

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Dial U.S.)
for a Certificate of Authority to Provide Basic)
Exchange and Local Exchange Intrastate Telecom-)
munications Services Within the State of)
Missouri.)
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Case No. TA-96-347

REPORT AND ORDER

Issue Date: December 20, 1996

Effective Date: December 31, 1996

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APPEARANCES

Mark W. Comley, Newman, Comley & Ruth P.C., 205 East Capitol Avenue, Post Office Box 537, Jefferson City, Missouri 65102, for Communications Cable-Laying Company, d/b/a Dial U.S.

Leland B. Curtis, Carl J. Lumley, and Elaine M. Walsh, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications Corporation.

Victor S. Scott and Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, L.L.C., 301 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102-1438, for: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

Paul G. Lane, General Attorney-Missouri, Diana J. Harter, Attorney, and Leo J. Bub, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Sondra B. Morgan and W.R. England, III, Brydon, Swearingen & England P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, for: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company; Bourbeuse Telephone Company and Fidelity Telephone Company.

Linda K. Gardner, Senior Attorney, United Telephone Company of Missouri, 5454 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri.

Paul S. DeFord, Lathrop & Gage L.C., 2345 Grand Boulevard, Suite 2500, Kansas City, Missouri 64106, for AT&T Communications of the Southwest, Inc.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the Public Counsel and the public.

Colleen M. Dale, Deputy General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: Dale Hardy Roberts, Chief.

REPORT AND ORDER

Procedural History

On April 19, 1996, Communications Cable-Laying Company, d/b/a Dial U.S. (Applicant or Dial U.S.) filed an application requesting the Commission grant a certificate of service authority to provide basic local exchange service and a certificate of service authority to provide local exchange service. Dial U.S. applied for authority to provide these services in all exchanges in the service territories of Southwestern Bell Telephone Company (SWBT), United Telephone Company of Missouri (United), and GTE Midwest Incorporated (GTE). Dial U.S. also seeks classification of its services as competitive and the waiver of the statutes in the rules which the Commission has granted for all competitive interexchange carriers.

On April 23, the Commission issued an Order and Notice in this case and directed that applications to intervene be filed not later than May 24. On June 6, the Commission issued its Order Granting Intervention

and Setting Prehearing Conference in this case. Timely applications to intervene were filed by MCI Telecommunications Corporation (MCI), the Mid-Missouri Group of local exchange companies (Mid-Missouri Group),¹ SWBT, the "Small Telephone Company Group"² (STG), Bourbeuse Telephone Company (Bourbeuse), Fidelity Telephone Company (Fidelity), GTE, United, and AT&T Communications of the Southwest, Incorporated (AT&T). The Commission granted these applications to intervene.

On August 19, Dial U.S. filed its First Amended Application in which it requested a certificate of service authority to provide basic local exchange and local exchange intrastate telecommunications services, as well as an order classifying it as a competitive telecommunications company providing competitive service and suspending, waiving, or modifying certain Commission rules and statutory provisions as they relate to the regulation of competitive telecommunications companies in the State of Missouri. The amended Application specifically requested authority pursuant to Sections 392.430, 392.440, and 392.450, R.S.Mo. (Supp. 1996).

¹The following companies comprise the "Mid-Missouri Group": Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Mo-Kan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company, Inc.

²The following companies comprise the "Small Telephone Company Group": BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

On September 17, a Stipulation and Agreement (Stipulation) was filed which was entered into by all parties to this case. On that same date, a document captioned Suggestions in Support of the Stipulation and Agreement was also unanimously filed. Pursuant to the Stipulation in this case, the Commission convened a hearing on October 23 for the purpose of receiving the Stipulation and hearing statements in its support.

Background

Dial U.S. is certificated to provide intrastate interexchange services in Missouri. In this case it has requested a certificate to provide basic local telecommunications service and local exchange telecommunications services as well. Local exchange services are considered competitive services and are subject to different rules and statutory requirements than are basic local services. The parties state within the Stipulation that all of the requirements and criteria for certification have been met, including those which were enacted in Senate Bill 507.

