

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

August 1, 2001

CASE NO: TA-2001-350

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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge

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

In the Matter of the Application of Everest Midwest)
Licensee LLC for Authority to Provide Basic Local)
Telecommunications Services and to Provide) **Case No. TA-2001-350**
Intrastate Interexchange and Nonswitched Local)
Exchange Telecommunications Service Within the)
State of Missouri.)

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

This order grants a certificate of service authority to provide basic local, interexchange and nonswitched local exchange telecommunications services to Everest Midwest Licensee LLC.

Procedural History

Everest Midwest Licensee LLC applied to the Missouri Public Service Commission on December 6, 2000, for a certificate of service authority to provide basic local, interexchange, and nonswitched local telecommunications services in Missouri under Sections 392.410 - .450, RSMo 2000.¹ Everest Midwest filed adoption notice tariff sheets in three related cases² which are being simultaneously approved by the Commission. Everest Midwest also asked the Commission to classify it as a competitive company.

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

² Case Nos. TT-2001-352, TT-2001-353, and TT-2001-354.

The Commission issued a notice and schedule of applicants on December 12, 2000, directing interested parties wishing to intervene to do so by January 11, 2001. There were no applications to intervene. On December 20, 2000, Everest Midwest filed an amendment to its application requesting certain standard waivers of Commission rules. Everest Midwest also supplemented its application with financial information after the Commission issued a protective order. The Staff of the Commission filed a recommendation on June 28, 2001.

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.³ Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application. The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

Everest Midwest is a Delaware limited liability company with principal offices located at 5555 Winghaven Boulevard, O'Fallon, Missouri 63366. Commission Rule 4 CSR 240-2.060 requires a foreign company applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State 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

³ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

proposed tariff with a 45-day effective date. Everest Midwest has provided the required documentation.

Exhibit B to the application lists the names and qualifications of Everest Midwest's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry. Staff stated that in its opinion Everest Midwest possesses sufficient technical and managerial experience to provide basic local exchange telecommunications service.

Everest Midwest submitted as Exhibit C to its application the necessary financial information. In addition, Staff stated that in its opinion Everest Midwest passes the minimum standard to provide basic local exchange telecommunications service.

The Commission finds that Everest Midwest possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Everest Midwest stated in its application that it will provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. In its recommendation, the Staff concurs with this allegation. The Commission finds that Everest Midwest proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Everest Midwest is seeking certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone Company, Sprint/United Telephone Company, and GTE Midwest, Inc.⁴ Everest Midwest is not asking for certification in any area that is

⁴ Now doing business as Verizon Midwest.

served by a small incumbent local exchange carrier (ILEC). Staff stated in its recommendation that in its opinion, Everest Midwest has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange. The Commission finds that Everest Midwest has sufficiently identified the geographic area in which it proposes to offer service and that Everest Midwest has demonstrated that the area follows ILEC exchange boundaries and is no smaller than an exchange.

Everest Midwest states that all the services it proposes to offer will be subject to sufficient competition to justify a lesser degree of regulation. Everest Midwest is proposing to offer all forms of basic local exchange and interexchange telecommunications service. Everest Midwest intends to provide basic local exchange, interexchange, and non-switched local exchange telecommunications service as a facility-based provider to both residential and business customers.

Everest Midwest 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. In its recommendation, Staff concurs with this statement. Therefore, the Commission finds that Everest Midwest will provide basic local exchange service as a separate and distinct service and that Everest Midwest has committed to provide equitable access.

Everest Midwest states that it intends to take responsibility for the operations run by its affiliate, Everest Connections Corporation. Everest Connections was granted certificates of service authority to provide basic local, non-switched local exchange, and

interexchange telecommunications services in Commission case Nos. TA-2000-452 and TA-2000-623. Everest Connections was also classified as a competitive telecommunications company in those orders. Everest Midwest has filed adoption notice tariffs adopting in whole the tariffs of Everest Connections.

