

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of MFS Intelenet)
of Missouri, Inc. for a Certificate of Service)
Authority to Provide Basic Local Exchange and) Case No. TA-96-374
Local Exchange Services.)
)

REPORT AND ORDER

Issue Date: February 28, 1997

Effective Date: March 11, 1997

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APPEARANCES

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Julie Thomas Bowles, Attorney, Sprint Communications Company, L.P., 8140 Ward Parkway, Kansas City, Missouri 64114, for Sprint Communications Company, L.P.

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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 JUDGES: Dale Hardy Roberts, Chief, and Joyce Hainen.

REPORT AND ORDER

Procedural History

MFS Intelenet of Missouri, Inc. (MFSI or applicant) applied to the Commission on May 7, 1996 for a certificate of service authority to provide basic local telecommunications service and local exchange telecommunications services in Missouri under Sections 392.410 - .450, RSMo 1994¹. MFSI 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. MFSI is a Delaware corporation with its principal business at 11636 Lackland Road, St. Louis, Missouri 63146.

On May 14, 1996 the Commission issued an Order and Notice directing parties wishing to intervene in the case to do so by June 13, 1996. On June 18, 1996 MFSI filed a response in opposition to Small Telephone Company Group's application to intervene. The Commission granted permission to intervene to the following entities on June 26, 1996:

Southwestern Bell Telephone Company (SWBT)
The Small Telephone Company Group²
Bourbeuse Telephone Company
Fidelity Telephone Company
MCI Telecommunications Corporation

¹ All statutory references are to Revised Statutes of Missouri 1994 and the 1996 Cumulative Supplement, unless otherwise indicated.

² The 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.

GTE Midwest Incorporated (GTE)
United Telephone Company of Missouri (United)
AT&T Communications of the Southwest, Inc.

On August 19, 1996 MFSI amended its application. The Commission issued its Order consolidating the cases of AT&T (Case No. TA-96-322), MCImetro (Case No. TA-96-355) and Brooks Fiber Communications of Kansas City, Inc. (Brooks) (Case No. TA-96-438) on August 20, 1996. On August 21, 1996 MFSI filed a motion to consolidate cases TA-96-374, TA-96-322, TA-96-355 and TA-96-438. On September 10, 1996 the Commission issued its Order further consolidating the similar cases of MFS Intelenet of Missouri, Inc. (MFSI) (Case No. TA-96-374), TCG St. Louis, Inc.³ (TCG) (Case No. TA-96-345), Digital Teleport, Inc. (Digital Teleport) (Case No. TA-96-406), Ameritech Communications International, Inc. (Ameritech) (Case No. TA-96-415), and Sprint Communications Company L.P. (Sprint) (Case No. TA-96-424) with AT&T, MCImetro and Brooks.

The parties filed a Stipulation and Agreement (SA) on September 23, 1996. The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on October 15, 1996. Staff's suggestions included sworn testimony by members of the Commission's telecommunications staff. The Commission conducted a hearing on October 23, 1996, where the parties made presentations and were available for Commission questions.

Background

MFSI, which is certificated to provide intrastate interexchange services in Missouri, seeks authority to provide facilities-based and resold basic local telecommunications service and local exchange telecom-

³ TCG has submitted a separate stipulation.

munications services as well. Local exchange services are considered competitive services and are subject to different rules and statutory requirements than are basic local services. Therefore, they will be considered separately in the discussion below.

MFSI filed an amended application for Certificate on August 19, 1996. In the amended application MFSI seeks authority to provide basic local services in all exchanges currently served by SWBT and GTE. The specific exchanges in which MFSI proposes to operate are described in an attachment to the amended application. MFSI is not asking for certification in any area that is served by a small incumbent local exchange provider. MFSI is requesting that its basic local exchange services be classified as competitive and that 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 corporation applying for certification to provide telecommunications services 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. MFSI has provided all the required documentation except for a 45-day tariff. The applicant has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for MFSI to submit a tariff until it has executed interconnection agreements with the ILECs involved. MFSI cannot firmly price its resold services until it has reached price agreements with the ILECs from which it will purchase those services. The company has agreed

that, once it is possible to do so, it will submit to the Commission for approval a proposed tariff with a minimum 30-day effective date. MFSI will file the tariff in Case No. TA-96-374 and give notice of the tariff filing to all the parties and participants. Along with that filing MFSI has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas. See SA pages 12-13, ¶ 9.

