

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 6th
day of August, 1996.

In the Matter of the Application of)	
PREFERRED TELECOM, INC. for a)	
Certificate of Service Authority to)	
Operate as a Reseller of Intrastate)	
Telecommunications Services Within)	CASE NO. TA-96-348
the State of Missouri, for Designa-)	
tion as a Competitive Telecommunica-)	
tions Company, and for Waiver of)	
Certain Statutory and Regulatory)	
Provisions.)	

ORDER APPROVING INTEREXCHANGE CERTIFICATE OF SERVICE AUTHORITY AND
ORDER APPROVING TARIFF

Preferred/Telecom, Inc. (Preferred) applied to the Public Service Commission on April 19, 1996, for a certificate of service authority to provide intrastate interexchange telecommunications services in Missouri under § 392.440 RSMo 1994¹. Preferred asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. Applicant is a Delaware corporation, with its principal office located at 12655 North Central Expressway, #800, Dallas, Texas 75243.

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

The Commission issued a Notice and Schedule of Applicants on April 23, 1996, directing parties wishing to intervene in the case to do so by May 8, 1996. On May 9, 1996, Southwestern Bell Telephone Company (SWBT) filed a Request For Clarification, Or In The Alternative, Application For Intervention, which expressed concern that while the Commission's Notice treated Preferred's application as a request for a certificate to provide intrastate interexchange telecommunications services, the application was ambiguous and could be construed to be seeking authority to provide local exchange telecommunications services. On May 17, 1996, Preferred filed a response to SWBT's request for clarification, which stated that if SWBT had reviewed Preferred's proposed tariff, it would have noted the absence of any reference to local service. Preferred added that it does not intend to waive its right to seek local exchange authority at an appropriate point in the future. No subsequent response was filed by SWBT, therefore SWBT's request for clarification or for intervention remains outstanding.

Preferred filed a proposed tariff at the time of its application, on April 19, 1996, and filed substitute sheets on June 3, 1996 and July 22, 1996. The tariff's effective date was originally June 10, 1996, but the effective date was subsequently extended on several occasions to August 7, 1996. Preferred's tariff describes the rates, rules, and regulations it intends to use, identifies Preferred as a competitive company, and lists the waivers requested. Preferred

intends to provide interexchange telecommunications services including 1+, 800, operator, and calling card services.

In its Memorandum filed July 29, 1996, Staff notes SWBT's intervention request, and states that it had reviewed Preferred's tariff, and believes that the services Preferred wishes to provide are intrastate interexchange services, and that it is clear Preferred does not aspire to provide local exchange service. Staff therefore recommends that the Commission deny SWBT's application to intervene. Staff also notes that Preferred originally requested two nonstandard waivers in its application, 4 CSR 240-30.060(5)(B)-(O), minimum filing requirements, and 4 CSR 240-30.040(4), annual reports. However, Staff points out that Preferred's tariff only references the standard waivers, thus Staff believes Preferred has effectively withdrawn its request for the two nonstandard waivers.

In addition, Staff states that Applicant's proposed services are the same or equivalent to those classified as competitive in Case No. TO-88-142, *In re 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 (September 1989). Staff recommends that the Commission grant Applicant a certificate of intrastate interexchange service authority, competitive status, and waiver of the statutes and rules listed in its tariff. Staff recommended that the Commission approve the tariff as amended, effective August 7, 1996.

The Commission first notes that SWBT's request was filed one day past the intervention deadline. No one has raised this as an issue, and the Commission will not deny SWBT's request on this basis, but the Commission cautions SWBT that the safer practice is to file its intervention requests on a timely basis. The Commission has reviewed Preferred's application, SWBT's request for clarification or intervention, and Preferred's response, and finds that neither clarification nor intervention is warranted in this case.

Initially the Commission takes issue with Preferred's assertion that SWBT should have reviewed Preferred's proposed tariff. Both the Commission and any interested person or entity should be able to ascertain from the face of an application what type of certificate an applicant is seeking. This is important so that the Commission can issue appropriate notice of a certificate application, and so other persons or entities can determine their interests in the matter and whether intervention is necessary to protect those interests. Indeed, 4 CSR 240-2.060(1)(E) requires all applications to contain a clear and concise statement of the relief requested. In this regard Preferred's application is somewhat inartfully drawn, as the relief requested in the opening paragraph and in the final "wherefore" clause of the application is vague at best. Nevertheless, taken as a whole the application contemplates issuance of a certificate for intrastate interexchange authority, as the application refers to interexchange services such as message telecommunications services (MTS) and 800 service, and references

"interexchange termination service," "termination of interstate and intrastate calls from diverse geographic locations," "[b]asic long distance calls," and "services purchased from other interexchange carriers."

Furthermore, whatever the subjective intent of an applicant may be, the applicant is bound by the Commission's interpretation of the relief requested in issuing its notice and final order. Here the Commission treated Preferred's application as a request for intrastate interexchange service authority in its Notice, and the Commission's Staff also reviewed both the application and the proposed tariff, and recommended issuance of a certificate of service authority to provide intrastate interexchange telecommunications services. The Commission finds that it is unnecessary to formally grant the clarification requested by SWBT, since the Commission's orders generally always describe the type of certification granted. As SWBT's alternate request for intervention is solely premised upon the perceived ambiguity of Preferred's application, this request will also be denied.

Since the Commission has denied SWBT's application for intervention, and no one else has requested a hearing or permission to intervene, the Commission determines that no hearing is necessary. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo.App. 1989).

The Commission finds that Staff's recommendation is appropriate, and will grant Preferred a certificate of service authority

for the provision of intrastate interexchange telecommunications services. The Commission cautions Preferred that to the extent it wishes to provide local exchange services at some point in the future, it must request a certificate for authority to do so. With regard to the nonstandard waivers mentioned in Preferred's application, the Commission notes that 4 CSR 240-30.060(5)(B)-(O) was rescinded effective October 10, 1993, and thus no waiver thereof is necessary. With respect to 4 CSR 240-30.040(4), the Commission agrees with Staff that since Preferred has not included this waiver in its tariff, it has effectively abandoned its request for waiver of this rule.

The Commission finds that competition in the intrastate interexchange telecommunications market is in the public interest and Applicant should be granted a certificate of service authority. The Commission finds that the services Applicant proposes to offer are competitive and Applicant should be classified as a competitive company. The Commission is of the opinion that waiving the statutes and Commission rules set out in Ordered Paragraph 2 is reasonable and not detrimental to the public interest.

The Commission determines, by authority of § 392.470, that Applicant should comply with the following regulatory requirements as reasonable and necessary conditions of certification:

- (1) Applicant must comply with reasonable requests by Staff for financial and operating data to allow Staff to monitor the intraLATA toll market. § 386.320.3.

- (2) Applicant must file tariffs containing rules and regulations applicable to customers, a description of the services provided, and a list of rates associated with those services in accordance with 4 CSR 240-30.010 and § 392.220.
- (3) Applicant may not unjustly discriminate between its customers. §§ 392.200, 392.400.
- (4) Applicant must comply with all applicable rules of the Commission except those specifically waived by this order. §§ 386.570, 392.360.
- (5) Applicant must file a Missouri-specific annual report. §§ 392.210, 392.390.1.
- (6) Applicant must comply with jurisdictional reporting requirements as set out in each local exchange company's access services tariffs. § 392.390.3.
- (7) Applicant must submit to the staff, on a confidential basis, a copy of the jurisdictional report it submits to local exchange companies. The report must be submitted within ten (10) days of the date on which it is submitted to the local exchange company.

The Commission finds that Preferred's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange carriers. The Commission finds that the proposed tariff filed on

April 19, 1995, and amended on June 3, 1996 and July 22, 1996, should be approved, effective August 7, 1996.

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company's Request For Clarification, Or In The Alternative, Application For Intervention is hereby denied.

2. That Preferred/Telecom, Inc. be granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above.

3. That Preferred/Telecom, Inc. be classified as a competitive telecommunications company. 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
392.330	- issuance of securities, debts and notes
392.340	- reorganization(s)

Commission Rules

4 CSR 240-10.020	- depreciation fund income
4 CSR 240-30.010(2)(C)	- rate schedules
4 CSR 240-30.040(1)	- Uniform System of Accounts
4 CSR 240-30.040(2)	- Uniform System of Accounts
4 CSR 240-30.040(3)	- Uniform System of Accounts
4 CSR 240-30.040(5)	- Uniform System of Accounts
4 CSR 240-30.040(6)	- 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

4. That the tariff filed by Preferred/Telecom, Inc. on April 19, 1996, be approved as amended, effective August 7, 1996. The tariff approved is:

P.S.C. Mo. No. 1

5. That this order shall become effective on August 7, 1996.

BY THE COMMISSION



David Rauch
Executive Secretary

(SEAL)

Zobrist, Chm., McClure, and Crumpton,
CC., Concur.
Kincheloe, Drainer, CC., Absent

ALJ: Bensavage