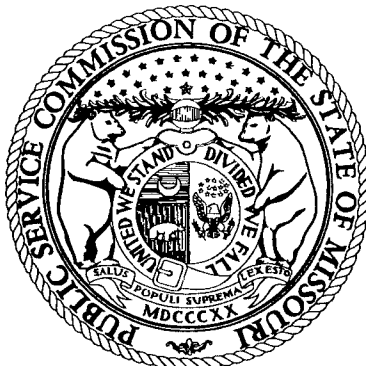


**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

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In the Matter of the Application of Max-Tel )  
Communications, Inc. for a Certificate of Service )  
Authority to Provide Basic Local Telecommunica- )  
tions Service in Portions of the State of Missouri )  
and to Classify Said Services and the Company as )  
Competitive. )  
)

Case No. TA-97-342

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**REPORT AND ORDER**

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**Issue Date:**

December 2, 1997

**Effective Date:**

December 5, 1997

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

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## APPEARANCES

Charles Brent Stewart, Stewart & Keevil, L.L.C., 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for Max-Tel Communications, Inc.

Sondra B. Morgan, Brydon, Swaengen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65201, for: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company (the Small Telephone Company Group); Bourbeuse Telephone Company, and Fidelity Telephone Company.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Carol M. Keith, Assistant General Counsel, and Penny G. Baker, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

**REGULATORY LAW JUDGES:** L. Anne Wickliffe, Deputy Chief, and Amy E. Randles.

## **REPORT AND ORDER**

### **Procedural History**

Max-Tel Communications, Inc. (Max-Tel or company) applied to the Commission on February 21, 1997 for a certificate of service authority to provide basic local telecommunications service in Missouri. On June 6, the Commission granted Max-Tel the requested certificate of service authority, subject to certain conditions, to become effective when Max-Tel's tariff became effective. The Commission also classified Max-Tel as a competitive telecommunications company and waived the application of certain statutes and rules with respect to the basic local services that Max-Tel would offer.

In connection with its grant of a certificate to Max-Tel, the Commission temporarily waived the requirement of 4 CSR 240-2.060(4)(H), which mandates the filing of a 45-day tariff, until Max-Tel had entered into a Commission-approved interconnection agreement or agreements that enabled it to provide basic local exchange services. Max-Tel was required to file tariff sheets for approval no later than 30 days after the Commission approved the required interconnection agreement or agreements.

Max-Tel subsequently submitted its resale agreement with Southwestern Bell Telephone Company (SWBT), which was approved on July 15 in Case No. TO-97-501. On June 9, the company filed the required tariff sheets reflecting the rates, rules, and regulations it will use and the services it will offer. These sheets had an effective date of July 9. Max-Tel filed substitute sheets on June 25, July 8, July 14, July 16, July 18, and July 25, and extended the effective date to August 7. The tariff sheets filed by Max-Tel indicated that Max-Tel would be offering basic local services on a prepaid basis. The Missouri Public Service

Commission Staff (Staff) filed its Memorandum on July 29, recommending approval of the proposed tariff, but commenting on the unusually high rates and toll blocking aspects of Max-Tel's proposed service.

On August 5, the Commission suspended Max-Tel's tariff sheets to December 5 so that the Commission could review the tariff sheets for compliance with the Commission's statutes and rules and consider what protections, if any, should be provided for end users before providers are permitted to offer prepaid services. The Commission conducted an evidentiary hearing on October 9.

At the October 9 hearing, the Commission requested Max-Tel to file information demonstrating its financial resources and abilities to provide basic local exchange telecommunications service in the form of a late-filed exhibit. In addition, the Commission requested Staff to submit a late-filed exhibit showing what information Staff used to determine that Max-Tel is financially able to provide basic local service. The parties were informed at the hearing that the late-filed exhibits would be due on October 17, and that the parties would then have five business days to respond with objections to the proposed exhibits.

On October 14, Max-Tel offered its late-filed exhibit. This exhibit was marked Exhibit 1 and entitled "Max-Tel Financial Statements." On October 17, the Staff offered its late-filed exhibit. This exhibit was marked Exhibit 2 and entitled "Staff Statement Regarding Financial Review of Max-Tel." On November 4, Staff offered another late-filed exhibit in response to the Commission's questions. This exhibit was marked Exhibit 3 and entitled "Supplemental Staff Statement Regarding Financial Review of Max-Tel." No objections to Exhibits 1, 2, or 3 were filed.

