

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
July 13, 2000**

CASE NO: TA-2000-570

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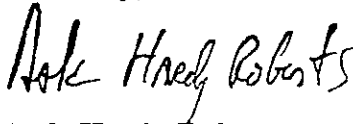
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

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 Maxcess)
Inc. for a Certificate of Service Authority)
to Provide Basic Local Telecommunications) Case No. TA-2000-570
Services in Portions of the State of Missouri)
and to Classify Such Services and the Company)
as Competitive.)

**ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL
TELECOMMUNICATIONS SERVICES**

Procedural History

Maxcess, Inc. (Maxcess), applied to the Missouri Public Service Commission on March 14, 2000, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1999. Maxcess filed an Amended Application on April 5, 2000, amending and supplementing the original application. Maxcess asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. Maxcess is a Florida corporation with principal offices located at 100 West Lucerne Plaza, Suite 500, Orlando, Florida 32801.

The Commission issued a notice and schedule of applicants on March 21, 2000, directing interested parties wishing to intervene to do so

¹ All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

by April 5, 2000. No applications to intervene were filed. The Staff of the Commission (Staff) filed its recommendation regarding the application on June 27, 2000.

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 application.

Discussion

Maxcess seeks certification to provide basic telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT), GTE Midwest Incorporated (GTE) and Sprint Missouri, Inc. d/b/a Sprint (Sprint). Maxcess is not asking for certification in any area that is served by a small incumbent local exchange carrier (ILEC). Maxcess proposes to provide service in the exchanges currently served by SWBT, GTE and Sprint as listed in Exhibit IV of its application as amended. Maxcess is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

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 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. Maxcess has provided all the required documentation except for the proposed tariff. Maxcess requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. The Commission may waive this requirement. 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.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1999, 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.

Exhibit II to the application lists the names and qualifications of Maxcess's management team. Maxcess submitted as Exhibit III to its application certain financial documentation. The Commission's Staff did not raise any objection that Maxcess lacked sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Maxcess wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint as described in their basic local tariffs. Staff agreed that Maxcess 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.

Maxcess stated that it will give consideration to equitable access, for all Missourians within the geographic area in which it will offer basic local services, on an affordable basis and regardless of where persons live or their income, in compliance with Section 392.455(5), RSMo Supp. 1999.

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. Section 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 Southwestern Bell
Telephone Company's Application for Classification of Certain Services as
Transitionally Competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). 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. *Id.* at 487.

The Staff has agreed that Maxcess should be classified as a
competitive telecommunications company. The Staff has also agreed that
Maxcess's switched services may be classified as a competitive service,
conditioned upon certain limitations on Maxcess's ability to charge for its
access services and certain other conditions.

Staff suggests the following conditions:

(1) That unless otherwise ordered by the Commission, the
originating and terminating access rates by Maxcess will be no greater than
the lowest Commission-approved corresponding access rates for the large
ILEC(s) within whose service area(s) Maxcess seeks to operate;

(2) That any increases in switched access services rates above the
maximum switched access service rates set forth in (1) must be made
pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than
Sections 392.500 and 392.510;

(3) That the certificate not be effective until the company's tariff becomes effective; and

(4) that Maxcess file a basic local exchange tariff within 30 days of a Commission-approved interconnection agreement for the company.

Staff agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1999, and 392.340. The parties also agreed that application of these Commission rules could be waived: 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 telecommunications market is in the public interest.
- B. The Commission finds that Maxcess 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 Maxcess 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 the local exchange services market is competitive and that granting Maxcess a certificate of

service authority to provide local exchange telecommunications services is in the public interest. Maxcess's certificate shall become effective when its tariff becomes effective.

- E. The Commission finds that Maxcess 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 Maxcess a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Maxcess's certificate shall become effective when its tariff becomes effective.
- F. The Commission finds that Maxcess is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- G. The Commission finds that Maxcess's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

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. Maxcess has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1999, 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, RSMo Supp. 1999, 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. 1999.

Based upon the Commission's review of the applicable law and Staff's recommendation, and upon its findings of fact, the Commission concludes that the application should be approved with the conditions suggested by Staff.

IT IS THEREFORE ORDERED:

1. That Maxcess, 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 stated by the Commission's Staff and 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 Maxcess, 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
392.270 - 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, RSMo Supp. 1999 - issuance of securities,
debts and notes

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

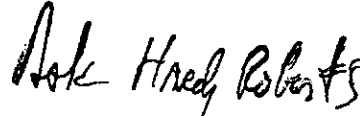
3. That the request for waiver of 4 CSR 240-2.060(4)(H), which requires the filing of a 45-day tariff, is granted.

4. That Maxcess, Inc., 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 Maxcess to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

5. That this order shall become effective on July 25, 2000.

6. That this case may be closed on July 26, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Keith Thornburg, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 13th day of July, 2000.

FYI: To Be Ced By Delegation
ALJ/Sec'y: Thornburg / Pope
7-11 _____ 7-14
Date Circulated _____ Return by 8:30 am

TA-2000-570
CASE NO.

[Signature]
Lumpe, Chair
[Signature]
Drainer, Vice Chair
[Signature]
Murray, Commissioner
[Signature]
Schemenauer, Commissioner
[Signature]
Simmons, 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 13th day of July 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

