

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

10-91

In the matter of the application of Matrix Telecom )  
for certificate of service authority to operate as )  
a reseller and for classification as a competitive )  
telecommunications company. )

CASE NO. TA-91-237

APPEARANCES: Michael W. Mlinar, Attorney at Law, P.O. Box 13142,  
Overland Park, Kansas 66212-3142, for Matrix Telecom.

Darryl W. Howard, Attorney at Law, 100 North Tucker Boulevard,  
Room 630, St. Louis, Missouri 63101, for Southwestern Bell  
Telephone Company.

Randy Bakewell, Assistant Public Counsel, P.O. Box 7800,  
Jefferson City, Missouri 65102, for Office of the Public  
Counsel and the Public.

Robert J. Hack, Assistant General Counsel, P.O. Box 360,  
Jefferson City, Missouri 65102, for Staff of the Missouri  
Public Service Commission.

HEARING  
EXAMINER: Michael F. Pfaff

REPORT AND ORDER

Procedural History

On December 27, 1990, Matrix Telecom (Applicant or Company) applied for a certificate to resell intrastate interexchange telecommunication services. Company states it will be a non-facilities based carrier and will not offer operator services. Matrix also seeks classification as a competitive telecommunications provider and the waiver of certain Commission statutes and rules, discussed infra.

Following notice of Matrix's application, Southwestern Bell Telephone Corporation (SWBT) applied for, and was granted, intervention by this Commission's Order of April 5, 1991. By the same Order, the Commission

established a prehearing conference on April 15.<sup>1</sup> On June 4, Office of Public Counsel, (PC) moved the Commission for an order prohibiting Matrix from collecting interexchange access surcharges for pay telephones via any billing agreements with Local Exchange Telephone Companies (LECs). This matter is no longer in contention.

On June 17, the Commission Staff filed its recommendation, discussed *infra*. On June 24, PC moved the Commission for an order denying Company's request for, *inter-alia*, a waiver of 4 CSR 240-33.030 (the "Minimum Charges Rule," or the "Rule") and requested a hearing on that issue.

On July 19, the Commission granted PC's request for a hearing, established a hearing date of August 13, and advised all parties that direct evidence and cross-examination would be undertaken at the hearing, followed by oral arguments in lieu of briefs.

The hearing was conducted on the scheduled date, at which time Company, Staff, and PC each presented one witness. SWBT, while a participant, did not present a witness.

The oral argument of the parties begins at page 50 of the 52 page transcript; a portion of Public Counsel's oral argument incorporates by reference PC's opening statement, found at Tr. 4, 5, 6, 7 and 8.

#### Findings of Fact

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

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<sup>1</sup>Unless otherwise indicated, all dates hereafter mentioned occurred in 1991.

Applicant seeks authority and approval under Sections 392.440 (certificate) and 392.361 (competitive status and rule waiver) RSMo Cum. Supp. 1990.<sup>2</sup>

There are two issues in this case: the first is whether the Commission should approve Applicant's request for a certificate and competitive status pursuant to Sections 392.440 and 392.361; the second is whether the Commission should waive the application, under Section 392.361(5) of the following Commission Rules and statutes, as originally prayed by Company.

- a. Detailed tariff filing and rate of return regulation, Chapters 392.340(1) and 392.270 RSMo., 4 CSR 240-30.010 and 240-30.060 (1986);
- b. Valuation of property, 392.270 RSMo;
- c. Depreciation accounting, 392.280 RSMo;
- d. Asset sale, purchase, or encumbrances, 392.300 RSMo;
- e. Issuance of securities, 392.291, 392.310 and 392.320 RSMo;
- f. Corporate reorganization, 392.340 RSMo;
- g. Service standards, 4 CSR 230-32;
- h. Service and billing requirements, 4 CSR 240-33;
- i. Any other rules or regulations solely applicable to noncompetitive telecommunications service providers.

In its recommendation of June 17, Staff states that the Commission should only waive a portion of the rules and statutes set out above, described at greater length, *infra*. Public Counsel apparently finds nothing amiss with most of Staff's recommendation, but opposes waiving 4 CSR 240-33.030, the Minimum Charges Rule. Staff and SWBT join Company in requesting a waiver of

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<sup>2</sup>Unless otherwise indicated, all following citations are to RSMo Cum. Supp. 1990.

said Rule, and it is only on this issue that Staff and PC disagree. PC states that waiving the Minimum Charges Rule would be inimical to competition.

Staff, Company and SWBT are of the opinion that the Minimum Charges Rule was intended to apply to local exchange companies, (LECs), and was never intended to apply to the operations of a non-facilities based IXC, one offering no operator services.

