

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of)
O1 Communications of Missouri, LLC, for a)
Certificate of Service Authority to Provide)
Basic Local Telecommunications Service, Local) Case No. TA-2000-496
Exchange Telecommunications Service, and)
Interexchange Telecommunications Service in)
the State of Missouri and to Classify Said)
Services and the Company as Competitive.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL EXCHANGE AND INTEREXCHANGE
CERTIFICATES OF SERVICE AUTHORITY

Procedural History

O1 Communications of Missouri, LLC (Applicant or O1 Communications), applied to the Commission on February 16, 2000, for a certificate of service authority to provide basic local, local exchange and intrastate interexchange telecommunications services in Missouri under 4 CSR 240-2.060(4). O1 Communications 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. O1 Communications is a Missouri limited liability company and is a wholly owned subsidiary of O1 Communications, Inc., a California corporation. The principal address of O1 Communications is 770 L Street, Suite 960, Sacramento, California 95814. O1 Communications also filed a motion for a protective order on February 16, 2000. This request was granted on February 28, 2000.

On February 28, 2000, the Commission issued an Order Directing Filing and Granting Protective Order, in which it noted several deficiencies with the application. One of the deficiencies was that the application was not clear as to which statutes and regulations 01 Communications was requesting be waived.

In response to this Order Directing Filing, 01 Communications filed a Supplement to Application for a Certificate of Service Authority on March 9, 2000.

The Commission issued a notice and schedule of applicants on March 21, 2000, directing interested parties wishing to intervene to do so by April 20, 2000, regarding the basic local application and by April 5, 2000, regarding the interexchange application. No applications to intervene were filed.

On May 2, 2000, the Staff of the Missouri Public Service Commission (Staff) filed a Recommendation and Memorandum recommending approval of 01 Communications' application with the following condition: if 01 Communications is to provide exchange 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 01 Communications seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo. The Staff Memorandum also recommends that the Commission order 01 Communications to file basic local exchange, interexchange, and if applicable, exchange access tariffs, within 30 days following the Commission's approval of an interconnection agreement, and that the proposed

tariffs have an effective date forty-five (45) days following the date the tariffs are filed with the Commission. Staff recommends that 01 Communications and the services it provides be classified as competitive, and that 01 Communications' certificate become effective when the applicable tariffs are approved and become effective. 01 Communications did not file any response to Staff's Recommendation and Memorandum within the ten days allowed for such response by 4 CSR 240-2.080(16).

The Commission issued a Second Order Directing Filing on May 11, 2000, which directed Staff to file a revised recommendation or other pleading clarifying which statutes and rules Staff recommends be waived as the list of requested waivers cited by Staff did not match the list of waivers requested by 01 Communications in its Supplement to Application. Staff filed a response on May 16, 2000, indicating that it had discussed the waivers with counsel for 01 Communications, and that it believed 01 Communications would be filing an amendment with the correct list. On May 17, 2000, 01 Communications filed a Second Supplement to Application for a Certificate of Service Authority clarifying that it requests waiver of the statutes and regulations which are listed in the Staff's recommendation.

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

O1 Communications seeks certification to provide basic local and local exchange services in portions of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT), GTE Midwest, Inc. (GTE), and Sprint/United Telephone Company (United). O1 Communications is not asking for certification in any area that is served by a small incumbent local exchange provider. O1 Communications 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 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. O1 Communications 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 the underlying local exchange carrier and that agreement has been approved by the Commission. O1 Communications, in its application, agreed to submit to the Commission for approval a proposed tariff with a minimum 30-day effective date once it is a party to the appropriate interconnection agreement. O1 Communications will be required to

comply with the Commission's regulation by submitting a proposed tariff with a 45-day effective date.

The Commission will require O1 Communications 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 O1 Communications files the required tariff, it will be assigned a new case number.

B. Telecommunications Services 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 financial, technical 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 (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 whether they live or their income.

