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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 10th
day of August, 1999.

In the Matter of the Application of Rocky)
Mountain Broadband, Inc. for a Certificate of)
Service Authority to Provide Basic Local) Case No. TA-99-567
Exchange Telecommunications Services in)
Portions of the State of Missouri and for)
Competitive Classification.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

Rocky Mountain Broadband, Inc. (RMB) applied to the Commission on May 20, 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. 1998. RMB 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. RMB is a Colorado corporation with its principal offices located at 999 18th Street, Suite 2201, North Tower, Denver, Colorado 80202.

The Commission issued a notice and schedule of applicants on May 25, 1999, directing interested parties wishing to intervene to do so by June 24. No other party requested permission to intervene. On July 12,

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

the Commission issued an Order Directing Parties to Submit Additional Information. That Order directed both the Staff of the Missouri Public Service Commission (Staff) and RMB to submit pleadings, no later than August 2, regarding any contacts they have had with Southwestern Bell Telephone Company, GTE Midwest, Inc. and Sprint Missouri, Inc. d/b/a Sprint - the incumbent local exchange carriers within whose areas RMB seeks authority to operate - regarding RMB's application. The Order also directed Staff to file a pleading indicating by what authority the Commission may add a restriction to RMB's application without either a hearing or a stipulation and agreement submitted by the parties.

On July 26, RMB filed a Response to Commission Order in which it stated that it has had no contact with any of the incumbent local exchange carriers. RMB also indicates that it is willing to agree to the restrictions on originating and terminating access rates normally proposed by Staff in these cases and will waive its right to a hearing regarding those restrictions. RMB requests that the Commission expeditiously approve its application.

On July 30, Staff filed a response to the Commission's Order of July 12. Staff indicates that the Commission does have the authority to add restrictions to RMB's application for a certificate of service authority without either a hearing or a stipulation and agreement, provided that RMB has reasonable prior notice of those proposed restrictions and an opportunity to request a hearing if it wishes to contest those restrictions.

On August 2, Staff filed a Memorandum recommending that the Commission approve RMB's Application with certain additional restrictions. Those recommended additional restrictions are as follows:

- 1) Notwithstanding the provisions of Section 392.500, RSMo 1994, unless otherwise ordered by the Commission, RMB's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large incumbent local exchange company(ies) for each service area within which RMB seeks authority to provide service.
- 2) Any increase in switched access service rates above the maximum switched access service rates set forth in (1) shall be made exclusively pursuant to 392.220 and 392.230, and not 392.500 and 392.510.
- 3) That the certificate be subject to the conditions stated above and that the certificate becomes 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 and the recommendations of Staff.

Discussion

RMB seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone Company, GTE Midwest, Inc. and Sprint Missouri, Inc. d/b/a Sprint. RMB is not asking for certification in any area that is served by a small incumbent local exchange provider. RMB proposes to operate in all of the exchanges described in Exhibit 2 to its Application. RMB 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) (D) requires an applicant doing business under a fictitious name to include in its application a copy of the registration of the fictitious name with the Secretary of State, 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. RMB has provided all the required documentation except for the proposed tariff. RMB 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. RMB 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. 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 RMB files the required tariff it will be assigned a new case number.

B. Basic Local Service Certification

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.

In its Application, RMB indicated that it will rely on the financial resources of its parent company Rocky Mountain Internet, Inc. Attached to RMB's Application was a copy of the most recent annual report on SEC Form 10-KSB for Rocky Mountain Internet, Inc. A description of the managerial experience of RMB's key personnel is attached to the Application as Exhibit 4. There is sufficient evidence to find that RMB

possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

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

RMB wishes to be certificated to offer services in the exchanges presently served by Southwestern Bell Telephone Company, GTE Midwest, Inc. and Sprint Missouri, Inc. d/b/a Sprint. There is sufficient evidence to find that RMB 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.

RMB 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. 1998.

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.

There is sufficient evidence to find that RMB should be classified as a competitive telecommunications company. RMB's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on RMB's ability to charge for its access services. Unless otherwise ordered by the Commission, RMB's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for the large incumbent LEC for each service area within which RMB seeks authority to provide service. Furthermore, any increases in switched access services rates above the maximum switched access service rates as set forth previously shall be made exclusively pursuant to 392.220, RSMo Supp. 1998 and 392.230, and not 392.500 and 392.510.

RMB and requests and Staff recommends that the following statutes be waived: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1994, and 392.340. RMB also request and Staff recommends that these Commission rules also 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 RMB 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 RMB 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 RMB 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 RMB a

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

E. The Commission finds that RMB 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 RMB's 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 must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, 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. RMB has requested certification under Sections 392.420 - .440, and Sections 392.410 and .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 .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, RMB's Application, the recommendation of Staff, and its findings of fact, the Commission concludes that RMB's Application should be granted.

IT IS THEREFORE ORDERED:

1. That the Application for a Certificate of Service Authority to Provide Basic Local Exchange Telecommunications Services and for Competitive Classification, filed by Rocky Mountain Broadband, Inc. on May 20, 1999, is granted.

2. That Rocky Mountain Broadband, 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 Rocky Mountain Broadband, Inc.'s tariff becomes effective.

3. That Rocky Mountain Broadband, 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. 1998 - 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

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

5. That Rocky Mountain Broadband, 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 RMB to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

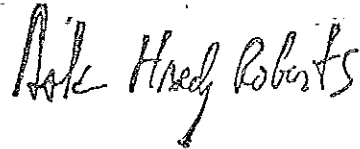
6. That Rocky Mountain Broadband, Inc. shall give notice of the filing of the tariffs described above to all parties or participants. In addition, Rocky Mountain Broadband, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of 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.

7. That Rocky Mountain Broadband Inc.'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, RMB's originating and terminating access rates 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 within which RMB 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 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510.

8. That this order shall become effective on August 20, 1999.

9. That this case may be closed on August 23, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Woodruff, Regulatory Law Judge

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AUG 10 1999
COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION