

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of TCG Kansas City,)
Inc., to Expand Its Certificate of Basic Local Exchange) **File No. CA-2010-0116**
Telecommunications Service Authority to Include) Tariff No. JC-2010-0270
Windstream Missouri's Exchanges.)

ORDER APPROVING EXPANSION OF CERTIFICATE OF SERVICE AUTHORITY

Issue Date: November 25, 2009

Effective Date: November 27, 2009

Syllabus: This order expands TCG Kansas City, Inc.'s certificate of service authority to provide basic local telecommunications services, continues to classify those services and the company as competitive, waives certain statutes and regulations, and approves tariff sheets.

Procedural History

TCG Kansas City applied to the Missouri Public Service Commission on October 13, 2009, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services in the exchanges of Windstream Missouri, Inc. TCG Kansas City also sought to remain classified as a competitive company and asked the Commission to grant the "standard waivers"¹ as well as a waiver of Section 392.300.1, RSMo, 4 CSR 240-3.550(4) and (5)(A), 32.060, 32.070, 32.080, 33.040 (except not 33.040(4)), 33.045, 33.080(1), and 33.130(1), (4), and (5).

¹ The "standard" waivers include waiver of the Revised Statutes of Missouri Sections 392.210.2; 392.240.1; 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340; and Commission rules 4 CSR 240-3.550(5)(C); 4 CSR 240-10.020; and 4 CSR 240-30.040.

On October 21, 2009, the Commission issued a Schedule of Applicants for Basic Local and Nonswitched Local Exchange Service Authority and Opportunity to Intervene. The notice told parties who wished to intervene to file their requests by November 5, 2009. No parties responded to the notice. The Staff of the Missouri Public Service Commission filed its Recommendation on November 20, 2009.

Findings of Fact

The Missouri Public Service Commission has considered all of the relevant factors and makes the following findings of fact. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

1. TCG Kansas City is a corporation organized under the laws of the state of Delaware.²
2. The Commission previously granted TCG Kansas City a certificate to provide basic local telecommunications services in the state of Missouri.³ TCG Kansas City is currently providing basic local exchange services as a competitive telecommunications company in Southwestern Bell Telephone Company, L.P., d/b/a AT&T Missouri's exchanges in the Kansas City LATA (Local Access and Transport Area).
3. That certificate also classified TCG Kansas City and its services as competitive and granted certain Commission waivers.
4. TCG Kansas City applied to the Missouri Public Service Commission on October 13, 2009, for permission to expand its certificate of service authority to provide basic local

² *Application for Expanded Authority to Provide Local Exchange Telecommunications Service Authority*, (filed October 13, 2009), hereinafter "*Application*," para. 1.

³ The certificate was granted in Commission File No. TM-96-283.

exchange telecommunications services in the exchanges currently served by Windstream Missouri.

5. TCG Kansas City is qualified to do business in the State of Missouri and is registered with the Missouri Secretary of State.⁴
6. TCG Kansas City provided names and addresses for contact purposes.⁵
7. TCG Kansas City 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.⁶
8. TCG Kansas City filed its amended tariff including the expanded service area, Commission Tariff File Number JC-2010-0270, with an effective date of November 27, 2009.⁷
9. TCG Kansas City was previously found to be financially, managerially, and technically qualified to provide telecommunications services in the state of Missouri.⁸
10. TCG Kansas City has successfully provided telecommunications services in the state of Missouri since its original certificate was granted.⁹
11. TCG Kansas City will comply with all applicable Commission rules, except those that are waived, including, but not limited to, tariff filing and maintenance in a manner

⁴ *Application*, para. 1.

⁵ *Application*, para. 2.

⁶ *Application*, para. 12.

⁷ *Application*, para. 6.

⁸ File No. TM-98-253; and *Application*, pp. 2-3.

⁹ *Application*, para. 3.

consistent with the Commission's requirement for incumbent local exchange carriers with whom TCG Kansas City seeks to compete.¹⁰

12. TCG Kansas City will continue to offer basic local service as a separate and distinct service.¹¹
13. TCG Kansas City will compete directly with Windstream Missouri in each of its exchanges.
14. The services TCG Kansas City will offer in the Windstream Missouri exchanges have previously been classified as competitive services.¹²
15. Granting the expansion of the certificate into the Windstream Missouri exchanges will benefit the public by creating and enhancing competition, expanding customer service options, and expanding the availability of reliable telecommunications services.¹³
16. Staff recommended that the Commission expand TCG Kansas City's current basic local certificate, grant competitive classification, grant the waivers requested, and approve the tariff sheets.¹⁴
17. Staff recommended that the Commission grant TCG Kansas City's expanded basic local certificate subject to the following conditions:
 - A. The applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370, RSMo.
 - B. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant

¹⁰ *Application*, para. 9.

¹¹ *Application*, para. 8.

¹² *Application*, para. 7; see also the order granting TCG Kansas City a certificate and competitive classification in File No. TA-28-253 (issued June 17, 1998).

¹³ *Application*, para. 14.

