

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
July 7, 1998**

CASE NO: TA-98-380

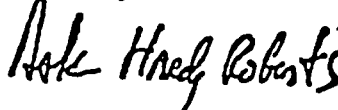
**Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102**

**General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102**

**Sondra B. Morgan/W.R. England III
Brydon, Swearngen & England
312 East Capitol Avenue, PO Box 456
Jefferson City, MO 65102**

Enclosed find certified copy of ORDER in the above-numbered case(s).

Sincerely,



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

Uncertified Copy:

**Green Hills Area Cellular Telephone, Inc.
d/b/a Green Hills Telecommunications Ser
7926 Northeast State Route M, PO Box 227
Breckenridge, MO 64625**

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 7th
day of July, 1998.

In the Matter of the Application of Green Hills)
Area Cellular Telephone Company Incorporated,)
d/b/a Green Hills Telecommunications Services,)
for a Certificate of Service Authority to Provide) Case No. TA-98-380
Basic Local Telecommunications Service in)
Portions of the State of Missouri and to Classify)
Said Services and the Company as Competitive.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

Green Hills Area Cellular Telephone Company Inc. d/b/a Green Hills Telecommunications Services (GHTS) applied to the Commission on March 9, 1998, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1997. GHTS 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. GHTS is a corporation organized under the laws of the state of Missouri. GHTS's offices are at 7926 Northeast State Route M, Post Office Box 227, Breckenridge, Missouri 64625.

The Commission issued a Notice and Schedule of Applicants on March 17, directing interested parties wishing to intervene to do so by

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

April 16. No applications to intervene were filed. The Staff of the Commission (Staff) filed a memorandum on May 20 in which it recommended approval of GHTS's application. 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 and the Staff's recommendation.

Discussion

GHTS wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by GTE Midwest Incorporated (GTE) and Sprint Missouri, Inc. (Sprint). GHTS is not asking for certification in any area that is served by a small incumbent local exchange provider. GHTS proposes to operate in all of GTE's and Sprint's exchanges as described in their tariffs. GHTS 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 Missouri corporation applying for certification to provide telecommunications services to include in its application a certified copy of the Articles of Incorporation and Certificate of Incorporation from the Secretary of State, a request to be classified as a competitive telecommunications company, 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. GHTS has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) because, when it applied for certification, it was not party to an approved interconnection agreement with either GTE or Sprint. GHTS cannot price its resold services until it has reached price agreements with GTE and Sprint. The company has agreed to submit to the Commission for approval a proposed tariff with a 30-day effective date once all facts necessary to do so are known.

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.

GHTS submitted its balance sheet as of December 31, 1997 as Appendix D. Appendix C to the application lists the names and qualifications of GHTS's management team. In addition to academic credentials,

the team members have experience in various areas of the telecommunications industry including operations, construction, customer service, marketing, and product development. In its recommendation, the Staff stated that GHTS possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. GHTS has stated it will provide services that meet the minimum basic local service standards required by the Commission, including quality of service and billing standards.

GHTS wishes to be certificated to offer services in all the exchanges presently served by GTE and Sprint as described in both companies' basic local tariffs. GHTS indicated that its service area will follow GTE and Sprint's exchange boundaries and be no smaller than an exchange. In its recommendation, the Staff stated that GHTS 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.

GHTS stated it will offer basic local telecommunications service as a separate and distinct service and 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.

Staff recommends that GHTS be classified as a competitive telecommunications company, conditioned upon certain limitations on GHTS's ability to charge for its access services. Staff recommends that, unless otherwise ordered by the Commission, GHTS's originating and terminating access rates should 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 GHTS seeks to operate.

Staff 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. Staff also recommended 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 basic local exchange telecommunications markets is in the public interest.
- B. The Commission finds that GHTS 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 GHTS 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 GHTS 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 GHTS a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. GHTS's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that GHTS 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 GHTS's certification and competitive status are 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. GHTS 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 Green Hills Area Cellular Telephone Company Inc. d/b/a Green Hills Telecommunications Services 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.

2. That Green Hills Area Cellular Telephone Company Inc. d/b/a Green Hills Telecommunications Services 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

3. 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.

4. That Green Hills Area Cellular Telephone Company Inc. d/b/a Green Hills Telecommunications Services shall file tariff sheets with a 30-day effective date reflecting the rates, rules, regulations and the services it will offer no later than 30 days after the effective date of a Commission order approving an appropriate interconnection agreement. The tariff sheets shall be filed in Case No. TA-98-380 and shall include a listing of the statutes and Commission rules waived above.

5. That Green Hills Area Cellular Telephone Company Inc. d/b/a Green Hills Telecommunications Services shall give notice of the filing of the tariffs described above to all parties or participants. In addition, Green Hills Area Cellular Telephone Company Inc. d/b/a Green Hills Telecommunications Services 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.

6. That Green Hills Area Cellular Telephone Company Inc. d/b/a Green Hills Telecommunications Services' certification and competitive status 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.

7. That this order shall become effective on July 17, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Harper, Regulatory Law Judge

ALJ/Sec'y: Harper / Pope

7-2
Date Circulated

JA-98-380
CASE NO.

[Signature]
Lumpe, Chair

[Signature]
Crumpton, Commissioner

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

[Signature]
Dralner, Vice-Chair

7-7
Agenda Date

Action taken: _____

Must Vote Not Later Than _____

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

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 7th day of July, 1998.

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**