead focuses on its status as an affiliate of an SC. SWBT also correctly distinguishes the cases cited by Green Hills for the proposition that since the Commission has previously granted certificates to affiliates of LECs which are SCs, the Commission must do the same in this instance. In none of the cases cited did the Commission ever explicitly address the concerns raised by SWBT in this case.

The Commission also finds that the tariff submitted by Green Hills does not currently contain provisions for the offering of intraLATA toll. Ordinarily restrictions or conditions on the issuance of a certificate of service authority are addressed in the certification procedure rather than during a later tariff process. This generally protects both applicants and parties opposed to an applicant's certification. For example, an applicant is protected from an opposing party getting a "second bite of the apple" by contesting a later tariff filing, in the event the opposing party missed an intervention deadline in the certification procedure, or was denied intervention. Likewise, an opposing party is protected from being required to monitor all of the applicant's tariff filings into the indefinite future. However, in the present case the Commission finds, for the reasons set forth below, that SWBT's concerns should be addressed at the time Green Hills files a tariff to provide intraLATA toll services.

The witness for Green Hills testified at the hearing that a certificate which would encompass the provision of intraLATA interexchange service was necessary in order for it to provide the telemedicine and distance learning services it contemplated, and the Commission so finds. The Commission has in the past granted limited certificates, such as certificates to provide only interLATA interexchange service, which were granted to Chariton Valley Long Distance Corporation and ALLTEL Communications, Inc. in Case Nos. TA-96-314 and TA-97-41 respectively. However, in this instance a certificate which would grant Green Hills the authority requested and still address SWBT's concerns might be unnecessarily complicated in its wording: for example, "a certificate to provide full intrastate interLATA interexchange services and intrastate

intraLATA interexchange services limited to dedicated, nonswitched interexchange private line services."

In addition, if the Commission were to issue such a certificate, Green Hills would be required to bear additional expense to file a later application for switched intraLATA interexchange authority. In contrast, because Green Hills does not have tariff provisions to offer intraLATA toll and could not legally do so, there is no current harm to SWBT's interests. Moreover, Green Hills offered at the hearing to mail a copy of any tariff provisions for intraLATA toll services to SWBT if it files such provisions with the Commission in the future. Finally, the Commission's decision in the PTC case, Case No. TO-97-217, anticipates that SCs like Green Hills Corp. will in the future function as their own PTCs.

The Commission is aware, as has been pointed out by SWBT, that its decision in the PTC case is subject to appellate review, and that the Commission's decision contemplates that the PTC Plan will be phased out over time. The Commission is also aware of the need to have an alternative in place to provide intraLATA toll service to the customers of Green Hills Corp., who are currently served by SWBT as the PTC, so that there is no gap in the provision of intraLATA toll to those customers.

The Commission determines that the most efficacious method to consider the link between Green Hills' provision of intraLATA toll and SWBT's release as a PTC for Green Hills Corp. is to require Green Hills to provide SWBT with a copy of any tariff sheets it files with the Commission which would permit it to provide intraLATA toll services on the same day they are filed with the Commission. This will provide SWBT with adequate notice in which it may ask the Commission to condition approval of the tariff sheets upon SWBT being released from its PTC obligations, or



otherwise seek suspension of the tariff. This may furnish a more appropriate route, since SWBT does not actually contest that Green Hills meets the requirements for intrastate interexchange certification, only that there are compelling policy reasons why Green Hills should not be allowed to provide a certain class of services, intraLATA toll, until such time as SWBT is relieved from the duty to provide those same services.

Under the facts presented here, the Commission determines that it would be more prudent to wait until Green Hills files tariff provisions to provide intraLATA toll before deciding whether or at what juncture SWBT should be relieved of its obligation to provide intraLATA toll to the customers of Green Hills Corp. under the PTC Plan. It is likely that the Commission will have more and better information upon which to base its decision, as some of the uncertainty regarding the Commission's decision in the PTC case will be resolved with time and some progress may be made toward a resolution of technical problems associated with the dismantling of the PTC Plan. Nothing in this Report And Order shall be construed as a finding or prejudgment by the Commission of whether any tariff sheets filed by Green Hills Communications, Inc. for the provision of intraLATA toll services should be approved, or whether conditions should be attached to any such approval. Likewise, nothing in this Report And Order shall be construed as limiting the Commission's authority to move forward with the dismantling of the PTC Plan in Case No. TO-97-217, as it pertains to Green Hills Corp.

