

# BEFORE THE PUBLIC SERVICE COMMISSION

## OF THE STATE OF MISSOURI

In The Matter Of The Application Of       )  
Activetel L.D., Inc. For Certificate       )  
Of Service Authority To Provide Shared   )  
Tenant Services Within The State Of       )  
Missouri.                                       )

CASE NO. TA-95-380

In The Matter Of The Application Of       )  
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CASE NO. TA-95-381

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CASE NO. TA-95-410

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### REPORT AND ORDER

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**Issue Date:**       April 10, 1996

**Effective Date:**   April 23, 1996

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APPEARANCES:       **Linda K. Gardner**, Attorney at Law, Goller &  
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                              Mid-Missouri Telephone Company, MoKan Dial, Inc.,  
                              Northeast Missouri Rural Telephone Co., and  
                              Peace Valley Telephone Company.

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For: Staff of the Missouri Public Service Commission.

Administrative  
Law Judge: **Mark A. Grothoff**

#### REPORT AND ORDER

On May 19, 1995, ActiveTel L.D., Inc. (ActiveTel) filed separate applications seeking authority to provide shared tenant services (STS) pursuant to Section 392.520 RSMo 1994. The Commission docketed these separate applications as Case Nos. TA-95-380, TA-95-381, and TA-95-382. On June 9, 1995, ActiveTel filed another application for authority to provide STS and the Commission docketed this application as Case No. TA-95-410. On May 26, 1995, the Commission issued an Order and Notice in each docket directing that applications to intervene be filed on or before June 26, 1995. On July 5, 1995, the Commission granted intervention to Southwestern Bell Telephone Company (SWBT), and Mid-Missouri Telephone Company, Northeast Missouri Rural Telephone Company, MoKan Dial, Inc., Chariton Valley Telephone Corporation, Choctaw Telephone Company, Peace Valley Telephone Company and Alma Telephone Company (collectively referenced as (Mid-Missouri Group)). On August 3, 1995, the Commission adopted a Protective Order for these cases and on August 4, 1995, the Commission established a common procedural schedule for these cases.

On November 15, 1995, during the prehearing conference for these cases, the Commission consolidated these cases for purposes of the hearing and the briefs. On November 28, 1995, a hearing was held in these cases and the parties subsequently filed briefs in these cases.

#### 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:

ActiveTel has filed four applications seeking a certificate of service authority pursuant to Section 392.520 RSMo 1994, to provide STS at four apartment complexes in Missouri, the West End Terrace Apartments in St. Louis, Missouri (Case No. TA-95-380), the Wedgewood Apartments in St. Louis, Missouri (Case No. TA-95-381), the Park Val Apartments in St. Louis, Missouri (Case No. TA-95-382), and the Oakhill Manor Apartments in Kansas City, Missouri (Case No. TA-95-410). The apartment complexes range in size from 164 to 228 units and from six to ten buildings per complex comprising a total of 776 apartment units and all are located in territory served by SWBT. ActiveTel proposes to provide STS at each of these four locations but does not intend, or request authority, to connect or interconnect these four locations to each other. Calls from one apartment complex to another would still be handled by the local exchange company (LEC). The residents of each apartment complex would constitute a stand alone STS location and a separate, individual user group.

The specific properties for which ActiveTel requests STS authority are depicted in four maps. A map for each location was attached to each respective application filed by ActiveTel. These maps and the

testimony from the hearing show that each individual apartment complex sits on a single block of land which, in some cases, contains a limited number of public thoroughfares.

The concept of STS as a service distinct from basic local exchange service is well established. SWBT has suggested that ActiveTel's STS service would constitute "basic local telecommunication service" under Section 386.020(3), RSMo 1994. Such a contention is without merit. Section 386.020(3) defines basic local telecommunications service as "two-way switched voice service within a local calling scope as determined by the Commission, but does not include the offering or provision of basic local telecommunication service at private shared tenant service locations."

Within its Report and Order in *GE Capital ResCom L.P.*, Case No. TA-95-125 (October 27, 1995), the Commission clarified that STS providers do not provide basic local telecommunication service when the STS offering is confined to the premise site and the STS provider is relying exclusively on the LEC to originate and terminate all calls. *ResCom*, pages 14-15. The record indicates that ActiveTel will not originate or terminate calls within the same complex as it is ActiveTel's policy not to configure its switches to allow five digit dialing behind the switch.

Central to the issue in question is the meaning of "discrete private premise". Section 386.020(30) RSMo 1994 defines "private shared tenant services" as "the provision of telecommunications and information management services and equipment within a user group located in discrete private premises as authorized by the Commission...."

"Discrete private premises" was not defined by the Legislature but was left for the Commission to interpret. Prior to the *ResCom*

decision, the presumptive standard for a "discrete private premise" was a single building or less, subject to waivers. The waiver standard was based on a successful finding that the waiver would not be detrimental to the public interest and that all buildings were located on a continuous or contiguous property under common ownership in the same wire center. *In re Research Medical Center*, 2 Mo. P.S.C. 3d 329 (1993). However, that standard is no longer applicable in view of the Commission's decision in *ResCom*.

In *ResCom*, the Commission found the single building or less requirement to have "no remaining value" in evaluating "discrete private premises". *ResCom*, p. 17. Rather, the Commission adopted the following components as the appropriate standard for "discrete private premises":

- (1) all buildings must be located on either a continuous tract of land or upon adjacent and abutting tracks of land, only separated by a public thoroughfare;
- (2) all buildings and land must be subject to common ownership interest or associated ownership interests; and
- (3) all buildings and land should be located on the same wire center.

*ResCom*, p. 21

Based on the standard established by the Commission in *ResCom*, all four apartment complexes that are the subject of ActiveTel's applications are located on discrete private premises. The record indicates, without dispute from any party, that each of these complexes are located on continuous or contiguous tracts of land under common ownership and are served out of the same wire center. Moreover, the outer boundaries of each apartment complex are clearly discernible and definite.

ActiveTel's apartment complexes appear no different from the complexes approved by the Commission in its *ResCom* decision and, in fact, comprise a significantly smaller number of total apartment units. The total number of apartments approved in *ResCom* was approximately 4,400, far in excess of ActiveTel's proposed 776 units.

SWBT has objected to the residential nature of the apartment complexes in these cases. However, no distinction between residential and commercial application is found in the statutes and the Commission has never established a policy against residential STS. To the contrary, the Commission's *ResCom* decision specifically addressed this issue and approved STS to residential multi-building apartment complexes despite substantially similar objections by SWBT. *ResCom*, pp. 7-9. Thus, the Commission finds that each of ActiveTel's applications meet the appropriate statutory standard under Section 386.020 RSMo 1994.

In addition, the Commission finds that the granting of ActiveTel's applications is in the public interest. ActiveTel has the necessary experience and technical and financial expertise to provide STS to those Missouri consumers residing within the four subject apartment complexes. Moreover, ActiveTel has demonstrated that it has the necessary corporate infrastructure required to support ActiveTel's proposed competitive service offerings in Missouri.

The record reflects that ActiveTel presently employs 15 engineers whose previous training included employment with various LECs, LEC subcontractors, or interexchange carriers (IXC). ActiveTel's engineering group, which is responsible for the drafting and design of ActiveTel's facilities, is managed by its vice-president of engineering who

has an engineering degree from the Massachusetts Institute of Technology and has over 20 years experience in network drafting and design. According to unrebutted testimony, ActiveTel's engineers design network facilities that support an industry standard PBX trunk-to-station-line ratio of between 8-1 to 15-1.

The record also reflects that ActiveTel has a program management group whose employees serve as project managers for ActiveTel's facilities and properties. The program management group oversees the implementation of the engineering designs at ActiveTel's properties and is responsible for monitoring the necessary construction time lines governing the completion of a facility.

In addition, ActiveTel employs a field service organization comprised of technicians whose responsibilities include providing the necessary technical support and maintenance to ensure high quality service. According to the record, the field service organization consists of on-site local technicians and installers who provide service to ActiveTel's facilities and customers. ActiveTel's field service technicians undergo both internal and external support training. ActiveTel's director of training is responsible for providing in-house training to ActiveTel's technicians and installers, and has completed applicable courses provided by ActiveTel's PBX switch manufacturers, Fujitsu and Cortelco. ActiveTel requires its technicians to complete the necessary training provided by both switch manufacturers, consisting of an on-site training period of approximately three weeks.

ActiveTel presently does not employ any technical staff within Missouri because it does not currently provide any STS services within the



state. Unrebutted testimony indicates, however, that after the necessary Commission authority is granted and prior to the provision of service, ActiveTel will hire or relocate the necessary technical team to ensure service reliability to Missouri consumers. Thus, the record indicates that ActiveTel has sufficient technical expertise to support its service offerings.

The record also indicates that ActiveTel has the financial expertise to conduct its STS business in Missouri. No party has questioned ActiveTel's financial qualifications. As a wholly-owned subsidiary of Interactive Cable System, Inc. (Interactive Cable) and its holding company, ICS Communications Inc. (ICS), ActiveTel relies entirely on the financial structure of ICS.