Max-Tel indicated at the hearing that it would revise its tariff sheets to address some of the Commissioners' concerns. Following the

hearing, the Commission notified Max-Tel that it would have until November 7 to revise its tariff sheets. On November 7, Max-Tel filed tariff sheet numbers 1 through 24 which replaced all of the tariff sheets previously filed in this case. The new tariff sheets bear an effective date of December 5.

On November 24, Staff filed a supplemental Memorandum (Supplemental Memorandum), recommending approval of the tariff sheets as amended, but commenting on the company's unusually high rates, lack of operator services, and toll blocking. The Office of the Public Counsel (OPC) filed comments on November 25, stating that OPC does not oppose the tariffs as amended but making certain recommendations regarding the statement of rights and responsibilities to be provided to customers under the tariff.

## **Discussion**

The issues before the Commission are whether the tariff sheets submitted by Max-Tel on November 7 comply with the Revised Statutes of Missouri and the Commission's rules.

### **1. 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.

**A. Late-Filed Exhibits** - Max-Tel offered Exhibit 1 following the hearing in response to the Commission's request for information demonstrating Max-Tel's financial ability to provide basic local exchange telecommunications services. Exhibit 1 contains Max-Tel's September 30 Statement of Assets and Liabilities, Max-Tel's Statement of Income and Expenses for the Nine Months Ended September 30, Max-Tel's September 30 Statement of Cash Flows, and Max-Tel's September 30 Notes to Financial Statements. Exhibit 1 is responsive to the Commission's request and no parties filed objections to its admission.

Staff offered Exhibits 2 and 3 in response to the Commission's request for a late-filed exhibit explaining the information reviewed by Staff in determining whether Max-Tel possesses sufficient financial resources and abilities to provide basic local exchange telecommunications services. Attached to Exhibit 3 was a copy of the checklist used by Staff in reviewing Max-Tel's application and a copy of the financial information provided by the company with its application. No objections were made to Exhibit 2 or Exhibit 3. Exhibits 2 and 3 contain information responsive to the Commission's request.

**B. Tariff Sheets** - The tariff sheets filed by Max-Tel following the hearing were intended to replace all of the sheets previously filed in this docket and to address the public interest and statutory and regulatory compliance concerns highlighted by the Commission at the hearing. The issues raised by the Commission at the hearing, and the Commission's findings with respect to each issue, are as follows.

**1) Charges** - The Staff's Memorandum and Supplemental Memorandum indicated that Max-Tel's rates were "unusually high." The tariff sheets on file prior to the hearing included an initial fee of

\$69.00 and a monthly recurring charge of \$49.99 for basic local service. It appeared from the tariff language that a new customer would have to pay one month's recurring charge in addition to the initial fee of \$69.00 to initiate service, and that the \$69.00 would not be applied toward any monthly recurring charges. Also, nine separate optional services such as Call Forwarding, Three-Way Calling and Caller ID were available for monthly recurring charges ranging from \$5.00 to \$10.00 each. An initial fee of \$10.00 would be charged for each optional service requested. The company also proposed to give customers the option of having all optional services except Caller ID available for an initial fee of \$10.00 and a monthly recurring charge of \$20.00. The charge for restoring blocked or suspended service was \$50.00.

At the hearing, Max-Tel provided evidence that the recurring monthly charge of \$49.99 would be unlikely to change frequently, and that any changes would be tariffed and brought to the Commission for approval first. Max-Tel acknowledged that the basic local service that it seeks to provide is provided by SWBT in the metropolitan areas of Missouri for approximately \$12.00 per month, and that Max-Tel would be able to obtain these services at a discount from SWBT to resell to Max-Tel's customers. Max-Tel had not completed an elaborate cost study, but its rates were based on the company's cost of doing business as a start-up company, the charges that Max-Tel would have to pay to Southwestern Bell Telephone Company to resell the offered services, and a reasonable profit for Max-Tel.

