

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Blue Ridge)	
Telecom Systems, LLC, for a Certificate of)	
Service Authority to Provide Resold and)	
Facilities-based Basic Local Telecommunications)	<u>Case No. TA-2002-432</u>
Service in Portions of the State of Missouri)	
and to Classify such Services and the)	
Company as Competitive)	

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

This order grants a certificate of service authority for basic local telecommunications services to the applicant.

Procedural History

Blue Ridge Telecom Systems, LLC, applied to the Missouri Public Service Commission on March 11, 2002, for a certificate of service authority to provide resold and facilities-based basic local telecommunications services in Missouri under Sections 392.410-.450, RSMo 2000.¹ Blue Ridge asked the Commission to classify it as a competitive company and waive certain statutes and rules under Sections 392.361 and 392.420. On that same date, Blue Ridge requested a protective order, which the Commission issued on March 22, 2002.

¹ All citations to statutory authority are to the year 2000 Revised Statutes of Missouri, as currently supplemented, unless otherwise indicated.

The Commission issued a notice and schedule of applicants on March 19, 2002, directing interested parties wishing to intervene to do so by April 18, 2002. There were no applications to intervene.

The Staff of the Commission filed its recommendation on April 24, 2002, and is discussed below.

Blue Ridge's Application

In its application, Blue Ridge stated that it is a privately-held limited liability company organized under the laws of the state of Delaware. Blue Ridge notes that it was organized to provide both domestic and international telecommunications services to business customers in the state of Missouri and throughout the United States. In its application, Blue Ridge seeks to provide all forms of basic local exchange telecommunications services to small and medium-sized business customers in the state of Missouri. In addition to the above-listed local exchange services and in conformity with the regulations of the Commission, Blue Ridge pleaded that, either directly or through arrangements with other service providers, it will offer access to the following services: dual-party relay service for the hearing and speech-impaired; local emergency services, including 911 services established by local authorities; basic local operator services; basic local directory assistance; equal access to intraLATA and interLATA interexchange carriers, consistent with the regulations of the Federal Communications Commission; and one standard white pages directory listing.

Blue Ridge alleged that it possesses the technical and managerial expertise and experience necessary to provide the services it proposes. Blue Ridge claims that it is managerially and technically qualified to operate as a provider of resold and facilities-based

local exchange services and resold interexchange telecommunications services in Missouri. In particular, Blue Ridge alleged that its management team includes individuals with extensive technical and managerial experience in successfully developing and operating telecommunications businesses. According to Blue Ridge, the members of the Blue Ridge management team bring many years of experience and a wealth of knowledge from being associated with a number of highly successful companies.

Blue Ridge claims that with such vast managerial and technical experience by the members of its management team, in addition to the outstanding team of operational and local services specialists it has employed, Blue Ridge has adequate technical and managerial capability to develop and maintain successful telecommunications operations in the state of Missouri.

According to Blue Ridge, it has applied for authority to provide facilities-based and resold local exchange service in a number of states. Blue Ridge states that it is not yet operational in any state.

Blue Ridge also alleged that it possesses the necessary financial resources to provide the basic local telecommunications services identified in this application. As a start-up company, Blue Ridge noted that it has no significant financial history, and currently is making network investments, as well as securing vendors for the equipment and construction of its network. Nonetheless, Blue Ridge maintains, as evident from Blue Ridge's most recent financial statements, it has the necessary financial resources to provide the telecommunications services described in these statements, and to finance its operations in order to ensure the continued provision of these services in Missouri.

Blue Ridge further maintains that, as demonstrated by its financial statements, Blue Ridge has access to ample working capital to fund the construction and operation of Blue Ridge's telecommunications network and to compete effectively in the market for interexchange services in Missouri. The capital, Blue Ridge states, will enable it to meet its working capital requirements in Missouri for the near-term future.

Blue Ridge claims that its customer service representatives are available to assist its business customers with service, maintenance, and billing problems. Specifically, Blue Ridge states that its customer service representatives are prepared to respond to a broad range of service matters, including inquiries regarding: (1) the types of services offered by Blue Ridge and the rates for services; (2) monthly billing statements; (3) problems or concerns pertaining to a customer's current service; and (4) general telecommunications matters. Blue Ridge states that for service and maintenance problems, customers may contact Blue Ridge's Customer Services 24 hours a day, seven days a week.

Blue Ridge's application shows that it proposes to provide basic local exchange telecommunications services on a resold and facilities-basis throughout exchanges currently served by SWBT and Verizon.