The Commission finds that competition in the intrastate interexchange and nonswitched local exchange telecommunications markets is in the public interest and Green Hills should be granted certificates of service authority. The Commission finds that the services Green Hills

proposes to offer are competitive and Green Hills 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 Green Hills' proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange and nonswitched local exchange carriers. The Commission finds that the proposed tariff filed on October 10, should be approved to become effective on May 30.

### **Conclusions of Law**

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

SWBT and Green Hills Corp. are telecommunications companies and public utilities as defined in Sections 386.020(51) and 386.020(42), RSMo Supp. 1997, and as such are subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392 of the Missouri Revised Statutes. Green Hills, if granted the certificates requested, will become a telecommunications company and public utility as defined in Sections 386.020(51) and 386.020(42), RSMo Supp. 1997, and as such will be subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392 of the Missouri Revised Statutes.

Section 392.410.2, RSMo Supp. 1997 requires any telecommunications company seeking to provide interexchange telecommunications service to apply for and receive a certificate of interexchange service authority pursuant to Section 392.410.1, RSMo Supp. 1997 prior to offering such service. Similarly, Section 392.410.2, RSMo Supp. 1997 also requires any

telecommunications company seeking to provide local exchange telecommunications service to apply for and receive a certificate of local exchange service authority pursuant to Section 392.420 prior to offering such service. Likewise, Section 392.440 requires any telecommunications company wishing to offer the resale of local exchange or interexchange telecommunications service to obtain a certificate of service authority first.

The Commission shall approve an application for a certificate of local exchange or interexchange service authority upon a showing by the applicant, and a finding by the Commission, that the grant of such authority is in the public interest. § 392.430. The Commission has found that the public interest would be served by allowing Green Hills to provide interexchange and nonswitched local exchange telecommunications services, therefore the Commission concludes that Green Hills should be granted certificates of service authority to provide interexchange and nonswitched local exchange service. The Commission further concludes that the balance of the equities favors deferring a decision on whether Green Hills should be allowed to provide intraLATA toll services, or whether conditions should be attached to any such allowance, until such time as Green Hills files tariff sheets to offer such services.

**IT IS THEREFORE ORDERED:**

1. That Green Hills Communications, Inc. is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the State of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

2. That Green Hills Communications, Inc. is granted a certificate of service authority to provide local exchange telecommunications services

in the State of Missouri limited to dedicated, nonswitched local exchange private line services, subject to all applicable statutes and Commission rules except as specified in this order.

3. That Green Hills Communications, Inc. shall provide Southwestern Bell Telephone Company with a copy of any tariff sheets it files with the Commission which would permit it to provide intraLATA toll services, on the same day that they are filed with the Commission.

4. That nothing in this Report And Order shall be construed as a finding or prejudgment by the Commission of whether any tariff sheets filed by Green Hills Communications, Inc. for the provision of intraLATA toll services should be approved, or whether conditions should be attached to any such approval.

5. That nothing in this Report And Order shall be construed as limiting the Commission's authority to move forward with the dismantling of the Primary Toll Carrier Plan in Case No. TO-97-217, as it pertains to Green Hills Telephone Corporation.

6. That Green Hills 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. 1997
  - issuance of securities, debts and notes

Commission Rules

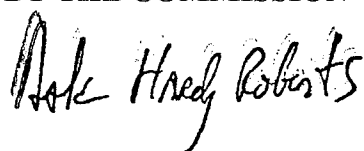
4 CSR 240-10.020	- depreciation fund income
4 CSR 240-30.010(2)(C)	- rate schedules
4 CSR 240-30.040	- Uniform System of Accounts
4 CSR 240-32.030(1)(B)	- exchange boundary maps
4 CSR 240-32.030(1)(C)	- record keeping
4 CSR 240-32.030(2)	- in-state record keeping
4 CSR 240-32.050(3)	- local office record 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

7. That the tariff filed by Green Hills Communications, Inc. on October 10, 1997, is approved to become effective on May 30, 1998. The tariff approved is:

**P.S.C. Mo. No. 1**

8. That this order shall become effective on May 30, 1998.
9. That this case shall be closed on June 23, 1998.

**BY THE COMMISSION**



**Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Murray and Drainer, CC., concur.  
Crumpton, C., concurs with concurrence to follow.  
Schemenauer, C., not participating.

Dated at Jefferson City, Missouri,  
on this 21st day of May, 1998.

**RECEIVED**

MAY 22 1998

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION