

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 5th day of
May, 2005.

In the Matter of the Application of MCC Telephony of Missouri, Inc., for a Certificate of Service Authority to Provide Basic Local Exchange, Non-Switched Local Exchange and Interexchange Telecommunications Services in the State of Missouri and to Classify Said Services as Competitive)
)
) **Case No. LA-2005-0150**
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)

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

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

Procedural History

On November 30, 2004, MCC Telephony of Missouri, Inc., applied to the Commission for a certificate of service authority to provide basic local exchange, interexchange and local exchange telecommunications services and to classify those services and the company as competitive. On December 7, the Commission sent notice, giving interested parties until January 6 to request intervention.

On January 6, the Small Telephone Company Group¹ filed an Application to Intervene. STCG claimed that MCC Telephony's application was unclear about how MCC Telephony planned to provide point-to-point dedicated services over a predominately-IP based network. STCG stated that it was also unsure how MCC Telephony's plans would affect STCG, and therefore it was unsure if it supported or opposed MCC Telephony's application.

Also on January 6, the Missouri Independent Telephone Company Group² filed an Application to Intervene. MITG raised the same concerns that STCG did. On January 21, over MCC Telephony's objection, the Commission granted STCG and MITG intervention.

Nonunanimous Stipulation

On March 18, after a prehearing conference and motions to suspend the requirement to file a proposed procedural schedule, some of the parties filed a Nonunanimous Stipulation. MCC Telephony, the Office of the Public Counsel, STCG and MITG signed that stipulation.

¹ The Small Telephone Company Groups consists of BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Peace Valley Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., Stoutland Telephone Company.

² The Missouri Independent Telephone Company Group consists of Alma Communications Co., Chariton Valley Telephone Corp., Choctaw Telephone Co., Mid-Missouri Telephone Company, MoKan Dial Inc., and Northeast Missouri Rural Telephone Co.

That stipulation provides that MCC Telephony does not request authority to provide basic or non-switched local exchange services in any of the exchanges or rate centers that STCG's or MITG's members serve. Further, MCC Telephony will not obtain or assign any NXX codes within any exchange or rate center in which it has not received authority to provide basic or non-switched local exchange services. MCC Telephony also agrees that it will not provide basic or non-switched local exchange services, including intrastate point-to-point dedicated service arrangements, within any exchange or rate center in which it does not have authority to provide basic or non-switched local exchange services. Moreover, to the extent that MCC Telephony originates non-local, non-EAS, and non-MCA traffic that is destined to terminate to exchanges or rate centers that STCG or MITG members serve, MCC will comply with those members' access tariffs. Finally, to the extent that MCC Telephony originates non-local, non-EAS, and non-MCA traffic that is destined to terminate to exchanges or rate centers that STCG or MITG members serve, MCC Telephony will create and pass appropriate industry standard traffic records to the STCG and MITG member companies so that they may accurately identify and bill MCC Telephony for that traffic's termination.

All of those parties agreed that the MCC Telephony is eligible for an interexchange, non-switched local, and basic local exchange certificate of service authority. They further agree that the Commission should grant MCC Telephony those certificates.

Also on March 18, the Staff of the Commission filed its Staff Response to Nonunanimous Stipulation. Staff stated that it does not object to the Nonunanimous Stipulation, and does not dispute its contents. On that same date, Staff filed its Recommendation. Staff recommended the Commission grant MCC Telephony a certificate

of service authority to provide basic local, interexchange and non-switched local telecommunications services.

Discussion

MCC Telephony seeks certification to provide resold and facilities-based basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone, L.P. d/b/a SBC Missouri; CenturyTel of Missouri, LLC; Spectra Communications Group LLC d/b/a CenturyTel; and Sprint Missouri, Inc. d/b/a Sprint, as listed in those companies' Missouri local exchange tariffs. MCC Telephony is not asking for certification in any area that is served by a small incumbent local exchange provider. The Commission may grant an application for a certificate of service authority to provide basic local telecommunications service upon a showing (1) that the applicant has met the statutory requirements,³ and (2) that the grant of authority is in the public interest.⁴

MCC Telephony also asks the Commission for authority to offer nonswitched local and interexchange service in Missouri. The Commission may grant MCC Telephony a certificate of service authority to provide nonswitched local and interexchange service if the Commission finds such authority to be in the public interest.⁵ The applicant must also comply with the Commission's procedural rules.⁶

MCC Telephony also asks that it and its basic local services be classified as competitive and that the Commission waive certain statutes and regulatory rules. The

³ See Sections 392.450 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

⁴ Sections 392.430 and 392.440.

⁵ Id.

⁶ See Chapter 2, 4 CSR 240.

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.⁷ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁸ 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 392.⁹

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 Commission has considered the positions and arguments of all of the parties in making this decision. 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.

A. Requirements of the Commission's Rules:

Commission Rule 4 CSR 240-2.060(1) and 4 CSR 240-3.510 require an entity seeking certification to provide telecommunications services to provide certain information to the Commission. This information includes: a description of the business organization of the applicant, supported by the 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

⁷Section 392.361.2.

