

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of Excel)
Telecommunications, Inc., for a certificate)
of service authority to operate as a reseller) CASE NO. TA-90-117
of telecommunications services in the State)
of Missouri.)

APPEARANCES: Robin A. Casey, Attorney at Law, Bickerstaff, Heath &
Smiley, San Jacinto Center, Suite 1800, 98 San Jacinto
Boulevard, Austin, Texas 78701-4039, and
Mark P. Johnson, Attorney at Law, Spencer, Fane, Britt &
Browne, 1000 Walnut, Suite 1400, Kansas City, Missouri 64106,
for Excel Telecommunications, Inc.

HEARING
EXAMINER: Michael F. Pfaff

REPORT AND ORDER

On December 11, 1989, Excel Telecommunications, Inc., (Applicant) filed its verified application for a certificate of service authority authorizing it to provide resold telecommunications services in the State of Missouri.

The Commission issued its Order and Notice on December 20, 1989, directing its Secretary to send notice of this order. Interested persons or entities were directed to intervene on or before January 19, 1990. No applications to intervene or motions to schedule a hearing were filed. The Commission stated that in the event no proper party filed an application to intervene in this matter and neither Commission Staff nor the Office of Public Counsel requested a hearing on or before January 19, 1990, the Commission would allow the Applicant to submit its evidence in support of the application by verified statement.

On January 29, 1990, the Staff of the Missouri Public Service Commission filed its memorandum recommending approval of the application on the condition that the certificate become effective on the same date as Excel's tariff. Staff further

recommends, and the Commission finds, that Excel should file its official tariff in the time provided by this Report and Order.

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:

Applicant requests authority to provide intrastate resold toll telecommunications services in the state of Missouri.

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered an opportunity to do so. In the instant case, notice was sent by the Secretary of the Commission to any persons or entities known to the Telecommunications Department of the Public Service Commission to be rendering identical or similar services within the service area proposed by the instant application, as well as to each telephone company rendering local exchange service in Missouri. Interested persons or entities were directed to intervene on or before January 19, 1990. Since no proper party or governmental entity filed an application to intervene and neither the Commission Staff nor the Office of Public Counsel requested a hearing, the Commission determines that a hearing is not necessary and the Applicant may submit its evidence in support of the application by verified statement.

Applicant is a foreign corporation authorized to do business in the state of Missouri, with its principal office or place of business located at 1219 Abrams Road, Suite 341, Richardson, Texas 75081.

On September 28, 1987, House Bill 360 went into effect repealing Section 392.260, RSMo 1986, as well as twenty other sections of Chapters 386 and 392. Consequently, in considering Applicant's application, the Commission is bound by the terms of Sections 392.410, 392.430, and 392.440, RSMo Supp. 1988. These sections

permit the Commission to grant a certificate of service authority if it shall find that the granting of the authority is in the public interest. The Commission notes that in Case No. TX-85-10 at 10 Mo. Reg. 1048 (1985), the Commission made a Statement of Policy which set out certain standards pertaining to applicants requesting authority to provide interLATA telecommunications services. In Re: Investigation into WATS resale by hotels/motels, Case No. TO-84-222, et al. (effective on August 26, 1986), the Commission found it was reasonable to apply the same standards to applicants which desire to provide intraLATA toll services. The Commission believes this is consistent with the policy set forth in Section 392.530, RSMo Supp. 1988.

Based upon the verified statements of Applicant and the recommendations of the Commission's Staff, the Commission finds that Applicant has complied with the Commission's standards and is qualified to perform the service proposed. In Case No. TX-85-10, the Commission stated that if an applicant is found to be fit pursuant to the Commission's standards, then the Commission will assume that additional competition in the interLATA market is in the public interest and a certificate of public convenience and necessity (now a "certificate of service authority" pursuant to House Bill 360) should be granted. Since the intraLATA toll market has been opened for competition, the Commission did not deem it necessary in Case No. TO-84-222, et al., to determine a public need for each reseller's services as the market would eliminate any reseller for which there was no public need. The Commission has determined that the same reasoning is appropriate in this case. Consequently, a grant of authority to provide interexchange toll service or the resale of interexchange toll service will be deemed to be in the public interest in accordance with Sections 392.430 and 392.440, RSMo Supp. 1988.

The Commission finds that Applicant has filed current financial information and a brief description of what type of service it proposes to provide, and has

agreed to comply with all applicable Commission rules and regulations and any terms and conditions which the Commission may impose.

The Commission in Case No. TO-84-222, et al., determined that certain regulatory requirements should be imposed upon resellers which were authorized to provide intrastate interLATA and intraLATA telecommunications services in Missouri. The Commission notes that in Case No. TO-84-222, et al., it stated that for purposes of authorizing intraLATA competition, it could not find a rational basis to distinguish between resellers and facilities-based carriers. The Commission believes that the regulatory requirements imposed upon resellers should also be imposed upon facilities-based carriers (this term does not include basic local telecommunications service) which request authority to provide the same services. Therefore, the Commission finds that the following regulatory requirements should be imposed upon Applicant as reasonable and necessary conditions of certification:

- (1) Applicant is required to comply with reasonable requests by the Staff for financial and operating data to allow the Staff to monitor the intraLATA toll market pursuant to Section 386.320.3, RSMo 1986;
- (2) Applicant is required to file tariffs containing rules and regulations applicable to customers, a description of the services provided and a list of rates associated with the services pursuant to Section 392.220, RSMo Supp. 1988, and 4 CSR 240-30.010;
- (3) Applicant is precluded from unjustly discriminating between and among its customers pursuant to Section 392.200, RSMo Supp. 1988, and Section 392.400, RSMo Supp. 1988;
- (4) Under Section 392.510, RSMo Supp. 1988, master schedules with minimum-maximum ranges are only available for competitive or transitionally competitive telecommunications services or for companies for which a range or band of rates existed at the time of

the effective date of House Bill 360. Since Applicant is presently a noncompetitive company and Applicant did not have master schedules with minimum-maximum ranges approved by the Commission prior to the effective date of House Bill 360, Applicant cannot lawfully file master schedules with minimum-maximum ranges;

- (5) Applicant is required by Sections 386.570 and 392.360, RSMo Supp. 1988 to comply with all applicable Commission rules except those which are specifically waived by the Commission pursuant to Section 392.420, RSMo Supp. 1988;
- (6) Applicant is required to file a Missouri-specific annual report pursuant to Section 392.210, RSMo Supp. 1988, and Section 392.390.1, RSMo Supp. 1988;
- (7) Applicant is required to submit Percentage of Interstate Use (PIU) reports, including the percentage of interstate use and the percentage of intrastate use, on a quarterly basis to the local exchange companies pursuant to Section 392.390.3, RSMo Supp. 1988;
- (8) Applicant is required, until the Commission orders otherwise, to submit to the Public Service Commission Staff on a confidential basis, quarterly reports showing its percentage of intrastate intraLATA use pursuant to Section 392.390.3, RSMo Supp. 1988;
- (9) Pursuant to Section 392.390.3, RSMo Supp. 1988, Applicant is required to comply with the jurisdictional reporting requirements as set out in each local exchange company's access services tariff.

The Commission finds that Applicant should file appropriate tariffs within thirty (30) days of the effective date of this Report and Order. The Commission finds that Applicant should file any request for a variance from the Commission's rules that may be necessary as a result of the grant of this authority within thirty (30) days of

the effective date of this Report and Order. In addition, the Commission finds that Applicant should file its PIU reports and its quarterly reports to the Staff within thirty (30) days of the effective date of this Report and Order.

Conclusions

The Missouri Public Service Commission has arrived at the following conclusions:

Applicant proposes to provide service to the public as a public utility subject to the Commission's jurisdiction pursuant to Chapters 386 and 392, RSMo Supp. 1988.

Based upon the verified application of Applicant, the Commission has found that Applicant has complied with the Commission's standards pertaining to applications requesting authority to provide resold telecommunications services and is qualified to perform said services. The Commission has concluded that additional competition in the interexchange telecommunications market is in the public interest and a certificate of service authority should be granted.

It is, therefore,

ORDERED: 1. That Excel Telecommunications, Inc., be, and hereby is, granted a certificate of service authority to provide intrastate interexchange toll telecommunications services in Missouri. This certificate of service authority is subject to the conditions of certification set out herein.

ORDERED: 2. That nothing contained herein shall be construed as a finding by the Commission of the value for ratemaking purposes of the properties herein involved, nor as an acquiescence in the values placed upon said properties by the Applicant.

ORDERED: 3. That Excel Telecommunications, Inc., shall file tariffs within thirty (30) days of the effective date of this Report and Order.

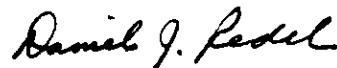
ORDERED: 4. That Excel Telecommunications, Inc., shall file any request for variance from the Commission's rules that may be necessary as a result of the grant of this authority within thirty (30) days of the effective date of this Report and Order.

ORDERED: 5. That Excel Telecommunications, Inc., shall file its PIU reports as discussed herein within thirty (30) days of the effective date of this Report and Order.

ORDERED: 6. That Excel Telecommunications, Inc., shall file with the Commission Staff a report showing its percentage of intrastate intraLATA use. Said report shall be filed within thirty (30) days of the effective date of this Report and Order and on a confidential basis, unless the Commission orders otherwise.

ORDERED: 7. That this Report and Order shall become effective on the 23rd day of February, 1990.

BY THE COMMISSION



Daniel J. Redel
Acting Secretary

(S E A L)

Steinmeier, Chm., Mueller, Rauch,
McClure and Letsch, CC., Concur.

Dated at Jefferson City, Missouri,
on the 13th day of February, 1990.