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October 4, 2002

Secretary of the Commission
Missouri Public Service Commission
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, Missouri 65102-0360

FILED⁴

OCT 04 2002

Missouri Public
Service Commission

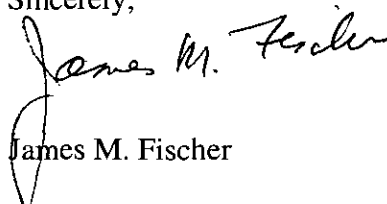
RE: *In the matter of the Petition of Spectra Communications Group, L.L.C. d/b/a
CenturyTel Regarding Price Cap Regulation Under Section 392.245, RSMo 2000*

Dear Mr. Roberts:

Enclosed for filing in the above-referenced matter are the original and eight (8) copies of the Petition of Spectra Communications Group L.L.C. d/b/a CenturyTel Regarding Price Cap Regulation Under Section 392.245, RSMo 2000. A copy of the foregoing Petition has been hand-delivered, emailed, and/or mailed this date to parties of record.

Thank you for your attention to this matter.

Sincerely,



James M. Fischer

/jr
Enclosures

cc: Office of the Public Counsel
Dana K. Joyce, General Counsel

FILED⁴
OCT 04 2002
Missouri Public
Service Commission

Case No.

Missouri Public
Service Commission

1

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Price Cap Regulation

4. Section 386.020(22) defines "incumbent local exchange telecommunications company" as a "local exchange telecommunications company authorized to provide basic local telecommunications service in a specific geographic area as of December 31, 1995, or a successor in interest to such a company." GTE Midwest Incorporated ("GTE") (now "Verizon") was a local exchange telecommunications company authorized to provide basic local telecommunications service as of December 31, 1995. Spectra is a "successor in interest" to GTE/Verizon as a result of its purchase of local exchange properties which was approved by the Commission in its *Report and Order*, Re GTE Midwest Incorporated and Spectra Communications Group L.L.C., Case No. TM-2000-182 (issued April 4, 2000) and is therefore an incumbent local exchange company ("ILEC").

5. Section 386.020(30) defines a large local exchange telecommunications company as a company that has at least one hundred thousand access lines in Missouri. Spectra presently serves more than 100,000 access lines in Missouri. Consequently, Spectra is a large incumbent local exchange telecommunications company as defined in Missouri statutes.

6. Section 392.245.2 requires a large local exchange telecommunications company be regulated pursuant to price cap regulation when certain specific events occur. This section reads in pertinent part:

A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the large incumbent company's service area.

Thus, a large ILEC must show two things in order to obtain price cap status: 1) that a competitive local exchange company ("CLEC") is properly certificated to provide service in its service area; and 2) that the CLEC is, in fact, providing service in any part of the ILEC's service area.

7. The conditions which require the Commission to make the determination that Spectra is now subject to price cap regulation have occurred. Mark Twain was certified to provide basic local telecommunications service in two of Spectra's exchanges on May 19, 1998. Attached as Appendix 1 is a copy of the certificate of service authority (and related orders) granted to Mark Twain in Case No. TA-98-305. Mark Twain's tariffs were effective on July 28, 1998.

8. Mark Twain is now providing basic local telecommunications service in three Spectra exchanges. (See Affidavit of Arthur Martinez attached as Appendix 2). As reflected in

the affidavit, customers of Mark Twain are able to and have subscribed to basic local telecommunications service as defined in Section 386.020(4). These customers subscribe to two-way switched voice services.

9. The availability of price cap regulation for large incumbent local exchange companies under Section 392.245(2) is not discretionary. To the contrary, the statute clearly and unambiguously provides that a large incumbent local exchange telecommunications company shall be subject to regulation under Section 392.245, once a determination has been made that a competitor is certified and providing basic local telecommunications services. The Commission has made this determination for other large ILECs in numerous cases. *See Report & Order*, Re Southwestern Bell Telephone Company, Case No. TO-97-397 (issued September 16, 1997); *Order Approving Price Cap Regulation Application*, Re GTE Midwest Incorporated, Case No. TO-99-294 (issued January 26, 1999); *Order Approving Price Cap Application*, Re Sprint Missouri, Inc., Case No. TO-99-359 (August 19, 1999). Spectra's affiliate, CenturyTel of Missouri L.L.C., was also determined to be price cap regulated in *Report and Order*, Re GTE Midwest Incorporated d/b/a Verizon Midwest and CenturyTel of Missouri L.L.C., Case No. TM-2002-232 (May 21, 2002).

