

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 13th  
day of October, 1995.

Joint petition of TCG America, Inc.,     )  
Teleport Communications Group Inc.,     )  
TCG St. Louis, TCG Partners, and     )  
TCI Teleport of St. Louis, Inc., for     ) CASE NO. TM-95-422  
authority to transfer assets and     )  
certificates of TCG America, Inc. to     )  
TCG St. Louis, a NY partnership.     )

ORDER APPROVING TRANSFER OF ASSETS

On June 19, 1995, TCG America, Inc. (TCG America), Teleport Communications Group Inc., (TCGI), TCG St. Louis, TCG Partners, and TCI Teleport of St. Louis, Inc. (TCI-St. Louis) filed an application for approval by the Commission of: (1) the transfer of the assets of TCG America, including its certificate of service authority to provide within the state of Missouri intrastate interexchange and local exchange telecommunications service limited to dedicated, nonswitched private line service, to TCG St. Louis; (2) the subsequent transfer of TCG St. Louis through one or more intermediaries to MajorCo, L.P. (MajorCo), and, ultimately, to NewTelco, L.P. (NewTelco); and (3) for a waiver of the filing requirements of 4 CSR 240-2.060(3), to the extent that those requirements have not been complied with in Applicants' application.

TCG America was certificated by this Commission on June 1, 1994, in Case No. TA-94-160, to provide intrastate interexchange switched and private line telecommunications services and local exchange nonswitched private line telecommunications services. Applicants seek the transfer of TCG America to TCG St. Louis, then the subsequent transfer of TCG St.-Louis

to NewTelco through a convoluted two-step process involving, directly or indirectly, 19 different entities. TCG America would first be transferred to TCG St. Louis, but customers would initially continue to be served under the name and tariff of TCG America. In their application, Applicants state that TCG St. Louis is working with the Secretary of State's office to determine how best to obtain the appropriate authorization to conduct business in Missouri, in view of the numerous and complex holding company relationships involved in the ultimate ownership of TCG St. Louis. Applicants add that TCG St. Louis ultimately intends to operate under its own name, and will amend its application when authorization to do so is provided by the Secretary of State. Further, Applicants state that when TCG St. Louis receives authorization to conduct business in its name, it intends to file an Adoption Notice adopting the tariff of TCG America. To date, the Commission has received neither an amended application nor the Secretary of State's authorization for TCG St. Louis to do business in the state of Missouri.

TCG America is wholly owned by TCGI, which in turn is owned by Cox Teleport, Inc. (Cox Teleport), TCI Teleport, Inc. (TCI Teleport), Comcast Teleport, Inc. (Comcast Teleport), and Continental Teleport, Inc. (Continental Teleport). TCG St. Louis is owned by a partnership which includes TCG Partners, TCI-St. Louis, and Continental Telecommunications Corp. of St. Louis County (Continental-St. Louis). TCG Partners is a partnership which includes Cox Teleport Partners, Inc. (Cox Partners), TCI Teleport Partners, Inc. (TCI Partners), Comcast Teleport Partners, Inc. (Comcast Teleport), and Continental Teleport Partners, Inc. (Continental Partners), all of which are affiliated with their respective owners of TCGI.

In addition to the transfer of TCG America's assets and certificate of service authority to TCG St. Louis, Applicants also seek approval of the transfer of the ownership interests in TCG St. Louis to NewTelco. NewTelco is owned by a partnership which includes MajorCo and MinorCo, L.P. (MinorCo), which in turn are owned in partnership by direct or indirect subsidiaries of Sprint corporation (Sprint), and the corporate parents of Cox Partners, TCI Partners, and Comcast Partners. The purpose of NewTelco is to implement an agreement between Sprint, Cox Partners, TCI Partners, and Comcast Partners to form the Sprint Telecommunications Venture (Joint Venture) to offer various forms of telecommunications services in markets throughout the United States.

Pursuant to a Contribution Agreement dated March 28, 1995, entered into between the affiliates of Cox Partners, TCI Partners, Comcast Partners, NewTelco, and MajorCo, a number of entities, including TCG Partners and TCI-St. Louis, along with TCG St. Louis, will be transferred to MajorCo, which in turn will transfer those assets and interests to NewTelco. Applicants state that while NewTelco is currently expected to hold the majority partnership interests in TCG St. Louis, the majority interests may for organizational or tax purposes actually be held by one or more entities within the Joint Venture structure, including TCG Partners, therefore Applicants request authority for the acquisition and holding of the TCG St. Louis majority interest by any of the entities within the Joint Venture structure. In addition, Applicants state that to maintain the partnership structure of TCG St. Louis, it is anticipated that another entity affiliated with NewTelco will hold a noncontrolling minority partnership interest in TCG St. Louis. The minority partner will have the same ultimate owners as NewTelco.

Further, Applicants state that they envision four possible scenarios with respect to the interests of Continental-St. Louis in TCG St. Louis and Continental Partners in TCG Partners. It is anticipated that either (1) Cox Partners, TCI Partners, and Comcast Partners will negotiate an agreement to acquire the Continental interest on a pro rata basis, (2) TCG Partners and TCG St. Louis will redeem the Continental interests, (3) Continental-St. Louis and Continental Partners will retain their respective interests in TCG-St. Louis and TCG Partners, or (4) Continental-St. Louis and Continental Partners will agree to participate in the Joint Venture on terms involving a transfer of the Continental interests to NewTelco through MajorCo. Applicants request authority to effectuate the proposed transactions with or without the Continental interests.

Applicants state that no changes are planned in the operation, rates, or terms and conditions of service with respect to the transfer of TCG America to TCG St. Louis. All customers will be sent appropriate and timely notice of the transfer, and no customer will experience a switching fee because of the transfer. Applicants claim that the proposed transfer of assets is in the public interest because the proposed transactions will provide potential capital and technical and managerial resources to the Joint Venture, which will allow TCG St. Louis to serve existing and future customers better, and will enhance competition in the telecommunications market in Missouri. Applicants also seek the waiver of existing Rule 4 CSR 240-2.060(3)(A)-(F), citing in support thereof the new proposed Rule 4 CSR 240-2.060(5)(H), published in the *Missouri Register* on April 3, 1995, which streamlines the process of transferring assets of competitive telecommunications companies.

On September 18, 1995, Staff filed a memorandum recommending approval of the proposed transfer. Staff states that Applicants request

Commission approval of a transaction whereby TCG St. Louis will acquire operating control of TCG America. Staff also states that TCGI and its subsidiaries are requesting approval of the transfer of assets to strengthen the ability of the companies to provide high quality telecommunications services to the public, and that the transfer of assets will improve the ability of TCG America and the other companies to achieve economies of scale, which are important to a carrier's ability to compete effectively in the market. In addition, the transfer of assets will also permit TCGI and its subsidiaries to develop new products jointly through their combined resources. Further, Staff notes that TCG America will continue to provide service to Missouri customers under its name and existing tariff. However, Staff urges that the Commission not transfer TCG America's certificate to TCG St. Louis until such time as TCG St. Louis submits appropriate supporting documentation, including Missouri Secretary of State authorization, for such certification. The Staff recommendation does not address the transfer of TCG St. Louis to NewTelco, nor does it address the requested waiver of 4 CSR 240-2.060(3)(A)-(F).

The Commission has reviewed the verified joint application and attachments thereto, and Staff's recommendation, and finds that the acquisition of operating control of TCG America by TCG St. Louis is not detrimental to the public interest, as TCG America will initially continue to provide service to Missouri customers under its name and existing tariffs, with TCG St. Louis ultimately intending to adopt TCG America's tariff and provide service under the name TCG St. Louis. The Commission finds that Missouri customers will be sent appropriate and timely notice of the transfer, will not experience a switching fee because of the transfer, and will be provided with the same services they currently enjoy.

While Applicants' joint application states in several places that it seeks Commission authorization for the subsequent transfer of TCG St. Louis to NewTelco, it is clear from a close reading of the joint application as a whole that Applicants anticipate the following with regard to the subsequent transfer of TCG St. Louis: (1) the majority and controlling partnership interest in TCG St. Louis will be held by either NewTelco or another entity within the Joint Venture structure; (2) a noncontrolling minority partnership interest in TCG St. Louis will be held by a company with the same ultimate owners as NewTelco; and (3) the transfer will be made with or without the interests of Continental-St. Louis in TCG St. Louis and Continental Partners in TCG Partners. It is not clear to the Commission whether Commission authorization is necessary for the secondary transfer of TCG St. Louis if the transfer were completed prior to the transfer of TCG America's certificate to TCG St. Louis. Nevertheless the Commission finds that the secondary transfer of TCG St. Louis will not be detrimental to the public interest, as all of the companies involved are ultimately owned by major players in the telecommunications industry, with obvious managerial, technical, and financial resources. What is clear, however, is that the transfer of the certificate of service authority of TCG America to TCG St. Louis cannot take place until such time as TCG St. Louis has filed with the Commission a certificate from the Secretary of State indicating that TCG St. Louis is authorized to do business in Missouri, as TCG St. Louis could not legally operate in the state of Missouri without such a certificate from the Secretary of State, and the Commission so finds.

The Commission also finds that waiver of the provisions of 4 CSR 240-2.060(3)(A)-(F) is not warranted. Applicants give no justification for the requested waiver other than to indicate that since a new rule is

being promulgated, the old rule should not apply. The Commission notes that Rule 4 CSR 240-2.060(3) contains no provision for the waiver or variance of any of its requirements. The Commission also specifically finds that 4 CSR 240-2.060(3)(F) may not be waived, as its requirements are statutory in nature, and are found in Section 392.300.1, RSMo 1994. In addition, the Commission finds that the grant of a waiver in this case would not be fair to the other competitive telecommunication companies which have and are complying with the Commission's existing rules. Thus, the Commission finds that new Rule 4 CSR 240-2.060(5)(H) should apply only to applications filed after its effective date.