Max-Tel does not target any particular market for its services. Nevertheless, the kind of customers who will typically pay four times the cost that SWBT charges for basic local services are those who have had their service suspended by the incumbent local exchange carrier (ILEC) for

nonpayment of local charges or, more often, long distance charges. Many of prepaid service providers' customers are so-called "interim" customers, who use a prepaid service for several months while they pay off a large phone bill to the ILEC, and then return to the ILEC for service when they are eligible for the ILEC's service again. Max-Tel's attrition rate has historically been 8 to 10 percent per month, which translates to 100 percent or more than a 100 percent turnover in Max-Tel's customer base per year, and this turnover drives up Max-Tel's costs considerably.

Staff witness Voight testified at the hearing that Staff does not have a policy or standard for judging the rates of competitive services provided by competitive companies. (Tr. 18). Nevertheless, Staff called attention to Max-Tel's unusually high rates in its recommendation, (Tr. 18), and Mr. Voight testified that he has a great deal of concern over these types of charges because competition is not yet fully developed. (Tr. 20-21). Mr. Voight did note that there is one other company proposing to offer prepaid services in a similar fashion in Missouri at a rate of approximately \$40 per month, and so price competition between companies may be developing. (Tr. 21). What "prepaid" service customers get in return for the premium they pay is service that is not subject to credit checks, deposits and application scoring. (Tr. 32). OPC presented evidence that customers likely to use Max-Tel's service would probably expect to pay a premium price to get that service, and that Max-Tel's service would create a way for people who might not otherwise have local service to do so on a temporary basis.

On November 7, Max-Tel filed a revised tariff in which it lowered its proposed basic local service rate from \$49.99 to \$39.99 per month.



Original Sheet No. 20.<sup>1</sup> In addition, Max-Tel clarified that its initiation fee of \$69.00 for basic local service includes the first month of service, and that the initiation fee is due again only if a customer is terminated. Id. Max-Tel's revised tariff clearly does not require payment of a new initiation fee if service is merely suspended, but does provide for a \$25 restoration fee in such instances. Id.; Original Sheet No. 21. The restoration fee has been lowered from \$50.00 to \$25.00. Id. The revised tariff makes it clear when the initiation fee will apply and when the restoration fee will apply, because the terms "suspension" and "termination" have been clearly defined and are no longer used interchangeably.

The Commission finds that Max-Tel's rates may be higher than those of SWBT because they reflect a premium for providing service to individuals who pose credit risks. Although prepayment should serve to eliminate some of those risks, Max-Tel may be more likely than SWBT to incur disconnection costs. Moreover, Max-Tel experiences unusual costs due to the high customer attrition rate for prepaid services. While Max-Tel may not have completed detailed cost studies or otherwise justified its rates from a cost standpoint, competition is likely to cause Max-Tel to lower its rates in the future. When, at the hearing, Max-Tel was made aware of the fact that at least one competitor will be providing prepaid services at approximately \$10.00 less per month than Max-Tel, Max-Tel responded by lowering its rates by \$10.00 per month. This is a sign that the market is at the door of competition.

The Commission notes that both the recurring and nonrecurring charges may be higher than full competition would justify. At the same

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<sup>1</sup> This reference and all similar references are to Max-Tel's Mo PSC No. 1 substitute tariff sheets filed on November 7, which replaced all previously tariff sheets previously filed by Max-Tel.

time, given the developing market for prepaid services, the Commission does not find Max-Tel's rates to be unjust or unreasonable. However, the Commission finds that the public interest will be served if Customers are made fully aware of Max-Tel's rates, and the limitations of its service as discussed below, prior to the time that their \$69.00 fee becomes nonrefundable.

**2) Toll-blocking and Lack of Operator and Directory Assistance Services** - Max-Tel's tariff sheets on file at the time of the hearing indicated that long distance service would not be provided by Max-Tel. In addition, prior to the hearing, Max-Tel's tariff did not guarantee that customers would be made aware of the toll blocking aspects of the service prior to receiving their first bill following initiation of service. These sheets also failed to address directory assistance and operator services.

At the hearing, Max-Tel presented evidence that even though Max-Tel's customers would be toll-blocked and could not receive collect or other toll calls, its customers could access collect and other toll services on a prepaid basis through use of prepaid long distance calling cards by dialing the long distance carriers' access codes, which are 800 numbers. 800 number service would not be blocked. Max-Tel's customers would not be able to make collect calls by dialing zero to use an operator service. Max-Tel's representatives testified that PIC codes could also be used.