10. In its *Order Approving Price Cap Regulation Application* in Case No. TO-99-294, *supra*, (attached as Appendix 3), the Commission found that Mark Twain is certificated and providing service in the Lewiston and LaBelle exchanges now served by Spectra:

The Commission has reviewed the Petition filed by GTE and has determined that:

* * *

c) Mark Twain received a certificate of service authority to provide basic local telecommunications service on May 19, 1998 in Case No. TA-98-305. That certificate became effective simultaneously with the effective date of Mark Twain's tariff, which was approved on July 23, 1998, to become effective for service on and after July 28, 1998.

d) Mark Twain received its certificate of service authority to provide basic local telecommunications services subsequent to December 31, 1995, and thus is an alternative local exchange telecommunications company as defined in Section 386.020(1).

e) Mark Twain has been providing basic local telecommunications service on a resale basis to customers in the Lewiston and LaBelle exchanges for the period following July 28, 1998.

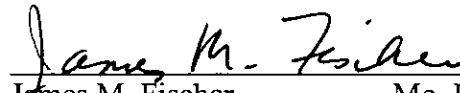
The Commission's findings with regard to Mark Twain's provision of basic local exchange service in Lewiston and LaBelle in Case No. TO-99-294 are equally true today, except that the exchanges are served by Spectra instead of GTE.

11. Spectra has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of the application.

12. Spectra does not have any annual report or assessment fees which are overdue.

WHEREFORE, for all the foregoing reasons, Spectra respectfully requests this Commission expeditiously make the determination required by Section 392.245(2) that Spectra is subject to price cap regulation, and that its initial maximum allowable prices are those which were in effect on December 31, 2001.

Respectfully submitted,



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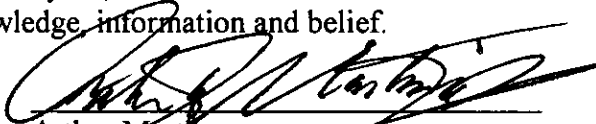
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Attorneys for Spectra Communications Group, L.L.C.
d/b/a CenturyTel

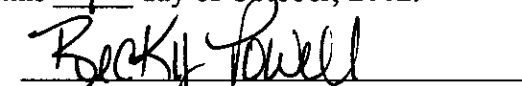
VERIFICATION

STATE OF MISSOURI)
) SS
COUNTY OF COLE)

I, Arthur Martinez, of lawful age, being first duly sworn upon my oath, state that I am the Director Government Relations for Spectra Communications Group, L.L.C. and CenturyTel of Missouri L.L.C. and that I am authorized to execute this Application on behalf of Spectra Communications Group, L.L.C. d/b/a CenturyTel; and that the facts set forth in the foregoing Application are true to the best of my knowledge, information and belief.


Arthur Martinez

Subscribed and sworn to before me this 4th day of October, 2002.


Notary Public

My Commission expires:

May 8, 2005

BECKY POWELL
NOTARY PUBLIC, STATE OF MISSOURI
COUNTY OF COLE
MY COMMISSION EXPIRES MAY 8, 2005

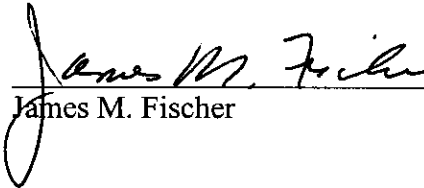


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was hand-delivered, emailed or mailed this 4th day of October, 2002 to:

Mr. Mike Dandino
Assistant Public Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, Missouri 65102

Mr. Dan Joyce,
General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102


James M. Fischer

CERTIFIED COPIES OF:

Order from Re Mark Twain Communications Company, Case No. TA-98-305:

Order Granting Certificate of Service Authority and Suspending Tariff
(May 19, 1998);

Order Conditionally Approving Tariff (July 23, 1998); and

Order Approving Revised Statement of Customer Rights and
Responsibilities (September 9, 1998).

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 19th
day of May, 1998.

In the Matter of the Application of Mark Twain)	
Communications Company for a Certificate of)	
Service Authority to Provide Basic Local Telecom-)	<u>Case No. TA-98-305</u>
munications Service in Portions of the State of)	
Missouri and to Classify Said Services and the)	
Company as Competitive.)	
)	

ORDER GRANTING CERTIFICATE OF SERVICE AUTHORITY
AND SUSPENDING TARIFF

Mark Twain Communications Company (MTCC) applied to the Commission on January 28, 1998, for a certificate of service authority to provide basic local telecommunications service in Missouri under Sections 392.420 - .440, RSMo 1994,¹ and Sections 392.410 and .450, RSMo Supp. 1996. MTCC 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. MTCC is a Missouri corporation with offices at Post Office Box 128, Hurdland, Missouri 63547-0128. MTCC has not provided its street address to the Commission.

