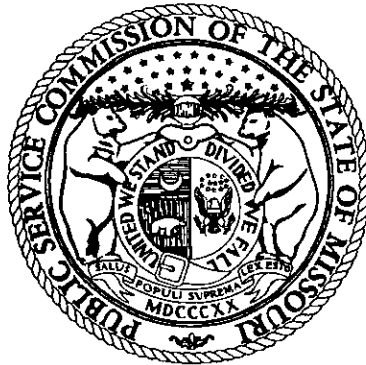


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of Intermedia)
Communications Inc. for a Certificate of)
Service Authority to Provide Basic Local Exchange)
and Local Exchange Services.)

Case No. TA-97-264

REPORT AND ORDER

Issue Date: September 30, 1997

Effective Date: October 10, 1997

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OF THE STATE OF MISSOURI**

In the Matter of the Application of Intermedia)
Communications, Inc. for a Certificate of)
Service Authority to Provide Basic Local Exchange) **Case No. TA-97-264**
and Local Exchange Services.)
)

APPEARANCES

Charles Brent Stewart, Stewart & Keevil, L.L.C., 1001 Cherry Street, Suite 302, Columbia, Missouri 65201, for Intermedia Communications, Inc.

Leo J. Bub, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Thomas R. Schwarz, Jr., Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: Amy E. Randles and Elaine E. Bensavage.

REPORT AND ORDER

Procedural History

Intermedia Communications, Inc. (Intermedia) applied to the Commission on February 10, 1997¹, for a certificate of service authority to provide basic local telecommunications service and local exchange telecommunications services in Missouri under Sections 392.420 - .440,

¹ Intermedia's original application was filed on January 7, 1997. The February 10, 1997, was an amended application that superseded the original application.

RSMo 1994², and Sections 392.410 and .450, RSMo Supp. 1996. Intermedia 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. Intermedia is a Delaware corporation with offices at 3625 Queen Palm Drive, Tampa, Florida.

The Commission issued an Order and Notice on March 10 directing parties wishing to intervene in the case to do so by April 9. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) April 24.

The parties filed a Stipulation and Agreement on May 16, and Intermedia filed a motion asking that the Commission waive the evidentiary hearing on the same date. The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on June 27. On September 17, Intermedia filed its Motion to Accept Late-Filed Exhibit, attaching as the offered exhibit its Securities and Exchange Commission (SEC) Form 10-Q for the quarter ending June 30 and SEC Form 10-K for the year ending December 31, 1996. No party filed suggestions in opposition to Intermedia's motion within ten days of its filing.

In the Stipulation and Agreement, the parties waived their rights to present testimony, to cross-examine witnesses, to present oral argument or written briefs, to have the transcript read by the Commission, to seek rehearing, and to seek 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,

² All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

776 S.W.2d 494 (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.

Background

Intermedia wishes certification to provide facilities-based and resold basic local telecommunications service and local exchange telecommunications services as well. Local exchange services are considered competitive services and are subject to different rules and statutory requirements than are basic local services. Therefore, they will be considered separately in the discussion below.

Intermedia wants to provide basic local services in all portions of Missouri that are currently served by SWBT. Intermedia is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which Intermedia proposes to operate are described in Exhibit 3 to the application that was filed on February 10 (Attachment A to this order). Intermedia is requesting that its basic local exchange and local exchange services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

Discussion

A. Motion to Accept Late-Filed Exhibit

Intermedia stated in its September 17 motion that it wished to submit additional financial data in the form of a late-filed exhibit because Commission members had expressed concerns at their September 16 session about the sufficiency of the financial data submitted in support of the application. No party objected to Intermedia's motion within

ten days of its filing, as provided by 4 CSR 240-2.080(12). The offered late-filed exhibit contains information about Intermedia's financial resources.

