

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Missouri)
State Discount Telephone (M-SDT) for a)
Certificate of Service Authority to Provide)
Basic Local Telecommunications Service and) **Case No. TA-**
2001-334
Long Distance Service in the State of)
Missouri and to Classify Said Services and)
Missouri State Discount Telephone as)
Competitive)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL EXCHANGE AND INTEREXCHANGE TELECOMMUNICATIONS SERVICE

Procedural History

Missouri State Discount Telephone (M-SDT) applied to the Public Service Commission on November 29, 2000, for a certificate of service authority to provide basic local exchange and interexchange telecommunications services in Missouri under Sections 392.410 - .450, RSMo 2000.^[1] M-SDT supplemented its Application on December 18. M-SDT asked the Commission to classify it as a competitive company and to waive certain statutes and rules as authorized by Sections 392.361 and 392.420. M-SDT is a sole proprietorship owned by Mr. Harry L. Thielepape, Jr., with principal offices located at 804 Elkins Lake, Huntsville, Texas 77340.

The Commission issued a notice and schedule of applicants on December 5. That notice directed that interested parties wishing to intervene with regard to M-SDT's application to provide interexchange service should do so by December 20. The same notice directed that parties wishing to intervene with regard to M-SDT's application to

provide basic local service should do so by January 4, 2001. On December 20, the Missouri Independent Telephone Company Group (MITG)^[2] filed an application to intervene. The Small Telephone Company Group (STCG)^[3] filed an application to intervene on December 22. Both Applications to Intervene were granted on January 5, 2001. On February 28, the parties filed a Unanimous Stipulation and Agreement (Agreement), which is included with this order as Attachment 1. The Staff of the Commission filed Suggestions in Support of the Unanimous Stipulation and Agreement on March 9.

In the Agreement, the parties waive their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or 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.^[4] Since no one has requested a hearing in this case, the Commission may grant the relief requested based on M-SDT's application and the Agreement.

Discussion

M-SDT seeks certification to provide basic local exchange telecommunications service throughout Missouri, including exchanges served by both large and small incumbent local exchange carriers. M-SDT also seeks certification to provide interexchange telecommunications service. M-SDT is requesting that its basic local and interexchange services be classified as competitive and that the application of certain statutes and regulations be waived.

A. Requirements of 4 CSR 240-2.060(6)(C)

Commission Rule 4 CSR 240-2.060(6)(C) requires an applicant for certification to include in its application a proposed tariff with a 45-day effective date. M-SDT requested a temporary waiver of 4 CSR

240-2.060(6)(C) until it has entered into an interconnection agreement with an underlying local exchange carrier and that agreement has been approved by the Commission. M-SDT agreed to file its initial tariffs within 30 days after it is party to an approved interconnection agreement. The Agreement provides that M-SDT will give written notice of the tariff filing to all the parties to allow them the opportunity to participate in the tariff approval process. When filing its initial basic local tariff, M-SDT has agreed to provide a written disclosure of all resale or interconnection agreements that affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale or interconnection agreement with the ILEC; and an explanation of why such a resale or interconnection agreement is unnecessary for such areas.

The Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and, when M-SDT files the required tariff, it will be assigned a new case number. M-SDT will be directed to provide the notice and disclosures required by the Agreement when it files its proposed tariff.

B. Basic Local Service Certification

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 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.

In the Agreement, the parties agree that there is sufficient evidence from which the Commission can find and conclude that:

a. M-SDT possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service and interexchange service;

b. M-SDT proposes and agrees to offer basic local services that satisfy the minimum standards established by the Commission;

c. M-SDT has sufficiently identified the geographic area in which it proposes to offer basic local telecommunications service and such area follows exchange boundaries of the ILECs in the same area, and such area is no smaller than an exchange;

d. M-SDT will offer basic local telecommunications service as a separate and distinct service;

e. M-SDT has agreed to provide equitable access to affordable basic local telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which M-SDT will offer basic local services, regardless of where they live or their income;

f. In areas served by small LECs, M-SDT will offer telecommunications services that the Commission has determined are essential for purposes of qualifying for state universal service fund

support found in 4 CSR 240-31.010(5) ^[5] and will advertise the availability of such essential services and the charges therefor using media of general distribution in compliance with Section 392.451, RSMo; and

g. M-SDT has sought authority that will serve the public interest.

C. Competitive Classification

Section 392.361.2 provides that the Commission may classify a telecommunications provider as a competitive company if the Commission determines that the provider is subject to sufficient competition to justify a lesser degree of regulation. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. ^[6] Section 392.361.3 provides that the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services. 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. ^[7]

The parties have agreed that M-SDT should be classified as a competitive telecommunications company. The parties further agree that M-SDT's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on M-SDT's ability to charge for its access services. The agreed upon limitations are that, unless otherwise ordered by the Commission, M-SDT's originating and terminating access rates will be capped at the levels authorized by the Commission in *In the Matter of Access Rates to be Charged by Competitive Local Exchange Telephone Companies in the*

State of Missouri, Case No. TO-99-596. Accordingly, the parties acknowledge and agree that M-SDT may submit tariffs providing for originating and terminating exchange access rates equal to or less than those of the directly competing ILEC in each exchange in which M-SDT is authorized to provide basic local telecommunications services. Additionally, M-SDT agrees that if the directly competing ILEC, in whose service area M-SDT is operating, decreases its originating or terminating access service rates, M-SDT shall file an appropriate tariff amendment to reduce its originating or terminating access rates in order to maintain the cap. The parties further agree that the grant of service authority and competitive classification to M-SDT 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 shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510.

