

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

In the Matter of the Application of Digital )  
Teleport, Inc., for Certificates of Service )  
Authority to Provide Basic Local Telecom- )  
munications Services and Exchange Access ) Case No. TA-96-406  
Services and to Classify Such Services as )  
Competitive. )  
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**REPORT AND ORDER**

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**Issue Date:** February 28, 1997

**Effective Date:** March 11, 1997

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**APPEARANCES**

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Paul H. Gardner, Goller, Gardner and Feather, P.C., 131 East High Street, Jefferson City, Missouri 65101, for TCG St. Louis, Inc.

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and

Morton J. Posner, Swidler & Berlin, Chartered, 3000 K Street, N.W., Suite 300, Washington, DC 20007, for MFS Intelenet of Missouri, Inc.

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Linda K. Gardner, Senior Attorney, United Telephone Company of Missouri, 5454 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri.

Victor S. Scott and Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 301 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102, for: Alma Telephone Company, Chariton

Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

Sondra B. Morgan and W.R. England, III, Brydon, Swearngen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, 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; Bourbeuse Telephone Company and Fidelity Telephone Company.

Julie Thomas Bowles, Attorney, Sprint Communications Company, L.P., 8140 Ward Parkway, Kansas City, Missouri 64114, for Sprint Communications Company, L.P.

Mark P. Johnson, and Lisa C. Creighton, Sonnenschein, Nath & Rosenthal, Twentieth Century Tower II, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111, for Kansas City Fiber Network, L.P.

Mary Ann (Garr) Young, William D. Steinmeier, P.C., Post Office Box 104595, Jefferson City, Missouri 65102, for Consolidated Communications Telecom Services Inc.

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.

Colleen M. Dale, Deputy 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 JUDGES: Dale Hardy Roberts, Chief, and Joyce Hainen.

## REPORT AND ORDER

### Procedural History

Digital Teleport, Inc. (Digital Teleport or applicant) applied to the Commission on May 28, 1996, for a certificate of service authority to provide basic local telecommunications service in Missouri under Sections 392.410 - .450, RSMo 1994<sup>1</sup>. Digital Teleport 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. Digital Teleport is a Missouri corporation with its principal business address at 11111 Dorsett Road, St. Louis, Missouri 63043. On June 11, 1996, the Commission issued an Order and Notice directing parties wishing to intervene in the case to do so by July 11, 1996. On July 18, 1996, the Commission issued an order setting prehearing conference and granting permission to intervene to the following entities:

Southwestern Bell Telephone Company (SWBT)  
The Small Telephone Company Group<sup>2</sup>  
The Mid-Missouri Group of local exchange companies  
(Mid-Missouri Group)<sup>3</sup>

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 and the 1996 Cumulative Supplement.

<sup>2</sup> The following companies comprise the "Small Telephone Company Group": 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.

<sup>3</sup> The following companies comprise the "Mid-Missouri Group": Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone

Bourbeuse Telephone Company  
Fidelity Telephone Company  
GTE Midwest Incorporated (GTE)  
AT&T Communications of the Southwest, Inc.  
MCI Telecommunications Corporation  
United Telephone Company of Missouri

On August 12, 1996, a prehearing conference was held at the Missouri Public Service Commission in Jefferson City, Missouri. On August 14, 1996, Digital Teleport filed an amended application for certificate of authority to provide basic local telecommunications services and exchange access services and to classify such services as competitive. On August 22, 1996, Digital Teleport filed a second amended application.

On August 16, 1996, Digital Teleport filed a motion to consolidate the instant case with TA-96-322 (AT&T). The Commission issued its Order consolidating the cases of AT&T (Case No. TA-96-322), MCImetro (Case No. TA-96-355), and Brooks Fiber Communications of Kansas City, Inc. (Brooks) (Case No. TA-96-438) on August 20, 1996. On September 10, 1996, the Commission issued its Order further consolidating the similar cases of Digital Teleport, Inc. (Digital Teleport) (Case No. TA-96-406), TCG St. Louis, Inc.<sup>4</sup> (TCG) (Case No. TA-96-345), MFS Intelenet of Missouri, Inc. (MFS) (Case No. TA-96-374), Ameritech Communications International, Inc. (Ameritech) (Case No. TA-96-415), and Sprint Communications Company L.P. (Sprint) (Case No. TA-96-424) with AT&T, MCImetro and Brooks.

