

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of ActiveTel L.D.,)
Inc. For a certificate of service authority to) CASE NO. TA-95-274
provide shared tenant services within the state of)
Missouri.)

REPORT AND ORDER

Issue Date: December 21, 1995

Effective Date: January 3, 1996

OF THE STATE OF MISSOURI

CASE NO. TA-95-274

ActiveTel L.D., Inc. (ActiveTel) filed with the Missouri Public Service Commission (Commission) an application for a certificate of service authority to provide shared tenant services (STS) on March 14, 1995. ActiveTel wishes to provide STS to tenants at the Sierra Vista apartment complex located in St. Louis, Missouri. ActiveTel filed its application pursuant to §§ 392.410 and 392.520 RSMo 1994. The Commission issued an Order and Notice on March 23, 1995, directing parties wishing to intervene

to do so by April 24, 1995. Southwestern Bell Telephone Company (SWBT) filed an Application to Intervene on March 27, 1995, which the Commission granted on April 4, 1995. The Mid-Missouri Group (the Group) applied for permission to participate without intervention on May 2, 1995, and the Commission granted its application on June 23, 1995. In the same order, the Commission adopted a procedural schedule, setting the case for evidentiary hearing. The parties met in prehearing conference on September 6, 1995. The Commission conducted an evidentiary hearing on September 13 and 14, 1995.

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:

I. PUBLIC INTEREST INQUIRY

ActiveTel wishes to provide STS to tenants at the Sierra Vista apartment complex located in St. Louis, Missouri, which consists of 52 garden style apartment buildings. Each of the 52 buildings contains approximately 14 apartments for a total of 758 apartment units. ActiveTel, the Staff of the Missouri Public Service Commission (Staff) and the Office of the Public Counsel (OPC) asserted that the only issue in this case is whether to grant ActiveTel a waiver of the single building requirement. However, in all cases before the Commission, the Commission is obligated to consider the public interest. § 392.440 RSMo 1994. When granting a certificate of service authority to provide shared tenant services the Commission must determine whether the requesting company has the experience, financial expertise, and technical expertise to provide adequate services to the public. *GE Capital-Rescom, L.P.*, Case No.

TA-95-25, Report and Order, issued October 27, 1995. The Commission has serious concerns about ActiveTel's technical expertise and experience in the field of STS provision.

ActiveTel's witness stated at the hearing that approximately 24% of ActiveTel's parent company, Intractive Cable Systems, is owned by MCI. No other evidence was elicited regarding the company's financial soundness. Although ActiveTel claims to be operating in 20 states, the company has only 4,700 customers. The Commission finds that insufficient evidence was presented to determine whether ActiveTel has the requisite financial expertise.

ActiveTel's witness, Ms. Landauer, testified that the company had been operating as an STS provider for approximately two years and had received no customer complaints. No evidence was introduced to contradict that. Ms. Landauer also testified that ActiveTel would switch customers back to the local exchange company (LEC) on request at no charge to the customer. She did not know how long a customer might be without service or whether ActiveTel would be willing to switch a customer to the LEC who had not paid all monies due to ActiveTel. ActiveTel did not offer into evidence any promotional brochures or customer contracts demonstrating the guarantee of a return to the LEC on demand at no charge.

Ms. Landauer testified that she did not know how old the Sierra Vista complex was. She stated that the company had not inspected the telephone cabling in the complex and she was unsure as to whether the riser cables were owned by SWBT or by the property owner. Ms. Landauer stated that ActiveTel had not attempted to conduct an engineering plan to determine what facilities are available or whether the company would need to install facilities in order to provide STS services. Ms. Landauer stated that the company had not talked with any of the tenants to find out

what market there might be for STS services at Sierra Vista. She testified that ActiveTel had not "spent a lot of time and effort" and that the company "didn't want to put forth any kind of financial effort until [the] application was granted".

ActiveTel, Staff, and OPC took the position that granting ActiveTel's application would be beneficial to customers by providing a choice in services, bundling of features and services, and providing services at a lower price than the same services would cost if provided by SWBT. Ms. Landauer testified that ActiveTel could provide bundled services at a lower cost than those services could be supplied by SWBT. But Ms. Landauer was unable to state what specific services would be offered at Sierra Vista, how the services would be bundled, or what rates they would charge to customers. Ms. Landauer admitted that, as a reseller, the company would have to charge at least enough to cover the cost to the company of obtaining access to those services from SWBT. ActiveTel's witnesses asserted in prefiled testimony that SWBT would carry intraLATA toll traffic for Sierra Vista. On cross examination Ms. Landauer was unable to state how intraLATA toll calls would be handled or whether the customers would be presubscribed to ActiveTel's choice of interexchange carrier.

Ms. Landauer testified that ActiveTel could have STS service up and running in six months time but recanted and stated that the six month date was speculation. She testified that ActiveTel would like to lease SWBT's facilities but had made no offer to SWBT and had no plan to suggest for accomplishing such an arrangement. Given the fact that ActiveTel had no idea as of the date of hearing whether it would be attempting to lease SWBT's facilities or install its own, the six month projection appears unreasonable. ActiveTel stated in its application that it could provide

adequate technical support but, on cross examination, Ms. Landauer testified that there were no arrangements in place for technical support and it was unknown who would be providing technical support for the Sierra Vista complex should the application be granted.

In short, ActiveTel made no showing that it had any expertise as an STS provider other than the fact the company provides STS services on a limited basis in other states. The company, by its own testimony, has made no effort to develop a viable plan for providing the cabling or services it wishes to provide nor has it developed a rate structure or marketing approach.

ActiveTel points to the fact that STS services are competitive and customers who are dissatisfied with an STS provider are free to change back to the local exchange company. However, ActiveTel's witness seemed to have little understanding of how such transactions would be handled or how long a delay in service might occur. Though Ms. Landauer testified that customers would be able to switch back to SWBT without incurring any costs the company could not point to written customer contracts or information that would assure that right.

Ms. Landauer, ActiveTel's director of regulatory affairs, testified that an STS provider is not required to charge identical prices for identical services. ActiveTel clearly considers itself immune from Missouri statutes which prohibit discriminatory pricing. Although STS providers are subject to minimum regulation as competitive companies, they are not free of all regulation. § 392.520 RSMo 1994 specifies which provisions will be waived for an STS provider and the discriminatory pricing provisions found in §§ 392.200 and 392.240 RSMo are not among them.

**392.520. PRIVATE SHARED TENANT SERVICES, COIN
OPERATED TELEPHONE SERVICES, REGULATION OF.**

1. The commission shall have jurisdiction

over the provision of private shared tenant services and customer owned coin telephone telecommunications services, but shall subject such services to the minimum regulation permitted by this chapter for competitive telecommunications services. The commission shall exempt the provision of private shared and customer owned coin telephone telecommunications services from the tariff filing requirements of sections 392.220, 392.230, subsections 4 and 5 of section 392.370, and section 392.500 and may exempt the provision of such telecommunications services from the provisions of subdivisions (1) and (3) of section

392.390 and from the provisions of section 386.370, RSMo.

The Commission finds that ActiveTel has failed to show that it has the financial and technical expertise and experience to provide STS services. The Commission further finds that ActiveTel has failed to offer adequate safeguards to ensure that customers dissatisfied with ActiveTel's STS service will be permitted to switch back to the local exchange company without cost, penalty, or unreasonable delay.

II. SWBT ISSUES

SWBT raised numerous issues focused primarily on the effect that permitting STS in purely residential locations might have on SWBT. In particular, SWBT argued that approval of ActiveTel's application would result in: a) loss of revenues to the local exchange company; b) stranded investment; c) loss of control of facilities for provider of last resort purposes; d) the prohibited resale by ActiveTel of basic local telecommunications service without a showing the SWBT is failing to provide reasonably safe and adequate service; e) STS services provided at a location not fitting the definition of discrete private premises; f) no real benefit to tenant users; and g) possible failure by ActiveTel to follow Commission quality of service rules and procedures regarding customer notice and customer complaints. Since the Commission has found

that approving an STS certificate for ActiveTel would not be in the public interest there is no need to reach these issues.

III. WAIVER OF THE SINGLE BUILDING REQUIREMENT

According to ActiveTel, Staff, and OPC, the only issue for Commission consideration in this case is whether a waiver of the single building requirement should be granted to ActiveTel. Since the filing of this case the Commission has issued an order in *GE Capital-Rescom, L.P.*, Case No. TR-95-125, Report and Order, issued October 27, 1995 in which the Commission interpreted the requirement of § 392.520 RSMo that STS be permitted only on "discrete private premises". The Commission found that premises which are contiguous or continuous, under common or associated ownership, and served by a single wire center meet the discrete private premises requirement. Because the Commission has found that approving an STS certificate for ActiveTel would not be in the public interest, the Commission will make no decision as to whether the Sierra Vista apartment complex satisfies the Commission's definition of "discrete private premises" as used in *GE Capital-Rescom, L.P.*

Conclusions of Law

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

The Commission has jurisdiction over the application for STS pursuant to Chapters 386 and 392 of the Revised Statutes of Missouri 1994. § 392.440 RSMo 1994 provides that the Commission may approve an application for service authority upon a showing by the applicant, after notice and hearing, that the grant of authority is in the public interest. Based upon its findings of facts the Commission concludes that a grant of the

authority requested in this case would not be in the public interest and that the application should be denied.

IT IS THEREFORE ORDERED:

1. That the application for a certificate of service authority to provide shared tenant services filed by ActiveTel is denied.

2. That this Report and Order shall become effective on January 3, 1996.

BY THE COMMISSION

A handwritten signature in cursive script that reads "David L. Rauch".

David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure and
Drainer, CC., Concur.
Kincheloe, C., Dissents.
Certify compliance with the
provisions of Section 536.080,
RSMo 1994.
Crumpton, C., Absent.

Dated at Jefferson City, Missouri,
on this 21st day of December, 1995.