The Commission issued an Order and Notice on January 28, directing parties wishing to intervene in the case to do so by February 27. The Commission granted permission to intervene to GTE Midwest Incorporated (GTE) on March 17.

¹ All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

The parties filed a Stipulation and Agreement (Attachment 1 to this order) on April 16. On April 29, MTCC filed tariff sheets bearing an effective date of June 13, 1998.

Background

MTCC, which is certificated to provide intrastate interexchange services in Missouri, wishes certification to provide facilities-based and possibly resold basic local telecommunications service. MTCC wants to provide basic local services in portions of Missouri that are currently served by GTE. MTCC is not asking for certification in any area that is served by a small incumbent local exchange provider (ILEC). The specific exchanges in which MTCC proposes to operate are described in Appendix B to the application that was filed on January 22 (Attachment 2 to this order). MTCC is requesting that its basic local exchange services be classified as competitive and that the application of 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 Missouri corporation applying for certification to provide telecommunications services to include in its application a certificate of incorporation and a certified copy of its articles of incorporation from the Secretary of State, 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 45-day effective date. MTCC has provided all the required documentation. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) when it originally filed its application because it was impractical for MTCC to

submit a tariff until it had executed an interconnection agreement with the ILEC involved. MTCC could not price its resold services until it had reached price agreements with the ILEC from which it will purchase those services.

However, on March 30, MTCC filed a joint application with GTE and GTE Arkansas for approval of an interconnection agreement between them. The Commission established Case No. TO-98-410 to review the agreement and issued notice to interested parties. The tariffs filed by MTCC in this case are scheduled to take effect prior to the end of the 90-day period during which the Commission has jurisdiction to review the proposed interconnection agreement filed in Case No. TO-98-410. The 90-day period will expire on June 26.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1996, 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 their income.

1. Technical, financial and managerial resources and abilities.

MTCC submitted Appendix C with its application that lists the names and qualifications of its management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including technical, accounting and customer services. MTCC also submitted as Appendix D its December 31, 1997, balance sheet. In the Stipulation and Agreement, MTCC asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission should find and conclude that MTCC possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. Staff stated in its Suggestions in Support of the Stipulation and Agreement that it has reviewed the financial information submitted by MTCC and has concluded that MTCC is financially able to provide basic local telecommunications service in portions of the state of Missouri.

2. The entrant's proposed services satisfy the minimum standards established by the Commission. MTCC has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards. The parties agreed that MTCC proposes to offer basic local services that satisfy the minimum standards established by the Commission.

3. The geographic area in which the company proposes to offer service. MTCC set out in Appendix B all the exchanges in which it proposes to offer services. MTCC has defined its service area by means of the tariffed exchange areas of the ILEC presently providing basic local service in those exchanges. Appendix B consists of Commission-approved tariff sheets filed by GTE that describe local exchanges. MTCC has agreed that

its service area must follow ILEC exchange boundaries and be no smaller than an exchange. The parties agreed that MTCC has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

4. The offering of basic local telecommunications service as a separate and distinct service. MTCC has agreed to offer basic local telecommunications service as a separate and distinct service.

5. Equitable access for all Missourians to affordable telecommunications services. MTCC has agreed to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1996.

C. 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. § 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 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). In addition, all the services a competitive company provides must be classified as competitive. § 392.361.3. 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. *Id.* at 487.

The parties have agreed that MTCC shall be classified as a competitive telecommunications company. The parties have also agreed that MTCC's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on MTCC's ability to charge for its access services. MTCC 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 MTCC seeks to operate.² The parties have agreed that the grant of service authority and competitive classification to MTCC shall be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1996, 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, RSMo Supp. 1996, and 392.230, rather than Sections 392.500 and 392.510.

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, RSMo Supp. 1996, 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.

² For MTCC, this effectively places a cap at GTE's access rates.

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:

- A. The Commission finds that competition in the local exchange and basic local exchange telecommunications markets is in the public interest.
- B. The Commission finds that MTCC has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services.
- C. The Commission finds that MTCC 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 MTCC a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. MTCC's certificate shall become effective when its tariff becomes effective.
- D. The Commission finds that MTCC is a competitive company and shall be granted waiver of the statutes and rules set out in Ordered Paragraph 3.
- E. The Commission finds that MTCC's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, 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, RSMo Supp. 1996, and 392.230, rather than Sections 392.500 and 392.510.

