

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 28th day
of February, 2006.

In the Matter of the Application of CLEC, Inc.,)
for a Certificate of Service Authority to Provide)
Basic Local, Local Exchange and interexchange)
Telecommunications Services and for Competitive)
Classification.)

Case No. LA-2006-0274

**ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL,
LOCAL EXCHANGE, AND INTEREXCHANGE
TELECOMMUNICATIONS SERVICES**

Issue Date: February 28, 2006

Effective Date: March 10, 2006

This order grants a certificate of service authority to provide basic local, local exchange and interexchange telecommunications services in the state of Missouri, classifies those services and the company as competitive and waives certain statutes and regulations.

Procedural History

On December 23, 2005, CLEC, Inc. filed with the Missouri Public Service Commission an application for a certificate of service authority to provide basic local, nonswitched local and interexchange telecommunications services in the state of Missouri, and for competitive classification. On December 27, 2005, the Commission issued its Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene, establishing January 11, 2006, as the deadline for intervention. There were no requests to intervene.

On February 22, 2006, the Staff of the Commission filed its memorandum, recommending that the Commission grant CLEC a certificate to provide basic local, nonswitched local and interexchange telecommunications services. Staff also recommends that the Commission classify the company and its services as competitive and grant the certificate subject to certain conditions.

Discussion

CLEC seeks certification to provide basic local, local exchange and interexchange services in portions of Missouri served by Southwestern Bell Telephone Company, Sprint, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel.

The Commission may grant an application for a certificate of service authority to provide basic local telecommunications services upon a showing that: (1) the applicant as met the statutory requirements,¹ and (2) the grant of authority is in the public interest.² The applicant must also comply with the Commission's procedural rules.³

CLEC is also requesting that it and its services be classified as competitive and that the application of certain statutes and regulatory rules be waived. The Commission may classify a telecommunications services as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.⁴ The Commission may only classify a telecommunications carrier as

¹ See Sections 392.450, 392.451 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

² Sections 392.430 and 392.440.

³ See Chapter 2, 4 CSR 240.

⁴ Section 392.361.2

competitive if all of its services are co classified.⁵ The Commission may waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁶

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. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission had failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

Requirements of the Commission's Rules:

Commission rules 4 CSR 240-2.060(1) and (6) require that an entity seeking certification to provide basic local telecommunications services provide certain information to the Commission in its application, including: a description of the business organization of the applicant, supported by a certificate of the Missouri Secretary of State; names and addresses for contact purposes; a disclosure of any pending or final judgments or decisions against it from any state or federal agency or court involving customer service or rates; a verified statement that there are no outstanding annual reports or assessment fees owed to this Commission; if applicable, a request to be classified as a competitive telecommunications company; a description of the types of services the applicant intends to provide; the

⁵ Section 392.361.3

⁶ See Sections 392.185, 392.361.3 and 392.420.

exchanges in which services are to be offered; and, a proposed tariff with an effective date which is not fewer than 45 days after its issue date.

Having reviewed the application and supporting materials filed by CLEC, the Commission finds that CLEC has complied with each of these requirements except for the proposed tariff. CLEC requests a temporary waiver of 4 CSR 240-3.510(1)(C) until “all facts necessary for the development of such tariffs are known.”⁷ CLEC states that it will not provide service prior to any such tariffs being effective

Requirements of Section 392.450

Section 392.450.1 provides that the Commission may grant a basic local certificate only upon a finding, after notice and a hearing, that the applicant has complied with the certification process established under Section 392.455. Thus, an applicant’s satisfaction of the requirements of the Commission’s regulations and of Section 392.455 also satisfies Section 392.450.1. As explained below, the Commission does find that CLEC has satisfied the requirements of the Commission’s regulations and of Section 392.455, and consequently finds that CLEC has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.

Section 392.450.2 provides that an applicant for a basic local certificate must (1) file and maintain tariffs with the Commission in the same manner as the incumbent local exchange carriers and (2) meet the minimum service standards, including quality of service and billing standards, that the Commission requires of the competing incumbent local exchange carriers.

⁷ Application for Certificate, pg. 4, paragraph 11.

CLEC did not file a proposed tariff in support of its application. However, CLEC stated that it would comply with all applicable Commission rules except those expressly waived by the Commission. Thus, CLEC 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. Staff recommends that the certificate be granted. Having reviewed CLEC's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that CLEC has met the requirements of Section 392.450.2.

Requirements of Section 392.455

Section 392.455 authorizes the Commission to establish a process to grant basic local certification to new entrants and to grant certificates to new entrants to provide basic local telecommunications service on a common carriage basis. That section further requires that a new entrant: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications services; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographical area in which it proposes to offer service and demonstrate that such area follows the 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. Finally, Section 392.455 also requires that the Commission give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

In support of its application, CLEC submitted Exhibit C to its application, the names and qualifications of its key personnel. CLEC also submitted financial projections as reflected in a balance sheet and operations projections. In its Memorandum, Staff indicated that CLEC has sufficient technical, financial and managerial resources and recommends that the application be granted.

Having reviewed CLEC's application and supporting materials, as well as Staff's Recommendation and Memorandum, the Commission finds that CLEC has met the requirements of Section 392.455(1) in that it has shown that it possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications services.

As previously noted, CLEC has stated that it will comply with all applicable Commission rules except those expressly waived by the Commission. Based on this statement, the Commission finds that CLEC has demonstrated that the services it proposes to offer satisfy the minimum standards promulgated in Section 392.455(2).