The Minimum Charges Rule provides as follows:

PURPOSE: This rule requires all telephone utilities to inform prospective customers at the time service is requested and at the time a contract for service is entered into of the lowest cost service available and the lowest cost one party service available and the lowest equipment cost available for such types of service so that prospective customers are aware of the lowest cost service and equipment available.

- (1) Upon a request for service and at the time a contract for service is entered into, a telephone utility shall use a prepared statement to inform a prospective customer of the lowest cost service available, including services as measured party service and toll limitation services if offered and the lowest cost one (1) party service available to such prospective customer and the lowest equipment cost for such grades of service.
- (2) A copy of all prepared statements required by this rule shall be provided to the commission, its counsel and the public counsel upon request.

Applicant's managing partner states that Applicant is a certificated IXC provider in 48 states and markets its product through NASE,<sup>3</sup> a trade association of some 300,000 self-employed individuals. Company's 1+ dialing plan is made available to NASE members primarily through person-to-person contact and by NASE brochures, the latter offering over 60 different products or services to NASE members, one of which is Company's 1+ dialing plan. Offered at a minimum of 10% below AT&T rates, Company offers three plans, all

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<sup>3</sup>National Association of the Self Employed.

of which are priced according to volumes, i.e., average bills for monthly usage. Company's basic offering is for those customers whose average monthly long distance bill is \$70 a month or less; Company's "EasyWATS I" is for usage in the \$70-\$150 range and "EasyWATS II" for usage exceeding \$150 a month.

Company states that it advises NASE members of its plan at two stages, in the initial solicitation and when they become customers. Exhibit I contains brochures used for both purposes, although Company advises that person-to-person selling is also employed to enroll subscribers.

Public Counsel contends that the Minimum Charges Rule should require Applicant to advise its potential customers of its lowest priced service. Applicant maintains that it already does so, and that the rule has no logical application to it or its operations. Like Staff, Company also feels that the Rule is intended to apply not to competitive IXCs, but to LECs.

Since Company's rates are determined only by a customer's billed usage, not other factors, Company offers a simple long distance plan. Thus, from the outset, this particular IXC has very little to "explain" to a potential customer regarding the price of its product, much less the "lowest cost service" available. For Matrix, telling a customer their "best" or most economical dialing plan is not only simple, but is necessary for enrolling new customers. Notwithstanding, PC would have Matrix do what they are already doing: tell their customers which "plan" is least expensive. Without more, Company's method of soliciting business, and the plan it offers, does not lend much evidentiary support to PC's position.

In a filing titled "Prehearing Memorandum," Public Counsel states: "Public Counsel is not suggesting that the telecommunications companies must explain to the customers how they would need to modify their existing calling patterns in order to achieve savings under any other plan." This statement aside, PC seems to be telling Matrix to do exactly that, since the only way

Company's customers can get the lowest cost service is to make fewer (or more) long distance calls, i.e., to "modify their calling patterns."

During PC's cross of Company's witness, the following colloquy addresses this issue:

Q. Well, let's assume that you could underprice him [the competition] with EasyWATS I or EasyWATS II. And I'd assume that EasyWATS II would be the cheapest for the customer. Which would you offer?

A. It's the customer's selection. We'd tell him, as long as he's willing to commit that he's going to have more than \$150 a month in billings, we'll sign him up for EasyWATS II.

You'll notice on the application form there's a line in there asking for the average monthly billing. So he commits himself as to what he's saying he's going to spend. And that then places him on the appropriate product.

Q. So you are saying that you'll comply with that part of the rule to the extent that you will tell them of the cheapest available offering for their usage?

A. I think that's evident in the product literature we've provided you with.  
(Bracketed material inserted).

Public Counsel contends that waiver of the rule would lead to less competition because "customer information," the lifeblood of competition, would suffer. PC also states that even if all the rule doesn't apply to Applicant, or to other IXC's, then certainly the portion requiring a statement of the "lowest cost service" should apply.

In its opening statement, PC reminds the Commission of the statutory criteria by which it should interpret Chapter 392. As stated by PC, the Commission is to "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 appreciates PC's reminder regarding the interpretation of Missouri's telecommunications law; but on the facts herein

the Commission finds that the nature of competition itself dictates that Matrix, as well as most other competitive IXCs, will make their lowest price services known to their clientele.

Public Counsel's position in this case is further illuminated by the following, extracted from the cross-examination of PC's witness Thompson.

Q. From what you've heard today and what's filed in Matrix's petition and tariff, would you say that Matrix is providing the information necessary for the customer to make an informed decision?

A. Yeah. Based on my review of the brochure and what Mr. Miga said, I think they are providing the kinds of information that we're concerned about them providing, yes.

In this respect, the Commission agrees with Public Counsel. The Commission finds that Matrix already provides the price information required by the Rule. PC has adduced no evidence from which the Commission could conclude otherwise. The Commission also finds that it has previously waived the application of this rule to other IXC providers, including MCI, although such prior waivers do not require an identical result in this case.