The Commission further finds that MTCC's proposed tariff sheets should not be permitted to take effect until after the Commission has ruled on MTCC's interconnection agreement in Case No. TO-98-410. Approval of MTCC's proposed tariff is inappropriate at this time in that approval of the tariff necessarily depends upon approval of MTCC's interconnection agreement with GTE and GTE Arkansas. Pursuant to the federal Telecommunications Act of 1996 ("the Telecommunications Act"), 47 U.S.C. Sections 252(e)(2)(A) and 252(e)(4), the Commission has jurisdiction until June 26, 1998 (90 days after submission of the interconnection agreement to the Commission) to determine whether the agreement or any portion thereof discriminates against a telecommunications carrier not a party to the agreement, or whether the implementation of any portion thereof is inconsistent with the public interest, convenience, and necessity. Staff has not yet filed its recommendation in the interconnection case, and other parties will have an opportunity to file comments, as well. Without knowing whether the underlying interconnection agreement meets the requirements of the Telecommunications Act, the Commission cannot meaningfully review any tariffs which are based upon it or determine the sufficiency of such tariffs. The Commission finds that the public interest will be served if the effective date of MTCC's tariff is suspended for 45 days to July 28, so that the Commission has a full 90 days to approve or reject the agreement in Case No. TO-98-410 and ample time following that period to review the proposed tariff sheets.

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. MTCC has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1996. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority 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 Sections 392.185 and 392.455, RSMo Supp. 1996, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1996, 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 services and 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, RSMo Supp. 1996. Based upon the information contained within the Stipulation and Agreement of the parties

and on its findings of fact, the Commission concludes that the Stipulation and Agreement shall be approved.

The Commission also has the legal authority to suspend tariffs that are prematurely filed. The Commission concludes that the effective date of MTCC's tariff sheets should be suspended for 45 days to July 28.

Finally, the Commission concludes that MTCC failed to include its street address in its application as required by 4 CSR 240-2.060(1)(A). MTCC should be required to file a pleading containing this information.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on April 16, 1998, is approved.

2. That Mark Twain Communications Company is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri to become effective when the company's tariff becomes effective, subject to all applicable statutes and Commission rules except as specified in this order.

3. That Mark Twain Communications Company is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2 - uniform system of accounts
392.270 - valuation of property (ratemaking)
392.280 - depreciation accounts
392.290.1 - issuance of securities
392.300.2 - acquisition of stock
392.310 - stock and debt issuance
392.320 - stock dividend payment
392.340 - reorganization(s)
392.330, RSMo Supp. 1996 - issuance of securities,
debts and notes

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

4. That Mark Twain Communications Company's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1996, and 392.230, rather than Sections 392.500 and 392.510.

5. That the effective date of the following tariff sheets submitted by Mark Twain Communications Company on April 29, 1998, is suspended to July 28, 1998, or until otherwise ordered by this Commission:

PSC MO. NO. 1

Original Title Sheet

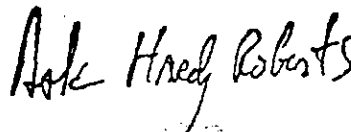
Section 1, Original Sheet 1 through Original Sheet 2
Section 2, Original Sheet 1
Section 3, Original Sheet 1
Section 4, Original Sheet 1
Section 5, Original Sheet 1
Section 6, Original Sheet 1 through Original Sheet 2
Section 7, Original Sheet 1 through Original Sheet 4
Section 8, Original Sheet 1 through Original Sheet 3
Section 9, Original Sheet 1
Section 10, Original Sheet 1 through Original Sheet 4
Section 11, Original Sheet 1
Section 12, Original Sheet 1
Section 13, Original Sheet 1
Section 14, Original Sheet 1 through Original Sheet 2
Section 15, Original Sheet 1
Section 16, Original Sheet 1 through Original Sheet 4
Section 17, Original Sheet 1
Section 18, Original Sheet 1
Section 19, Original Sheet 1 through Original Sheet 11
Section 20, Original Sheet 1 through Original Sheet 4
Section 21, Original Sheet 1
Section 22, Original Sheet 1
Section 23, Original Sheet 1 through Original Sheet 2
Section 24, Original Sheet 1
Section 25, Original Sheet 1 through Original Sheet 8

Section 26, Original Sheet 1 through Original Sheet 6
Section 27, Original Sheet 1
Section 28, Original Sheet 1
Section 29, Original Sheet 1
Section 30, Original Sheet 1
Section 31, Original Sheet 1 through Original Sheet 3
Section 32, Original Sheet 1
Section 33, Original Sheet 1
Section 34, Original Sheet 1 through Original Sheet 13

6. That Mark Twain Communications Company shall file a pleading containing its street address no later than June 3, 1998.

7. That this order shall become effective on May 29, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray
and Schemenauer, CC., concur.
Crumpton, C., absent.

Randles, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 23rd
day of July, 1998.

In the Matter of the Application of Mark)	
Twain Communications Company for a Certificate)	
of Service Authority to Provide Basic Local)	<u>Case No. TA-98-305</u>
Telecommunications Service in Portions of the)	
State of Missouri and to Classify Said)	
Services and the Company as Competitive.)	

ORDER CONDITIONALLY APPROVING TARIFF

The Commission granted to Mark Twain Communications Company (MTCC) a certificate of service authority to provide basic local telecommunications services in Missouri by Report and Order issued on May 19, 1998. The order, which took effect on May 29, conditionally granted MTCC authority to offer basic local telecommunications service in the areas served by GTE Midwest Incorporated (GTE), and provided that MTCC's certificate would become effective upon the effective date of the company's approved tariffs. MTCC had filed tariff sheets reflecting the rates, rules, and regulations it intends to use and the services it intends to offer on April 29, with an effective date of June 13. The Commission's May 19 order suspended the effective date of MTCC's tariff to July 28 so that the Commission could complete its review of the interconnection agreement between MTCC and GTE in Case No. TO-98-410. The Commission approved the interconnection agreement between MTCC and GTE on June 16. On June 17, MTCC filed a letter with a copy of its proposed statement of customer rights and responsibilities, seeking Commission approval to publish the statement in a directory and

distribute it to customers of MTCC when they initiate service. In addition, MTCC filed substitute tariff sheets on July 7 and 15. MTCC filed a motion to expedite Commission approval of its tariff on July 13.

On July 16, Southwestern Bell Telephone Company (SWBT) filed an application to intervene and a motion to suspend MTCC's tariff sheets. MTCC filed a response on July 16, and SWBT filed a reply on July 20. SWBT claims that MTCC's proposed access rates are not cost-based and are higher than the access rates charged by SWBT, and should therefore be suspended. According to SWBT, MTCC should be required to negotiate lower access rates with SWBT. SWBT states that it did not apply for intervention at an earlier point in time because MTCC only applied for a certificate to operate in GTE's service territory. SWBT was therefore not a party to the Stipulation and Agreement upon which the Commission approved MTCC's application for a basic local certificate, and was not aware of the access rates that MTCC intended to charge until it was notified by MTCC on July 13. MTCC responds by arguing that its rates do not have to be cost-based because MTCC was classified as a competitive company in the Commission's May 19 order, and that MTCC's access rates are not required to be the same as SWBT's. SWBT will be required to pay terminating access charges to MTCC when SWBT's customers call MTCC's customers, but MTCC will not be required to pay SWBT for access because MTCC does not intend to offer interexchange services. Finally, MTCC argues that SWBT should not be permitted to intervene at such a late date, and that SWBT received notice of MTCC's intentions on May 22.

The Commission's Staff reviewed the tariff sheets and filed a memorandum on July 17 recommending that the Commission approve them as amended by the substitute sheets. Staff states that MTCC proposes to

offer facilities-based basic local exchange service to residential and business customers at rates of \$6.25 and \$12.75, respectively. This rate will include access to local operator services, touch-tone dialing, intraLATA and interLATA presubscription, and a basic local exchange calling scope that parallels that of the incumbent, GTE. MTCC also intends to offer custom calling services such as call waiting, caller identification and 900 blocking service. Staff further states that MTCC's switched access rates comply with the Stipulation and Agreement upon which its certificate was conditioned because they are the same as, or lower than, GTE's switched access rates. Staff states that Staff and MTCC have agreed to develop a more extensive statement of customer rights and responsibilities that would be submitted for Commission approval 30 days prior to the publication of the next directory, which is scheduled to be printed on September 15, and that Staff would file a recommendation to the Commission concerning this statement no later than September 1. Staff recommends that the Commission condition its approval of MTCC's tariff on submission of a revised statement no later than August 10. Staff opposes SWBT's motion to suspend. In its recommendation, Staff states that there is no requirement for reciprocity in access rates as SWBT contends. Moreover, Staff points out that SWBT has been a party to many agreements with competitive local exchange carriers (CLECs) that contain language about the maximum access rates that such CLECs may charge which is nearly identical to the access cap language in MTCC's Stipulation and Agreement. Therefore, SWBT could have anticipated that MTCC and the other parties to this case would enter into a similar agreement in this case. Staff recommends that the tariff be approved, as amended by the substitute sheets.

The Commission has reviewed the tariff sheets, the pleadings, MTCC's letter and the Staff's recommendation. The deadline for filing an application to intervene in this case was February 27, and SWBT has not demonstrated good cause for requesting intervention at such a late date. The Stipulation and Agreement language filed by the parties, which is very similar to language approved in many agreements signed by SWBT in the past, states that:

. . . as a condition of certification and competitive classification, MTCC agrees 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 certificate for the large incumbent LEC(s) for each service area within which the Applicant seeks authority to provide service.

