

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of)
St. Louis Fiber Communications, Inc.)
for classification as a competitive)
telecommunications company providing)
competitive telecommunications services.)

CASE NO. TA-91-171

APPEARANCES: Richard S. Brownlee, III, Esq., Hendren & Andrae, The Monroe House
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 Linda K. Gardner, Deputy General Counsel, Missouri Public Service
 Commission, P.O. Box 360, Jefferson City, Missouri 65102

HEARING

EXAMINER: Alisa Dotson and Michael Pfaff

REPORT AND ORDER

Procedural History

On November 1, 1990, St. Louis Fiber Communications, Inc. (Applicant or Company) applied for classification as a competitive telecommunications company providing competitive telecommunications services. Applicant also seeks the waiver of various Commission Rules and Statutes, as specified below. In a previous Case, No. TA-91-13, Applicant received authority to provide intrastate private line telecommunications service.

On November 16, 1990, the Commission issued an Order and Notice which, inter alia, established an intervention deadline of December 18, 1990. None sought to intervene, and having received Staff's filed recommendation of December 21, 1990, this matter awaits determination.

Findings of Fact

Having considered all of the competent and substantial evidence upon the whole record, the Missouri Public Service Commission makes the following findings of fact.

Applicant St. Louis Fiber Communications, Inc. received a certificate of authority to provide intra-state private line telecommunications service in Commission Case No. TA-91-13, effective October 5, 1990. On November 1, 1990, Applicant applied under Section 392.361(3)(4) RSMo,¹ for status as a competitive telecommunications company offering competitive services. Applicant also seeks, pursuant to Section 392.361(5) RSMo and the Commission's Order in Case No. TO-88-142, to waive the following Commission Rules and Statutes:

Statutory Provisions

Section 392.340(1)

Section 392.270

Section 392.280

Commission Rules

4 CSR 240-30.010(2)(C)

4 CSR 240-32.050(4)

4 CSR 240-30.060(5)(B-O)

4 CSR 240-32.050(5)

4 CSR 240-32.030(1)(C)

4 CSR 240-32.050(6)

4 CSR 240-32.050(3)

4 CSR 240-32.070(4)

On December 21, 1990, the Commission Staff filed its recommendation in this case. Staff first recommends that the Commission approve Applicant's request for status as a competitive telecommunications company, stating that "St. Louis Fiber is presently providing only competitive telecommunication service in Missouri." Staff also states that Applicant's services are competitive, and recommends that the Commission so find. Having considered Staff's recommendations, the Commission finds

¹Unless otherwise indicated, all references are to the Revised Statutes of Missouri, (Cum. Supp. 1991).

that Applicant will be granted authority to provide intra-state competitive telecommunication services as a competitive telecommunications company.

Staff also recommends that in addition to the waivers of the Rules and Statutes identified above, that the following Statutes and Rules also be waived.

Sections 392.290, 392.310, 392.320, 392.330, 392.340 RSMo 1986. [All these sections pertain to approvals of stock, debt, and bond indebtedness].

4 CSR 240-33.030 - requiring companies to advise prospective customers of lowest available price.

Staff states, and the Commission finds, that the statutory sections immediately cited above should have no application to competitive interexchange telecommunication companies. Staff also states, and the Commission finds, that 4 CSR 240-33.030 is intended to apply only to the operations of Local Exchange Companies, not to competitive Interexchange Companies offering competitive services.

By its recommendation filed herein Staff states that these services are the same as the services which were classified as competitive in Case No. TO-88-142, In re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri (September 15, 1989). Therefore, Staff recommends that the Commission grant Applicant competitive status.

Based upon the verified statement of Applicant and Staff's recommendation, the Commission finds that all of the services Applicant proposes to offer are competitive and that Applicant should, therefore, be classified as a competitive company. The Commission further finds that the statutory and regulatory requirements waived in Case No. TO-88-142 for competitive companies and their services pursuant to Section 392.361, should also be waived for Applicant, in addition to the Statutes and Rule cited above.

The Commission finds that the notice requirements in Section 392.361, regarding applications for competitive status (both company and services) have been met when, as here, all parties have been afforded an opportunity to be heard and none

request a hearing. State ex rel. Rex Deffenderfer v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission also finds that Applicant's tariffs, on presentation to the Commission for approval, must clearly identify and display the Statutory and Rule waivers herein granted.

Conclusions of Law

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

The Commission has jurisdiction over this application by virtue of Section 392.361.

Applicant received a certificate of authority in Case No. TA-91-13, entitling Applicant to provide intrastate private line telecommunications services in Missouri.

Applicant's services are subject to sufficient competition to justify a lesser degree of regulation, and such lesser degree of regulation is consistent with the protection of ratepayers and promotes the public interest, as required by Section 392.361(4).

Applicant, by virtue of the Findings of Fact made above, is a competitive interexchange telecommunications company offering competitive services, as required by Sections 392.361(2) and (4).

The Commission, acting pursuant to Section 392.361(5), concludes that it is reasonable to waive and suspend Applicant's compliance with those Statutes and Commission Rules identified above.

IT IS THEREFORE ORDERED:

1. That the Application by St. Louis Fiber Communications, Inc. filed on November 1, 1990, requesting that said company and its private line interexchange services be classified as competitive, is hereby granted.

2. That St. Louis Fiber Communications, Inc. is hereby classified as a competitive private-line interexchange telecommunications company in the State of Missouri.

3. That the telecommunication services of St. Louis Fiber Communications, Inc. as specified herein, are hereby classified as competitive telecommunication services.

4. That St. Louis Fiber Communications, Inc.'s compliance with the Statutes and Commission Rules identified above is hereby waived.

5. That within thirty (30) days of the issue date of this Order, St. Louis Fiber Communications, Inc. shall file tariffs which clearly identify and display the Statutory and Rule waivers herein granted.

6. That this Report and Order shall become effective on the 16th day of April, 1991.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 5th day of April, 1991.