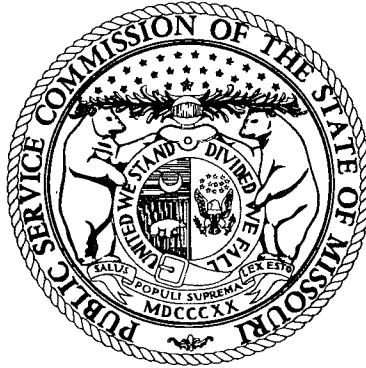


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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of Sterling )  
International Funding, Inc. d/b/a Reconex for a )  
Certificate of Service Authority to Provide Basic )  
Local Telecommunications Service in Portions of )  
the State of Missouri and to Classify Said )  
Services and the Company as Competitive. )  
)

**Case No. TA-97-451**

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**REPORT AND ORDER**

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**Issue Date:** October 7, 1997

**Effective Date:** October 17, 1997

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**OF THE STATE OF MISSOURI**

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International Funding, Inc. d/b/a Reconex for a )  
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Local Telecommunications Service in Portions of )  
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**APPEARANCES**

**William M. Shansey**, *Of Counsel*, Stewart & Keevil, L.L.C., 1001 Cherry Street, Suite 306, Columbia, Missouri 65201, for Sterling International Funding, Inc. d/b/a Reconex.

**Diana J. Harter**, 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 Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

**Stephen Gunn**, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

**REGULATORY**

**LAW JUDGE:** L. Anne Wickliffe, Deputy Chief.

**REPORT AND ORDER**

**Procedural History**

Sterling International Funding, Inc. d/b/a Reconex (Reconex) applied to the Commission on April 11, 1997, for a certificate of service authority to provide basic local telecommunications service in Missouri under Sections 392.420 - .440, RSMo 1994<sup>1</sup>, and Sections 392.410 and .450,

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

RSMo Supp. 1996. Reconex 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, RSMo Supp. 1996. Reconex is a Nevada corporation authorized to do business in the state of Missouri, with offices at 9620 S.W. Barbur Blvd., Suite 330, Portland, Oregon 97219. Its mailing address is P.O. Box 5395, Portland, Oregon 97228.

The Commission issued an Order and Notice on April 15, directing parties wishing to intervene in the case to do so by May 15. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on May 23. The Commission directed the parties to file a procedural schedule no later than June 9.

Reconex filed a Motion to Establish Stipulation Deadline on June 9, stating that the parties expected to be able to file a stipulation by June 30 and asking the Commission to establish that date as a filing deadline. The Commission granted Staff's motion by order issued on June 16. The parties filed a Stipulation and Agreement (SA) on June 30, and Staff filed Suggestions in Support of the Stipulation and Agreement on July 11. By the terms of the stipulation the parties waived their rights to present testimony, to cross-examine witnesses, and to present oral argument or written briefs. 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 asked permission to intervene or requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

## **Background**

Reconex wishes certification to provide facilities-based and resold basic local telecommunications service on a prepaid basis. Specifically, Reconex wants to provide basic local services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated and United Telephone Company of Missouri d/b/a Sprint. Reconex is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which Reconex proposes to operate are described in Appendix B to the application. Reconex is requesting that its basic local exchange services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

## **Discussion**

### **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. Reconex 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) and submitted illustrative tariff sheets in lieu of 45-day tariff sheets. Reconex and SWBT entered into a Resale Agreement that was approved by Commission order on March 15, in Case No. TO-97-230. The final agreement was filed on March 11. Therefore, there is no obstacle to

Reconex filing a tariff setting out the terms and conditions under which it will offer its basic local telecommunications services. Reconex agreed, in the SA, to file its tariff in Case No. TA-97-451 and give notice of the tariff filing to all the parties and participants. Along with that filing Reconex 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. 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 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.**

Reconex submitted Appendix C 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 technical, customer relations, marketing, computer technology, and finance. According to Appendix C Reconex and its affiliate, Ameritel, provide resale of residential

telecommunications services to thousands of customers. In addition, as a reseller, Reconex will be relying on the technical qualifications of the underlying ILECs. Reconex submitted as Appendix D a Management Report including a Balance Sheet and related Statement of Income and Retained Earnings and Cash Flows for the five months ending February 28, 1997. The parties agreed that Reconex possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

**2. The entrant's proposed services satisfy the minimum standards established by the Commission.** Reconex stated in its application that it will comply with all applicable Commission rules and service standards, including quality of service regulations. The parties agreed that Reconex 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.** Reconex set out in Appendix B to its application all the exchanges in which it proposes to offer services. Reconex has defined its service area by means of the tariffed exchange areas of the ILECs presently providing basic local service in those exchanges. The parties agreed that Reconex 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.** Reconex has agreed to offer basic local telecommunications service as a separate and distinct service.

**5. Equitable access for all Missourians to affordable telecommunications services.** Reconex 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.

### **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.

The parties have agreed that Reconex should be classified as a competitive telecommunications company. The parties have also agreed that Reconex's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Reconex's ability to charge for its access services. Reconex 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 Reconex seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Reconex 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 competition in the basic local exchange telecommunications market is in the public interest.
2. The Commission finds that Reconex has met the requirements of 4 CSR 240-.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.
3. The Commission finds that Reconex has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.



4. The Commission finds that Reconex 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 Reconex a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Reconex's certificate should become effective when its tariff becomes effective.
5. The Commission finds that Reconex is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 3.
6. The Commission finds that Reconex'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. Reconex 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.

The Commission has the authority to suspend or modify the application of its rules and of certain statutory provisions as to any competitive telecommunications company. § 392.361.5. The Commission may suspend different requirements for different telecommunications companies where it is reasonable and not detrimental to the public interest. *Id.*

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, and on 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 submitted by the parties on June 30 is approved.

2. That Sterling International Funding, Inc. d/b/a Reconex 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.

3. That Sterling International Funding, Inc. d/b/a Reconex 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
- 392.340 - reorganization(s)
- 392.330, RSMo Supp. 1996 - 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 filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived until 30 days after the effective date of this order.

5. That Sterling International Funding, Inc. d/b/a Reconex shall file tariff sheets for approval reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of this order. The tariff shall be filed in Case No. TO-97-451 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3.

6. That Sterling International Funding, Inc. d/b/a Reconex shall give notice of the filing of the tariffs described in Ordered Paragraph 5 as set out in the Stipulation and Agreement. In addition Sterling International Funding, Inc. d/b/a Reconex 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 its explanation of why no interconnection agreement is necessary for those areas.

7. That Sterling International Funding, Inc. d/b/a Reconex'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 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. 1996, and 392.230, rather than Sections 392.500 and 392.510.

8. That this Report And Order shall become effective on October 17, 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 7th day of October, 1997.