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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 2nd
day of December, 1997.

In the Matter of the Application of)
Midwestern Services L.C. d/b/a)
Midwestern Tel, for a Certificate of)
Service Authority to Provide Basic)
Local Telecommunications Services and) **CASE NO. TA-97-469**
Local Exchange Telecommunications)
Services in the State of Missouri and)
to Classify the Company and Its)
Services as Competitive.)

**ORDER GRANTING CERTIFICATE OF SERVICE AUTHORITY TO PROVIDE
BASIC LOCAL AND LOCAL EXCHANGE TELECOMMUNICATIONS SERVICE**

Procedural History

Midwestern Services L.C. d/b/a Midwestern Tel (Midwestern) applied to the Missouri Public Service Commission (Commission) on April 23, 1997, for a certificate of service authority to provide basic local and local exchange telecommunications services in Missouri under Sections 392.410 - .450, RSMo 1994¹. Midwestern 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. Midwestern is a Missouri limited liability company with offices located at 3809 Castleman Avenue, Suite 100, St. Louis, Missouri 63110.

¹ All statutory references are to Revised Statutes of Missouri 1994, except where otherwise noted.

The Commission issued an Order and Notice on April 28, directing parties wishing to intervene in the case to do so by May 26. The Commission granted intervention to Southwestern Bell Telephone Company (SWBT), the Small Telephone Company Group², and Fidelity Telephone Company and Bourbeuse Telephone Company (collectively Fidelity) on June 6. Midwestern subsequently filed an Amended Application on June 18, and on June 20 the Commission issued an Amended Order and Notice with an additional intervention period. There were no additional requests for intervention.

The parties filed a Stipulation and Agreement (Stipulation, Attachment A to this order) on September 4. The Staff of the Commission (Staff) filed Suggestions in Support of the Stipulation and Agreement on September 10.

Background

Midwestern has requested in the Stipulation that its original application be deemed amended by reference to the terms and provisions contained in ¶¶ 4-6 and ¶ 11 of the Stipulation, to the extent that its original application might be inconsistent therewith.

Midwestern, which is certificated to provide intrastate interexchange services in Missouri, wishes certification to provide both facilities-based and resold basic local telecommunications service.

Midwestern wants to provide basic local services in portions of Missouri that are currently served by SWBT and GTE Midwest Incorporated (GTE). Midwestern is not asking for certification in any area that is

² For purposes of this proceeding, the Small Telephone Company Group is comprised of

served by a small incumbent local exchange provider. The specific exchanges in which Midwestern proposes to operate are described in Exhibit II to Midwestern's original application (Attachment B to this order). Midwestern is requesting that its basic local exchange services be classified as competitive and that certain statutes and regulatory rules be waived for Midwestern.

Discussion

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 registration of fictitious name from the Secretary of State showing it is authorized to use a fictitious name, 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. Midwestern has provided all the required documentation except for the proposed tariff. The company has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for Midwestern to submit a tariff until it has executed interconnection agreements with the incumbent local exchange carriers (ILECs) involved. Midwestern cannot price its resold services until it has reached price agreements with the ILECs from which it will purchase those services.³ The company has agreed that, once it is possible to do so, it

³ The Commission issued an order approving a Resale Agreement between Midwestern and SWBT on July 3, in Case No. TO-97-460. However, Midwestern has not yet reached an agreement with GTE.

will submit to the Commission for approval a proposed tariff with a minimum 30-day effective date. Midwestern will file the tariff in Case No. TA-97-469 and give notice of the tariff filing to all the parties and participants. Along with that filing Midwestern has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

B. Local exchange certification

The Commission finds that Midwestern's entry into competition in the local exchange telecommunications market is in the public interest and the company should be granted a certificate of service authority. The Commission finds that the local exchange services Midwestern proposes to offer are competitive and the company should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in Ordered Paragraph 4 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, RSMo Supp. 1996.
- (3) Applicant may not unjustly discriminate between its customers. §§ 392.200, RSMo Supp. 1996, and 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.

C. Basic Local Exchange Certification

Section 392.455, RSMo Supp. 1996, effective August 28, 1996, 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.

1. Technical, financial and managerial resources and abilities.

Midwestern submitted Exhibit III with its application, which lists the

names and qualifications of its management team. The team members have experience in various areas of the telecommunications industry, including network provisioning and maintenance, design and engineering, product development, management, billing, and accounting and financial analysis.

Midwestern further stated that it possesses the necessary financial qualifications. In response to the Commission's Order Directing the Filing of Financial Data issued on September 25, Midwestern submitted late-filed Exhibit VI on October 6, which contains an income statement for Midwestern for September 30, 1997, as well as information regarding the source and amount of expected funding. No responses to the financial data were filed by the deadline provided for in the Commission's September 25th order. The parties agreed in the Stipulation that Midwestern possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

The Commission notes generally that it has concerns about the quality and adequacy of the financial information that has been provided by applicants in the past to support a finding that they possess sufficient financial resources and abilities to provide basic local telecommunications service. However, the Commission accepts the Stipulation of the parties that Midwestern possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

2. The entrant's proposed services satisfy the minimum standards established by the Commission. Midwestern stated in its application that its proposed services will include two-way lines, two-way trunks, Direct Inward Dialing options, Direct Outward Dialing options, local calling, operator-assisted services, directory assistance, Dual Party Relay and

other Special Needs services, and 911 emergency services. Midwestern indicated that it will provide service through the resale of services and facilities provided by SWBT, GTE, other authorized providers, and entrant local exchange carriers, including affiliates; through the use of facilities Midwestern has or will deploy; or through some combination thereof. In addition, Midwestern asserted in its application that the quality of the services it will provide will be equal to or superior to the quality of services presently provided by the ILECs, and that any facilities-based local network it may install will be a state-of-the-art telecommunications network that will serve as a platform for a full range of local services.

Midwestern has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards. The parties agreed that Midwestern proposes to offer basic local services that satisfy the minimum standards established by the Commission.

3. The geographic area in which the company proposes to offer service. Midwestern sets out in Exhibit II of its original application all the exchanges in which it proposes to offer services. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange. The parties agreed in the Stipulation that Midwestern 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.

4. The offering of basic local telecommunications service as a separate and distinct service. Midwestern has agreed to offer basic local

telecommunications service as a separate and distinct service in accordance with applicable law.

5. Equitable access for all Missourians to affordable telecommunications services. Midwestern 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), RSMo Supp. 1996.

D. 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 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. § 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 in the Stipulation that Midwestern should be classified as a competitive telecommunications company. The parties

have also agreed that Midwestern's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on Midwestern's ability to charge for its access services. Midwestern 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 Midwestern seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Midwestern should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1996, 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. 1996 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. 1996 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 and basic local exchange telecommunications markets is in the public interest.

- B. The Commission finds that Midwestern 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 Midwestern 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 the local exchange services market should be competitive and that granting Midwestern a certificate of service authority to provide local exchange telecommunications services is in the public interest. Midwestern's certificate should become effective when its tariff becomes effective.
- E. The Commission finds that Midwestern 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 Midwestern a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Midwestern's certificate should become effective when its tariff becomes effective.
- F. The Commission finds that Midwestern is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 4.

- G. The Commission finds that Midwestern's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996 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. 1996 and 392.230, rather than Sections 392.500 and 392.510.
- H. The Commission finds that the Stipulation and Agreement filed by the parties is a reasonable resolution of the issues.

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. Midwestern 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. 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 Sections 392.185 and 392.455, RSMo Supp. 1996, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1996 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 services and 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, RSMo Supp. 1996. Based upon the information contained within the Stipulation and Agreement of the parties, and on its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved and that Midwestern should be granted the certificate of service authority requested.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed on September 4, 1997 (Attachment A to this Report And Order) is adopted.

2. That Midwestern Services L.C. d/b/a Midwestern Tel is granted a certificate of service authority to provide local exchange 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 Midwestern Services L.C. d/b/a Midwestern Tel 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.

4. That Midwestern Services L.C. d/b/a Midwestern Tel 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, RSMo Supp. 1996
 - 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

5. That the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived until Midwestern Services L.C. d/b/a Midwestern Tel has entered into a Commission-approved interconnection agreement or agreements that enable it to provide basic local exchange services.

6. That Midwestern Services L.C. d/b/a Midwestern Tel shall file tariff sheets for approval reflecting the rates, rules, regulations and the services it will offer within 30 days after Commission approval of the necessary interconnection agreement(s). The tariff shall be filed in Case No. TA-97-469 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 4.

7. That Midwestern Services L/C/ d/b/a Midwestern Tel shall give notice of the filing of the tariffs described in Ordered Paragraph 6 to all parties or participants. In addition, Midwestern shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portion 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.

8. That the certification and competitive status of Midwestern Services L.C. d/b/a Midwestern Tel are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the Stipulation must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1996, and 392.230, rather than Sections 392.500 and 392.510.

9. That this Report And Order shall become effective on December 12, 1997.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton,
Murray, and Drainer,
CC., Concur.

Bensavage, Regulatory Law Judge