

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of Equicom)
Communications, Inc., for certificate of)
public convenience and necessity to operate) CASE NO. TA-90-298
as a reseller of intrastate telecommunications)
service, and provider of operator assisted)
service within the State of Missouri.)

APPEARANCES: Michael Madsen, Attorney at Law, 211 East Capitol Avenue,
P. O. Box 233, Jefferson City, Missouri 65102
and
Daniel R. Conway, Attorney at Law, Porterr, Wright, Morris & Arthur,
41 South High Street, Columbus, Ohio 43215, for Applicant.

Randy Bakewell, Assistant Public Counsel, P. O. Box 7800,
Jefferson City, Missouri 65102, for the Office of the
Public Counsel and the Public.

HEARING

EXAMINER: Michael F. Pfaff

REPORT AND ORDER

On April 27, 1990, Equicom Communications, Inc., (Equicom or Applicant) applied for an order of the Commission authorizing Equicom to operate as a reseller of intrastate telecommunication service and to provide intrastate operator assisted services. The Commission issued its Order and Notice on May 18, 1990, directing that notice be sent and establishing an intervention deadline of June 18, 1990. On June 5, 1990, the Commission issued a Supplemental Order And Notice to give more specific notice of Applicant's intent to provide operator assisted services. The new intervention date therein established was July 5, 1990.

On June 22, 1990, Southwestern Bell Telephone Company filed an application to intervene; on July 20, 1990, Southwestern Bell Telephone Company withdrew its application.

On June 29, 1990, the Commission Staff and Office of Public Counsel, respectively, filed requests for hearing. On July 27, 1990, the Commission issued

its order granting Staff and Public Counsel's motions for a hearing and establishing a procedural schedule wherein the prehearing and hearing were to take place on November 26, 1990. Following exchanges of information between Equicom, Staff and Public Counsel, and Equicom's resubmittal of its proposed tariff, the Commission Staff filed its written recommendation on October 31, 1990.

Staff's recommendation, in pertinent part, states that Equicom is an affiliate of Red Roof Inns, Inc., and initially plans to provide operator assisted service to Red Roof Inns. Eventually, Applicant plans to market its operator assisted services to other motels, hotels, hospitals and other business establishments. After consulting with Staff, Equicom submitted revisions to its proposed tariff which properly reflect the Commission's rules and regulations and the correct levels of interLATA and intraLATA usage charges. As now submitted, Applicant's proposed charges are the same as AT&T and Southwestern Bell Telephone Company. As a result of the colloquy between Staff and Applicant, and the latter's submission of a properly constituted draft tariff (attached as Exhibit H to its application), the Commission Staff recommends that Equicom be granted a certificate of service authority to provide interexchange telecommunications services in Missouri, effective on the date Applicant's tariffs are formally approved. Applicant has not requested competitive status or waivers under Section 392.361, RSMo (Supp. 1989).

On November 1, 1990, Staff withdrew its request for hearing. On November 5, 1990, Public Counsel filed a motion to withdraw its request for hearing, which the Commission herein grants.

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:

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 July 5, 1990. All pending requests for intervention and for hearing were, as shown above, withdrawn. As a result, the Commission determines that a hearing is not necessary and the Applicant may submit its evidence in support of the application by verified statement. The requirement for a hearing contained in Section 393.170 was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence. *State ex rel. Rex Deffenderfer Enterprises, Inc. vs. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

Applicant is a privately held Ohio corporation authorized to do business in the State of Missouri. Its principal office is located at 425 Metro Place, N., Suite 400, Dublin, Ohio.

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; this includes the Commission's proposed rule in Case No. TX-91-129: "In the matter of the proposed Rule 4 CSR 240-34.010 (operator services through traffic aggregators)."

By applying for authority to provide operator services, Applicant must demonstrate compliance with Sections 386.020 and 392.515, RSMo (Supp. 1990). Based on Applicant's verified statements, and its submission of proposed tariffs acceptable to Staff, the Commission finds that Applicant has satisfied these statutory requirements.

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 incorporating "Exhibit H", mentioned above, 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.

The Commission also concludes that Applicant has satisfied the statutory requirements regarding the provision of operator services in Missouri pursuant to Sections 386.020 and 392.515, RSMo (Supp. 1990).

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 intrastate operator assisted telecommunications services and is qualified to perform said services. The Commission has concluded that additional competition in the interexchange market is in the public interest and a certificate of service authority should be granted.

IT IS THEREFORE ORDERED:

1. That Equicom Communications, Inc., be, and hereby is, granted a certificate of service authority to provide intrastate telecommunications services and to provide intrastate operator assisted services in Missouri. This certificate of service authority is subject to the conditions of certification set out herein.

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.

3. That Equicom Communications, Inc., shall file tariffs within thirty (30) days of the effective date of this Report and Order.

4. That Equicom Communications, 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.

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

6. That Equicom Communications, 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.

7. That Public Counsel's motion of November 5, 1990, to withdraw its request for hearing is hereby granted.

8 That this Report and Order shall become effective on the date hereof.

BY THE COMMISSION

Brent Stewart
Brent Stewart
Interim Executive Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 21st day of November, 1990.