

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
February 17, 2000**

CASE NO: TA-2000-192

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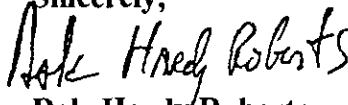
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

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)
Fidelity Cablevision, Inc. for a)
Certificate of Service Authority to)
Provide Basic Local Telecommunications)
Service in Portions of the State of)
Missouri and to Classify Said Services)
and the Company as Competitive.)

TA
Case No. TO-2000-192

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

Procedural History

Fidelity Cablevision, Inc. (Fidelity) applied to the Commission on August 26, 1999, 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. Fidelity 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. Fidelity is a Missouri corporation with principal offices located at 60 North Clark, Sullivan, Missouri 63080.

The Commission issued a notice and schedule of applicants on September 7, directing interested parties wishing to intervene to do so by October 7. On September 30, Southwestern Bell Telephone Company

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

(SWBT) filed its application to intervene. SWBT stated that it has a direct interest in the Commission's decision, that SWBT is authorized to provide local exchange telecommunications services and exchange access services within the state of Missouri, and that SWBT terminates intraLATA interexchange calls to these areas, and will be directly impacted by the level of access charges assessed by Fidelity on such calls. SWBT also stated that its interests as a local exchange telecommunications services provider is different from that of the general public and that no other party to this proceeding will adequately protect SWBT's interest. SWBT further stated that granting intervention to SWBT in this case will be in the public interest because SWBT will bring to this proceeding its expertise and experience as a telecommunications provider. On October 14, Fidelity filed its objection to SWBT's application to intervene. On October 18, SWBT filed its response to Fidelity's objections. On December 15, Fidelity withdrew its objection to SWBT's application to intervene. Having received no other objections, the Commission will grant SWBT's request for intervention.

On January 26, 2000, the parties filed a Joint Stipulation and Agreement (Agreement) which is included with this order as Attachment 1. The Staff of the Commission (Staff) filed Suggestions in Support of the Joint Stipulation and Agreement on January 27. In the Agreement, the parties waived 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. 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

Fidelity wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by Sprint Missouri, Inc. (Sprint). Fidelity is not asking for certification in any area that is served by a small incumbent local exchange provider. Fidelity proposes to operate in all of the exchanges described in the incumbent provider's local exchange tariffs. Fidelity is requesting that itself and 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 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 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. Fidelity 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

interconnection agreement with the underlying local exchange carrier and those agreement have been approved by the Commission. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreement. Fidelity will give notice of the tariff filing to all the parties. Along with that filing, Fidelity has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

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 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.

Fidelity submitted as Appendix 4 to its application certain financial documentation including the consolidated financial statements of Fidelity Communications Company, years ending December 31, 1998 and 1997. Appendix 3 to the application lists the names and qualifications of Fidelity's management team. In addition to academic credentials, Fidelity's application states that its management has extensive experience and expertise in various areas of the telecommunications industry. Fidelity asserted and no party denied that Fidelity possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Fidelity has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. Fidelity asserted and no party denied that Fidelity proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Fidelity wishes to be certificated to offer services in all the exchanges presently served by Sprint. Fidelity asserted and no party denied that Fidelity 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.

Fidelity has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within

the geographic area in which it will offer basic local services 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, all the services a competitive company provides must be classified as competitive. 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.

Fidelity asserted and no party denied that Fidelity should be classified as a competitive telecommunications company. The parties have also agreed that Fidelity's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Fidelity's ability to charge for its access services. Fidelity has agreed that, unless otherwise ordered by the Commission,

its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the incumbent LEC within whose service areas Fidelity seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Fidelity should be expressly conditioned on 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.

The parties 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 Fidelity 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 Fidelity 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 Fidelity 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 Fidelity a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Fidelity's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that Fidelity 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 Fidelity'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. Fidelity 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.

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, RSMo Supp. 1999. Based upon the Commission's review of the applicable law and Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the application to intervene filed by Southwestern Bell Telephone Company (SWBT) on September 30, 1999, is granted.

2. That the Joint Stipulation and Agreement of the parties, filed on January 26, 2000, is approved.

3. That Fidelity Cablevision, Inc. 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.

4. That Fidelity Cablevision, 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
- 392.290.1 - 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

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

6. That Fidelity Cablevision, 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 which will allow Fidelity Cablevision, Inc. to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

7. That Fidelity Cablevision, Inc. shall give notice of the filing of the tariffs described above to all parties in this case. In addition, Fidelity Cablevision, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

8. That Fidelity Cablevision, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access service 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.

9. That this order shall become effective on February 28, 2000.

10. That this case may be closed after February 29, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Shelly A. Register, 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 17th day of February, 2000.

FYI: To Be Issued By Delegation

ALJ/Sec'y: Register/Boyce

2-16
Date Circulated

2-22
Return by ~~3 p.m.~~

10 a.m.

TO-2000-192
CASE NO.

[Signature] (origin: Sprint tex.)
Lumpé, Chair

[Signature]
Crumpton, Commissioner

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

[Signature]
Drainer, Vice-Chair

**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 17th day of FEBRUARY 2000.

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

