

NW

Case No. TA-2000-217

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

On September 7, 1999, HJN Telecom, Inc. (HJN or Applicant), a Georgia corporation, filed its Application for a Certificate of Service Authority to provide Basic Local Telecommunications Services in Portions of the State of Missouri and to Classify Such Services and the Company as Competitive. On September 14, 1999, the Commission issued its Notice of Applications and established October 14, 1999, as the deadline for applications to intervene in this matter. On October 7, 1999, Southwestern Bell Telephone Company (SWBT) timely filed an application to intervene, which the Commission granted on October 19, 1999. The Commission also set a prehearing conference and directed the parties to file a proposed procedural schedule.

On November 5, 1999, SWBT sought to be excused from the prehearing conference. In its pleading, SWBT informed the Commission that it did not oppose HJN's application, so long as its certificate would be subject to

the same conditions imposed by the Commission in other such cases. SWBT further advised the Commission that it expected that a unanimous stipulation and agreement would be filed in place of a proposed procedural schedule.

On November 8, 1999, the Commission canceled the prehearing conference. On November 15, 1999, the Staff moved for additional time within which to file either a stipulation and agreement or a proposed procedural schedule. The following day, HJN filed a stipulation and agreement executed by all of the parties, a copy of which is attached hereto as Attachment 1. In the stipulation and agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. On November 22, 1999, HJN filed a supplement to its application and, on December 7, 1999, Staff filed suggestions in support of the stipulation and agreement.

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 supplemental information filed by HJN in support of its application.

Discussion

Applicant seeks certification to provide basic local exchange telecommunications services on a resold basis in portions of Missouri that

are currently served by SWBT, GTE Midwest, Inc. (GTE), and United Telephone Company d/b/a Sprint (Sprint). Applicant is not asking for certification in any area that is served by a small incumbent local exchange provider. Applicant proposes to provide service in the exchanges currently served by SWBT, GTE and Sprint as listed in those companies' Missouri local exchange tariffs. Applicant 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 in Missouri to include in its application a certificate from the Missouri 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 at least a 45-day effective date. Applicant has provided all the required documentation except for the proposed tariff. Applicant requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into interconnection agreements the incumbent LECs and those agreements have been approved by the Commission. Applicant 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. Applicant will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing, Applicant 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. 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.

Applicant submitted as Exhibit III to its application a copy of its December 31, 1998, Balance Sheet, its Income Statement, and its Cash Flow Statement. Exhibit II to the application lists the names and qualifications of Applicant's management team. Additional information on this point is contained in the supplemental information provided by Applicant. In addition to academic credentials, the team members have experience in the telecommunications industry. The parties agreed that Applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Applicant 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. The parties agreed that Applicant proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Applicant wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint as described in the basic local exchange tariffs of those companies. The parties agreed that Applicant has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows the incumbent local exchange carrier's exchange boundaries and is no smaller than an exchange.

Applicant 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, 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, RSMo. 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. 3rd at 487. In addition, all the services a competitive
company provides must be classified as competitive. Section 392.361.3,
RSMo.

The parties have agreed that Applicant should be classified as a
competitive telecommunications company. The parties have also agreed that
Applicant's switched exchange access services may be classified as a
competitive service, conditioned upon certain limitations on Applicant's
ability to charge for its access services. Applicant 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
large incumbent LEC(s) within whose service area(s) Applicant seeks to
operate. The parties have agreed that the grant of service authority and
competitive classification to Applicant should be expressly conditioned on
the continued applicability of Section 392.200, RSMo Supp. 1998, 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. 1998, 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. 1998, 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 Applicant has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services, excepting the contemporaneous submission of a proposed tariff with a 45-day effective date. The Commission further finds that HJN has shown good cause for the application of rule 4 CSR 240-2.060(4)(H) to be waived.
- C. The Commission finds that Applicant 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 Applicant a certificate of service authority to provide basic local

exchange telecommunications services is in the public interest. Applicant's certificate shall become effective when its tariff becomes effective.

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

E. The Commission finds that Applicant's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, 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. 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. Applicant 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. 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. 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. 1998. Based upon the Commission's review of the applicable law and the 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 Stipulation and Agreement of the parties, filed on November 17, 1999, is approved.

2. That HJN Telecom, 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 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 HJN Telecom, 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 HJN Telecom, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, 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. 1998, and 392.230, rather than Sections 392.500 and 392.510.

5. That application of Rule 4 CSR 240-2.060(4)(H) is waived. HJN Telecom, Inc., shall submit a proposed tariff with at least a 45-day effective date within 30 days of the approval by this Commission of an interconnection agreement between HJN Telecom, Inc., and any of the incumbent local exchange carriers in whose service area HJN Telecom, Inc., may operate under the certificate granted in this order. Simultaneously with the submission of such a proposed tariff, HJN Telecom, Inc., shall file in this case, and serve upon all the parties hereto, a pleading giving

notice that such a tariff has been submitted. HJN Telecom, Inc., shall provide copies of such proposed tariff to the parties hereto upon request and shall make such other disclosures as required by the Stipulation and Agreement approved herein.

6. That this order shall become effective on December 23, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Kevin A. Thompson, Deputy Chief
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 14th day of December, 1999.

RECEIVED

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION