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May 17, 2002

HAND-DELIVERED

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102

**RE: ALLTEL Missouri, Inc.'s Notice of Election to be Price Cap Regulated
Under Section 392.245, RSMo 2000.**

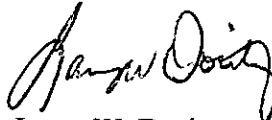
Dear Mr. Roberts:

Please find enclosed for filing with the Commission the original and eight (8) copies of ALLTEL Missouri, Inc.'s Notice of Election to be Price Cap Regulated Under Section 392.245, RSMo 2000.

Copies of the foregoing Notice of Election have been hand-delivered or mailed this date to the Office of the Public Counsel and Dana K. Joyce, General Counsel.

Thank you for your attention to this matter.

Sincerely,



Larry W. DORITY

Enclosures

cc: Office of the Public Counsel
Dana K. Joyce, General Counsel

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

| | | |
|--|---|-----------------|
| In the Matter of the Notice of |) | |
| Election of ALLTEL Missouri, Inc. |) | |
| To Be Price Cap Regulated Under |) | Case No. |
| Section 392.245, RSMo. 2000. |) | |

ALLTEL MISSOURI, INC.'S
NOTICE OF ELECTION TO BE PRICE CAP REGULATED
UNDER SECTION 392.245, RSMO 2000

COMES NOW ALLTEL Missouri, Inc. (ALLTEL) and, pursuant to Section 392.245, RSMo 2000,¹ hereby notifies the Commission of its election to be price cap regulated under Section 392.245 commencing on the date of the filing of this Notice of Election. In support of its Notice of Election, ALLTEL respectfully states as follows:

1. ALLTEL is a small incumbent local exchange telecommunications company, authorized to provide basic local exchange telecommunications service in Missouri. The legal name and principal office or place of business of ALLTEL is:

ALLTEL Missouri, Inc.
One Allied Drive
P.O. Box 2177
Little Rock, Arkansas 72203
Telephone: (501) 905-5342
Facsimile: (210) 905-5679

2. ALLTEL Missouri, Inc. is a Missouri corporation, and a Certificate of Corporate Good Standing from the Missouri Secretary of State, dated October 2, 2001, was attached to a recent application filed in Case No.TO-2002-169, which is incorporated herein by reference. All correspondence, communications, and orders and decisions of the Commission should be sent to:

¹ All statutory references are to the Revised Missouri Statutes 2000, unless otherwise indicated.

Larry Krajci
ALLTEL Communications
P.O. Box 2177
Little Rock, AR 72203
Telephone: (501) 905-5342
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Larry W. DORITY
FISCHER & DORITY, P.C.
101 Madison, Suite 400
Jefferson City, Missouri 65101
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Facsimile: (573) 636-0383

3. ALLTEL currently provides telecommunications services to members of the public located in those areas certificated to it by the Commission. ALLTEL provides "basic local telecommunications services" within the exchanges as defined by its respective tariffs which are on file with and approved by the Commission. ALLTEL is a "small local exchange telecommunications company," as defined by Section 386.020(30) RSMo 2000, serving less than one hundred thousand (100,000) access lines in Missouri.

4. On March 21, 2002, Universal Telecom (Universal), an alternative local exchange telecommunications company, as defined in Section 386.020(1), was granted a certificate of service authority to provide basic local exchange telecommunications services in exchanges served by various local exchange companies, including ALLTEL. *See Order Granting Certificate To Provide Basic Local Exchange Service*, Case No. TA-2002-183, attached hereto as Appendix 1 and incorporated herein by reference. On March 16, 2001, Missouri State Discount Telephone (M-SDT), an alternative local exchange telecommunications company, as defined in Section 386.020(1), was granted a certificate of service authority to provide basic local exchange telecommunications services in exchanges served by various local exchange companies, including ALLTEL. *See Order Granting Certificate To Provide Basic Local Exchange And Interexchange Telecommunications*

Service, Case No. TA-2001-334, attached hereto as Appendix 2 and incorporated herein by reference. As explained in the Affidavit of Steve R. Mowery, attached as Appendix 3 and incorporated herein by reference, Universal and M-SDT are currently providing basic local exchange service in ALLTEL's service area in Missouri.

