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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 18th
day of March, 1999.

In the Matter of the Application of NET-tel)	
Corporation d/b/a NET-tel Communications)	
Corporation for a Certificate of Service)	
Authority to Provide Resold Basic Local)	<u>Case No. TA-99-180</u>
Telecommunications Service in Portions of)	
the State of Missouri and for Competitive)	
Classification.)	

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

NET-tel Corporation d/b/a NET-tel Communications Corporation (NET-tel) applied to the Commission on October 23, 1998, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 and 392.430, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1997. NET-tel 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. NET-tel is a Florida corporation with principal offices located at 11921 Freedom Drive, Suite 550, Reston, Virginia 20190.

The Commission issued a notice and schedule of applicants on November 10, 1998, directing interested parties wishing to intervene to do so by November 25. A corrected notice and schedule of

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

applicants was issued on November 24, extending the date for intervention to December 24. No applications to intervene were received.

On January 25, 1999, NET-tel filed its supplemental Appendix D as an amendment to its application originally filed on October 23, 1998. On March 1, Staff of the Missouri Public Service Commission (Staff) filed its memorandum to the Commission recommending that the Commission grant a certificate of service authority to provide basic local, local exchange and interexchange access telecommunications services to NET-tel with the following conditions:

1. That NET-tel's 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 large incumbent local exchange company within whose service area NET-tel seeks authority to provide service.
2. That the certificate be subject to the conditions stated above and that the certificate become effective when the company's tariff becomes effective.

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

NET-tel wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT), GTE Midwest

Incorporated (GTE), and Sprint Missouri, Inc. (Sprint). NET-tel is not asking for certification in any area that is served by a small incumbent local exchange provider. NET-tel proposes to operate in all of the exchanges described in Appendix B to its application. NET-tel 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. NET-tel 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 agreements with the underlying local exchange carriers and those agreements 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 agreements. NET-tel will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing NET-tel has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas. On December 23, 1998, NET-tel

filed an application for approval of a resale agreement with SWBT which was approved by the Commission in Case No. TO-99-282 on March 16, 1999 and will be effective March 23, 1999.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1997, 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.

NET-tel submitted as Appendix D to its application certain financial documentation including a copy of its parent company's audited year end 1997 and end year to date March 1998 financial statements. Appendix C to the application lists the names and qualifications of NET-tel's principals. NET-tel stated in its application that it possesses sufficient technical, financial and managerial resources and abilities to provide basic local

telecommunications services. NET-tel stated further in its application that it has demonstrated this capacity by its successful provision of service to long distance customers in Missouri and in 43 other states. Further, NET-tel stated that pursuant to the authority granted by the Federal Communications Commission, it currently originates interstate and international traffic in all 50 states.

NET-tel proposes to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. NET-tel wishes to be certificated to offer services in all exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs (see Appendix B to the application). NET-tel has sufficiently identified the geographic area in which it proposes to offer basic local service.

NET-tel proposes 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. 1997.

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 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. § 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. NET-tel has requested that it be classified as a competitive telecommunications company.

In its application, NET-tel requested the waiver of the following statutes: Section 310.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1997, and 392.340. NET-tel also requested that the 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 NET-tel 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 NET-tel 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 NET-tel 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 NET-tel a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. NET-tel's certificate shall become effective when its tariff becomes effective.

E. The Commission finds that NET-tel 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 NET-tel's certification and competitive status should be expressly conditioned upon NET-tel's agreement that the 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 large incumbent local exchange company within whose service area NET-tel seeks authority to provide service.

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. NET-tel has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1997, 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. 1997, 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. 1997.

IT IS THEREFORE ORDERED:

1. That NET-tel Corporation d/b/a NET-tel Communications Corporation 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 NET-tel Corporation d/b/a NET-tel Communications Corporation 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. 1997	-	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 the filing of 4 CSR 240-2.060(4)(H) which requires the filing of a 45-day tariff is granted.

4. That NET-tel Corporation d/b/a NET-tel Communications Corporation 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 NET-tel to provide services. The tariff shall be filed in Case No. TA-99-180 and shall include a listing of the statutes and Commission rules waived above.

5. That NET-tel Corporation d/b/a NET-tel Communications Corporation shall give notice of the filing of the tariffs described above to all parties or participants. In addition, NET-tel 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.

6. That NET-tel Corporation d/b/a NET-tel Communications Corporation's certification and competitive status are expressly conditioned upon NET-tel's agreement that the 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 large incumbent local exchange company within whose service area NET-tel seeks authority to provide service.

7. That this order shall become effective on March 30, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, Schemenauer
and Drainer, CC., concur
Crumpton, C., absent

Register, Regulatory Law Judge

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FILED IN 100-1000000