

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

In the Matter of the Application of Brooks Fiber )  
Communications of Kansas City, Inc., for Certifi- )  
cates of Service Authority to Provide Basic Local )  
Telecommunications Services, Local Exchange Tele- )  
communications Services, Exchange Access Services, )  
and Interexchange Telecommunications Services in )  
the State of Missouri, and to Classify the Company )  
and Its Services as Competitive. )

**Case No. TA-96-438**

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**REPORT AND ORDER**

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**Issue Date:** February 28, 1997

**Effective Date:** March 11, 1997

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and Its Services as Competitive. )  
)

**APPEARANCES**

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Julie Thomas Bowles, Attorney, Sprint Communications Company, L.P., 8140 Ward Parkway, Kansas City, Missouri 64114, for Sprint Communications Company, L.P.

Mark P. Johnson, and Lisa C. Creighton, Sonnenschein, Nath & Rosenthal, Twentieth Century Tower II, 4520 Main Street, Suite 1100, Kansas City, Missouri 64111, for Kansas City Fiber Network, L.P.

Mary Ann (Garr) Young, William D. Steinmeier, P.C., Post Office Box 104595, Jefferson City, Missouri 65102, for Consolidated Communications Telecom Services Inc.

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.

Colleen M. Dale, 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 JUDGES: Dale Hardy Roberts, Chief, and Joyce Hainen.

## REPORT AND ORDER

### Procedural History

Brooks Fiber Communications of Kansas City, Inc. (Brooks or applicant) applied to the Commission on June 17, 1996, for certificates of service authority to provide basic local telecommunications service, local exchange telecommunications services, and interexchange telecommunications services in Missouri under Sections 392.410 - .450, RSMo 1994<sup>1</sup>.

Brooks 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. Brooks is a Delaware corporation with its principal business at 425 Woods Mill Road South, Suite 300, Town and Country, Missouri 63017.

On June 25, 1996 the Commission issued an Order and Notice directing parties wishing to intervene in the case to do so by July 25, 1996. The Commission granted permission to intervene to the following entities on July 30, 1996:

Southwestern Bell Telephone Company (SWBT)  
The Small Telephone Company Group<sup>2</sup>  
Bourbeuse Telephone Company

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 and the 1996 Cumulative Supplement, unless otherwise indicated.

<sup>2</sup> The following companies comprise the "Small Telephone Company Group": BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

Fidelity Telephone Company  
GTE Midwest Incorporated (GTE)  
AT&T Communications of the Southwest, Inc. (AT&T)

On August 9, 1996 Brooks, AT&T, and MCImetro and filed a joint motion to consolidate cases TA-96-438, TA-96-322, and TA-96-355. On August 16, 1996 SWBT filed a response to the joint motion to consolidate the cases and requested the Commission deny the joint motion to consolidate. On August 19, 1996 Sprint Communications Company L.P. (Case No. TA-96-424) filed a motion to consolidate cases TA-96-424, TA-96-322, TA-96-355, and TA-96-438. On August 20, 1996, the Commission issued its Order consolidating the cases of Brooks Fiber Communications of Kansas City, Inc. (Brooks) (TA-96-438), AT&T (TA-96-322), and MCImetro (TA-96-355). Brooks filed an amended application for certificate on August 21, 1996. On September 10, 1996 the Commission issued its Order further consolidating the similar cases of TCG St. Louis, Inc.<sup>3</sup> (TCG) (TA-96-345), MFS Intelenet of Missouri, Inc. (MFS) (TA-96-374), Digital Teleport, Inc. (Digital Teleport) (TA-96-406), Ameritech Communications International, Inc. (Ameritech) (TA-96-415), and Sprint Communications Company L.P. (Sprint) (TA-96-424) with AT&T, MCImetro and Brooks.

The parties filed a Stipulation and Agreement (SA) on September 23, 1996, and AT&T filed a motion asking that the Commission establish a hearing date to consider approval of the agreement. On August 19, 1996 SWBT filed a response to the joint motion filed by Brooks, MCImetro and AT&T for expedited modification of procedural schedule. SWBT stated that based on its understanding as to the status of negotiations on the Stipulation and Agreement, it did not oppose deferring the hearing until November, 1996 and shifting all deadlines by the same amount of time.

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<sup>3</sup> TCG has submitted a separate stipulation.

The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on October 15, 1996. Staff's suggestions included sworn testimony by members of the Commission's telecommunications staff. The Commission conducted a hearing on October 23, 1996, where the parties made presentations and were available for Commission questions.

### **Background**

Brooks Fiber Communications of Kansas City, Inc., a wholly owned subsidiary of Brooks Fiber Properties, Inc., a Delaware corporation, seeks authority to provide facilities-based and resold basic local telecommunications service, interexchange services, and local exchange telecommunications services as well. Interexchange services and 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.