5. Section 392.245(2) states:

A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area. A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area, and the incumbent company shall remain subject to regulation under this section after such election. (*emphasis added.*)

6. ALLTEL hereby exercises its statutory right to elect to be regulated under Section 392.245 by providing written notice to the Commission since "an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area. . . ." *Id.* ALLTEL will remain subject to regulation under Section 392.245 after the filing of this Notice of Election. No further action of the Commission is required to effectuate ALLTEL's election herein.

WHEREFORE, ALLTEL Missouri, Inc. hereby provides the Commission with written notice of its election to be price cap regulated, pursuant to Section 392.245, RSMo 2000, commencing on the date of this filing.

Date: May 17, 2002

Respectfully submitted,



Larry W. Dority MBN 25617

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Email: lwdority@sprintmail.com

Attorneys for ALLTEL Missouri, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered or mailed, United States Mail, postage prepaid, this 17th day of May, 2002, to:

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

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



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the Application of Universal Telecom,)
Inc., for a Certificate of Service Authority to Provide)
Prepaid Basic Local Telecommunications Services) **Case No. TA-2002-183**
in the State of Missouri (Small Incumbent Local)
Exchanges) and to Classify Said Services and the)
Company as Competitive.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

This order grants Universal Telecom, Inc., a certificate of service authority to provide basic local exchange telecommunication service in the exchanges currently served by Southwestern Bell Telephone Company, Sprint/United Telephone Company, GTE Midwest, Inc., ALLTEL, Spectra Communications, and TDS Telecom.

Universal Telecom, Inc., applied to the Missouri Public Service Commission on October 12, 2001, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.361, 392.410 - .450, RSMo 2000.¹ Universal Telecom also asked the Commission to classify it as a competitive company and to waive certain statutes and rules as authorized by Sections 392.361 and 392.420. On December 31, 2001, Universal Telecom filed an amendment to its application.

The Commission issued a Notice of Applications on October 30, 2001, directing interested parties wishing to intervene to do so by November 29, 2001. On February 4,

¹ All further statutory references are to Revised Statutes of Missouri 2000, unless otherwise indicated.

2002, the Commission issued a corrected notice *nunc pro tunc*. In the corrected notice, interested parties were directed to intervene no later than March 6, 2002. No requests for intervention or requests for an evidentiary hearing were filed. On January 30, 2002, the Staff of the Missouri Public Service Commission filed its recommendation.

Findings of Fact

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.² Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application and the agreement and stipulations of the parties.

The Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

In Commission Case No. TA-2000-598, Universal Telecom was granted a certificate to provide basic local and interexchange telecommunications services in Missouri. Small incumbent local exchanges, however, were specifically excluded from that grant of authority. Universal Telecom is now seeking to add authority to provide basic local telecommunications service in the exchanges of certain small incumbent local carriers' exchanges.

² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

Universal Telecom is a Kentucky corporation with its principal offices located in LaGrange, Kentucky. Commission Rule 4 CSR 240-2.060 requires that an application for certification to provide telecommunications services include documentation showing that 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.³ Universal Telecom has provided all the required documentation with the exception of the tariff.

Universal Telecom has an approved tariff on file at the Commission but would need to amend its tariff to provide service in the small incumbent local exchange companies' territory. Universal Telecom requested a temporary waiver of 4 CSR 240-2.060(6)(C) and indicated that it would file the tariff revisions at a later date.