The parties agree that waiver of the following statutes is appropriate with regard to M-SDT's basic local service offerings: Sections 392.210.2; 392.240.1; 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340. The parties also agree that application of these Commission rules should be waived with regard to M-SDT's basic local service offerings: 4 CSR 240-10.020; 4 CSR 240-30.010(2)(C); 4 CSR 240-30.040; 4 CSR 240-32.030(4)(C); 4 CSR 240-33.030; and 4 CSR 240-35.

The parties agree that waiver of the following statutes is appropriate with regard to M-SDT's interexchange and non-switched service offerings: Sections 392.210.2; 392.240(1); 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340. The parties also agree that application of these Commission rules should

be waived with regard to M-SDT's interexchange and non-switched service offerings: 4 CSR 240-10.020; 4 CSR 240-30.010(2)(C); 4 CSR 240-30.040; 4 CSR 240-33.030; and 4 CSR 240-35.

Findings of Fact

The 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 M-SDT has met the requirements of 4 CSR 240-2.060 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.
- C. The Commission finds that M-SDT has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that M-SDT 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 M-SDT a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. M-SDT's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that M-SDT is a competitive company and should be granted waiver of the statutes and rules set

out in the ordered paragraph below.

F. The Commission finds that M-SDT's certification and competitive status should be 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 shall be made pursuant to Sections 392.220 and 392.230, rather than Sections 392.500 and 392.510.

Conclusions of Law

The 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. M-SDT has requested certification under Sections 392.410 - .450, 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 were designed to institute competition in the basic local exchange and interexchange telecommunications markets in order to benefit all telecommunications consumers. See Section 392.185.

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 Commission's review of the applicable law, the Agreement of the parties, and upon its findings of fact, the Commission concludes that

the Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on February 28, 2001, is approved.

2. That Missouri State Discount Telephone 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 Missouri State Discount Telephone is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

4. That Missouri State Discount Telephone is classified as a competitive telecommunications company. Application of the following statutes and rules shall be waived with regard to Missouri State Discount Telephone's basic local service offerings:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240(1) - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - 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 240-30.010(2)(C) - posting of tariffs
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-32.030(4)(C) - exchange boundary maps
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and customer-specific arrangements

5. That application of the following statutes and rules shall be waived with regard to Missouri State Discount Telephone's interexchange and non-switched service offerings:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - 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 240-30.010(2)(C) - posting of tariffs
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-33.030 - minimum charges
- 4 CSR 240-35 - reporting of bypass and customer-specific arrangements

6. That the service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of Section 392.200, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the Unanimous Stipulation and Agreement shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510. If the directly competing ILEC, in whose service area Missouri State Discount Telephone is operating, decreases its originating or terminating

access service rates, Missouri State Discount Telephone shall file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing ILEC's service area within thirty days of the directly competing ILEC's reduction of its originating or terminating access rates in order to maintain the cap. Missouri State Discount Telephone is not required to file a tariff amendment if it has concurred in the directly competing ILEC's access tariff or its existing originating or terminating access rates are not higher than the directly competing ILEC's originating or terminating access rates following the ILEC's reduction of rates.

7. That the request for waiver of 4 CSR 240-2.060(6)(C), which requires the filing of a 45-day tariff, is granted.

8. That Missouri State Discount Telephone shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving a resale or interconnection agreement that will allow it to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

9. That Missouri State Discount Telephone shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, Missouri State Discount telephone shall file a written disclosure of all resale or interconnection agreements that affect its Missouri service areas, all portions of Missouri service areas for which it does not have a resale or interconnection agreement, and an explanation of why no resale or interconnection agreement is necessary for those areas.

10. That the service authority and service classification granted in this order are subject to the requirements of Section

392.200, RSMo 2000 and are conditional and shall not be exercised until such time as tariffs for services have become effective.

11. That this order shall become effective on March 26, 2001.

12. That this case may be closed on March 27, 2001.

BY THE COMMISSION

(S E A L)

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Morris L. Woodruff, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 16th day of March, 2001.

[1] All statutory references are to Revised Statutes of Missouri 2000 unless otherwise indicated.

[2] The MITG includes the following members: Alma Telephone Company; Chariton Valley Telephone Corporation; Choctaw Telephone Company; Mid-Missouri Telephone Company; Modern Telecommunications, Inc.; MoKan Dial Inc.; and Northeast Missouri Rural Telephone Company.

[3] The STCG includes the following members: 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; Kingdom Telephone Company; KLM Telephone Company; Lathrop Telephone Company; Le-Ru Telephone Company; McDonald County Telephone Company; Mark Twain Rural 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; Peace Valley Telephone Company; Rock Port Telephone Company; Seneca Telephone Company; Spectra Communications Group, LLC; Steelville Telephone Exchange, Inc.; and Stoutland Telephone Company.

[4] *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989)

[5] 4 CSR 240-31.010(5) defines essential telecommunications services as follows:

Essential local telecommunications services - Two (2)-way switched voice residential service within a local calling scope as determined by the commission, comprised of the following services and their recurring charges:

- (A) Single line residential service, including Touch-Tone dialing, and any applicable mileage or zone charges;
- (B) Access to local emergency services including, but not limited to, 911 service established by local authorities;
- (C) Access to basic local operator services;
- (D) Access to basic local directory assistance;
- (E) Standard intercept service;
- (F) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission (FCC);
- (G) One (1) standard white pages directory listing; and
- (H) Toll blocking or toll control for qualifying low-income customers.

[6] *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).

[7] *Id.* at 487.