B. Local Exchange Certification

The Commission finds that MFSI'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 MFSI proposes to offer are competitive and the company should be classified as a competitive company. The Commission is of the opinion that waiving the statutes and Commission rules set out in Ordered Paragraph 4 is reasonable and not detrimental to the public interest.

The Commission determines, by authority of § 392.470, that MFSI 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. §§ 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 Service Classification

Section 392.455 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 the amount of their income.

1. Technical, Financial and Managerial Resources and Abilities.

Based upon its verified application, as amended, MFSI asserts that there is sufficient evidence from which the Commission can find and conclude that MFSI possesses sufficient technical, financial and managerial resources and expertise to provide basic local telecommunications service.

See SA page 9 ¶ 7A. The parties unanimously agree that MFSI proposes to offer basic local services that satisfy the minimum standards established by the Commission. *See* SA page 9 ¶ 7B. The parties unanimously agree that MFSI 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. *See* SA page 9 ¶ 7C. The parties agree that MFSI will offer basic local telecommunications service as a separate and distinct service. Further the parties agree that MFSI 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, to affordable telecommunications services⁴. MFSI has sought the authority to provide services which will serve the public interest. *See* SA pages 9-10, ¶ 7.

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

MFSI stated in its application that the services it will provide will satisfy the minimum standards established by the Commission. Additionally MFSI agreed to offer basic local services that will satisfy the minimum standards established by the Commission. *See* SA pages 9-10, ¶ 7B.

⁴ Footnote 11 to the SA states: "The Agreement in Paragraph 7E of this Stipulation and Agreement is without prejudice to each Applicant's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's considerations of equitable access under Section 392.455.(5). Furthermore, such agreement should not be construed as an admission or conclusion of any Applicant that Section 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access."

3. The Geographic Area in Which the Company Proposes to Offer Service.

MFSI set out all the exchanges in which it proposes to offer services in its amended application. MFSI 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 MFSI 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. *See* SA pages 9-10, ¶ 7C.

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

MFSI has agreed to offer basic local telecommunications service as a separate and distinct service. *See* SA pages 9-10, ¶ 7D.

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

MFSI 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). *See* SA pages 9-10, ¶ 7E.

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 the matter of 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 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 MFSI should be classified as a competitive telecommunications company. *See* SA pages 10-12, ¶ 8. The parties have also agreed that MFSI's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on MFSI's ability to charge for its access services. MFSI 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 MFSI seeks to operate. The parties have agreed that the grant of service authority and competitive classification to MFSI 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. *See* SA pages 7-8, ¶ 4. 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. *See* SA pages 12-13, ¶ 9.

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 MFSI 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 MFSI 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 is competitive and that granting MFSI a certificate of service authority to provide local exchange telecommunications services is in the public interest. MFSI's certificate should become effective when its tariff becomes effective.
5. The Commission finds that MFSI 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 MFSI a

certificate of service authority to provide basic local exchange telecommunications service is in the public interest. MFSI's certificate should become effective when its tariff becomes effective.

6. The Commission finds that MFSI is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 4.
7. The Commission finds that MFSI'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.

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. MFSI has requested certification under Sections 392.410 - .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 (47 U.S.C. §§ 251, et seq.) and Sections 392.185 and 392.200 - 392.455 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 service 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.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed by the parties on September 23, 1996 is approved as submitted.

2. That MFS Intelenet of Missouri, Inc. is granted a certificate of service authority to provide local exchange 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 MFS Intelenet of Missouri, Inc. 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.

4. That MFS Intelenet of Missouri, Inc. 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

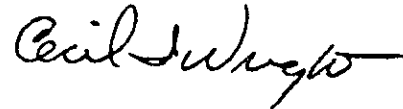
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

5. That the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived until MFS Intelenet of Missouri, Inc. has entered into a Commission-approved interconnection agreement that enables it to provide basic local exchange services.

6. That MFS Intelenet of Missouri, Inc. 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 4.

7. That this Report and Order shall become effective on March 11, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., Kincheloe, Crumpton
and Drainer, CC., concur.
McClure, C., not participating.

Dated at Jefferson City, Missouri,
on this 28th day of February, 1997.