Universal Telecom proposes to provide prepaid basic local telecommunications service on a resold basis. Universal Telecom alleges that it possesses the managerial and technical qualifications to provide local exchange service in Missouri. Exhibit C to the application describes the extensive experience and expertise of Universal Telecom's management. Universal Telecom stated that it possesses the necessary financial resources to provide basic local telecommunications services. Universal Telecom demonstrated its financial resources by submitting a copy of Universal Telecom's financial statements, marked as Exhibit D to its application. Staff agreed in its recommendation that Universal Telecom has sufficient financial and managerial resources and abilities to provide the service. Therefore, the Commission finds that Universal Telecom possesses sufficient

³ 4 CSR 240-2.060(1) and (6)(C), effective April 30, 2000.

technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Universal Telecom stated in its application that it will comply with all applicable Commission rules and is willing to meet all relevant service standards, including billing, quality of service, tariff filings, and maintenance. The Commission finds that Universal Telecom proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Staff indicates that Universal Telecom has identified the geographic area in which it proposes to offer basic local service and that the areas are no smaller than an exchange. Furthermore, Universal Telecom alleges that those areas follow exchange boundaries of the ILECs in the territory to be served. The Commission finds that Universal Telecom has sufficiently identified the geographic area in which it proposes to offer service and that Universal Telecom has demonstrated that the area follows ILEC exchange boundaries and is no smaller than an exchange.

Universal Telecom stated that it will offer basic local telecommunications service as a separate and distinct service and that, in compliance with Section 392.455(5), it will provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services. Therefore, the Commission finds that Universal Telecom will provide basic local exchange service as a separate and distinct service and that Universal Telecom has committed to provide equitable access.

Universal Telecom stated in its verified application that it will offer each of the telecommunications services defined by the Commission as essential to qualify for state universal service fund support as found in 4 CSR 240-31.010(5), in any area served by a

small ILEC. Universal Telecom also agreed to advertise the availability of essential services and the charges for those services using media of general distribution, in any area served by a small ILEC. Therefore, the Commission finds that Universal Telecom will offer all telecommunications services, which the Commission has determined are essential for purposes of qualifying for state universal service fund support, throughout the service area of the small ILEC. The Commission also finds that Universal Telecom will advertise the availability of such essential services and the charges for those services using media of general distribution, throughout the service area of the small ILEC.

Universal Telecom stated that approval of its application is in the public interest because its proposed services will create and enhance competition and expand customer service options consistent with the legislative goals of the federal Telecommunication Act of 1996 and Chapter 392, RSMo. Universal Telecom stated that granting its application will expand the availability of innovative, high quality, and reliable telecommunication services within the state of Missouri.

Universal Telecom stated that it seeks classification of itself and its services as competitive, with accompanying reduced regulation pursuant to Sections 392.361 and 392.420. Staff recommended that all services proposed should be classified as competitive telecommunications services, provided that the requirements of Section 392.200, RSMo, continue to apply. Universal Telecom alleges that its services will be subject to sufficient competition by the services of ILECs to justify a lesser degree of regulation.

Staff recommended that Universal Telecom and its services be classified as competitive based on certain conditions. Universal Telecom agrees to have its certificate

conditioned upon certain limitations on its ability to charge for its access services. The conditions are as follows:

- A. Universal Telecom'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 the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.
- B. The service authority and service classification for switched exchange access is 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 Universal Telecom is operating, decreases its originating and/or terminating access service rates, Universal Telecom 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. If the service area in which Universal Telecom seeks to compete is served by a small ILEC, Universal Telecom will offer services essential to qualify for state universal service fund support, advertise the availability of such essential services and the charges for those services, and comply with the Commission rules and regulations for tariffs, service standards, reports, and other information filings as the Commission requires of the incumbent with which the Applicant seeks to compete, pursuant to Section 392.451, RSMo.

The Commission finds that all the telecommunications services Universal Telecom proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the Commission finds that all of Universal Telecom's proposed telecommunications services are competitive telecommunications services.