⁸Section 392.361.3.

⁹See Sections 392.185, 392.361.3 and 392.420.

verified statement that there are no outstanding annual reports or assessment fees owed to this Commission; a request to be classified as a competitive telecommunications company, if applicable, and a description of the types of service the applicant intends to provide; and the exchanges in which service is to be offered.

Having reviewed the application and supporting materials, the Commission finds that MCC Telephony has complied with each of these requirements.

B. 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 finds that MCC Telephony has satisfied the requirements of the Commission's regulations and of Section 392.455, and consequently finds that MCC Telephony 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.

MCC Telephony states that it will comply with all applicable Commission rules except those the Commission waives. The Commission rules that MCC Telephony agrees to obey include the Commission's minimum basic local service standards, including quality

of service and billing standards. Staff recommends the Commission grant MCC Telephony a certificate. Having reviewed MCC Telephony's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that MCC Telephony has met the requirements of Section 392.450.2.

C. 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 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 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, that section also requires that the Commission give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of their location or income.

In support of its application, MCC Telephony filed a statement of its financial resources, including a statement of assets, liabilities, and equity, a statement of revenues and expenses, and a statement of retained earnings. Based on its review of this information, Staff concluded that MCC Telephony has sufficient financial resources and recommended that the Commission grant the application.

In its verified application, MCC Telephony asserts that it has the technical and managerial expertise to provide the services it proposes. With its application, MCC Telephony filed summaries of its key employees' experience. These employees have management experience in various settings and some technical telecommunications experience. Staff, in its Recommendation, indicates that MCC Telephony has sufficient managerial and technical expertise to provide basic local telecommunications service. Having reviewed MCC Telephony's application and supporting materials, as well as Staff's Recommendation, the Commission finds that MCC Telephony 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 service.

MCC Telephony 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 MCC Telephony has demonstrated that the services it proposes to offer satisfy the minimum standards established by the Commission, in satisfaction of Section 392.455(2).

MCC Telephony seeks certification in all of the exchanges served by Southwestern Bell Telephone, L.P. d/b/a SBC Missouri; CenturyTel of Missouri, LLC; Spectra Communications Group LLC d/b/a CenturyTel; and Sprint Missouri, Inc. d/b/a Sprint, as listed in those companies' Missouri local exchange tariffs. Staff agrees that MCC Telephony has sufficiently identified the exchanges in which it seeks certification and recommends that the Commission approve the application. Having reviewed MCC Telephony's application and supporting materials, as well as Staff's Recommendation, the Commission finds that MCC Telephony 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 verified application, MCC Telephony states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that MCC Telephony has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

MCC Telephony also states that it will consider equitable access for all Missourians, regardless of their location or income, to affordable telecommunications service. MCC Telephony submits that the public interest will be served by Commission approval of its application because its proposed services will create and enhance competition and expand customer service options, improve the quality of telecommunications service, and decrease the cost of such services. The Commission finds these representations are consistent with the legislative goals set forth in the Telecommunications Act of 1996 and Chapter 392, RSMo. Therefore, granting the certificate will further the goal announced by the Legislature.

D. Requirements for Sections 392.430 and 392.440:

MCC Telephony asks the Commission for authority to offer nonswitched local and interexchange service in Missouri. The Commission may grant MCC Telephony a certificate of service authority to provide nonswitched local and interexchange service if the Commission finds such authority to be in the public interest.

The Staff recommended that the Commission grant MCC Telephony a certificate of interexchange service authority and a certificate of service authority for nonswitched

local exchange telecommunications service subject to the condition that this authority be restricted to providing dedicated private line services. Staff recommended that the Commission grant MCC Telephony competitive status, and a waiver of the statutes and rules listed in the Notice.

MCC Telephony proposes to provide interexchange and nonswitched local exchange telecommunications service, subject to the condition that this authority be restricted to providing dedicated private line services. The Commission finds that competition in the intrastate interexchange and nonswitched local exchange telecommunications markets is in the public interest and that the Commission should grant MCC Telephony certificates of service authority to provide those services.

E. Requirements for Competitive Classification:

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

The Commission finds that the services MCC Telephony proposes to offer are competitive and that MCC Telephony should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraphs below is reasonable and not detrimental to the public interest.

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 basic local exchange, nonswitched local exchange, and interexchange 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 public interest.¹⁰ The Commission is also authorized to classify services and companies as competitive or transitionally competitive and to waive certain statutory provisions and Commission rules.¹¹ The Commission may also impose any reasonable and necessary condition or conditions upon telecommunications service providers if such conditions are in the public interest and consistent with the provisions and purposes of this chapter.¹²

The Public Interest:

Having found that MCC Telephony has met all of the requirements for certification to provide basic local, nonswitched local, and interexchange telecommunications services as a common carrier, the Commission must still determine whether it is in the public interest to grant the certificates. The public interest is found in the

positive, well-defined expression of the settled will of the people of the state or nation, as an organized body politic, which expression must be looked for and found in the Constitution, statutes, or judicial decisions of the state or nation, and not in the varying personal

¹⁰Sections 392.430, 392.440, 392.450, and 392.455.