In its Application, CLEC seeks certification in the exchange or services areas of the incumbent local exchange companies of Southwestern Bell Telephone Company, Sprint, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel. Staff agrees that CLEC has sufficiently identified the exchange in which it seeks certification and recommends that the application be approved. Having reviewed CLEC's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that CLEC has met the requirements of Section 392.455(3) in that it has set forth the geographic area in which it proposes to offer service and has

demonstrated that such area follows the exchange boundaries of the incumbent local exchange telecommunications companies and is no smaller than an exchange.

In its application, CLEC states that it will offer basic local service as a separate and distinct service. Based on this statement, the Commission finds that CLEC has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

In its application, CLEC states that it “will give due consideration to equitable access for all Missourians to affordable telecommunications services regardless of their income or place of residence.” Section 392.455(5) requires the Commission to give consideration to equitable access for all Missourians, regardless of where they reside or their income, to affordable telecommunications service. CLEC’s statement furthers this requirement.

Requirement for Competitive Classification

If the requested certification is granted, CLEC will compete with an incumbent local exchange carrier in each exchange in which it provides basic local telecommunications service. The Commission finds that CLEC will thus be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services CLEC will offer are thus qualified for classification as competitive services.

Conclusions of Law

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

Jurisdiction:

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, after notice and a hearing, where it is in the best interest of the public.⁸ The Commission is also authorized to classify services and companies as competitive or transitionally competitive and waive certain statutory provisions and Commission rules.⁹ The Commission may also impose and reasonable and necessary conditions upon telecommunications service providers if such conditions are in the public interest and consistent with the provisions and purposes of this chapter.¹⁰

The Public Interest

Having found that CLEC has met all of the requirements for certification to provide basic local telecommunications services as a common carrier, it remains to be determined whether it is in the public interest to grant the requested certificate. It has been legislated¹¹ that “[t]he provisions of this chapter shall be construed to . . . promote diversity in the supply of telecommunications services and products throughout the state of Missouri; [and to] . . . [a]llow 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[.]” In consideration of the foregoing, and based upon its findings that CLEC has met all of the requirements for the requested certification, the Commission concludes that granting the requested certification is in the public interest. The Commission also finds that competition in the interexchange telecommunications market is in the public interest and CLEC shall be granted a certificate of service authority to provide interexchange telecommunications services.

⁸ Sections 392.430, 392.450 and 392.455.

⁹ Section 392.361.

¹⁰ Section 392.470.1.

¹¹ Section 392.180.

Competitive Classification

CLEC seeks competitive classification and the Commission has found that CLEC will be subject to a sufficient degree of competition to justify a lesser degree of regulation. The Commission has further found that all of CLEC's services will be entitled to classification as competitive services. Therefore, the Commission may classify CLEC as a competitive telecommunications company if such lesser degree of regulation is consistent with the protection of ratepayers and promotes the public interest. In consideration of these findings and of the public interest, the Commission concludes that granting competitive classification to CLEC is consistent with the protection of ratepayers and promotes the public interest.

Waivers

The Commission may waive certain statutes and administrative rules for competitively classified carriers "if such waiver or modification is otherwise consistent with the other provisions of section 392.361 to 392.520 and the purposes of this chapter."¹²

The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange and interexchange carriers. The Commission will waive these provisions for CLEC because to do so furthers the purposes of Chapter 392 to foster and encourage the development of competition in the telecommunications industry.

Staff's recommendation indicates that CLEC should be classified as a competitive telecommunications company. Staff agrees that CLEC's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on CLEC's ability to charge for its access services. Those limitations are as follows:

¹² Section 392.361.5 and 392.420.

1. CLEC's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each ILEC within whose service area CLEC seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230.
2. The Certificate and service classification for switched access services is conditioned on the continued applicability for Section 392.200, and the requirement that any increase in switched access service rates above the maximum switched access service rate set forth herein shall be made pursuant to Sections 392.220 and 392.230, and not Section 392.500 and 392.510.
3. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant 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.

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.

Compliance

The Commission places CLEC on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against. These 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 will as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 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.

Furthermore, the company is reminded that, if it is a corporation, non-attorneys may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice law in Missouri.

In addition, the company is reminded that Section 392.410.6, RSMo Supp. 2005, renders the company's certificate of service authority null and void one year from the date of this order unless it has exercised its authority under that certificate.

IT IS ORDERED THAT:

1. CLEC, Inc. is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of Southwestern Bell Telephone Company, Sprint, CenturyTel of Missouri, LLC and Spectra Communications Group, LLC d/b/a CenturyTel subject to the conditions and recommendations contained in the Staff of the Commission's Memorandum.

2. CLEC, Inc. is granted a certificate to provide nonswitched local exchange telecommunications service restricted to dedicated private line services.

3. CLEC, Inc. is granted a certificate to provide interexchange telecommunications services.

4. CLEC, Inc. is granted competitive classification.

5. CLEC, Inc.'s certification and competitive status are expressly conditioned on the continued applicability for Section 392.200, and the requirement that any increase in switched access service rates above the maximum switched access service rate set forth herein shall be made pursuant to Sections 392.220 and 392.230, and not Section 392.500 and 392.510.

6. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant 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.

7. 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
- 392.300.2 - 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 boundaries
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts

8. The requirement of 4 CSR 240-3.510(1)(C) is temporarily waived; however, prior to delivering services under its certificate of service authority, CLEC, Inc. shall file, in a

separate case, tariff sheets with an effective date which is not fewer than 45 days from the issue date and which reflects the rates, rules, regulations and the services it will offer. The tariff shall also include a listing of the statutes and Commission rules waived above.

9. This order shall become effective on March 10, 2006.

10. This case may be closed on March 11, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw, Clayton,
and Appling, CC., concur.

Jones, Regulatory Law Judge