Conclusions of Law

Certificate of Service Authority

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. Universal Telecom has requested certification under Sections 392.410, 392.420, 392.430, 392.440, 392.450 and 392.451, which permit the Commission to grant a certificate of service authority where it is in the public interest. The federal Telecommunications Act of 1996 and Section 392.455 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers.⁴

Section 392.455 sets out the requirements for granting certificates to provide basic local telecommunications service. 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 the area follows exchange boundaries of the ILEC 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.

Section 392.451 sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants in an area served by a small

⁴ See Section 392.185.

incumbent local exchange telecommunications company. The applicant must (1) offer telecommunications services defined by the Commission as essential to qualify for state universal service fund support, throughout the service area of the small ILEC, and (2) advertise the availability of essential services and the charges for those services using media of general distribution.

The Commission finds that Universal Telecom meets the statutory requirements for provision of basic local telecommunications services generally, and for service areas served by a small ILEC, and has stated it will abide by those requirements in the future. The Commission determines that granting Universal Telecom a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.

Competitive Classification

Universal Telecom requested that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived. 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.⁵ In making that determination, the Commission may consider a number of factors including market share, financial resources, and name recognition, among others.⁶ In addition, the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services

⁵ Section 392.361.2.

⁶ *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).

offered by the company are competitive telecommunications services pursuant to 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.⁷

The Commission finds that competition in the basic local exchange telecommunications market is in the public interest. The Commission has found that all the telecommunications services offered by Universal Telecom are competitive telecommunications services and that the telecommunication services Universal Telecom proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the Commission concludes that Universal Telecom should be classified as a competitive company.

Waivers and Conditions

Subsection 392.470.1 authorizes the Commission to impose conditions upon a telecommunications service provider which the Commission deems reasonable and necessary and which are in the public interest and consistent with the purposes of Chapter 392. 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.

Universal Telecom requested a waiver of standard statutes and rules that the Commission ordinarily waives for competitive companies. The parties agreed that the Commission should grant Universal Telecom waiver of all the standard statutes and rules waived for competitive basic local exchange carriers.

⁷ *Id.* at 487.

Sections 392.361 and 392.420, RSMo, 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 Commission has found that the telecommunication services Universal Telecom proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. The Commission has also found that Universal Telecom is a competitive company. Therefore, the Commission finds that Universal Telecom should be granted the same waivers of the statutes and rules as the Commission usually grants to competitive companies. The waivers are set out in the ordered paragraph below.

The Commission also finds that the conditions as recommended by Staff are reasonable and necessary to protect the public interest and that they further the purposes of Chapter 392 as stated in Section 392.185. Therefore, the Commission finds that Universal Telecom' competitive classification and certification should be expressly conditioned as recommended by Staff and as ordered below.

Universal Telecom has stated that it intends to file an amendment to its current tariff. The amendment would contain the rules and regulations applicable to its customers and the additional exchanges where Universal Telecom will offer services. The tariff will also set forth the services offered and the rates for those services. The Commission concludes that under the provisions of Chapter 392, RSMo, Universal Telecom may not provide service in its additional service areas until it has been granted a certificate of service authority and has approved tariffs.

IT IS THEREFORE ORDERED:

1. That Universal Telecom, Inc., 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 below and to all applicable statutes and Commission rules except as specified in this order.

2. That Universal Telecom, Inc., 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
- 392.240(1) - rates-rentals-service & physical connections
- 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
- 392.340 - reorganization(s)
- 392.330 - issuance of securities, debts and notes

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - posting of tariffs
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-32.030(4)(C) - exchange boundary maps
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and customer-specific arrangements

3. That Universal Telecom, Inc.'s request for a temporary waiver of 4 CSR 240-2.060(6)(C) is granted.

4. That if Universal Telecom, Inc., provides access service, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area Universal Telecom is providing service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo 2000.

5. That the certification and competitive status herein granted to Universal Telecom, Inc., are expressly conditioned upon the continued applicability of Section 392.200, RSMo 2000, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set out above must be cost-justified pursuant to Sections 392.220 and 392.230, RSMo 2000, rather than Sections 392.500 and 392.510, RSMo 2000.

6. That if a directly competing incumbent local exchange carrier, in whose service area Universal Telecom, Inc., is operating, decreases its originating or terminating access service rates, Universal Telecom, Inc., shall file an appropriate tariff amendment to reduce its originating or terminating access rates in that directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates.

7. That the service authority and service classification granted above are subject to the requirements of Section 392.200, RSMo, and are conditional and shall not be exercised until such time as tariffs for services have become effective.

8. That this order shall become effective on March 31, 2002.

9. That this case may be closed on April 1, 2002.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

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

(SEAL)

Nancy Dippell, Senior Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of March, 2002.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri)
State Discount Telephone (M-SDT) for a)
Certificate of Service Authority to Provide)
Basic Local Telecommunications Service and) Case No. TA-2001-334
Long Distance Service in the State of)
Missouri and to Classify Said Services and)
Missouri State Discount Telephone as)
Competitive)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL
EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICE

Procedural History

Missouri State Discount Telephone (M-SDT) applied to the Public Service Commission on November 29, 2000, for a certificate of service authority to provide basic local exchange and interexchange telecommunications services in Missouri under Sections 392.410 - .450, RSMo 2000.¹ M-SDT supplemented its Application on December 18. M-SDT asked the Commission to classify it as a competitive company and to waive certain statutes and rules as authorized by Sections 392.361 and 392.420. M-SDT is a sole proprietorship owned by Mr. Harry L. Thielepape, Jr., with principal offices located at 804 Elkins Lake, Huntsville, Texas 77340.

The Commission issued a notice and schedule of applicants on December 5. That notice directed that interested parties wishing to intervene with regard to M-SDT's application to provide interexchange service should do so by December 20. The same notice directed that parties wishing to intervene with regard to M-SDT's application to provide basic

¹ All statutory references are to Revised Statutes of Missouri 2000 unless otherwise indicated.

local service should do so by January 4, 2001. On December 20, the Missouri Independent Telephone Company Group (MITG)² filed an application to intervene. The Small Telephone Company Group (STCG)³ filed an application to intervene on December 22. Both Applications to Intervene were granted on January 5, 2001. On February 28, the parties filed a Unanimous Stipulation and Agreement (Agreement), which is included with this order as Attachment 1. The Staff of the Commission filed Suggestions in Support of the Unanimous Stipulation and Agreement on March 9.

In the Agreement, the parties waive 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.⁴ Since no one has requested a hearing in this case, the Commission may grant the relief requested based on M-SDT's application and the Agreement.

Discussion

M-SDT seeks certification to provide basic local exchange telecommunications service throughout Missouri, including exchanges served

² The MITG includes the following members: Alma Telephone Company; Chariton Valley Telephone Corporation; Choctaw Telephone Company; Mid-Missouri Telephone Company; Modern Telecommunications, Inc.; MoKan Dial Inc.; and Northeast Missouri Rural Telephone Company.

³ The STCG includes the following members: 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; Goodman Telephone Company, Inc.; Granby Telephone Company; Grand River Mutual Telephone Corporation; Green Hills Telephone Corporation; Holway Telephone Company; Kingdom Telephone Company; KLM Telephone Company; Lathrop Telephone Company; Le-Ru Telephone Company; McDonald County Telephone Company; Mark Twain Rural 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; Spectra Communications Group, LLC; Steelville Telephone Exchange, Inc.; and Stoutland Telephone Company.

⁴ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989)

by both large and small incumbent local exchange carriers. M-SDT also seeks certification to provide interexchange telecommunications service. M-SDT is requesting that its basic local and interexchange services be classified as competitive and that the application of certain statutes and regulations be waived.

