

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 27th
day of October, 1998.

In the Matter of the Application of MCImetro)
Access Transmission Services, LLC, for)
Certificates of Service Authority to Provide)
Basic Local Telecommunications Services,) Case No. TA-98-575
Local Exchange Telecommunications Services,)
Exchange Access Services, and Interexchange)
Telecommunications Services in the State of)
Missouri and for Competitive Classification.)

**ORDER GRANTING CERTIFICATES TO PROVIDE
TELECOMMUNICATIONS SERVICES**

Procedural History

MCImetro Access Transmission Services, LLC (MCImetro LLC) applied to the Commission on June 22, 1998, for certificates of service authority to provide basic local exchange telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services in Missouri under Sections 392.361, 392.420 - .440, RSMo 1994¹, and Sections 392.410, .450 and .455 RSMo Supp. 1997. MCImetro LLC 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. MCImetro LLC is a Delaware corporation, duly authorized to do business in Missouri. MCImetro's principal offices are located at 1801 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

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

The Commission issued a notice and schedule of applicants on June 30, directing interested parties wishing to intervene to do so by July 30 regarding the basic local and local exchange application and July 15 regarding the interexchange application. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on August 5.

The parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment A, on September 30. The Staff of the Commission (Staff) filed Suggestions in Support of the Agreement on October 16. 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.

Discussion

MCImetro LLC seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated, and United Telephone Company of Missouri d/b/a Sprint. MCImetro LLC is not asking for certification in any area that is served by a small incumbent local exchange provider. MCImetro LLC proposes to operate in all of the exchanges described in Exhibit II to its application. MCImetro LLC is requesting that its

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. MCImetro LLC has provided all the required documentation except for the proposed tariff. MCImetro LLC has filed an Application for Approval of Merger (Case No. TM-98-576) and upon approval intends to adopt the tariffs of MCImetro Access Transmission Services, Inc. MCImetro LLC will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing MCImetro LLC has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

B. Telecommunications Services 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.

MCImetro LLC's application states that its financial resources and abilities are identical to those of MCImetro Access Transmission Services, Inc. which is already certificated in Missouri. The application also indicates that the experience and background of MCImetro LLC's officers and employees is identical to that of MCImetro Access Services, Inc. The parties agreed that MCImetro LLC possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; local exchange telecommunications service, including exchange access service; and switched and dedicated interexchange telecommunications services.

MCImetro LLC 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 MCImetro LLC proposes to offer basic local services that satisfy the minimum standards established by the Commission.

MCImetro LLC wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs (see Exhibit I to the Stipulation and Agreement). The parties agreed that MCImetro LLC has sufficiently identified the geographic area in which it proposes to offer basic local

service and that the area follows Incumbent Local Exchange Company (ILEC) exchange boundaries and is no smaller than an exchange.

MCImetro LLC 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. Section 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. Section 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 MCImetro LLC should be classified as a competitive telecommunications company. The parties have also agreed that MCImetro LLC's switched exchange access services may be

classified as a competitive service, conditioned upon certain limitations on MCImetro LLC's ability to charge for its access services. MCImetro LLC 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 MCImetro LLC seeks to operate. The parties have agreed that the grant of service authority and competitive classification to MCImetro LLC 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.

The parties agreed that the following statutes and regulations should be waived regarding all of its services other than basic local telecommunications services: Section 392.240.1, RSMo; 4 CSR 240-30.010(2)(c); 4 CSR 240-32.030(1)(B)&(C), (2); 4 CSR 240-32.050(3)-(6); 4 CSR 240-32.070(4); and 4 CSR 240-33.030.

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 and interexchange telecommunications markets is in the public interest.
- B. The Commission finds that MCImetro LLC 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 MCImetro LLC 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 MCImetro LLC meets the statutory requirements for provision of basic local telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting MCImetro LLC a certificate of service authority to provide basic local telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services, is in the public interest.

MCImetro LLC's certificate shall become effective when its tariff becomes effective.

- E. The Commission finds that MCImetro LLC 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 MCImetro LLC'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. MCImetro LLC 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 September 30, 1998, is approved.

2. That MCImetro Access Transmission Services, LLC is granted a certificate of service authority to provide basic local exchange telecommunications services, local exchange telecommunications services, exchange access services and interexchange 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 MCImetro Access Transmission Services, LLC 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

In addition, the following statute and regulations shall be waived regarding all services other than basic local telecommunications services:

Statute

392.240.1

Commission Rules

4 CSR 240-30.010(2)(c)
4 CSR 240-32.030(1)(B)&(C), (2)
4 CSR 240-32.050(3)-(6)
4 CSR 240-32.070(4)
4 CSR 240-33.030

4. That the request for waiver of 4 CSR 240-2.060(4)(H) which requires the filing of a 45-day tariff is granted for good cause in that MCImetro Access Transmission Services, LLC intends to adopt the tariffs of MCImetro Access Transmission Services, Inc. upon approval of the Application for Approval of Merger now pending in Case No. TM-98-576 and approval of local exchange service and access service tariffs now pending in File No. 9900225, Case No. TA-96-355. When the merger is approved, Applicant shall file its notice of adoption of the tariffs of MCImetro Access Transmission Services, Inc. and serve such notice on all parties or participants. Upon adopting the tariffs of MCImetro Access