

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Neutral Tandem –)
Missouri, LLC, for Expansion of Certificate of)
Service Authority to Provide Basic Local Exchange) **File No. CA-2010-0245**
Telecommunications Service in the State of Missouri)
and to Classify said Services and the Company as)
Competitive.)

ORDER APPROVING EXPANSION OF CERTIFICATE OF SERVICE AUTHORITY

Issue Date: April 29, 2010

Effective Date: May 9, 2010

Syllabus: This order expands Neutral Tandem – Missouri, LLC's certificate of service authority to provide basic local telecommunications services, continues to classify those services and the company as competitive, and waives certain statutes and regulations.

Procedural History

Neutral Tandem applied to the Missouri Public Service Commission on February 26, 2010, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services throughout all exchanges in the state of Missouri. Neutral Tandem also sought to remain classified as a competitive company and asked the Commission to grant certain waivers under Sections 392.420 and 392.245.5(8), RSMo.

On March 3, 2010, the Commission issued an order providing notice and directing any party who wished to intervene to file its request by March 18, 2010. No parties responded to the notice. The Staff of the Missouri Public Service Commission filed its Recommendation on March 23, 2010.

The Commission directed additional filings be made. Staff filed a response on April 6, 2010, and Neutral Tandem filed its response on April 15, 2010.

Findings of Fact

The Missouri Public Service Commission has considered all of the relevant factors and makes the following findings of fact.

1. Neutral Tandem is a corporation organized under the laws of the state of Delaware.
2. The Commission previously granted Neutral Tandem a certificate to provide basic local¹ and interexchange and non-switched local exchange² telecommunications services in the state of Missouri.
3. Neutral Tandem's current certificate grants it the authority to provide basic local exchange services as a competitive telecommunications company in Southwestern Bell Telephone Company, L.P., d/b/a AT&T Missouri, Sprint Missouri, Inc., CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel's exchanges.
4. Neutral Tandem's certificates also classified it and its services as competitive and granted certain Commission waivers.
5. Neutral Tandem is qualified to do business in the State of Missouri and is registered with the Missouri Secretary of State.
6. Neutral Tandem provided names and addresses for contact purposes.
7. Neutral Tandem has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court involving customer service or rates.

¹ File No. CA-2006-0035.

² File No. XA-2006-0034.

8. Neutral Tandem filed its amended tariff including the expanded service area, Commission Tariff File Number JX-2010-0151, which was approved by the Commission in File No. TT-2010-0099.
9. Neutral Tandem was previously found to be financially, managerially, and technically qualified to provide telecommunications services in the state of Missouri.³
10. Neutral Tandem has successfully provided telecommunications services in the state of Missouri since its original certificates were granted.
11. Neutral Tandem will comply with all applicable Commission rules, except those that are waived, including, but not limited to, tariff filing and maintenance, and other reporting requirements.
12. Neutral Tandem will continue to offer basic local service as a separate and distinct service.
13. Neutral Tandem will not compete against the incumbent local carrier in the traditional sense. Rather, Neutral Tandem will be a vendor of services and will therefore have access rates associated with its tandem services.
14. Granting the expansion of the certificate into all Missouri exchanges will benefit the public by creating and enhancing competition, expanding customer service options, and expanding the availability of reliable telecommunications services.
15. Staff recommended that the Commission expand Neutral Tandem's current basic local certificate, grant competitive classification, and grant the waivers requested.
16. Neutral Tandem is not delinquent in filing an annual report or in paying the PSC assessment, the Missouri Universal Service Fund, and Relay Missouri surcharges.

³ File No. CA-2006-0035.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law.

1. The requirement for a hearing is met when the opportunity for a hearing was provided and no proper party requested the opportunity to present evidence.⁴ Notice was issued in this case and no hearing has been requested.
2. Neutral Tandem is a “local exchange telecommunications company” as that term is defined by Section 386.020, RSMo.
3. The Commission is authorized to create a process by which to certify new entrants to provide local exchange telecommunications services in Missouri as common carriers, and is further authorized to grant such certificates where it is in the public interest.⁵
4. Neutral Tandem was certificated to provide basic local telecommunications service prior to August 28, 2008.
5. Neutral Tandem has requested that the Commission grant it an expansion of its certificate to provide basic local exchange telecommunications services to include all exchanges in Missouri. Neutral Tandem has satisfied the requirements of the Commission’s regulations and of Section 392.455, and consequently, the Commission concludes that Neutral Tandem has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.
6. The Commission shall modify the existing certificate of service authority to provide basic local telecommunications service to any alternative local exchange

⁴ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm’n*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

⁵ Sections 392.430, 392.450 and 392.455, RSMo.

telecommunications company which was certificated to provide basic local telecommunications service as of August 28, 2008, as long as the alternative local exchange company is in good standing, in all respects, with all applicable Commission rules and requirements.⁶ Neutral Tandem “is in good standing, in all respects, with all applicable commission rules and requirements.”⁷ Therefore, the Commission shall grant the certificate expansion.