A. Requirements of 4 CSR 240-2.060(6)(C)

Commission Rule 4 CSR 240-2.060(6)(C) requires an applicant for certification to include in its application a proposed tariff with a 45-day effective date. M-SDT requested a temporary waiver of 4 CSR 240-2.060(6)(C) until it has entered into an interconnection agreement with an underlying local exchange carrier and that agreement has been approved by the Commission. M-SDT agreed to file its initial tariffs within 30 days after it is party to an approved interconnection agreement. The Agreement provides that M-SDT will give written notice of the tariff filing to all the parties to allow them the opportunity to participate in the tariff approval process. When filing its initial basic local tariff, M-SDT has agreed to provide a written disclosure of all resale or interconnection agreements that affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale or interconnection agreement with the ILEC; and an explanation of why such a resale or interconnection agreement is unnecessary for such areas.

The Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and, when M-SDT files the required tariff, it will be assigned a new case number. M-SDT will be directed to provide the notice and disclosures required by the Agreement when it files its proposed tariff.

B. Basic Local Service Certification

Section 392.455 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 ILEC 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.

In the Agreement, the parties agree that there is sufficient evidence from which the Commission can find and conclude that:

a. M-SDT possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service and interexchange service;

b. M-SDT proposes and agrees to offer basic local services that satisfy the minimum standards established by the Commission;

c. M-SDT has sufficiently identified the geographic area in which it proposes to offer basic local telecommunications service and such area follows exchange boundaries of the ILECs in the same area, and such area is no smaller than an exchange;

d. M-SDT will offer basic local telecommunications service as a separate and distinct service;

e. M-SDT has agreed to provide equitable access to affordable basic local telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which M-SDT will offer basic local services, regardless of where they live or their income;

f. In areas served by small LECs, M-SDT will offer telecommunications services that the Commission has determined are essential for purposes of qualifying for state universal service fund support found in 4 CSR 240-31.010(5)⁵ and will advertise the availability of such essential services and the charges therefor using media of general distribution in compliance with Section 392.451, RSMo; and

g. M-SDT has sought authority that will serve the public interest.

C. Competitive Classification

Section 392.361.2 provides that the Commission may classify a telecommunications provider as a competitive company if the Commission determines that the provider is subject to sufficient competition to justify a lesser degree of regulation. In making that determination, the Commission may consider such factors as market share, financial resources

⁵ 4 CSR 240-31.010(5) defines essential telecommunications services as follows:

Essential local telecommunications services -- Two (2)-way switched voice residential service within a local calling scope as determined by the commission, comprised of the following services and their recurring charges:

- (A) Single line residential service, including Touch-Tone dialing, and any applicable mileage or zone charges;
- (B) Access to local emergency services including, but not limited to, 911 service established by local authorities;
- (C) Access to basic local operator services;
- (D) Access to basic local directory assistance;
- (E) Standard intercept service;
- (F) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC);
- (G) One (1) standard white pages directory listing; and
- (H) Toll blocking or toll control for qualifying low-income customers.

and name recognition, among others.⁶ Section 392.361.3 provides that the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services. 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.⁷

The parties have agreed that M-SDT should be classified as a competitive telecommunications company. The parties further agree that M-SDT's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on M-SDT's ability to charge for its access services. The agreed upon limitations are that, unless otherwise ordered by the Commission, M-SDT's originating and terminating access rates will be capped at the levels authorized by the Commission in *In the Matter of Access Rates to be Charged by Competitive Local Exchange Telephone Companies in the State of Missouri*, Case No. TO-99-596. Accordingly, the parties acknowledge and agree that M-SDT may submit tariffs providing for originating and terminating exchange access rates equal to or less than those of the directly competing ILEC in each exchange in which M-SDT is authorized to provide basic local telecommunications services. Additionally, M-SDT agrees that if the directly competing ILEC, in whose service area M-SDT is operating, decreases its originating or terminating access service rates, M-SDT shall file an appropriate tariff amendment to reduce its originating or terminating access rates in order to

⁶ *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).