On the facts now before it, the Commission finds that waiving Company's compliance with the Minimum Charges Rule is consistent with the protection of the ratepayers. The Commission further finds that enough competition exists in the interexchange market, and among interexchange offerings by a host of companies, to justify waiving the Minimum Charges Rule. This is especially so when, as here, the IXC provider maintains neither facilities nor operator services.

As regards Company's application for waiver of those statutes and regulations shown on page 4, supra, the Commission finds that Staff's recommendation regarding same (shown immediately below), is reasonable and should be implemented. The Commission also finds that most of what Applicant

seeks to waive has previously been waived in Case No. TO-88-142,<sup>4</sup> or has been the subject of previous waivers by IXC's on a case-by-case basis.

Figure 1  
STAFF RECOMMENDS WAIVERS OF:

<u>Statute</u>	<u>Rule</u>	<u>Subject</u>
392.270	4 CSR 240-32.030(1)(C)	Valuation of Property/ Rate of Return
392.280	4 CSR 240-32.050(3, 4, 5 and 6)	Depreciation Accounting/ Rate Base
392.310	4 CSR 240-32.070(4)	Issuance of Securities and Evidences of Indebtedness
392.320	4 CSR 240-33.030	Issuance of Securities and Evidences of Indebtedness
392.340(1)	4 CSR 240-30.060(5)(B, C, D, E, F, G, H, I, J, K, L, M, N, O)	Reconfiguration of Capital Structure/Corporate Reorganization/Rate of Return Information

The Commission also finds that waivers of the following statutes and regulations sought by Company should not be granted. To do so would not be in the public interest.

Figure 2  
STAFF RECOMMENDS NO WAIVERS OF:

<u>Statute</u>	<u>Rule</u>	<u>Subject</u>
392.300	4 CSR 240-30.010	Sale of Assets, Purchases and Encumbrance/Service Standards/ Tariff Filings
	4 CSR 240-30.060 except (5)(B, C, D, E, F, G, H, I, J, K, L, M, N, O)	Rate of Return Information
	4 CSR 240-32 except 32.030(1)(C) 32.050(3, 4, 5 and 6) and 32.070(4)	Service Standards
	4 CSR 240-33 except 33.030	Service and Billing Requirements

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<sup>4</sup>In Re: the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri (Sept. 15, 1989).

The Commission finds that granting the waivers identified in Figure 1 is in the public interest and will promote, not hinder, competition in the IXC market. The Commission also finds that Applicant's telecommunications services, as herein described, are subject to sufficient competition to justify a lesser degree of regulation and is consistent with protection of the ratepayers. The Commission therefore finds that Company and its services are sufficiently competitive to merit a designation as competitive.

#### Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law. The Missouri Public Service Commission has jurisdiction in this matter by virtue of Sections 392.440 and 392.362. Applicant and its services, as described, are competitive and justify a lesser degree of regulation. The Commission concludes that classifying said Company and its services as competitive, and waiving the statutes and regulations identified above, promotes the public interest and offers protection to ratepayers, as required by Section 391.361(4) and (5).

#### IT IS THEREFORE ORDERED:

1. That Matrix Telecom is hereby granted a certificate of service authority to provide intrastate interexchange telecommunications services in Missouri. This certificate is subject to the conditions of certification set out above and in this order and shall not become effective until the Commission approves Company's tariffs.

2. That Matrix Telecom is hereby classified as a competitive telecommunications company offering competitive intrastate 1+ dialing services for which the following statutory and regulatory requirements shall be waived.

<u>Statute</u>	<u>Rule</u>
392.270	4 CSR 240-32.030(1)(C)
392.280	4 CSR 240-32.050(3, 4, 5 and 6)
392.310	4 CSR 240-32.070(4)
392.320	4 CSR 240-33.030
392.340	4 CSR 240-30.060(5)(B, C, D, E, F, G, H, I, J, K, L, M, N, O)

3. That Company shall file tariffs for Commission approval within thirty (30) days of the issue date of this Report and Order which shall identify, either by indexing or in some other prominent way, the statutory and rule waivers herein granted.

4. That Company shall file with the Commission Staff on a quarterly basis reports showing its percentage of interstate use and intrastate interLATA and intraLATA use. The first such report shall be filed in the next quarterly period following the effective date of this Report and Order and quarterly thereafter on a confidential basis, unless otherwise ordered by the Commission.

5. That this Report and Order shall be effective November 1, 1991.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

Steinmeier, Chm., Mueller,  
Rauch, McClure and Perkins, CC.,  
Concur.

Dated at Jefferson City, Missouri,  
on this 22nd day of October, 1991.