7. Neutral Tandem requests that it and its basic local services continue to be classified as competitive. The Commission may classify a telecommunications service as competitive if the Commission determines that it is subject to a sufficient degree of competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest.⁸ The Commission may classify a telecommunications carrier as competitive if the Commission finds that a majority of its services are so classified.⁹
8. Neutral Tandem has been found to be a competitive company in prior Commission cases. Furthermore, the services to be provided by Neutral Tandem in the state of Missouri will be competitive. The Commission also found that the expansion of Neutral Tandem’ certificate will benefit the public. Considering these findings, the Commission concludes that Neutral Tandem will be subject to a sufficient level of competition to justify a lesser degree of regulation and its services and the company shall continue to be classified as competitive.

⁶ Subsection 392.450.3, RSMo Cum. Supp. 2009.

⁷ Subsection 392.450.3, RSMo Cum. Supp. 2009.

⁸ Section 392.361.2 and 4, RSMo Cum. Supp. 2009.

⁹ Section 392.361.3, RSMo Cum. Supp. 2009.

9. Neutral Tandem requests that the Commission grant it certain waivers and Staff recommends they be granted. The Commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of Subsection 2 of Section 392.210, Subsection 1 of Section 392.240, and Sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340, RSMo.¹⁰ In accordance with Section 392.420, RSMo, the Commission shall grant the requested waivers.
10. An applicant for a basic local certificate must meet the minimum service standards that the Commission requires of the competing incumbent local exchange carriers.¹¹ Because of the nature of Neutral Tandem's business, it will not be in direct competition with the incumbent local exchange carrier for traditional basic local services. Neutral Tandem has agreed, however, to provide services that will meet the minimum basic local service standards required by the Commission. The Commission concludes that Neutral Tandem has met the requirements of Section 392.450.2(2).
11. Neutral Tandem has complied with each of the Commission's application requirements. Neutral Tandem has successfully operated as a telecommunications company since 1998 and the Commission has examined Neutral Tandem's qualifications in a previous certificate case.
12. Section 392.245.5(8) provides that the Commission shall retain the authority to hear and resolve customer complaints based upon certain federal regulations and standards, the company's tariff, or Commission rules "other than those related to customer billing, network engineering and maintenance, and service objectives and

¹⁰ Subsection 392.420, RSMo Cum. Supp. 2009.

¹¹ Section 392.450.2(2), RSMo.

surveillance levels or a failure to provide service in a manner that is safe, adequate, usual and customary in the telecommunications industry.”

13. The certificate of service authority granted in this order becomes null and void one year from the date of this order unless Neutral Tandem has exercised its authority under that certificate.¹²
14. The Commission reminds the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:
 - A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 per day for each day that the violation continues. 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
 - B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.
 - C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.
 - D) The obligation to keep the Commission informed of its current address and telephone number.

¹² Section 392.410.5, RSMo Cum. Supp. 2009.

THE COMMISSION ORDERS THAT:

1. Neutral Tandem – Missouri, LLC, is granted an expansion of its certificate of service authority to provide basic local telecommunications services to throughout all exchanges in the state of Missouri subject to all applicable statutes and Commission rules except as specified in this order.
2. Neutral Tandem – Missouri, LLC, and its telecommunications services are classified as competitive.
3. With regard to Neutral Tandem – Missouri, LLC, the application of the following statutes and Commission regulations is waived:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240(1) - just and reasonable rates
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300 - transfer of property and 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 240-3.550(4),
(5)(A) and (5)(C) - exchange boundary maps,
quality of service reports and
held order records
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-32.060 - engineering and maintenance
- 4 CSR 240-32.070 - quality of service
- 4 CSR 240-32.080 - service objectives and surveillance
levels
- 4 CSR 240-33.040(1 - 3)
and (5 - 10) - billing and payment standards

- 4 CSR 240-33.045 - separate identification of charges
 on customer bills
- 4 CSR 240-33.080(1) - toll-free number for billing disputes
- 4 CSR 240-33.130(1), - operator service billing requirements
 (4), and (5)

4. This order shall become effective on May 9, 2010.
5. This case may be closed on May 10, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Nancy Dippell, Deputy Chief Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 29th day of April, 2010.