⁷ *Id.* at 487.

maintain the cap. The parties further agree that the grant of service authority and competitive classification to M-SDT should be expressly conditioned on the continued applicability of Section 392.200, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510.

The parties agree that waiver of the following statutes is appropriate with regard to M-SDT's basic local service offerings: Sections 392.210.2; 392.240.1; 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340. The parties also agree that application of these Commission rules should be waived with regard to M-SDT's basic local service offerings: 4 CSR 240-10.020; 4 CSR 240-30.010(2)(C); 4 CSR 240-30.040; 4 CSR 240-32.030(4)(C); 4 CSR 240-33.030; and 4 CSR 240-35.

The parties agree that waiver of the following statutes is appropriate with regard to M-SDT's interexchange and non-switched service offerings: Sections 392.210.2; 392.240(1); 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340. The parties also agree that application of these Commission rules should be waived with regard to M-SDT's interexchange and non-switched service offerings: 4 CSR 240-10.020; 4 CSR 240-30.010(2)(C); 4 CSR 240-30.040; 4 CSR 240-33.030; and 4 CSR 240-35.

Findings of Fact

The 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 market is in the public interest.
- B. The Commission finds that M-SDT has met the requirements of 4 CSR 240-2.060 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 M-SDT 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 M-SDT 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 M-SDT a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. M-SDT's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that M-SDT 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 M-SDT's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement shall be made pursuant to Sections 392.220 and 392.230, rather than Sections 392.500 and 392.510.

Conclusions of Law

The 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. M-SDT has requested certification under Sections 392.410 - .450, 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 were designed to institute competition in the basic local exchange and interexchange telecommunications markets in order to benefit all telecommunications consumers. See Section 392.185.

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. Based upon the Commission's review of the applicable law, the Agreement of the parties, and upon its findings of fact, the Commission concludes that the Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on February 28, 2001, is approved.

2. That Missouri State Discount Telephone 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 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 Missouri State Discount Telephone is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

4. That Missouri State Discount Telephone is classified as a competitive telecommunications company. Application of the following statutes and rules shall be waived with regard to Missouri State Discount Telephone's basic local service offerings:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240(1) - rates-rentals-service & physical connections
- 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 240-30.010(2)(C) - posting of tariffs
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-32.030(4)(C) - exchange boundary maps
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and customer-specific arrangements

5. That application of the following statutes and rules shall be waived with regard to Missouri State Discount Telephone's interexchange and non-switched service offerings:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 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 240-30.010(2) (C) - posting of tariffs
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

6. That the service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of Section 392.200, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the Unanimous Stipulation and Agreement shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510. If the directly competing ILEC, in whose service area Missouri State Discount Telephone is operating, decreases its originating or terminating access service rates, Missouri State Discount Telephone shall file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing ILEC's service area within thirty days of the directly competing ILEC's reduction of its originating or terminating access rates in order to maintain the cap. Missouri State Discount Telephone is not required to file a tariff amendment if it has concurred in the directly competing ILEC's access tariff or its existing originating or terminating access rates are not higher than the directly competing ILEC's originating or terminating access rates following the ILEC's reduction of rates.

7. That the request for waiver of 4 CSR 240-2.060(6)(C), which requires the filing of a 45-day tariff, is granted.

8. That Missouri State Discount Telephone shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving a resale or interconnection agreement that will allow it to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.


9. That Missouri State Discount Telephone shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, Missouri State Discount telephone shall file a written disclosure of all resale or interconnection agreements that affect its Missouri service areas, all portions of Missouri service areas for which it does not have a resale or interconnection agreement, and an explanation of why no resale or interconnection agreement is necessary for those areas.