Discussion

A. Requirements of 4 CSR 240-2.060(4)

Commission Rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services in Missouri to include in its application a certificate from the Secretary of State showing it is authorized to do business in Missouri, 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. Dial U.S. has provided all the required documentation either directly in this case or by incorporation pursuant to 4 CSR 240-2.060(4)(E). The exception to the filing requirements is the provision of a proposed tariff. The company has requested a temporary waiver of

4 CSR 240-2.060(4) (H) because at the time of its application it did not yet have an interconnection agreement and could not establish any pricing for its services.

However, on December 2, 1996, an illustrative tariff was filed for initial review by the Staff, and Dial U.S. has notified the Commission that it stands ready to file a full and complete tariff in compliance with a Commission order. Moreover, Dial U.S. appears prepared to do so on short notice and has indicated that it may well request expedited approval of its tariff.

B. Local Exchange Certification

The Commission finds that Dial U.S.'s entry into competition in the local exchange telecommunications market is in the public interest and the company should be granted a certificate of service authority. The Commission finds that the local exchange services Dial U.S. proposes to offer are competitive and the company should be classified as a competitive company. Waiving the statutes and Commission rules set out in Ordered Paragraph 3 is reasonable and not detrimental to the public interest.

The Commission determines, by authority of § 392.470, that Applicant should comply with the following regulatory requirements as reasonable and necessary conditions of certification:

- (1) Applicant must comply with reasonable requests by Staff for financial and operating data to allow Staff to monitor the intraLATA toll market. § 386.320.3.
- (2) Applicant must file tariffs containing rules and regulations applicable to customers, a description of the services provided, and a list of rates associated with those services in accordance with 4 CSR 240-30.010 and § 392.220.
- (3) Applicant may not unjustly discriminate between its customers. §§ 392.200, 392.400.
- (4) Applicant must comply with all applicable rules of the Commission except those specifically waived by this order, or

waived by the Stipulation and Agreement as incorporated through this order. §§ 386.570, 392.360.

- (5) Applicant must file a Missouri-specific annual report. §§ 392.210, 392.390.1.
- (6) Applicant must comply with jurisdictional reporting requirements as set out in each local exchange company's access services tariffs. § 392.390.3.
- (7) Applicant must submit to the staff, on a confidential basis, a copy of the jurisdictional report it submits to local exchange companies. The report must be submitted within ten (10) days of the date on which it is submitted to the local exchange company.

C. Basic Local Telecommunications Service Certification

Section 392.455 R.S.Mo. (Supp. 1996), effective August 28, 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 what they earn.

1. Technical, Financial and Managerial Resources and Abilities.

Based upon its verified application, as amended, Dial U.S. asserts that there is sufficient evidence from which the Commission can find and conclude that Dial U.S. possesses sufficient technical, financial and

managerial resources and expertise to provide basic local telecommunications service. The parties unanimously agree that Dial U.S. proposes and agrees to offer basic local services that satisfy the minimum standards established by the Commission. The parties unanimously agree that Dial U.S. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange. The parties agree that Dial U.S. will offer basic local telecommunications service as a separate and distinct service.

Lastly, the parties agree that Dial U.S. has agreed to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area where it proposes to offer basic local service, regardless of their residence or their income. Dial U.S. has sought the authority to provide services which will serve the public interest.

2. The Entrant's Proposed Services Satisfy the Minimum Standards Established by the Commission.

Dial U.S. stated in its application that the services it will provide will be "equal to or superior to the quality of the basic local telecommunications services that customers in the State of Missouri are currently receiving from the incumbent providers." Dial U.S. also stated that it will install a state of the art telecommunications network if it provides facilities-based local services. Dial U.S. has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards. The parties agreed that Dial U.S. 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.

