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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of CapRock)
Telecommunications Corp. for a Certificate of)
Service Authority to Provide Basic Local Tele-)
communications Service, for Classification as) Case No. TA-2000-252
a Competitive Telecommunications Company, and)
for Waiver of Certain Statutory and Regulatory)
Provisions.)

ORDER GRANTING CERTIFICATE OF SERVICE AUTHORITY TO PROVIDE
BASIC LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

CapRock Telecommunications Corp. (CapRock) applied to the Commission on September 27, 1999, for a certificate of service authority to provide basic local exchange telecommunications service in Missouri under Chapter 392 of the Missouri Revised Statutes. CapRock asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Section 392.420, RSMo. CapRock is a Texas corporation with principal offices located at 15601 North Dallas Parkway, Suite 700, Addison, Texas 75001.

The Commission issued a notice and schedule of applicants on October 5, 1999, directing interested parties wishing to intervene to do so by November 4, 1999. No requests for intervention were filed. On November 15, 1999, the Staff of the Missouri Public Service Commission (Staff) filed a Memorandum recommending approval of CapRock's application with certain conditions.

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. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

CapRock proposes to provide basic local exchange telecommunications service on a facilities-based and resold basis, as a separate and distinct service, throughout all Missouri exchanges currently served by Southwestern Bell Telephone Company (SWBT), Sprint/United Telephone Company (United), and GTE Midwest, Inc. (GTE). CapRock proposes to operate in all of the exchanges described in the local exchange tariffs of these companies.

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

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing it is authorized to do business in Missouri, a description of the types of services it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. CapRock has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement

with one of the underlying local exchange carriers and that agreement has been approved by the Commission.

The Commission will require CapRock to file its tariffs after approval of an interconnection agreement. 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 CapRock files the required tariff, it will be assigned a new case number.

B. Telecommunications Services Certifications

Section 392.455, RSMo Supp. 1998, 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 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. 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.

CapRock submitted as Exhibit C to its application the financial documents including its balance sheets and income statements for 1996 and 1997. Exhibit B to the application lists the names and

qualifications of CapRock's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including management, procurement, human resources, accounting, marketing, engineering, tariff negotiations, and development.

CapRock stated in its application that it will provide services that meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. Staff stated in its recommendation that CapRock's financial information indicates that it satisfies minimum standards.

CapRock stated that it will offer basic local telecommunications service as a separate and distinct service and will provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it offers such service.

Staff recommends the Commission grant CapRock a certificate of service authority to provide basic local telecommunications service with the following three requirements:

- (1) Notwithstanding the provisions of Section 392.500, RSMo 1994, as a condition of certification and competitive classification, unless otherwise ordered by the Commission, CapRock's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates for the large incumbent LEC(s) for each service area within which CapRock seeks authority to provide service;

- (2) the grant of service authority and competitive classification to CapRock should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in item number 1 (above), must be filed pursuant to Section 392.220, RSMo Supp. 1998, and 392.230, RSMo 1994, rather than Sections 392.500 and 392.510, RSMo 1994; and
- (3) that CapRock's certificate become effective on the same day its tariff becomes effective.

Staff further recommends the Commission order CapRock to file a basic local telecommunications tariff within 30 days following the Commission's approval of an interconnection agreement, and that the filed tariff have an effective date 45 days following the date the tariff was filed with the Commission.

C. Competitive Classification

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. § 392.361.2. In making that determination, the Commission may consider such factors as market share, financial resources, and name recognition, among others. 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 South-

western Bell Telephone Company's Application for Classification of Certain Services as Transitionally Competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). 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. *Supra*, 1 Mo. P.S.C. 3d at 487. In addition, all the services a competitive company provides must be classified as competitive. § 392.361.3, RSMo.

CapRock requests waivers of the following statutes: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, and 392.340, RSMo. CapRock also requests waiver of the following Commission rules: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

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:

- A. The Commission finds that competition in the basic local exchange, local exchange, and interexchange telecommunications markets is in the public interest.
- B. The Commission finds that CapRock has met the requirements of 4 CSR 240-2.060(4) 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 CapRock 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 CapRock meets the statutory requirements for provision of basic local telecommunications services and indicates it will abide by those requirements in the future. The Commission determines that granting CapRock a certificate of service authority to provide basic local telecommunications services is in the public interest. CapRock's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that CapRock 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 CapRock's certification and competitive status should be expressly conditioned on the requirement that if CapRock provides access services, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates for the large incumbent local exchange company within whose service area CapRock is providing service.
- G. The Commission finds that CapRock's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in

switched access rates above the maximum switched access rate set forth in the agreement must be filed pursuant to Sections 392.200, RSMo Supp. 1998, and 392.230, RSMo 1994, rather than Sections 392.500 and 392.510, RSMo 1994.

Conclusions of Law

The Missouri 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. CapRock has requested certification under Sections 392.420 - .440, and Sections 392.410 and 392.450, RSMo Supp. 1998, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and 392.420 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, RSMo Supp. 1998, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1998.

Based upon the Commission's review of the applicable law and upon its findings of fact, the Commission concludes that certificate and competitive classification requested by CapRock should be granted.

IT IS THEREFORE ORDERED:

1. That CapRock Telecommunications Corp. is granted a certificate of service authority to provide basic local exchange 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.

2. That CapRock Telecommunications Corp. 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
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290.1 - 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 240-35 - reporting of bypass and customer-specific arrangements

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

4. That CapRock Telecommunications Corp. 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 an interconnection agreement that will allow it provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

5. That CapRock Telecommunications Corp. shall give notice of the filing of the tariffs described above to all parties or participants in this case.

6. That CapRock Telecommunications Corp.'s certification and competitive status are conditioned upon its rates for originating and terminating access being no greater than the lowest Commission-approved corresponding access rates for the large incumbent local exchange company within whose service area CapRock Telecommunications Corp. provides service.

7. That CapRock Telecommunications Corp.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access rates above the maximum switched access rates set forth in this order shall be made pursuant to Sections 392.200, RSMo Supp. 1998, and 392.230, RSMo 1994, rather than Sections 392.500 and 392.510, RSMo 1994.

8. That this order shall become effective on December 2, 1999.

9. That this case may be closed on December 3, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Vicky Ruth, Regulatory Law Judge,
by delegation of authority pursuant
to 4 CSR 240-2.120(1) (November 30,
1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 22nd day of November, 1999.

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION