

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of CommPartners, LLC,)
for a Certificate of Service Authority to Provide Basic)
Local Exchange Telecommunications Services in) **Case No. LA-2006-0174**
Portions of the State of Missouri and for Competitive)
Classification)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES

Issue Date: January 19, 2006

Effective Date: January 29, 2006

Syllabus: This order grants a certificate of service authority to provide basic 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 October 18, 2005, CommPartners, LLC, applied for a certificate of service authority to provide facilities-based and resold basic local telecommunications services. On October 25, 2005, the Commission issued its Notice of Applications. That notice established November 9, 2005, as the deadline for applications to intervene. The Commission did not receive any requests to intervene. CommPartners filed a supplement to its application with additional financial information on December 29, 2005. The Staff of the Missouri Public Service Commission filed its memorandum on January 6, 2006.

In its memorandum, Staff recommended that the Commission grant CommPartners a basic local certificate with the requested classifications and waivers. Staff asked the Commission to grant CommPartners a basic local certificate subject to certain conditions.

Discussion

CommPartners seeks certification to provide facilities-based and resold basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, Sprint Missouri, Inc., CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel. CommPartners 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,¹ and (2) that the grant of authority is in the public interest.²

CommPartners is also requesting that it and its basic local services be classified as competitive and that the Commission waive certain statutes and regulatory rules. 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.³ The Commission may only classify a telecommunications

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

² Sections 392.430 and 392.440.

³ Section 392.361.2.

carrier as competitive if all of its services are so classified.⁴ The Commission may waive the application of certain statutes and rules for a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁵

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 Rules 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 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; the exchanges in which service is to be

⁴ Section 392.361.3.

⁵ See Sections 392.185, 392.361.3 and 392.420.

offered; and before providing service, 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 CommPartners filed, the Commission finds that CommPartners has complied with each of these requirements with the exception of filing a proposed tariff.

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

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

including quality of service and billing standards. Having reviewed CommPartners' application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that CommPartners has met the requirements of Section 392.450.2 with the exception of the filing of a tariff.

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, CommPartners filed statements of its financial resources including pro forma balance sheets and income statements. Based on its review of this information, Staff concluded that CommPartners has sufficient financial resources and recommended that the Commission grant the application.

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

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

CommPartners seeks certification in the exchanges served by Southwestern Bell Telephone Company, Sprint, CenturyTel, and Spectra. Staff agrees that CommPartners has sufficiently identified the exchanges in which it seeks certification and recommends that the Commission approve the application. The Commission finds that CommPartners 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, CommPartners states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that CommPartners has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

CommPartners also states that it will consider equitable access for all Missourians, regardless of their location or income, to affordable telecommunications service. CommPartners 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 Competitive Classification:

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

The Commission finds that the services CommPartners proposes to offer are competitive and CommPartners 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 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.⁶ The Commission is also authorized to classify services and companies as competitive or transitionally competitive and to waive certain statutory provisions and Commission rules.⁷ 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.⁸

The Public Interest:

Having found that CommPartners has met all of the requirements for certification to provide basic local telecommunications services as a common carrier,

⁶ Sections 392.430, 392.440, 392.450, and 392.455.

⁷ Section 392.361.

⁸ Section 392.470.1.

with the exception of filing its tariff, 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 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.⁹

"[I]f there is legislation on the subject, the public policy of the state must be derived from such legislation."¹⁰

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[.]"¹¹ In consideration of the foregoing, and based upon its finding that CommPartners has met all of the requirements for the certificate with the exception of filing its tariff, the Commission concludes that granting the certificate is in the public interest.

Competitive Classification:

CommPartners seeks competitive classification. The Commission found that CommPartners will be subject to sufficient competition to justify a lesser degree of

⁹ *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.

¹⁰ *Moorshead v. Railways Co.*, 203 Mo. 121, 165, 96 S. W. 261, 271 (banc 1907).

¹¹ Section 392.185.

regulation. The Commission further found that all of CommPartners' services will be entitled to classification as competitive services. Therefore, the Commission may classify CommPartners 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 as announced by the General Assembly, the Commission concludes that granting competitive classification to CommPartners 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."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 CommPartners 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."¹³ Staff recommends that CommPartners' application be granted subject to the following conditions:

¹² Sections 392.361.5 and 392.420.

¹³ Section 392.361.6.

- A. CommPartners' 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 CommPartners 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.
- C. If the directly competing ILEC, in whose service area CommPartners is operating, decreases its originating and/or terminating access service rates, CommPartners 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, concludes that they are reasonably necessary to protect the public interest, and should be adopted.

Compliance:

The Commission places CommPartners on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against CommPartners. These obligations include, but are not limited to, the following:

- 1. The requirement to file an annual report, subject to a penalty of \$100 and an additional \$100 per day for each day CommPartners remains in noncompliance, pursuant to Section 392.210.1, RSMo 2000, Commission Rule 4 CSR 240-3.540(1).
- 2. The requirement to pay an annual assessment fee, pursuant to Section 386.370, RSMo Supp. 2005. Because assessments are

facilitated by order of the Commission, failure to comply with the order will subject CommPartners to penalties ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

3. That CommPartners shall comply with all relevant state and federal statutes and rules.
4. That CommPartners shall comply with all orders of this Commission, subject to penalties for noncompliance ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo.

The Commission further reminds CommPartners that Section 392.410.6, RSMo Supp. 2005, renders CommPartners' certificate of service authority null and void one year from the date of this order unless CommPartners has exercised its authority under that certificate.

IT IS THEREFORE ORDERED:

1. That CommPartners, LLC, is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out in this order and to all applicable statutes and Commission rules except as specified in this order.

2. That CommPartners, LLC, is classified as a competitive telecommunications company.

3. That CommPartners, LLC, shall have originating and terminating access rates no greater than the lowest Commission-approved corresponding access rates in effect for each ILEC within whose service area CommPartners, LLC, seeks authority to

provide service, unless authorized by the Commission pursuant to sections 392.220 and 392.230, RSMo 2000.

4. 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.

5. That if the directly competing ILEC, in whose service area CommPartners, LLC, is operating, decreases its originating and/or terminating access service rates, CommPartners, LLC, 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.

6. 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

7. That CommPartners, LLC, shall not conduct business in Missouri until the Commission approves of its interconnection agreement.

8. That prior to delivering services under its certificate of service authority, CommPartners, LLC, 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. That this order shall become effective on January 29, 2006.

10. That this case may be closed on January 30, 2006.

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 19th day of January, 2006.