¹⁴ *Staff Recommendation* (filed Nov. 20, 2009).

shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

18. TCG Kansas City agreed in its application that it will not exceed the corresponding exchange access rates in effect for Windstream Missouri. TCG Kansas City also agreed that if Windstream Missouri decreases its current originating and/or terminating access service rates, in accordance with the Commission's Report and Order in File No. TO-99-596 and pursuant to Section 392.361.6, RSMo, as amended August 28, 2008, TCG Kansas City will file a tariff amendment to reduce its corresponding access rates in that service area within thirty days.¹⁵
19. TCG Kansas City is not delinquent in filing an annual report or in paying the PSC assessment, the Missouri Universal Service Fund, and Relay Missouri surcharges.¹⁶

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.¹⁷ Notice was issued in this case and no hearing has been requested.
2. TCG Kansas City is a "local exchange telecommunications company" as that term is defined by Section 386.020, RSMo.

¹⁵ *Application*, para. 11.

¹⁶ *Staff Recommendation*, Memorandum p. 2; *see, also, Application*, para. 13.

¹⁷ *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

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.¹⁸
4. TCG Kansas City was certificated to provide basic local telecommunications service prior to August 28, 2008.
5. TCG Kansas City 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 served by Windstream Missouri. TCG Kansas City has satisfied the requirements of the Commission's regulations and of Section 392.455, and consequently, the Commission concludes that TCG Kansas City 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 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.¹⁹ TCG Kansas City "is in good standing, in all respects, with all applicable commission rules and requirements."²⁰ Therefore, the Commission shall grant the certificate expansion.

¹⁸ Sections 392.430, 392.450 and 392.455, RSMo.

¹⁹ Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²⁰ Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

7. TCG Kansas City 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.²¹ The Commission may classify a telecommunications carrier as competitive if the Commission finds that a majority of its services are so classified.²²
8. TCG Kansas City has been found to be a competitive company in prior Commission cases. Furthermore, the services to be provided by TCG Kansas City in the Windstream Missouri exchanges will be competitive. The Commission also found that the expansion of TCG Kansas City' certificate will benefit the public and will be in direct competition with the incumbent basic local provider. Considering these findings, the Commission concludes that TCG Kansas City 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.
9. In addition to the Commission's "standard waivers," TCG Kansas City requests that the Commission waive all of Section 392.300, RSMo.²³ 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,

²¹ Section 392.361.2 and 4, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²² Section 392.361.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²³ *Application*, para. 10.

392.310, 392.320, 392.330, and 392.340, RSMo.²⁴ 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.²⁵ TCG Kansas City has agreed to provide services that will meet the minimum basic local service standards required by the Commission. The Commission concludes that TCG Kansas City has met the requirements of Section 392.450.2(2).
11. TCG Kansas City has complied with each of the Commission's application requirements. TCG Kansas City has successfully operated as a telecommunications company since 1998 and the Commission has examined TCG Kansas City's qualifications in a previous certificate case.
12. The Commission may also "require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement."²⁶ Staff recommends that TCG Kansas City's application be granted subject to the conditions set out above. TCG Kansas City has agreed to these conditions. The Commission has considered the conditions proposed by Staff and concludes that they are reasonably necessary to protect the public interest and shall be adopted.

²⁴ Subsection 392.420, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

²⁵ Section 392.450.2(2), RSMo.

²⁶ Section 392.361.6, RSMo.

13. TCG Kansas City has filed a proposed tariff authorizing it to provide service in the expanded areas. Staff has reviewed the tariff and recommends its approval. The Commission has reviewed the tariff and the recommendation of Staff and concludes that the tariff is in compliance with the provisions of this order. Therefore, the Commission shall approve the tariff to become effective as directed below.
14. The certificate of service authority granted in this order becomes null and void one year from the date of this order unless TCG Kansas City has exercised its authority under that certificate.²⁷
15. 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.

²⁷ Section 392.410.5, RSMo Cum. Supp. 2008.

- D) The obligation to keep the Commission informed of its current address and telephone number.

THE COMMISSION ORDERS THAT:

1. TCG Kansas City, Inc., is granted an expansion of its certificate of service authority to provide basic local telecommunications services to include the exchanges of Windstream Missouri, Inc., subject to the conditions of certification set out below and to all applicable statutes and Commission rules except as specified in this order.

2. TCG Kansas City, Inc., and its telecommunications services are classified as competitive.

3. TCG Kansas City, Inc.'s originating and terminating access rates shall be no greater than the lowest Commission-approved corresponding access rates in effect for each ILEC within whose service area TCG Kansas City seeks authority to provide service, unless authorized by the Commission under to Sections 392.220 and 392.230, RSMo 2000.

4. If the directly competing incumbent local exchange company in whose service area TCG Kansas City, Inc., is operating decreases its originating and/or terminating access service rates, TCG Kansas City shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

5. With regard to TCG Kansas City, Inc., 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(5)(C) - exchange boundary maps
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-3.550(5)(A)1 - service quality reporting
- 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)
- 4 CSR 240-33.130(1), (4), (5)

6. That the tariff filed by TCG Kansas City, Inc., on October 13, 2009, (tariff file number JC-2010-0270), is approved to become effective on November 27, 2009. The tariff sheet approved is:

P.S.C. Mo. No. 1

1st Revised Sheet 57, Cancels Original Sheet 57

7. This order shall become effective on November 27, 2008.
8. This case may be closed on November 28, 2008.

BY THE COMMISSION



Colleen M. Dale
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 25th day of November, 2009.