Staff recommends that Everest Midwest be classified as a competitive telecommunications carrier. Staff also recommends that Everest Midwest's certificate be conditioned upon certain limitations on its ability to charge for its access services and that Everest Midwest's certificate become effective when its tariff becomes effective. Staff's recommended conditions are as follows:

- A. If Everest Midwest 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 ILEC within whose service area Everest Midwest 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 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 Everest Midwest is operating, decreases its originating and/or terminating access service rates, Everest Midwest 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 finds that the telecommunications services Everest Midwest proposes to offer are identical to those offered by its affiliate, Midwest Connections, and are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the

Commission finds that all of Everest Midwest's proposed telecommunications services are competitive telecommunications services.

The Staff also recommends that the Commission cancel the certificates of Everest Midwest's affiliate, Everest Connections, at the same time that Everest Midwest's certificates become effective. There is evidence that Everest Midwest intends to take over the telecommunications services of Everest Connections within the state of Missouri. Staff stated in its pleading, however, that the application for approval of the transfer of assets from Everest Connections to Everest Midwest⁵ has been withdrawn. Therefore, because Everest Connections is not a party to this case and has had no notice of a potential cancellation of its certificate, the Commission will not take any action with regard to Everest Connections' certificates of authority in this order.

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. Everest Midwest has requested certification under Sections 392.410 - 392.450, 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.⁶

⁵ Case No. TM-2001-313.

⁶ See Section 392.185.

Section 392.455, RSMo 2000, 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.

The Commission finds that Everest Midwest meets the statutory requirements for provision of basic local telecommunications services and has stated it will abide by those requirements in the future. The Commission determines that granting Everest Midwest a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.

Competitive Classification

Everest Midwest 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.⁷ In making that determination, the Commission may consider such factors as

⁷ Section 392.361.2.

market share, financial resources and name recognition, among others.⁸ In addition, 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 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.⁹

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 Everest Midwest are competitive telecommunications services and that the telecommunication services Everest Midwest proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the Commission concludes that Everest Midwest 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

⁸ *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).

⁹ *Id.* at 487.

the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The Commission finds that Everest Midwest has met the requirements of 4 CSR 240-2.060 for applicants for certificates of service authority to provide telecommunications services.

Everest Midwest requested a waiver of the following statutes: 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. Everest Midwest also requested that the application of these Commission rules be waived: 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. Staff notes that this particular rule pertains to the filing of exchange boundary maps and is not applicable to the provision of interexchange telecommunications services.

The Commission has found that the telecommunication services Everest Midwest proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. The Commission has also found that Everest Midwest is a competitive company. Therefore, the Commission determines that Everest Midwest 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 that the Staff recommends 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 Everest Midwest's competitive classification and certification should be expressly conditioned as recommended by Staff and as ordered below.

IT IS THEREFORE ORDERED:

1. That Everest Midwest Licensee 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 below and to all applicable statutes and Commission rules except as specified in this order.

2. That Everest Midwest Licensee LLC 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.

3. That Everest Midwest Licensee LLC is granted a certificate of service authority to provide nonswitched local exchange telecommunications services in the state of Missouri limited to providing dedicated private line services, subject to all applicable statutes and Commission rules except as specified in this order.

4. That Everest Midwest Licensee LLC is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived for the provision of basic local telecommunications services:

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

5. That Everest Midwest Licensee LLC is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived for the provision of interexchange and non-switch local exchange telecommunications services:

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 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and customer-specific arrangements

6. That if Everest Midwest Licensee LLC 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 Everest Midwest is providing service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo 2000.

7. That the certification and competitive status herein granted to Everest Midwest Licensee LLC 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.

8. That if a directly competing incumbent local exchange carrier, in whose service area Everest Midwest Licensee LLC is operating, decreases its originating or terminating access service rates, Everest Midwest 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.

9. That this order shall become effective on August 6, 2001.

10. That this case may be closed on August 7, 2001.

BY THE COMMISSION



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

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 1st day of August, 2001.

FYI: To Be Issued By Delegation

ALJ/Secretary: Dyppell Pope

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Date Circulated 7-27 Return by 8-1 10 a.m.

CASE NO. TA-2001-350

KS

Simmons, Chair

Am

Murray, Commissioner

MS

Lumpke, Commissioner

MS

Gaw, Commissioner

Commissioner

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 1st day of August 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