10. That the service authority and service classification granted in this order are subject to the requirements of Section 392.200, RSMo 2000 and are conditional and shall not be exercised until such time as tariffs for services have become effective.

11. That this order shall become effective on March 26, 2001.

12. That this case may be closed on March 27, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Morris L. Woodruff, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 16th day of March, 2001.

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

| | | |
|--|---|-----------------|
| IN THE MATTER OF THE NOTICE OF |) | |
| ELECTION OF ALLTEL MISSOURI, INC. |) | Case No. |
| TO BE PRICE CAP REGULATED UNDER |) | |
| SECTION 392.245, RSMO. 2000 |) | |

**AFFIDAVIT AND VERIFICATION
OF
STEVE R. MOWERY**

| | | |
|--------------------------|---|-----------|
| STATE OF ARKANSAS |) | |
| |) | SS |
| COUNTY OF PULASKI |) | |

I, Steve R. Mowery, of lawful age, being first duly sworn upon my oath, state:

1. My name is Steve R. Mowery. I am Vice President, State Government Affairs, for ALLTEL Missouri, Inc. My business address is One Allied Drive, B4F04N-D, Little Rock, Arkansas 72202.

2. The facts and allegations set forth in the foregoing Notice of Election are true and correct to the best of my knowledge, information and belief.

3. In my capacity as Vice President, State Government Affairs for ALLTEL Missouri, Inc., I am personally familiar with ALLTEL Missouri, Inc.'s local exchange services and operations. In addition, I am also familiar with the provision of basic local telecommunications service by alternative local exchange carriers in ALLTEL Missouri, Inc.'s service area.

4. As stated in Paragraph 4 of the foregoing Notice, Universal Telecom (Universal) was granted a certificate of service authority to provide basic local exchange telecommunications services in additional exchanges served by various local exchange companies, including ALLTEL Missouri, Inc., in Case No. TA-2002-183. The Interconnection Agreement between Universal and ALLTEL Communications Service Corporation (on behalf of ALLTEL Missouri, Inc.) was approved by this Commission on January 22, 2001, in Case No. TO-2001-360.

5. As further set forth in Paragraph 4 of the foregoing Notice, Missouri State Discount Telephone (M-SDT), an alternative local exchange telecommunications company, was granted a certificate of service authority to provide basic local exchange telecommunications services in exchanges served by various local exchange companies, including ALLTEL Missouri, Inc., in Case No. TA-2001-334. Prior to that time, on April 24, 2000, the Commission had approved the Interconnection Agreement between M-SDT and ALLTEL Communications Service Corporation (on behalf of ALLTEL Missouri, Inc.) in Case No. TO-2000-469.

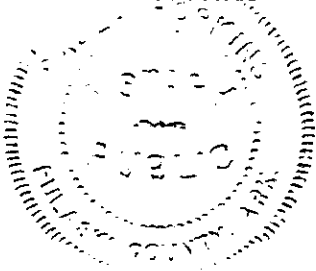
6. Both Missouri State Discount Telephone and Universal Telecom, as certificated alternative local exchange telecommunications companies, are providing basic local telecommunications service on a resale basis to customers in ALLTEL Missouri Inc.'s local service area, as follows:

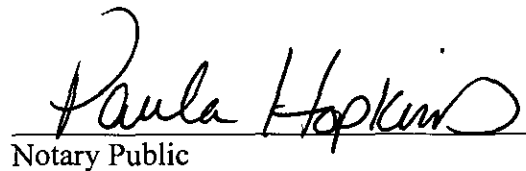
Universal: the ALLTEL Missouri, Inc. exchanges of Aldrich, Bolivar, Crocker, Dixon, Gallatin, Halfway, Madison, Morrisville, Polk, Purdy, and Winston.

M-SDT: the ALLTEL Missouri, Inc. exchange of Myrtle.


Steve R. Mowery

Subscribed and sworn before me this 16th day of May, 2002.




Notary Public