

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of Excel)
Telecommunications, Inc., for a certificate)
of service authority to operate as a) CASE NO. TA-90-117
reseller of telecommunications services in)
the State of Missouri.)

APPEARANCES: Robin A. Casey, Attorney at Law, Bickerstaff, Heath & Smiley,
San Jacinto Center, Suite 1800, 98 San Jacinto Boulevard,
Austin, Texas 78701-4039, and

Mark P. Johnson, Attorney at Law, Spencer, Fane, Britt & Browne,
1000 Walnut, Suite 1400, Kansas City, Missouri 64106, for
Excel Telecommunications, Inc.

REPORT AND ORDER

On December 11, 1989, Excel Telecommunications, Inc. (Excel or Applicant) applied for a certificate of authority under Chapter 392, RSMo, (Cum. Supp. 1989)¹ to operate as an intrastate reseller of telecommunication services. The Commission issued its Order and Notice on December 20, 1989, directing that notice be sent and setting an intervention deadline of January 19, 1990. No one sought to intervene or requested a hearing.

On February 1, 1990, the General Counsel's office and the staff recommended that Excel receive a certificate and, by its Report and Order of February 13, 1990, the Commission granted Applicant a certificate, pending approval of Excel's tariffs.

¹All statutory citations hereinafter, unless otherwise stated, are to RSMo Cum. Supp. 1989.

On March 5, 1990, Excel made a separate application pursuant to Section 392.361, RSMo for an order designating Excel as a competitive interexchange telecommunications carrier and exempting Excel from certain statutes and rules.

On March 23, 1990, by Supplemental Order and Notice, the Commission gave notice and an opportunity to intervene of Excel's application for competitive status. None sought to intervene nor requested a hearing. The Commission therefore finds that a hearing is not required. The requirement for a hearing in Section 392.361, RSMo is satisfied when the opportunity to be heard has been provided and no proper party requests same. *State ex rel. Rex Deffenderfer Enterprises, Inc. vs. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989). Applicant has submitted its evidence by verified statement which, pursuant to Section 536.070(12), RSMo 1986, suffices to support the grant of authority Excel has requested.

On March 23, 1990, the Office of the General Counsel and the Commission staff recommended that Excel's application for competitive status and for statutory and rule waivers be granted, specifically recommending (a) that Excel be designated as a competitive telecommunications carrier; (b) that Excel be exempt from the same statutes and Commission rules as granted other interexchange carriers in Case No. TO-88-142²; and (c) that Excel's proposed initial tariff, submitted March 5, 1990, be approved.

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:

²In 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.

By virtue of the Commission's previous order in this case, Applicant has a certificate of authority to provide intrastate toll interexchange telecommunications services. The Commission adopts by reference the Findings of Fact and Conclusions of Law made in Excel's certificate case. This leaves for the Commission's determination the questions of (a) whether Excel is a competitive telecommunications carrier pursuant to law, (b) whether to waive certain statutes and Commission regulations for Excel, and (c) whether Excel's initial tariff should be approved. Inasmuch as no interested party intervened, or requested a hearing, the Commission may consider these questions on the basis of Excel's verified application and the aforementioned recommendation of the Commission's Office of General Counsel and staff. Based thereon, the Commission finds that Excel is a competitive telecommunications company offering competitive services. The Commission also finds that the statutory and regulatory requirements listed below, and waived in Commission Case No. TO-88-142, should also be waived in this instance.

- Section 392.240(1) (Commission rate-setting)
- Section 392.270 (property valuation)
- Section 392.280 (depreciation accounts)
- 4 CSR 240-30.010(2)(C) (copies of rate schedules)
- 4 CSR 240-30.060(5) (rate case requirements)
- 4 CSR 240-32.030(1)(C) (access line and grade of service complaints)
- 4 CSR 240-32.050(3) (information at business offices)
- 4 CSR 240-32.050(4) (telephone directories)
- 4 CSR 240-32.050(5) (call interception)
- 4 CSR 240-32.050(6) (telephone number changes)
- 4 CSR 240-32.070(4) (coin telephone)

Finding further, the Commission determines that Excel's initial tariffs filed on March 5, 1990, [9000326] should be approved.

Conclusions

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

Applicant has previously received a certificate to provide service to the public as a public utility pursuant to Chapters 386 and 392, RSMo Supp. 1988.

Based upon Applicant's verified application for competitive status, for a waiver of statutes and rules, and for approval of its initial tariff, and on Staff's recommendation in favor thereof, the Commission concludes that all of Applicant's tariffed telecommunications services are competitive under Section 392.361, RSMo. As a result, and pursuant to the same statute, Applicant is a competitive interexchange telecommunications carrier.

The Commission also concludes that the statutory and rule waivers listed above and made applicable to interexchange carriers in Commission Case No. TO-88-142 are also applicable to Excel. The Commission also determines that Excel's initial tariff, submitted on March 5, 1990, complies with Chapter 392 and the conditions in Excel's certificate of authority granted on February 13, 1990.

It is, therefore,

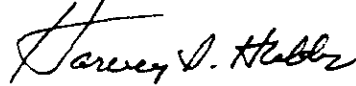
ORDERED: 1. That Excel Telecommunications, Inc. is a competitive interexchange telecommunications carrier offering competitive intrastate services.

ORDERED: 2. That those statutes and regulations stated at page 3 of this order, and waived in Commission Case No. TO-88-142, are hereby waived for Excel Telecommunications, Inc.

ORDERED: 3. That Excel Telecommunications, Inc.'s initial tariff, filed March 5, 1990, [9000326] is hereby approved.

ORDERED: 4. That this Report and Order shall become effective on the
4th day of May, 1990.

BY THE COMMISSION



Harvey G. Hubbs
Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on the 24th day of April, 1990.