In its application, O1 Communications indicates that it possesses the necessary financial qualifications to provide the

services it proposes to offer. 01 Communications' financial qualifications are detailed in Exhibit 3 to its application. 01 Communications also indicates that it possesses the necessary technical and managerial resources to provide basic local telecommunications services. Those resources are detailed in Exhibit 2. Staff's Memorandum indicates it has concluded that 01 Communications possesses sufficient financial, technical and managerial resources and abilities to provide basic local telecommunications service. There is sufficient evidence to find that 01 Communications possesses the necessary financial, technical and managerial resources and abilities to provide basic local telecommunications service.

01 Communications states 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. There is sufficient evidence to find that 01 Communications proposes to offer basic local services that satisfy the minimum standards established by the Commission.

01 Communications wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and United. There is sufficient evidence that 01 Communications has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC boundaries and is no smaller than an exchange.

01 Communications 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 - Basic Local Exchange Services

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 Southwestern 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.

There is sufficient evidence to find that 01 Communications should be classified as a competitive telecommunications company. Unless otherwise ordered by the Commission, if 01 Communications is to provide exchange 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 LEC within whose service area 01 Communications seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.

O1 Communications requests and Staff recommends that the following statutes be waived: Sections 392.210.2, 392.240(1), 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, and 392.340, RSMo 1994, and 392.330, RSMo Supp. 1999. O1 Communications also requests and Staff recommends that these Commission rules also 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.

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 O1 Communications 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 O1 Communications 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 O1 Communications 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 O1 Communications a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. O1 Communications' certificate shall become effective when its tariff becomes effective.

E. The Commission finds that O1 Communications meets the statutory requirements for provision of local exchange telecommunications services and indicates it will abide by those requirements in the future. O1 Communications' certificate shall become effective when its tariff becomes effective.

) F. The Commission finds that O1 Communications meets the statutory requirements for provision of interexchange telecommunications services and indicates it will abide by those requirements in the future. The Commission determines that granting O1 Communications a certificate of service authority to provide interexchange telecommunications services is in the public interest. O1 Communications' certificate shall become effective when its tariff becomes effective.

G. The Commission finds that O1 Communications is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.

) H. The Commission finds that O1 Communications' certification and competitive status should be expressly conditioned upon the requirement that any increases in switched access services rates above the maximum switched access service

rates set forth in this order shall be made 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. O1 Communications 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, O1 Communications' application, the recommendation of Staff, and the Commission's findings of fact, the Commission concludes that the application should be granted.

IT IS THEREFORE ORDERED:

1. That the application for a certificate of service authority to provide local exchange, basic local exchange, and

) interexchange telecommunications services, filed on February 18, 2000, is granted.

2. That O1 Communications of Missouri, LLC, 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.

3. That O1 Communications of Missouri, LLC, is granted a certificate of service authority to provide local exchange telecommunications services in the state of Missouri, limited to providing dedicated, nonswitched local exchange private line services, subject 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 O1 Communications of Missouri, 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. The certificate of service authority shall become effective when the company's tariff becomes effective.

5. That O1 Communications of Missouri, LLC, is classified as a competitive interexchange telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2 - uniform system of accounts
392.240(1) - ratemaking
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 240-30.010(2)(C) - rate schedules
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

6. 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.

7. That 01 Communications of Missouri, LLC, 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 inter-connection agreement that will allow it to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

8. That 01 Communications of Missouri, LLC's certification and competitive status are expressly conditioned upon the requirement that notwithstanding the provisions of Section 392.500, RSMo 1994, unless otherwise ordered by the Commission, the originating and

) terminating access rates of 01 Communications of Missouri, LLC, will be no greater than the lowest Commission-approved corresponding access rates in effect for the large incumbent local exchange company for each service area in which 01 Communications of Missouri, LLC, seeks authority to provide service. Furthermore, that any increases in switched access service rates above the maximum switched access service rates set forth in this order shall be made exclusively pursuant to Sections 392.200, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

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

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

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 21st day of June, 2000.