Brooks filed an amended application on August 21, 1996. In the amended application Brooks seeks authority to provide basic local services in exchanges currently served by SWBT and GTE specifically listed in Exhibit V. Brooks is not asking for certification in any area served by a small incumbent local exchange provider. The specific exchanges in which Brooks proposes to operate are described in Exhibit V to the amended application. Brooks is requesting that its basic local exchange services be classified as competitive and that 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 forty-five day effective date. Brooks has provided all the required documentation including an illustrative tariff. However, the applicant has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for Brooks to submit a tariff for approval until it has executed interconnection agreements with the ILECs involved. Brooks cannot firmly price its resold services until it has reached price agreements with the ILECs from which it will purchase those services. The applicant has agreed that, once it is possible to do so, it will submit to the Commission for approval a proposed tariff with a minimum 30-day effective date. Brooks will file the tariff in Case No. TA-96-438 and give notice of the tariff filing to all the parties and participants. Along with that filing Brooks has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas. **See** SA pages 12-13, ¶ 9).

### **B. Interexchange and Local Exchange Certification**

The Commission finds that Brooks's entry into competition in the interexchange and local exchange telecommunications market is in the public interest and the applicant should be granted certificates of service

authority. The Commission finds that the services Brooks proposes to offer are competitive and the applicant 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 3 is reasonable and not detrimental to the public interest.

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

- (1) Applicant must comply with reasonable requests by Staff for financial and operating data to allow Staff to monitor the intraLATA toll market. § 386.320.3.
- (2) Applicant 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 § 392.220.
- (3) Applicant may not unjustly discriminate between its customers. §§ 392.200, 392.400.
- (4) Applicant must comply with all applicable rules of the Commission except those specifically waived by this order. §§ 386.570, 392.360.
- (5) Applicant must file a Missouri-specific annual report. §§ 392.210, 392.390.1.
- (6) Applicant must comply with jurisdictional reporting requirements as set out in each local exchange company's access services tariffs. § 392.390.3.
- (7) Applicant 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 (10) days of the date on which it is submitted to the local exchange company.

### **C. Basic Local Service Classification**

Section 392.455 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 the amount of their income.

#### **1. Technical, Financial and Managerial Resources and Abilities.**

In the Stipulation and Agreement the parties assert that there is sufficient evidence from which the Commission can find and conclude that Brooks possesses sufficient technical, financial and managerial resources and expertise to provide basic local telecommunications service. *See* SA page 9, ¶ 7B). The parties agree that Brooks proposes to offer basic local services that satisfy the minimum standards established by the Commission. *See* SA page 9 ¶ 7B). The parties agree that Brooks has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange. *See* SA page 9, ¶ 7C). The parties agree that Brooks will offer basic local telecommunications service as a separate and distinct service. *See* SA page 10, ¶ 7D). Further, the parties agree that Brooks has agreed to provide equitable access to affordable telecommunications services, as determined by the Commission,

for all Missourians within the geographic area where it proposes to offer basic local service, regardless of their residence or their income. *See* SA page 10, ¶ 7E). Brooks has sought the authority to provide services which will serve the public interest. *See* SA page 10, ¶ 7F).

**2. The Entrant's Proposed Services Satisfy the Minimum Standards Established by the Commission.**

Brooks stated in its amended application that its basic local services will satisfy the minimum standards established by the Commission. Brooks also stated in its amended application that the quality of the basic local telecommunications services that it will provide in the State of Missouri will be equal to or superior to the quality of the basic local telecommunications services that customers in Missouri are currently receiving from the incumbent providers. Applicant's network will be a fiber optic self-healing ring configuration. The fiber backbone will consist of multiple fibers that connect Brooks's hub location to access nodes on the network. The backbone cable will be routed in a geographically diverse fashion (ring) so that no single cut can disrupt transmissions on the backbone. Customer distribution fibers will be incorporated in the same cable sheath that houses the backbone fibers. With this design, Brooks will be able to drop off fibers from the backbone at locations conveniently accessible by its customers. The network will be monitored and controlled from all node locations will be linked together using fiber optic unidirectional ring multiplexers. The nodes then will be connected on a spur cable to the customer location with transmission systems that are directly connected to the customer's interface. Applicant's initial network in Missouri will be constructed in the Kansas City metropolitan area. The Kansas City network will cover portions

of both the Missouri and Kansas sides of the Kansas City metropolitan area, and applicant will seek authority similar to that requested here from the Kansas Corporation Commission. Applicant intends to provide telecommunications services primarily as a facilities-based provider, although resale of other telecommunications providers' services may be utilized as a supplement thereto, depending upon the circumstances. In addition to linking customers directly to the fiber optic rings, applicant will seek to order originating service by obtaining unbundled loops from the incumbent LECs and transporting traffic originating over those loops to applicant's switch. In the SA Brooks agrees to offer basic local services that will satisfy the minimum standards established by the Commission. **See** SA page 9, ¶ 7B).

**3. The Geographic Area in Which the Applicant Proposes to Offer Service.**

Brooks sets out all the exchanges in Exhibit V to its amended application in which it proposes to offer services. Brooks has defined its service area by means of the tariffed exchange areas of the incumbent local exchange companies presently providing basic local service in those exchanges. The parties agreed that Brooks has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows incumbent local exchange company exchange boundaries and is no smaller than an exchange. **See** SA page 9, ¶ 7C).

**4. The Offering of Basic Local Telecommunications Service as a Separate and Distinct Service.**

Brooks has agreed to offer basic local telecommunications service as a separate and distinct service. **See** SA page 10, ¶ 7D).

## **5. Equitable Access for All Missourians to Affordable Telecommunications Services.**

Brooks has agreed to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services.<sup>4</sup> See SA page 10, ¶ 7E).

### **D. 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 telecommunication 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

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<sup>4</sup> Footnote 11 to the SA states: "The Agreement in Paragraph 7E of this Stipulation and Agreement is without prejudice to each Applicant's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's considerations of equitable access under Section 392.455.(5), RSMo. Furthermore, such agreement should not be construed as an admission or conclusion of any Applicant that Section 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access."

different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

The parties have agreed that Brooks should be classified as a competitive telecommunications company. *See* SA pages 10-12, ¶ 8). The parties have also agreed that Brooks's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on Brooks's ability to charge for its access services. Brooks 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 Brooks seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Brooks should be expressly conditioned on the continued applicability of Section 392.200, 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 and 392.230, rather than Sections 392.500 and 392.510. *See* SA pages 10-12, ¶ 8). 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 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. *See* SA pages 7-8, ¶ 4).

## **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 interexchange, local exchange, and basic local exchange telecommunications markets is in the public interest.
2. The Commission finds that Brooks 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.
3. The Commission finds that Brooks 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 the interexchange and local exchange services markets are competitive and that granting Brooks certificates of service authority to provide interexchange and local exchange telecommunications services is in the public interest. Brooks's certificates should become effective when its tariffs become effective.
5. The Commission finds that Brooks 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 Brooks a certificate of service authority to provide basic local exchange telecommunications service is in the public interest.

Brooks's certificate should become effective when its tariff becomes effective.

6. The Commission finds that Brooks is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 3.
7. The Commission finds that Brooks's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, 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 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. Brooks has requested certification under Sections 392.410 -.450. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority is in the public interest.

The Federal Telecommunications Act of 1996 (47 U.S.C. §§ 251, et seq.) and Sections 392.185 and 392.200 - 392.455 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185 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 service 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. Based upon the information contained within the Stipulation and Agreement of the parties, the supporting information offered at the hearing on October 23, 1996, 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 filed by the parties on September 23, 1996 is approved as submitted.

2. That Brooks Fiber Communications of Kansas City, Inc. is granted a certificate of service authority to provide intrastate inter-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 Brooks Fiber Communications of Kansas City, Inc. is classified as a competitive telecommunications company. The following statutes and regulatory rules shall be waived:



### Statutes

- 392.240(1) - ratemaking
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 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 240-30.010(2)(C) - rate schedules
- 4 CSR 240-30.040 - Uniform System of Accounts
- 4 CSR 240-32.030(1)(B) - exchange boundary maps
- 4 CSR 240-32.030(1)(C) - record-keeping
- 4 CSR 240-32.030(2) - in-state record-keeping
- 4 CSR 240-32.050(3) - local office record-keeping
- 4 CSR 240-32.050(4) - telephone directories
- 4 CSR 240-32.050(5) - call intercept
- 4 CSR 240-32.050(6) - telephone number changes
- 4 CSR 240-32.070(4) - public coin telephone
- 4 CSR 240-33.030 - minimum charges rule
- 4 CSR 240-33.040(5) - financing fees

4. That Brooks Fiber Communications of Kansas City, 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.

5. That Brooks Fiber Communications of Kansas City, 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.

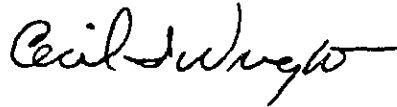
6. That the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived until Brooks Fiber Communications of Kansas City,

Inc. has entered into a Commission-approved interconnection agreement that enables it to provide basic local exchange services.

7. That Brooks Fiber Communications of Kansas City, Inc. shall file tariff sheets for approval no later than 30 days after the Commission approves the required interconnection agreement or agreements. The proposed tariff shall reflect the rates, rule, regulations and the services it will offer. The tariff shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3.

8. That this Report And Order shall become effective on March 11, 1997.

**BY THE COMMISSION**



**Cecil I. Wright  
Executive Secretary**

( S E A L )

Zobrist, Chm., Kincheloe, Crumpton  
and Drainer, CC., concur.  
McClure, C., not participating.

Dated at Jefferson City, Missouri,  
on this 28th day of February, 1997.