Blue Ridge's application shows that it will offer basic local exchange telecommunications service as a separate and distinct service in accordance with applicable law. Blue Ridge promises that it will give consideration to equitable access for all Missourians, regardless of where they might reside or their income, to affordable telecommunications services in its proposed service area, in accordance with applicable law.

Findings of Fact

The *Deffenderfer* case held that 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.² Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

Blue Ridge is a Delaware privately-held limited liability company, with its principal offices located at 4380 Boulder Highway, Las Vegas, Nevada 89121. Commission Rule 4 CSR 240-2.060 requires a 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, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. Blue Ridge has provided the required documentation except for the proposed tariff. Blue Ridge requested a temporary waiver of Commission Rule 4 CSR 240-2.060(6)(C) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. Blue Ridge stated that it will submit to the Commission for approval a proposed tariff bearing no less than a 30-day effective date in a manner consistent with recent Commission practice in similar cases. Blue Ridge intends to provide basic local exchange telecommunications services.

² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

Exhibit C to the application lists the names and qualifications of Blue Ridge's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry. Staff stated that in its opinion Blue Ridge possesses sufficient technical and managerial experience to provide basic local exchange telecommunications service.

Blue Ridge submitted as Exhibit D to its application the necessary financial information. In addition, Staff stated that in its opinion Blue Ridge possesses sufficient financial resources to provide basic local exchange telecommunications service.

The Commission finds that Blue Ridge possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Blue Ridge stated in its application that it will provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards.

The Commission finds that Blue Ridge proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Blue Ridge is seeking certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone Company and GTE, d/b/a Verizon. Blue Ridge indicates that the specific exchanges within which it proposes to offer service are listed in the incumbent providers' respective local exchange tariffs. Blue Ridge is not asking for certification in any area that is served by a small incumbent local exchange carrier. Staff stated in its recommendation that in its opinion, Blue Ridge has sufficiently identified the geographic

area in which it proposes to offer basic local service and that the area follows incumbent local exchange carriers' boundaries and is no smaller than an exchange.

The Commission finds that Blue Ridge has sufficiently identified the geographic area in which it proposes to offer service and that Blue Ridge has demonstrated that the area follows ILEC exchange boundaries and is no smaller than an exchange.

Blue Ridge states that all the services it proposes to offer will be subject to sufficient competition to justify a lesser degree of regulation. Blue Ridge intends to provide basic local exchange telecommunications service as a facility-based provider and on a resale basis.

Blue Ridge stated that it will offer basic local telecommunications service as a separate and distinct service and that, in compliance with Section 392.455(5), it will provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services.

The Commission finds that Blue Ridge will provide basic local exchange service as a separate and distinct service and that Blue Ridge has committed to provide equitable access.

Blue Ridge states that the public interest will be served by Commission approval of its application because Blue Ridge's proposed services will create and enhance competition and expand customer service options. Blue Ridge indicates that approval of its application will expand the availability of innovative, high quality, and reliable telecommunications services with in the state of Missouri.

Staff recommends that Blue Ridge be classified as a competitive telecommunications carrier. Staff also recommends that Blue Ridge's certificate be

conditioned upon certain limitations on its ability to charge for its access services and that Blue Ridge's certificate become effective when its tariff becomes effective. Staff's recommended conditions are briefly restated as follows:

- Blue Ridge's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each ILEC within whose service area Blue Ridge seeks authority to provide service, unless authorized by the Commission under Sections 392.220 and 392.230.
- The service authority and service classification for switched exchange access is granted conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein must be made under Sections 392.220 and 392.230 and not Sections 392.500 and 392.510.
- If the directly competing ILEC, in whose service area Blue Ridge is operating, decreases its originating or terminating access service rates, Blue Ridge must file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating or terminating access rates in order to maintain the cap.

The Commission finds that all the telecommunications services Blue Ridge proposes to offer are subject to sufficient competition to justify a lesser degree of regulation.

Therefore, the Commission finds that all of Blue Ridge's proposed telecommunications services are competitive telecommunications services.

Conclusions of Law

Certificate of Service Authority

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. Blue Ridge has requested certification under Sections 392.410 - 392.450, which permit the Commission to grant a certificate of service authority where it is in the public interest. The federal Telecommunications Act of 1996 and Section 392.455 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers.³

Section 392.455 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 ILEC 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.

³ See Section 392.185.