See Page 2 of Attachment to Commission's May 19 order. In a footnote, the Stipulation and Agreement states that for MTCC, "this places an effective cap at GTE's access rates." Id. SWBT could have anticipated that, since MTCC was applying only for certification in GTE's territory, the access rate cap applicable to MTCC would be GTE's rates if the parties entered into the same type of agreement that previous CLECs had entered into with incumbent local exchange carriers and Staff. If SWBT did not want this language to set the access rate cap for MTCC, it could have intervened in a timely manner and negotiated with the other parties for different arrangement or proceeded to hearing if no agreement was reached. The Commission finds that GTE's switched access rates do not violate the Stipulation and Agreement reached between the parties at this time. If MTCC were to amend its certificate to expand its service territory in the future and this affected the rate cap to be applied to MTCC, then the Commission would require MTCC to make appropriate changes

to its tariff at that time. For these reasons, the Commission finds that MTCC's tariff should be approved as amended.

The Commission will condition its approval of the tariff on submission of a revised customer statement no later than August 10, as recommended by Staff. The Commission will also condition its approval of the tariff on MTCC revising its switched access rates in the future if a change in its service territory triggers a change in its access rate cap under the Stipulation and Agreement that was approved on May 19.

The Commission will not expedite its review of the tariff as requested by MTCC because SWBT should be given an opportunity to apply for rehearing or reconsideration of this order. The Commission concludes that the conditions stated in the May 19 order for MTCC's certificate of service authority to provide basic local telecommunications service will be fulfilled at the time the tariff takes effect.

THEREFORE, IT IS ORDERED:

1. That the tariff filed by Mark Twain Communications Company on April 29, 1998, is approved as amended to become effective on July 28, 1998. The tariff approved is:

P.S.C. MO. NO. 1

2. That the approval granted in Ordered Paragraph 1 is conditioned upon Mark Twain Communications Company filing a revised statement of customer rights and responsibilities no later than August 10, 1998.


3. That the Motion to Expedite Approval of Tariff filed by Mark Twain Communications Company is denied.

4. That the Application to Intervene and Motion to Suspend filed by Southwestern Bell Telephone Company is denied.

5. That the certificate of service authority granted to Mark Twain Communications Company on May 19, 1998, to provide basic local telecommunications services shall take effect on July 28, 1998.

3. That this order shall become effective on July 28, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray
and Schemenauer, CC., concur.
Crumpton, C., absent.

Randles, Regulatory Law Judge

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 9th
day of September, 1998.

In the Matter of the Application of Mark)	
Twain Communications Company for a Certificate)	
of Service Authority to Provide Basic Local)	<u>Case No. TA-98-305</u>
Telecommunications Service in Portions of the)	
State of Missouri and to Classify Said)	
Services and the Company as Competitive.)	

**ORDER APPROVING REVISED STATEMENT OF CUSTOMER RIGHTS AND
RESPONSIBILITIES**

On July 23, 1998, the Commission approved the basic local tariff filed by Mark Twain Communications Company (MTCC). In its order, the Commission denied the application to intervene filed by Southwestern Bell Telephone Company (SWBT)¹ and conditionally approved MTCC's tariff sheets to become effective on July 28. Pursuant to the recommendation of the Staff of the Commission (Staff), the Commission conditioned its approval of the tariff on MTCC filing a revised statement of customer rights and responsibilities (revised statement) and on Commission approval of the revised statement. The Commission ordered MTCC to file its revised statement no later than August 10, so that the Commission could rule on the revised statement in time for MTCC to have the statement printed in its next directory, to be published on September 15.

MTCC filed its revised statement on August 10, together with a motion for its approval. MTCC stated that it has worked with the Staff

¹SWBT filed an application for rehearing on July 27, and MTCC filed a response to the application on August 5. SWBT's application for rehearing will be taken up in a separate Commission order.

of the Commission to revise the customer statement to be printed in the directory distributed by MTCC as well as other local exchange companies in the area.

On August 20, Staff filed a recommendation to approve the revised statement submitted by MTCC. Staff stated that the revised statement meets the requirements of 4 CSR 240-33.060(3). Staff recommended unconditional approval of MTCC's tariff.

The Commission has reviewed MTCC's motion, its revised statement, and the Staff's recommendation and finds that MTCC's revised statement meets the requirements of 4 CSR 240-33.060(3). The Commission finds that MTCC's motion should be granted, that the revised statement should be approved and that the Commission's approval of MTCC's tariff should be made unconditional.