The parties filed a Stipulation and Agreement (SA) on September 23, 1996. AT&T filed a motion asking that the Commission establish a hearing date to consider approval of the agreement. The

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Company, Mid-Missouri Telephone Company, Mo-Kan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

<sup>4</sup> TCG has submitted a separate stipulation.

Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on October 15, 1996. Staff's suggestions included sworn testimony by members of the Commission's telecommunications staff. The Commission conducted a hearing on October 23, 1996, where the parties made presentations and were available for Commission questions.

## **Background**

Digital Teleport, which is certificated to provide intrastate interexchange services in Missouri, seeks authority to provide facilities-based and resold basic local telecommunications service.

Digital Teleport filed an amended application for certificate on August 14, 1996, and filed a second amended application on August 22, 1996. In the seconded amended application Digital Teleport seeks authority to provide basic local services in all exchanges currently served by SWBT and GTE. The specific exchanges in which Digital Teleport proposes to operate are described in Exhibit A to the second amended application. Digital Teleport is not asking for certification in any area that is served by a small incumbent local exchange provider. Digital Teleport is requesting that its basic local exchange services be classified as competitive and that 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 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 forty-five day effective date. Digital Teleport has provided all the required documentation except for the proposed tariff. The applicant has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for Digital Teleport to submit a tariff until it has executed interconnection agreements with the ILECs involved. Digital Teleport cannot firmly price its resold services until it has reached price agreements with the ILECs from which it will purchase those services. The applicant has agreed that, once it is possible to do so, it will submit to the Commission for approval a proposed tariff with a minimum 30-day effective date. Digital Teleport will file the tariff in Case No. TA-96-406 and give notice of the tariff filing to all the parties and participants. Along with that filing Digital Teleport has agreed to provide a written disclosure of all interconnection agreements it has entered into which effect its Missouri service areas. *See* SA pages 12-13, ¶ 9.

### **B. Basic Local Service Classification**

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 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 the amount of their income.

### **1. Technical, Financial and Managerial Resources and Abilities.**

Digital Teleport asserts and the parties agree that there is sufficient evidence from which the Commission can find and conclude that Digital Teleport possesses sufficient technical, financial and managerial resources and expertise to provide basic local telecommunications service. *See* SA page 9, ¶ 7A. The parties unanimously agree that Digital Teleport proposes to offer basic local services that satisfy the minimum standards established by the Commission. *See* SA page 9, ¶ 7B. The parties unanimously agree that Digital Teleport has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange. *See* SA page 9, ¶ 7C. The parties agree that Digital Teleport will offer basic local telecommunications service as a separate and distinct service. *See* SA page 10, ¶ 7D. Further the parties agree that Digital Teleport has agreed to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area where it proposes to offer basic local service, regardless of their residence or their income, to affordable telecommunications services.<sup>5</sup> *See* SA page 9, ¶ 7E. Digital Teleport has

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<sup>5</sup> Footnote 11 to the SA states: "The Agreement in Paragraph 7E of this Stipulation and Agreement is without prejudice to each Applicant's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's considerations of equitable access under Section 392.455.(5), RSMo. Furthermore, such agreement should not be construed as an admission



sought the authority to provide services which will serve the public interest. *See* SA page 10, ¶ 7F.

**2. The Entrant's Proposed Services Satisfy the Minimum Standards Established by the Commission.**

Digital Teleport stated in its application that the services it will provide will satisfy the minimum standards established by the Commission. Additionally Digital Teleport agreed to offer basic local services that will satisfy the minimum standards established by the Commission. *See* SA page 9, ¶ 7B.