B. 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. Intermedia has provided all the required documentation except for the proposed tariff. The company has requested a temporary waiver of 4 CSR 240-.060(4)(H), because at the time the company filed the application at issue in this case, it had not yet executed an interconnection agreement with SWBT. Intermedia could not price its services until it had reached a price agreement with SWBT. On March 7, the Commission approved an interconnection agreement between Intermedia and SWBT (Case No. TO-97-260). Intermedia has submitted draft tariffs to Staff but has not finalized the tariffs to date. Once it is possible to do so, Intermedia will submit to the Commission for approval a proposed tariff with a minimum 30-day effective date. Intermedia will file the tariff in Case No. TA-97-264 and give notice of the tariff filing to all the parties and participants. Along with that filing Intermedia has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

C. Local exchange certification

The Commission finds that Intermedia's entry into competition in the local exchange telecommunications market is in the public interest and the company should be granted a certificate of service authority. The Commission finds that the local exchange services Intermedia proposes to offer are competitive and the company should be classified as a competitive company. The Commission is of the opinion that waiving the statutes and Commission rules set out in Ordered Paragraph 4 is reasonable and not detrimental to the public interest.

The Commission determines, by authority of Section 392.470, that Intermedia should comply with the following regulatory requirements as reasonable and necessary conditions of certification:

- (1) Intermedia must comply with reasonable requests by Staff for financial and operating data to allow Staff to monitor the intraLATA toll market. § 386.320.3, RSMo Supp. 1996.
- (2) Intermedia must file tariffs containing rules and regulations applicable to customers, a description of the services provided, and a list of rates associated with those services in accordance with 4 CSR 240-30.010 and Section 392.220, RSMo Supp. 1996.
- (3) Intermedia may not unjustly discriminate between its customers. §§ 392.200, RSMo Supp. 1996, and 392.400.
- (4) Intermedia must comply with all applicable rules of the Commission except those specifically waived by this order. §§ 386.570, 392.360.
- (5) Intermedia must file a Missouri-specific annual report. §§ 392.210, 392.390.1.
- (6) Intermedia must comply with jurisdictional reporting requirements as set out in each local exchange company's access services tariffs. § 392.390.3.
- (7) Intermedia must submit to the staff, on a confidential basis, a copy of the jurisdictional report it submits to local exchange companies. The report must be submitted within ten days of the date on which it is submitted to the local exchange company.

D. Basic local service certification

Section 392.455, RSMo Supp. 1996, 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 (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 where they live or their income.

1. Technical, financial and managerial resources and abilities.

Intermedia submitted Exhibit 4 with its application that lists the names and qualifications of its management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including computer science, engineering, electronics, accounting, customer services, policy, marketing and finance. Intermedia also submitted as Exhibit 2 its balance sheet and income statement for the year ended December 31, 1995. In the Stipulation and Agreement, Intermedia asserted that it possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. No party made contrary assertions. Intermedia's Motion to Accept Late-Filed Exhibit contained its SEC Form 10-K for the year ending December 31, 1996, and its SEC Form 10-Q for

the quarter ending June 30. This exhibit demonstrates that Intermedia has considerable financial resources to provide basic local exchange telecommunications service.

2. The entrant's proposed services satisfy the minimum standards established by the Commission. Intermedia has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards and tariff requirements. The parties agreed that Intermedia proposes to offer basic local services that satisfy the minimum standards established by the Commission.

3. The geographic area in which the company proposes to offer service. Intermedia set out in Exhibit 3 of its application all the exchanges in which it proposes to offer services. Intermedia has defined its service area by means of the tariffed exchange areas of SWBT. Intermedia has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange. The parties agreed that Intermedia 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.

4. The offering of basic local telecommunications service as a separate and distinct service. Intermedia has agreed to offer basic local telecommunications service as a separate and distinct service.

5. Equitable access for all Missourians to affordable telecommunications services. Intermedia has agreed 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. 1996.