IT IS THEREFORE ORDERED:

1. That the Motion to Approve Revised Statement of Customer Rights and Responsibilities filed by Mark Twain Communications Company on August 10, 1998 is granted.

2. That the conditions placed on the Commission's July 23, 1998 approval of the tariff sheets filed by Mark Twain Communications Company on April 29, 1998 have been fulfilled.

3. That this order shall become effective on September 22, 1998.

BY THE COMMISSION

A handwritten signature in cursive script, reading "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Schemenauer and Drainer, CC., concur.
Crumpton and Murray, CC., absent.

Randles, Regulatory Law Judge

**AFFIDAVIT OF
ARTHUR MARTINEZ**

STATE OF MISSOURI)
) ss
COUNTY OF COLE)

I, Arthur Martinez, of lawful age, being duly sworn, depose and state:

1. My name is Arthur Martinez. I am the Director Government Relations for Spectra Communications Group, L.L.C. and CenturyTel of Missouri L.L.C. with my business office located at 601 Monroe Street-Suite 304, Jefferson City, Missouri. I am personally familiar with Spectra local exchange services and operations. In addition, I am also familiar with the competition that Spectra faces from alternative local exchange carriers in Missouri.

2. Spectra is a "successor in interest" to GTE Midwest Incorporated (GTE). Since GTE was a local exchange telecommunications company which had been authorized to provide and has provided basic local telecommunications services in a specific geographical area in the state of Missouri prior to December 31, 1995, and Spectra purchased these exchanges from GTE, Spectra is an incumbent local exchange telecommunications company as defined in Section 386.020(22).

3. Spectra serves over 130,988 access lines in the State of Missouri. Therefore, Spectra meets the requirement of having at least 100,000 access lines in the state of Missouri, to be classified as a large local exchange telecommunications company as defined in Section 386.020(30).

4. I am also aware that Mark Twain Communications Corp. received a certificate of service authority to provide basic local telecommunications service from the Missouri Public Service Commission on May 19, 1998 in Case No. TA-98-305. That certificate became effective simultaneously with the effective date of Mark Twain's tariff, which was approved on July 23, 1998, to become effective for service on and after July 28, 1998.

5. Mark Twain Communications Corp. received its certificate of service authority to provide basic local telecommunications services subsequent to December 31, 1995, and thus is an alternative local exchange telecommunications company as defined in Section 386.020(1).

6. Mark Twain Communications Corp. has been offering and providing basic local telecommunications service on a facility-based and resale basis to customers in the Lewiston and LaBelle exchanges for the period following July 28, 1998.

7. I am also aware that the Lewiston and LaBelle exchanges are part of Spectra's local exchange service area.

8. In addition to the competition in the Lewiston and LaBelle exchanges, Spectra also faces competition from Mark Twain in Spectra's Ewing exchange.


Arthur Martinez

Subscribed and sworn before me this 4th day of October, 2002.


Notary Public

BECKY POWELL
NOTARY PUBLIC, STATE OF MISSOURI
COUNTY OF COLE
MY COMMISSION EXPIRES MAY 8, 2005



Date: 1-26-99
Copy: Nina Sudnick HQE02E84
~~Kim Newman HQE03-133~~
Tracy Pegliare H0EU3J36
Route: Evans/Little

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 26th
day of January, 1999.

In the Matter of the Petition of GTE)
Midwest Incorporated Regarding Price Cap) CASE NO. TO-99-294
Regulation Under RSMo Section 392.245)
(1996).)

ORDER APPROVING PRICE CAP APPLICATION

On January 7, 1999, GTE Midwest Incorporated (GTE) filed a Petition for determination that it is subject to price cap regulation pursuant to Section 392.245, RSMo Supp. 1996.¹ On that same date notice of the application was given by GTE to the Office of the Public Counsel (Public Counsel) and to the Staff of the Missouri Public Service Commission.

The issue in this application is whether GTE may convert from rate base/rate of return regulation to price cap regulation. GTE claims that it is authorized to convert to price cap regulation by virtue of Section 392.245.2 in that it has met the prerequisites contained therein. Section 392.245.2 states as follows: "A large incumbent local exchange telecommunications company shall be subject to regulation under this section upon a determination by the commission that an alternative local exchange telecommunications company has been certified to provide

¹ All statutory references are to the 1997 Supplement to the Revised Statutes unless otherwise noted.

basic local telecommunications service and is providing such service in any part of the large incumbent company's service area."

Since no proper party filed an application to intervene and there are no outstanding requests for hearing, the Commission determines that an evidentiary hearing is not necessary and the Commission may base its decision upon the pleadings. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

On May 19, 1998, Mark Twain Communications Corporation (Mark Twain) was certified to provide basic local telecommunications service within GTE exchanges in the state of Missouri. On June 16 the Commission approved an interconnection agreement between GTE and Mark Twain. On April 29 Mark Twain filed tariffs with the Commission for the provision of local service in GTE's exchanges. These tariffs were approved on July 23.