**3. The Geographic Area in Which the Applicant Proposes to Offer Service.**

Digital Teleport set out all the exchanges in which it proposes to offer services. Digital Teleport has defined its service area by means of the tariffed exchange areas of the incumbent local exchange companies presently providing basic local service in those exchanges. The parties agreed that Digital Teleport has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows incumbent local exchange company exchange boundaries and is no smaller than an exchange. *See* SA page 9, ¶ 7C.

**4. The Offering of Basic Local Telecommunications Service as a Separate and Distinct Service.**

Digital Teleport has agreed to offer basic local telecommunications service as a separate and distinct service. *See* SA page 10, ¶ 7D.

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or conclusion of any Applicant that Section 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access."

## **5. Equitable Access for All Missourians to Affordable Telecommunications Services.**

Digital Teleport 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). *See* SA page 10, ¶ 7E.<sup>6</sup>

### **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. Section 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 telecommunication 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). In addition, all the services a competitive company provides must be classified as competitive. Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that

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<sup>6</sup>Footnote 11 to the SA states: "The Agreement in Paragraph 7E of this Stipulation and Agreement is without prejudice to each Applicant's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's considerations of equitable access under Section 392.455.(5), RSMo. Furthermore, such agreement should not be construed as an admission or conclusion of any Applicant that Section 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access."

different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

The parties have agreed that Digital Teleport should be classified as a competitive telecommunications company. *See* SA pages 10-12, ¶ 8. The parties have also agreed that Digital Teleport's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on Digital Teleport's ability to charge for its access services. Digital Teleport has agreed that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the large incumbent LECs within those service areas in which Digital Teleport seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Digital Teleport should be expressly conditioned on the continued applicability of Section 392.200, 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 and 392.230, rather than Sections 392.500 and 392.510. *See* SA pages 10-12, ¶ 8. The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330 and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35. *See* SA page 12, ¶ 9.

### **Findings of Fact**

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

1. The Commission finds that competition in the basic local exchange telecommunications markets is in the public interest.
2. The Commission finds that Digital Teleport has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
3. The Commission finds that Digital Teleport has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
4. The Commission finds that Digital Teleport meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting Digital Teleport a certificate of service authority to provide basic local exchange telecommunications service is in the public interest. Digital Teleport's certificate should become effective when its tariff becomes effective.
5. The Commission finds that Digital Teleport 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 Digital Teleport's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, 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 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. Digital Teleport has requested certification under Sections 392.410 - .450. 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 (47 U.S.C. §§ 251, et seq.) and Sections 392.185 and 392.200-455 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185 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 service 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. Based upon the information contained within the Stipulation and Agreement of the parties, the

supporting information offered at the hearing on October 23, 1996, 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 filed by the parties on September 23, 1996 is approved as submitted.

2. That Digital Teleport, 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 Digital Teleport, 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
- 392.330 - issuance of securities, debts  
and notes
- 392.340 - reorganization(s)

**Commission Rules**

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-35 - reporting of bypass and  
customer-specific arrangements

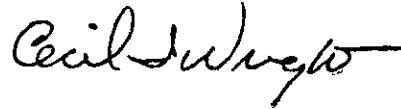
4. That the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived until Digital Teleport, Inc. has entered into a

Commission-approved interconnection agreement that enables it to provide basic local exchange services.

5. That Digital Teleport, Inc. shall file tariff sheets for approval no later than 30 days after the Commission approves the required interconnection agreement or agreements. The proposed tariff shall reflect the rates, rules, regulations and the services it will offer. The tariff shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3.

6. That this Report and Order shall become effective on March 11, 1997.

**BY THE COMMISSION**



**Cecil I. Wright  
Executive Secretary**

( S E A L )

Zobrist, Chm., Kincheloe, Crumpton  
and Drainer, CC., concur.  
McClure, C., not participating.

Dated at Jefferson City, Missouri,  
on this 28th day of February, 1997.