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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 15th
day of September, 1998.

In the Matter of the Application of LDM Systems)
Inc. for a Certificate of Service Authority to)
Provide Resold Local Exchange Services in the) Case No. TA-98-199
State of Missouri and for Designation as a)
Competitive Telecommunications Company.)

**ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES**

Procedural History

LDM Systems, Inc. (LDM) applied to the Commission on November 13, 1997, for a certificate of service authority to provide basic local telecommunications service in Missouri under Sections 392.420 -.440, RSMo 1994,¹ and Sections 392.410 and .450, RSMo Supp. 1997. LDM 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. LDM is a New York corporation with principal offices located at 245 South Main Street, New City, New York 10956.

The Commission issued an Order and Notice on November 24, directing interested parties wishing to intervene to do so by December 23. The Commission granted permission to intervene to the following entities on January 13, 1998:

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

Southwestern Bell Telephone Company (SWBT);
Small Telephone Company Group² (STCG);
Fidelity Telephone Company; and
Bourbeuse Telephone Company.

The parties filed a Stipulation and Agreement (Agreement) which is included with this order as Attachment 1 on February 13. The Staff of the Commission (Staff) filed Suggestions in Support of the Agreement on March 24. The Agreement discussed not only LDM's request for a certificate of service authority to provide basic local telecommunications services, but also a purported request for authority to provide dedicated/non-switched local exchange services. In the Agreement the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. 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. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

² In this case, the Small Telephone Company Group includes: 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.

On August 7, counsel for LDM filed a letter with the Commission, clarifying that LDM seeks certification only as a basic local service provider. LDM does not request authority to provide dedicated/non-switched local exchange services.

Discussion

LDM, which is certificated to provide intrastate interexchange services in Missouri³, wishes certification to provide basic local services in portions of Missouri that are currently served by SWBT. LDM is not asking for certification in any area that is served by a small incumbent local exchange provider. LDM proposes to operate in all of the exchanges described in Exhibit D to its application. LDM is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

A. Requirements of 4 CSR 240-2.060(4)

Commission rule 4 CSR 240-2.060(4) requires a foreign 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 45-day effective date. LDM has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of

³ LDM was granted a certificate of service authority to provide intrastate interexchange telecommunications services in Case No. TA-95-178. Currently, LDM has an application sell the majority of its stock to RSL Com USA pending before the Commission in Case No. TM-98-247. The Commission's resolution of Case No. TM-98-247 will not affect LDM because LDM will continue to exist and offer services pursuant to its certificates following any acquisition of its stock.

4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreement. LDM will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing LDM has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1997, 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 their income.

LDM submitted as Exhibit G to its application certain financial documentation including its balance sheet showing assets and liabilities as of May 31, 1997. Exhibit F to the application lists the names and

qualifications of LDM's officers and directors. In addition to academic credentials, these individuals have experience in various areas of the telecommunications industry including marketing, sales, and management. LDM asserted, and no party made a contrary assertion, that there is sufficient evidence from which the Commission may find that LDM possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. Staff stated in its suggestions that it had specifically reviewed the financial information submitted by LDM and concluded that LDM is financially able to provide basic local telecommunications services in the State of Missouri.

LDM has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The parties agreed that LDM proposes to offer basic local services that satisfy the minimum standards established by the Commission.

LDM wishes to be certificated to offer services in all the exchanges presently served by SWBT (see Exhibit D to the application). The company has agreed that its service area must follow exchange boundaries and be no smaller than an exchange. The parties agreed that LDM has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

LDM has agreed to offer basic local telecommunications service as a separate and distinct service and 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), RSMo Supp. 1997.

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. § 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 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). In addition, all the services a competitive company provides must be classified as competitive. § 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. *Id.* at 487.

The parties have agreed that LDM should be classified as a competitive telecommunications company. The parties have also agreed that LDM's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on LDM's ability to charge for its access services. LDM 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 LDM seeks to operate. The parties have agreed that the grant of service authority and

competitive classification to LDM should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1997, 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, RSMo Supp. 1997, and 392.230, rather than Sections 392.500 and 392.510.

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, RSMo Supp. 1997, 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.

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:

- A. The Commission finds that competition in the local exchange telecommunications market is in the public interest.
- B. The Commission finds that LDM 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.
- C. The Commission finds that LDM has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that LDM 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 LDM a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. LDM's certificate shall become effective when its tariff becomes effective.

E. The Commission finds that LDM is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.

F. The Commission finds that LDM's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997, 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, RSMo Supp. 1997, 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. LDM has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1997 which permit the Commission to grant a certificate of service authority where it is in the public interest. 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 federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1997, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1997.

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, RSMo Supp. 1997. Based upon the Commission's review of the applicable law and Stipulation and Agreement of the parties, and upon 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 of the parties, filed on February 13, 1998, is approved.

2. That LDM Systems, Inc. is granted a certificate of service authority to provide basic local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

3. That LDM Systems, Inc. is classified as a competitive telecommunications company. Application of 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
392.340 - reorganization(s)
392.330, RSMo Supp. 1997 - issuance of securities,
debts and notes

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 request for waiver of the filing of 4 CSR 240-2.060(4) (H) which requires the filing of a 45-day tariff is granted.

5. That LDM Systems, Inc. shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement which will allow LDM Systems, Inc. to provide services. The tariff shall be filed in Case No. TA-98-199 and shall include a listing of the statutes and Commission rules waived above.

6. That LDM Systems, Inc. shall give notice of the filing of the tariffs described above to all parties or participants. In addition, LDM Systems, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

7. That the certification and competitive status of LDM Systems, Inc. are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997, and on the requirement that any

increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1997, and 392.230, rather than Sections 392.500 and 392.510.

8. That this order shall become effective on September 25, 1998.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crumpton, Murray, Schemenauer
and Drainer, CC., concur.
Lumpe, Ch., absent.

Wickliffe, Deputy Chief Regulatory Law Judge