The Commission finds that Applicants are not in compliance with 4 CSR 240-2.060(3)(B), (E), and (F). The Commission determines that approval of the transfer of TCG America to TCG St. Louis, and the subsequent transfer of TCG St. Louis, should be conditioned upon compliance by the Applicants with the provisions of the above-referenced rule. In addition, a transfer of the certificate of service authority from TCG America to TCG St. Louis should be conditioned upon the filing with the Commission of the authorization of TCG St. Louis to do business in the state of Missouri. Further, the Commission finds that the transfer of the certificate from TCG America to TCG St. Louis should not become effective until the effective date of either the adoption by TCG St. Louis of TCG America's tariff, or the submission of a new tariff by TCG St. Louis.

**IT IS THEREFORE ORDERED:**

1. That Joint Applicants TCG America, Inc., Teleport Communications Group Inc., TCG St. Louis, TCG Partners, and TCI Teleport of St. Louis, Inc. be and are hereby directed to comply with the provisions of 4 CSR 240-2.060(3)(B), (E), and (F) as soon as possible.

2. That TCG St. Louis be and is hereby directed to file with the Commission its authorization from the Secretary of State to do business in the state of Missouri as soon as possible.

3. That the transfer of the assets and ownership of TCG America, Inc. to TCG St. Louis be and is hereby approved, subject to the completion of the directive in Ordered Paragraphs 1 and 2 above.

4. That the subsequent transfer of assets and ownership of TCG St. Louis to either NewTelco, L.P., or another entity within the Sprint Telecommunications Venture, be and is hereby approved, subject to completion of the directives in Ordered Paragraphs 1 and 2 above.

5. That the Commission's approval of the subsequent transfer of TCG St. Louis anticipates that a noncontrolling minority partnership interest in TCG St. Louis will be held by a company with the same ultimate owners as NewTelco, L.P., and that the proposed transaction may take place with or without the interests of Continental Telecommunications Corporation of St. Louis County in TCG St. Louis and Continental Teleport Partners, Inc. in TCG Partners.

6. That TCG America, Inc., Teleport Communications Group Inc., TCG St. Louis, TCG Partners, and TCI Teleport of St. Louis, Inc. be authorized hereby to enter into, execute, and perform in accordance with all other documents reasonably necessary to effectuate the transfer of TCG America, Inc. to TCG St. Louis, and the subsequent transfer of TCG St. Louis, as contemplated by the joint application and this order.

7. That TCG America, Inc., Teleport Communications Group Inc., TCG St. Louis, TCG Partners, and TCI Teleport of St. Louis, Inc. be and are hereby authorized to take any and all other actions necessary to effectuate the transfer of TCG America, Inc. to TCG St. Louis, and the subsequent



transfer of TCG St. Louis, as contemplated by the joint application and this order.

8. That TCG America, Inc. or TCG St. Louis shall file a pleading with the Missouri Public Service Commission notifying the Commission of the closing date of the transfer of TCG America, Inc. to TCG St. Louis within ten (10) days after the completion of the transaction.

9. That TCG St. Louis shall file a pleading with the Missouri Public Service Commission notifying the Commission of the closing date of the subsequent transfer of TCG St. Louis within ten (10) days after the completion of the transaction. This pleading should also indicate the names of the new owners of TCG St. Louis.

10. That TCG St. Louis be and is hereby ordered to file, at its election, either an adoption notice adopting the tariff of TCG America, Inc., or a new tariff for TCG St. Louis, within thirty (30) days of the effective date of the Commission's order.

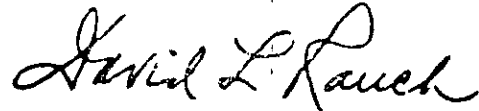
11. That the adoption notice or new tariff required to be filed by TCG St. Louis pursuant to Ordered Paragraph 10 above be and is hereby ordered to contain a thirty-day effective date.

12. That the adoption notice or new tariff required to be filed by TCG St. Louis pursuant to Ordered Paragraph 10 above shall not be approved until after TCG St. Louis has complied with the directives of Ordered Paragraphs 1 and 2 above.

13. That the certificate of service authority currently granted to TCG America, Inc. be and is hereby transferred to TCG St. Louis, effective simultaneously with the effective date of the adoption notice or new tariff required to be filed and approved pursuant to Ordered Paragraphs 10, 11, and 12 above.

14. That this Order shall become effective on October 23,  
1995.

BY THE COMMISSION

A handwritten signature in cursive script, reading "David L. Rauch".

David L. Rauch  
Executive Secretary

(S E A L)

Kincheloe, Crumpton, and  
Drainer, CC., Concur.  
Mueller, Chm., and McClure, C.,  
Absent.