¹¹Section 392.361.

¹²Section 392.470.1.

opinions and whims of judges or courts, charged with the interpretation and declaration of the established law, as to what they themselves believe to be the demands or interests of the public.¹³

"[I]f there is legislation on the subject, the public policy of the state must be derived from such legislation."¹⁴

Turning to the statutes of Missouri, the Commission notes that the General Assembly has expressly provided that "[t]he provisions of this chapter shall be construed to . . . [p]romote 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[.]"¹⁵ In consideration of the foregoing, and based upon its finding that MCC Telephony has met all of the requirements for the certificates, the Commission concludes that granting the certificates is in the public interest.

Competitive Classification:

MCC Telephony seeks competitive classification. The Commission found that MCC Telephony would be subject to sufficient competition to justify a lesser degree of regulation. The Commission further found that all of MCC Telephony's services would be entitled to classification as competitive services. Therefore, the Commission may classify MCC Telephony as a competitive telecommunications company if such lesser degree of regulation is consistent with the protection of ratepayers and promotes the public interest.

¹³ *In re Rahn's Estate*, 316 Mo. 492, 501, 291 S.W. 120, 123 (1926), *cert. den'd*, 274 U.S. 745, 47 S.Ct. 591, 71 L.Ed. 1325.

¹⁴ *Moorshead v. Railways Co.*, 203 Mo. 121, 165, 96 S. W. 261, 271 (banc 1907).

¹⁵ Section 392.185.

In consideration of these findings and of the public interest as announced by the General Assembly, the Commission concludes that granting competitive classification to MCC Telephony 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 sections 392.361 to 392.520 and the purposes of this chapter.”¹⁶

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 MCC Telephony because to do so furthers the purpose of Chapter 392 to foster and encourage the development of competition in the telecommunications industry.

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.”¹⁷ Staff recommends that MCC Telephony’s application be granted subject to the following conditions:

- A. MCC Telephony’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 MCC Telephony seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.
- B. The certificate and service classification for switched exchange access is granted conditioned on the continued applicability of Section 392.200, RSMo, and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230, RSMo, and not Sections 392.500 and 392.510, RSMo.

¹⁶ Sections 392.361.5 and 392.420.

¹⁷Section 392.361.6.

- C. If the directly competing ILEC, in whose service area MCC Telephony is operating, decreases its originating and/or terminating access service rates, MCC Telephony 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.
- D. MCC Telephony may not conduct business as an interexchange carrier in Missouri until it files tariffs with the Commission with proposed effective dates no less than 45 days from the filing date.
- E. MCC Telephony's certificate of service authority to provide nonswitched local exchange telecommunications service is restricted to providing dedicated private line services.

The Commission has considered the conditions proposed by Staff, concludes that they are reasonably necessary to protect the public interest, and should be adopted. The Commission reminds MCC Telephony that prior to providing telecommunications service, MCC Telephony must have an interconnection agreement approved by the Commission.

Compliance:

The Commission places MCC Telephony on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against it. 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 well 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, its officers 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. 2003, 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. Commission Rule 4 CSR 240-3.510(C) requires the company to file a proposed tariff and any applicable interconnection agreements before the company can conduct business.

IT IS THEREFORE ORDERED:

1. That the Nonunanimous Stipulation is approved.
2. That the Nonunanimous Stipulation's signatories shall abide by the Nonunanimous Stipulation's terms and conditions.
3. That MCC Telephony of Missouri, Inc., is granted a certificate of service authority to provide basic local telecommunications services, nonswitched local exchange services, and intrastate, interexchange services in the state of Missouri, subject to the conditions of certification set out below and to all applicable statutes and Commission rules except as specified in this order.

4. That MCC Telephony of Missouri, Inc., is classified as a competitive telecommunications company.

5. That MCC Telephony of Missouri, Inc.'s certificate of service authority to provide nonswitched local exchange services is restricted to dedicated, private line services.

6. That MCC Telephony of Missouri, Inc.'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 MCC Telephony of Missouri, Inc., seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo 2000.

7. That the certificate and competitive service classification for switched exchange access is granted conditioned on the continued applicability of Section 392.200, RSMo 2000, and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230, RSMo 2000, and not Sections 392.500 and 392.510, RSMo 2000.

8. That if the directly competing ILEC, in whose service area MCC Telephony of Missouri, Inc., is operating, decreases its originating and/or terminating access service rates, MCC Telephony of Missouri, Inc., 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.

9. That 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 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-3.550(5)(C) - exchange boundary maps

10. That MCC Telephony of Missouri, Inc., shall not conduct business in Missouri until the Commission approves of its interconnection agreements.

11. That MCC Telephony of Missouri, Inc., shall not conduct business in Missouri until it files and the Commission approves of tariffs with a proposed effective date of no less than 45 days from the filing date.

12. That this order shall become effective on May 15, 2005.

13. That this case may be closed on May 16, 2005.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Davis, Chm., Gaw, Clayton and Appling, CC., concur
Murray, C., concurs with concurring opinion attached

Pridgin, Regulatory Law Judge