Dial U.S. set out all the exchanges in which it proposes to offer services. Dial U.S. has defined its service area by means of the tariffed exchange areas of the incumbent local exchange companies presently providing basic local service in those exchanges. The parties agreed that Dial U.S. has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows incumbent local exchange company exchange boundaries and is no smaller than an exchange.

4. The Offering of Basic Local Telecommunications Service as a Separate and Distinct Service.

Dial U.S. has agreed to offer basic local telecommunications service as a separate and distinct service.

5. Equitable Access for All Missourians to Affordable Telecommunications Services.

Dial U.S. 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 § 392.455(5).

D. 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 re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunication*

companies within the State of Missouri, 30 Mo.P.S.C.(N.S.) 16 (1989); *In re Southwestern Bell Telephone Co.'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 Dial U.S. should be classified as a competitive telecommunications company. The parties have also agreed that Dial U.S.'s switched exchange access services may be classified as competitive services, conditioned upon certain limitations on Dial U.S.'s ability to charge for its access services. Dial U.S. 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 Dial U.S. seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Dial U.S. should be expressly conditioned on the continued applicability of § 392.200 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 §§ 392.220 and 392.230, rather than §§ 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: §§ 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330 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.

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.

1. The Commission finds that competition in the local exchange and basic local exchange telecommunications markets is in the public interest.
2. The Commission finds that Dial U.S. has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
3. The Commission finds that Dial U.S. has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
4. The Commission finds that the local exchange services market should be competitive and that granting Dial U.S. a certificate of service authority to provide local exchange telecommunications services is in the public interest. Dial U.S.'s certificate should become effective when its tariff becomes effective.
5. The Commission finds that Dial U.S. 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 Dial U.S. a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Dial U.S.'s certificate should become effective when its tariff becomes effective.

6. The Commission finds that Dial U.S. is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 3.
7. The Commission finds that Dial U.S.'s certification and competitive status are expressly conditioned upon the continued applicability of § 392.200 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 §§ 392.220 and 392.230, rather than §§ 392.500 and 392.510.
8. The Commission finds that the Stipulation and Agreement filed by the parties is a reasonable resolution of the issues.

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. Dial U.S. has requested certification under §§ 392.410 through 392.450. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority is in the public interest.

The Federal Telecommunications Act of 1996 and Missouri Senate Bill 507 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185 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 § 536.060. Based upon the information contained within the Stipulation and Agreement of the parties, the supporting information offered at the hearing on October 23, 1996 and on its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved and that Dial U.S. should be granted the certificate of service authority requested.

IT IS THEREFORE ORDERED:

1. That Communications Cable-Laying Company, d/b/a Dial U.S., is granted a certificate of service authority to provide local exchange telecommunications services in the State of Missouri, consistent with the Stipulation and Agreement and subject to the conditions of certification set out above, to become effective when the company's tariff becomes effective.

2. That Communications Cable-Laying Company, d/b/a Dial U.S., is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out above, to become effective when the company's tariff becomes effective.

3. That Communications Cable-Laying Company, d/b/a Dial U.S., is classified as a competitive telecommunications company. 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
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

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 the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived and in lieu thereof Communications Cable-Laying Company, d/b/a Dial U.S., shall file with the Commission a tariff with a 30-day effective date. Upon request for expedited treatment, the Commission may make that tariff effective in fewer than 30 days.

5. That Communications Cable-Laying Company, d/b/a Dial U.S., shall file tariff sheets for approval no later than 30 days after the Commission approves the required interconnection agreement or agreements. The proposed tariff shall reflect the rates, rules, regulations and the

services it will offer. The tariff shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3.

6. That this Report And Order shall become effective on December 31, 1996.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., McClure and Kincheloe,
CC., concur.
Crumpton and Drainer, CC., concur.

Dated at Jefferson City, Missouri,
on this 20th day of December, 1996.