Max-Tel's president testified at the hearing that Max-Tel would not be providing any operator services, or any access to SWBT operators. (Tr. 52). Its customers could use local information services provided by SWBT to the extent that there is no charge for such services. Id. This

might include five to ten free 1411 calls per month, and any attempt to dial 1411 above the maximum free 1411 calls would be blocked. (Tr. 52-53).

Staff witness Voight testified at the hearing that all of the other local exchange companies provide operator services. (Tr. 62). In his opinion, operator services should be addressed in the customer information and also more explicitly in the tariff. (Tr. 63).

Max-Tel has not included local operator or directory assistance services in its November 7 tariff. Max-Tel's tariff states explicitly that neither local nor long distance operator or directory assistance services will be available to its customers. Original Sheet No. 18. The tariff does not mention use of PIC codes to access long distance services, either. Max-Tel's revised tariff blocks all long distance services except those accessible by dialing 1-800 +. Original Sheet No. 18. The tariff provides for notice of the toll limitations to Max-Tel's customers prior to provision of service. Original Sheet No. 22. The notice does not, however, inform customers of the lack of operator or directory assistance services.

The Staff's Supplemental Memorandum commented on the toll-blocking and lack of operator services in Max-Tel's tariff. In addition, OPC's November 25 comments point out that the information concerning Max-Tel's toll restriction 1+800 call services and instructions concerning accessing emergency service are not contained directly in the statement to be provided to customers.

The Commission finds that the tariff is clear concerning the services to be provided by Max-Tel. However, the Commission further finds that Max-Tel's lack of operator and directory assistance services, as well as its limitations on toll services for all of its customers, are unusual

and that customers must be made aware of these limitations prior to paying a \$69.00 nonrefundable fee if the public interest is to be protected. Customers are unlikely to expect such limitations on basic local exchange service without being forewarned. The Commission takes official notice that all of the other prepaid basic local service providers with approved tariffs in Missouri have agreed to enter into customer service contracts with their customers prior to providing service so that such information is specifically brought to the customer's attention prior to the time that the customer pays. Under the tariff at issue here, Max-Tel is not required to provide this information prior to accepting payment from its customers.

**3) Customer Contracts** - Prior to the hearing, Max-Tel's proposed tariff contained a statement entitled "Residential Customer Rights and Responsibilities" that reiterated some of the terms and conditions in the tariff. At the hearing, Max-Tel clarified that the Statement of Residential Customer Rights and Responsibilities then on file as part of the tariff would be provided to customers after initiation of service, and that Max-Tel did not intend to enter into contracts with its customers. Customers would call to sign up, Max-Tel would place an order with the ILEC as soon as payment was received, and then Max-Tel would send the bill for the next billing period accompanied by the Statement.

However, Max-Tel indicated at the hearing that it would be willing to provide customers with this information prior to signing them up, and that it would include information concerning its rates in the statement. (Tr. 44-46). Staff witness Voight stated that, when reviewing the Statement of Residential Customer Rights and Responsibilities portion of the Max-Tel tariff on file at the time of the hearing, he had been under the impression that the statement would be provided to customers at the

time they signed up for service, even if it was not signed and did not form a legally binding contract. (Tr. 63).

Max-Tel's tariff, as amended, now provides that Max-Tel will send a written notice to customers prior to providing service that specifies the rates to be charged, explains Max-Tel's toll and operator service blocking and includes dialing instructions for accessing emergency services. Original Sheet No. 22. Max-Tel will also provide its new customers with a revised "Statement of Residential Customer Rights and Responsibilities," the contents of which is set out in its tariff, prior to initiating their service. Original Sheet Nos. 22-24. OPC has recommended that the information concerning toll blocking and emergency calling be included directly in the statement.

The Commission finds that the toll blocking, directory assistance and operator service aspects of Max-Tel's proposed service are unusual and not likely to be anticipated by customers, particularly when less crucial services such as Call-Forwarding and Three-Way Calling are being offered. Given the unusually high rates to be charged by Max-Tel for its services, the public interest will only be served if customers are adequately notified of the nature and price of Max-Tel's service before their \$69.00 initial fee becomes nonrefundable. Furthermore, Max-Tel's customers must be made aware of how they can access emergency services.

The Commission finds that Max-Tel shall mail, at least ten business days before the \$69.00 initiation fee becomes nonrefundable, all of the information contained on Original Sheet Nos. 20, 22, 23 and 24 of the tariff, as well as information about Max-Tel's failure to provide operator and directory assistance services as described on Original Sheet 18 of the tariff and a statement advising customers that their \$69.00

initial fee is refundable for ten days following the date on which the packet containing the statement and information is postmarked. All of this information should be included in Max-Tel's Statement of Residential Customer Rights and Responsibilities.

## **2. Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law:

**A. Late-Filed Exhibits** - The late-filed exhibits offered by Max-Tel and Staff are responsive to the Commission's requests, and no objections were made to their admission. Exhibits 1, 2 and 3 are admitted into evidence.

**B. Tariff Sheets** - The Commission has the authority to review all tariffs filed with the Commission and to reject or suspend such tariffs if they fail to comply with the Revised Statutes of Missouri or the Commission's rules pertaining to telecommunications companies, if they include unjust or unreasonable rates, or if they are not in the public interest. Sections 386.250, 386.310, 386.320, 392.200.<sup>12</sup> The Act and Missouri Senate Bill 507 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. The purposes of Missouri Senate Bill 507 were set forth in Section 392.185, which contains the following pertinent language:

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<sup>2</sup> All statutory references are to the 1996 Supplement of the Revised Statutes of Missouri, unless otherwise indicated.

The provisions of this chapter shall be construed to:

(1) Promote universally available and widely affordable telecommunications services;

\* \* \*

(3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri;

(4) Ensure that customers pay only reasonable charges for telecommunications service;

(5) Permit flexible regulation of competitive telecommunications companies and competitive telecommunications services;

(6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest; . . . .

The Commission has applied the law to the facts found in this case and determined that the tariff filed by Max-Tel on November 7 should be approved to take effect on December 5. The purposes of Missouri Senate Bill 507 will be served if Max-Tel's tariff is approved with the conditions identified in the Ordered Paragraphs of this Report and Order.

Max-Tel has not violated any statute or Commission rule by failing to offer directory assistance or operator services or by restricting toll service access. Section 386.020(4) defines "basic local telecommunications services" as being comprised of "any of" numerous listed services such as access to interexchange carriers, access to basic local operator services, access to basic local directory assistance, and access to local emergency services. However, the statutes do not explicitly mandate that all of such services be provided with every basic local service offering. Operator, directory assistance and toll services are not identified in the rule as "necessary elements" of basic local service under the Commission's rule that lists such elements. See 4 CSR 240-32.100(2). On the other hand, the Commission concludes that Max-Tel's customers should be made aware of Max-Tel's rates and the unusual terms and conditions of Max-Tel's service before the \$69.00 initiation fee becomes nonrefundable.

**IT IS THEREFORE ORDERED:**

1. That Exhibits 1, 2 and 3 are admitted.

2. That the tariff sheets filed by Max-Tel Communications, Inc. on June 6 are approved as amended to become effective on December 5, 1997. The tariff sheets approved are:

MoPSC No. 1

Original Sheet No. 1 through Original Sheet No. 24

3. That Max-Tel Communications, Inc. shall mail the following to its customers, at least ten business days prior to the date on which its initiation fee of \$69.00 becomes nonrefundable:

a. The Statement of Residential Customer Rights and Responsibilities to be approved by the Commission;

b. All of the information contained on Original Sheet Nos. 20, 22, 23 and 24 of the tariff;

c. The information contained in Section 3.2 on Original Sheet 18 of the tariff; and

d. A statement that the customer's \$69.00 initial fee is refundable for ten days following the date on which the packet containing the statement and information is postmarked.

4. That the date on which the Statement of Residential Customer Rights and Responsibilities is postmarked by the United States Postal Service shall be treated as the date of "mailing" for purposes of interpreting Ordered Paragraph 3.

5. That the certificate issued on June 6, 1997, to Max-Tel Communications, Inc., shall become effective on December 5, 1997.



6. That this Report and Order shall become effective on December 5, 1997.

7. That this case shall be closed on December 8, 1997.

**BY THE COMMISSION**

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

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

( S E A L )

Lumpe, Ch., Crumpton, Drainer  
and Murray, CC., concur and  
certify compliance with the  
provisions of Section 536.080,  
RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 2nd day of December, 1997.