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



In the Matter of the Application of U.S. Telco,)
Inc., for Certificates of Service Authority to)
Provide Basic Local Telecommunications Service in)
Portions of the State of Missouri and to Classify)
Said Services as Competitive.)
)

Case No. TA-97-444

REPORT AND ORDER

Issue Date: September 16, 1997

Effective Date: September 26, 1997

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APPEARANCES

William M. Shansey, Of Counsel, French & Stewart Law Office, 1001 Cherry Street, Suite 306, Columbia, Missouri 65201, for U.S. Telco, Inc.

Anthony K. Conroy, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Sondra B. Morgan and W.R. England, III, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 312, Jefferson City, Missouri 65102, 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); and 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.

Cherlyn D. McGowan, Assistant General Counsel, and Carol M. Keith, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: L. Anne Wickliffe, Deputy Chief.

REPORT AND ORDER

Procedural History

U.S. Telco, Inc. (U.S. Telco) applied to the Commission on April 8, 1997, for a certificate of service authority to provide basic local telecommunications service in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1996. U.S. Telco 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 Supp. 1996. U.S. Telco is a Texas corporation authorized to do business in the state of Missouri, with offices at 5215 O'Conner, Suite 300, Irving, Texas 75039.

The Commission issued an Order and Notice on April 10, directing parties wishing to intervene in the case to do so by May 9. The Commission granted permission to intervene to the following entities on May 19:

The Small Telephone Company Group²
Fidelity Telephone Company and Bourbeuse Telephone Company
Southwestern Bell Telephone Company (SWBT)

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

² 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 Commission directed the parties to file a procedural schedule no later than June 3.

The Staff of the Commission (Staff) filed a Motion to Establish Stipulation Deadline on June 3, stating that the parties expected to be able to file a stipulation by June 27 and asking the Commission to establish that date as a filing deadline. The Commission granted Staff's motion by order issued on June 16. The parties filed a Stipulation and Agreement (SA) on June 27, and Staff filed Suggestions in Support of the Stipulation and Agreement on July 11. By the terms of the stipulation the parties waived their rights to present testimony, to cross-examine witnesses, and to present oral argument or written briefs. 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.

Background

U.S. Telco wishes certification to provide resold basic local telecommunications service on a prepaid basis. Specifically, U.S. Telco wants to provide basic local services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE) and United Telephone Company of Missouri d/b/a Sprint (Sprint-United). U.S. Telco is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which U.S. Telco proposes to operate are described in Appendix C to the

application³. U.S. Telco is requesting that its basic local exchange services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

Discussion

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 to include in its application a certificate from the Secretary of State showing 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 a 45-day effective date. U.S. Telco has provided all the required documentation except for the proposed tariff. The company has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for U.S. Telco to submit a tariff until it has executed interconnection agreements with the incumbent local exchange companies (ILECs) involved. U.S. Telco cannot price its resold services until it has reached price agreements with the ILECs from which it will purchase those services. The company has agreed that, once it is possible to do so, it will submit to the Commission for approval a proposed tariff with a minimum 45-day effective date. U.S. Telco will file the tariff in Case No. TA-97-444 and give notice of the tariff filing to all the parties and participants. Along with that filing U.S. Telco has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

³ Note that the application itself incorrectly identifies Appendix B as identifying the exchanges in which it seeks to provide services and Appendix C as describing the expertise of its management.

B. Basic local service certification

Section 392.455, RSMo Supp. 1996, 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.

1. Technical, financial and managerial resources and abilities.

U.S. Telco submitted Appendix B with its application that lists the names and qualifications of its management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including technical and engineering, marketing, sales, and finance. U.S. Telco submitted as Appendix D its balance sheet and statement of earnings for 1996, as well as other financial documents. The parties agreed that U.S. Telco possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

2. The entrant's proposed services satisfy the minimum standards established by the Commission.

U.S. Telco stated in its application that it will comply with all applicable Commission rules and service standards,

including quality of service regulations. The parties agreed that U.S. Telco proposes to offer basic local services that satisfy the minimum standards established by the Commission.

3. The geographic area in which the company proposes to offer service. U.S. Telco set out in its Appendix C all the exchanges in which it proposes to offer services. U.S. Telco has defined its service area by means of the tariffed exchange areas of the ILECs presently providing basic local service in those exchanges. The parties agreed that U.S. Telco has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

4. The offering of basic local telecommunications service as a separate and distinct service. U.S. Telco has agreed to offer basic local telecommunications service as a separate and distinct service.

5. Equitable access for all Missourians to affordable telecommunications services. U.S. Telco has agreed 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(5), RSMo Supp. 1996.

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. § 392.361.2. 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

5. The Commission finds that U.S. Telco is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 3.
6. The Commission finds that U.S. Telco's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, 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. 1996, and 392.230, rather than Sections 392.500 and 392.510.

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. U.S. Telco has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1996. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority is in the public interest.

The Federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1996, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1996, states that "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; . . . (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 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. 1996. Based upon the information contained within the Stipulation and Agreement of the parties, and on 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 submitted by the parties on June 27, 1997, is approved.

2. That U.S. Telco, 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, to become effective when the company's tariff becomes effective.

3. That U.S. Telco, Inc. is classified as a competitive telecommunications company. 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. 1996 - 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 the filing of a 45-day tariff as required by 4 CSR 2-2.060(4)(H) is waived until U.S. Telco, Inc. has entered into a Commission-approved interconnection agreement that enables it to provide basic local exchange services.

5. That U.S. Telco, Inc. shall file tariff sheets for approval reflecting the rates, rules, regulations and the services it will offer within 30 days after Commission approval of the necessary interconnection agreement(s). The tariff shall be filed in Case No. TO-97-444 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3. The tariffs filed shall carry, at a minimum, a 45-day effective date.

6. That U.S. Telco, Inc. shall give notice of the filing of the tariffs described in Ordered Paragraph 5 as set out in the Stipulation and Agreement. In addition U.S. Telco, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

7. That U.S. Telco, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, 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. 1996, and 392.230, rather than Sections 392.500 and 392.510.

8. That this Report And Order shall become effective on September 26, 1997.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Cecil I. Wright", written in a cursive style.

**Cecil I. Wright
Executive Secretary**

(S E A L)

Lumpe, Ch., Drainer and Murray,
CC., concur.
Crumpton, C., dissents.

Dated at Jefferson City, Missouri,
on this 16th day of September, 1997.