The Commission finds that Blue Ridge meets the statutory requirements for provision of basic local telecommunications services and has stated it will abide by those requirements in the future. The Commission determines that granting Blue Ridge a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.

Competitive Classification

Blue Ridge requested that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived. 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 under Section 392.361.2. In making that determination, the Commission may consider such factors as market share, financial resources, and name recognition, among others.⁴ In addition, the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services under Section 392.361.3. 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.⁵

The Commission finds that competition in the basic local exchange telecommunications market is in the public interest. The Commission finds that all the

⁴ *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).

⁵ *Id.* at 487.

telecommunications services offered by Blue Ridge are competitive telecommunications services and that the telecommunication services Blue Ridge proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the Commission concludes that Blue Ridge should be classified as a competitive company.

Waivers and Conditions

Subsection 392.470.1 authorizes the Commission to impose conditions upon a telecommunications service provider which the Commission deems reasonable and necessary and which are in the public interest and consistent with the purposes of Chapter 392. 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 Commission finds that Blue Ridge has met the requirements of Commission Rule 4 CSR 240-2.060 for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with an effective date which is no fewer than 45 days after the tariff's issue date. The Commission finds that Blue Ridge has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver should be granted.

In addition to the waiver of the tariff requirement, Blue Ridge requested a waiver of the following statutes: Sections 392.210.2, 392.240(1), 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, and 392.340. Blue Ridge also requested that the application of these Commission rules be waived: 4 CSR 240-10.020, 4 CSR 240-30.010(2)(C), 4 CSR 240-30.040, 4 CSR 240-32.030(4)(C), 4 CSR 240-33.030, and 4 CSR 240-35. The Commission lists, in its Notice of Applications, a set of standard

waivers that the Commission ordinarily waives for competitive companies. The Staff recommends that the Commission grant Blue Ridge waivers of all the standard waivers for competitive basic local exchange carriers.

The Commission finds that the telecommunication services Blue Ridge proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. The Commission has also found that Blue Ridge is a competitive company. Therefore, the Commission determines that Blue Ridge should be granted the same waivers of the statutes and rules as the Commission usually grants to competitive companies. The waivers are set out in the ordered paragraph below.

The Commission finds that the conditions that the Staff recommends are reasonable and necessary to protect the public interest and that they further the purposes of Chapter 392 as stated in Section 392.185. The Commission finds that Blue Ridge's competitive classification and certification should be expressly conditioned as recommended by Staff and as ordered below.

IT IS THEREFORE ORDERED:

1. That Blue Ridge Telecom Systems, LLC, 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 below and to all applicable statutes and Missouri Public Service Commission rules except as specified in this order. (The Commission notes that prior to providing telecommunications services in Missouri, a party must possess an approved interconnection agreement; a certificate of service authority; and a tariff.)

2. That Blue Ridge Telecom Systems, LLC, is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules will be waived for the provision of basic local telecommunications services:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - 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 - issuance of securities, debts and notes

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - posting of tariffs
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-32.030(4)(C) - exchange boundary maps
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and customer-specific arrangements

3. That if Blue Ridge Telecom Systems, LLC, provides access service, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area Blue Ridge Telecom Systems, LLC, is providing service, unless authorized by the Commission under Sections 392.220 and 392.230, RSMo 2000.

4. That the certification and competitive status herein granted to Blue Ridge Telecom Systems, LLC, are expressly conditioned upon the continued applicability of

Section 392.200, RSMo 2000, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set out above must be cost-justified under Sections 392.220 and 392.230, RSMo 2000, rather than Sections 392.500 and 392.510, RSMo 2000.

5. That if a directly competing incumbent local exchange carrier, in whose service area Blue Ridge Telecom Systems, LLC, is operating, decreases its originating or terminating access service rates, Blue Ridge Telecom Systems, LLC, must file an appropriate tariff amendment to reduce its originating or terminating access rates in that directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates.

6. That the request for waiver of Commission Rule 4 CSR 240-2.060(6)(C), which requires the filing of a tariff with an effective date not fewer than 45 days from the issue date, is granted.

7. That this order will become effective on May 12, 2002.

8. That this case may be closed on May 13, 2002.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Law Judge

(SEAL)

Bill Hopkins, Senior Law Judge,
by delegation of authority under
Section 386.240, RSMo 2000,
as currently supplemented.

Dated at Jefferson City, Missouri,
on this 2nd day of May, 2002.