E. 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.

The parties have agreed that Intermedia should be classified as a competitive telecommunications company. The parties have also agreed that Intermedia's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Intermedia's ability to charge for its access services. Intermedia 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 LECs within those service areas in which Intermedia seeks to operate. The parties have agreed that the grant of service authority

and competitive classification to Intermedia should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1996, 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. 1996, 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. 1996, 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:

1. The Commission finds that the information contained in the late-filed exhibit submitted on September 17 is relevant to the Commission's determination of whether applicant possesses sufficient financial resources to provide basic local telecommunications service, that no parties oppose the admission of the late-filed exhibit and that said exhibit should be admitted.
2. The Commission finds that competition in the local exchange and basic local exchange telecommunications markets is in the public interest.
3. The Commission finds that Intermedia 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.

4. The Commission finds that Intermedia has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted, but the issuance of this order and the Commission's approval of Intermedia's interconnection agreement with SWBT should make it possible for Intermedia to file final tariffs no later than 60 days after the effective date of this order.
5. The Commission finds that the local exchange services market is competitive and that granting Intermedia a certificate of service authority to provide local exchange telecommunications services is in the public interest. Intermedia's certificate should become effective when its tariff becomes effective.
6. The Commission finds that Intermedia 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 Intermedia a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Intermedia's certificate should become effective when its tariff becomes effective.
7. The Commission finds that Intermedia is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 3.

8. The Commission finds that Intermedia's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, 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. 1996, 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. Intermedia has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1996. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority is in the public interest. Sections 392.361 and 392.420 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. 1996, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1996, states that "the provisions of this chapter shall be construed to: (1) Promote universally available and widely affordable telecommunications services; . . . (3) Promote diversity in the supply of telecommunications services and

products throughout the state of Missouri; . . . (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest. . . ."

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. 1996. Based upon the information contained within the Stipulation and Agreement of the parties, the information contained in Intermedia's late-filed exhibit, and on its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That Intermedia Communications, Inc.'s Motion to Accept Late-Filed Exhibit is granted.

2. That Intermedia Communications, Inc. is granted a certificate of service authority to provide local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above, to become effective when the company's tariff becomes effective.

3. That Intermedia Communications, 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, to become effective when the company's tariff becomes effective.

4. That Intermedia Communications, Inc. is classified as a competitive telecommunications company. 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
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

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 filing of a 45-day tariff as required by 4 CSR 2-2.060(4)(H) is waived for 60 days following the effective date of this order.

6. That Intermedia Communications, Inc. shall file tariff sheets for approval reflecting the rates, rule, regulations and the services it will offer no later than 60 days after the effective date of this order. The tariff shall be filed in Case No. TA-97-264 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 4.

7. That Intermedia Communications, Inc. shall give notice of the filing of the tariffs described in Ordered Paragraph 6 as set out in the Stipulation and Agreement. In addition, Intermedia Communications, 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 the Stipulation and Agreement submitted by the parties on May 16, 1997, is approved.

9. That Intermedia Communications, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, 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. 1996, and 392.230, rather than Sections 392.500 and 392.510.

10. That this Report And Order shall become effective on October 10, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 30th day of September, 1997.

INTERMEDIA COMMUNICATIONS INC.

Intermedia Communications Inc. seeks authority to provide local exchange and basic local exchange telecommunications service in the following exchanges currently served by Southwestern Bell Telephone. The geographic area in which proposed service is to be initially offered follows the exchange boundaries and is no smaller than an exchange.

I. The Kansas City Metropolitan Exchange and the exchanges in following zones:

<u>Zone 1</u>	<u>Zone 2</u>
Gladstone	Belton
Independence	Blue Springs
Parkville	East Independence
Raytown	Lee's Summit
South Kansas City	Liberty
	Nashua
	Tiffany Springs

II. The St. Louis Metropolitan Exchange and the exchanges in following zones:

<u>Zone 1</u>	<u>Zone 2</u>
Ferguson	Bridgeton
Ladue	Creve Coeur
Mehlville	Florissant
Overland	Kirkwood
Riverview	Oakville
Sappington	Spanish Lake
Webster Groves	

III. The Springfield Metropolitan Exchange and the exchanges in the Metropolitan Calling Area Zone:

Metropolitan Calling Area Zone
Fair Grove
Nixa
Republic
Rogersville
Strafford
Willard