Mark Twain is now providing basic local telecommunications services in GTE's Lewiston and LaBelle exchanges. The Commission is the controlling authority which grants permission to provide local service and is also the authority which approves interconnection agreements and approves telecommunications tariffs for service within Missouri. If GTE were to file for permission to sell the Lewiston and Labelle exchanges, the Commission may re-evaluate, at that time, whether the sale of those exchanges would have any effect of GTE's price cap status.

The Commission has reviewed the Petition filed by GTE and has determined that:

a) GTE is a local exchange telecommunications company which has been authorized to provide and has provided basic local telecommunications services in a specific geographic area in the state of Missouri prior to December 31, 1995, and thus is an incumbent local exchange telecommunications company as defined in Section 386.020(22).

b) GTE has at least 100,000 access lines in the state of Missouri, and thus is a large local exchange telecommunications company as defined in Section 386.020(30).

c) Mark Twain received a certificate of service authority to provide basic local telecommunications service on May 19, 1998 in Case No. TA-98-305. That certificate became effective simultaneously with the effective date of Mark Twain's tariff, which was approved on July 23, 1998, to become effective for service on and after July 28, 1998.

d) Mark Twain received its certificate of service authority to provide basic local telecommunications services subsequent to December 31, 1995, and thus is an alternative local exchange telecommunications company as defined in Section 386.020(1).

e) Mark Twain has been providing basic local telecommunications service on a resale basis to customers in the Lewiston and LaBelle exchanges for the period following July 28, 1998.

f) The Lewiston and LaBelle exchanges are part of GTE's service area.

The Commission has determined that GTE has met the conditions contained in Section 392.245.2, and thus is subject to price cap regulation. The Commission has further determined that the initial maximum allowable prices which GTE may charge for its telecommunications services are the prices which were in effect on December 31, 1998. Moreover, the maximum allowable prices for basic local telecommunications service and exchange access service may not be changed prior to January 1, 2000, except as otherwise provided in Section 392.245.4.

The Commission concludes that GTE is a telecommunications company and public utility as defined in Sections 386.020(51) and 386.020(42), and as such is subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392 of the Missouri Revised Statutes. GTE is also an incumbent local exchange telecommunications company as defined in Section 386.020(22), and a large local exchange company as defined in Section 386.020(30). Mark Twain is an alternative local exchange telecommunications company as defined in Section 386.020(1).

Section 392.245.2 mandates that a large incumbent local exchange telecommunications company be subject to price cap regulation upon a finding that an alternative local exchange telecommunications company has been certificated and is providing basic local telecommunications service in any part of the incumbent's service area.

Section 392.245.3 provides that the maximum allowable rates for a company subject to price cap regulation are those in effect on December 31 of the year preceding the year in which the company is first subject to price cap regulation, except as otherwise provided in the statute. The Commission has determined that the initial maximum allowable prices which GTE may charge for its telecommunications services are the prices which were in effect on December 31, 1998.

Section 392.245.4 also provides that the maximum allowable rates for basic local telecommunications service and exchange access service shall not be changed prior to January 1, 2000, except in certain circumstances. The Commission concludes that GTE is prohibited from changing the maximum rates for those services before January 1, 2000, or until such time as one of the statutory exceptions may apply.

The Circuit Court of Cole County has held "there is doubt that the competition envisioned by 392.245 would be met by the competition provided by a single reseller of telecommunications services, although Section 392.245.2 does not specify that any designated level of competition be obtained before price cap regulation is applied."²

IT IS THEREFORE ORDERED:

1. That GTE Midwest Incorporated has met the prerequisites of Section 392.245.2, RSMo Supp. 1997, and may

² Case No. CV197-1795cc, Revised Findings of Fact and Conclusions of Law and Judgment, issued August 6, 1998.

therefore convert from rate base/rate of return regulation to price cap regulation.

2. That the maximum allowable prices which may be charged by GTE Midwest Incorporated are the prices which were in effect on December 31, 1998.

3. That GTE Midwest Incorporated may not change the maximum allowable prices for basic local telecommunications service or exchange access service prior to January 1, 2000, unless otherwise authorized by the Commission in accordance with Sections 392.245.8, 392.245.9, or 392.248, RSMo Supp. 1996.

4. That this order shall become effective on February 5, 1999.

5. That this case may be closed on or after February 6, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Roberts, Chief Regulatory Law Judge

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

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson
City,**

Missouri, this 26TH day of JANUARY, 1999.

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**