The record reflects that ICS and its operating subsidiaries, including ActiveTel, presently employ approximately 400 people and that MCI Communications, Inc. (MCI) recently made a significant investment in ICS, becoming its controlling investor. Two executive officers of ICS are MCI employees with expertise in telephone operations. In addition, unrebutted testimony indicates that ActiveTel has approximately 6,800 customers located throughout 20 states. Thus, the Commission finds that ActiveTel has sufficient management support and financial qualifications to provide STS in Missouri.

With regard to customer service, the record indicates ActiveTel operates a toll free customer service center 24 hours a day, seven days a week, that handles a variety of customer service functions, including customer requests for installation and disconnection of service, repairs,

and other service related inquiries. ActiveTel also distributes "service request forms" that gather similar information in writing.

Within the customer service center, ICS employs between 25 to 30 customer service representatives at any time, approximately 10 of whom are dedicated to ActiveTel's business operations. These employees are closely monitored by six supervisors and a director. The record also reflects that ActiveTel has a centralized operations center with 15 employees handling ActiveTel's customer requests to subscribe, move, change, or add various calling features. The centralized operations center also has five to eight employees dedicated solely to dispatch related functions whose responsibilities include maintaining PBX switch surveillance and dispatching local technicians and installers to ActiveTel property sites.

Unrebutted testimony indicates that it is ActiveTel's policy to respond to customer service requests within 24 hours of receiving a service related inquiry and to install new subscribers at preexisting service locations within 48 hours. ActiveTel's service standards are attached to ActiveTel's agreement with the property owner.

The record shows ActiveTel's policy is to return any customer to the LEC at any time when said customer requests to be switched back. Unrebutted testimony indicates that new customers are notified upon subscribing to ActiveTel's service of their unequivocal right to return to the LEC at any time, for any reason, and that ActiveTel's policy is to return any requesting customer to the LEC within 48 hours of such request at no charge.

ActiveTel's STS service provides consumers with the choice of receiving various calling feature functions accompanying its local dial tone service provided through ActiveTel's PBX switch. The record indicates that ActiveTel offers its services as a bundled package, although customers can choose to receive only dial tone access. ActiveTel's feature functions include call forwarding, call waiting, three-way calling, voice mail services, last number redial, distinctive ringing, do not disturb service, wake-up service, universal speed dialing, and free unlisted or nonpublished numbers.

In addition, the record reflects that all of ActiveTel's customers are provided with 911 capabilities through ActiveTel's PBX switch. ActiveTel will not commence service at a property without 911 access in place. The record also indicates that enhanced 911 capabilities are supported by ActiveTel's PBX switch and are provided to ActiveTel's subscribers in those regions where the necessary supporting facilities are made available to ActiveTel.

SWBT has raised the specter of mass disconnection and stranded investment in arguing that the applications are not in the public interest. However, when faced with identical issues in *ResCom*, the Commission found that network integrity and revenue impact issues should "be considered in establishing the rates or charges in terms of connection. But these issues are not the test for the underlying question of whether an STS application should be approved...." *ResCom*, p. 10. Moreover, the grant or denial of an STS certificate does not turn on the issue of LEC revenue, but rather the impact to LEC revenue, if any occurs, is properly addressed in a rate

case. *ResCom*, p. 11. None of the evidence in these cases warrants a departure from the Commission's findings in *ResCom*.

SWBT interjected extensive argument concerning the placement of demarcation points and provider of last resort obligations. As the Commission found in *ResCom*, though, the parties are bound by the LEC's tariff. *ResCom*, p. 13. The parties should attempt to work out issues of demarcation among themselves and any disputes may be brought before the Commission in a subsequent case for resolution. *ResCom*, p. 13. Thus, demarcation issues are irrelevant to the grant or denial of ActiveTel's STS applications.

Furthermore, SWBT argues that ActiveTel's STS applications should be denied or delayed until SWBT is granted certain pricing flexibility. This issue was also addressed in *ResCom*. The Commission listed several competitive disadvantages that an STS provider will face as compared to a LEC, including the need for customers to switch telephone numbers; the loss of one's ability to subscribe to, or use, certain functions such as Caller ID; and the inherent advantage the LEC retains as the entrenched, incumbent, well-recognized provider. *ResCom*, p. 13. These distinctions, among others, "substantially equalize any disparity which might otherwise exist between the LEC and the STS provider." *ResCom*, p. 13. The Commission finds no reason in these cases to deviate from its finding in *ResCom*. Thus, pricing flexibility for SWBT in the context of these cases is unnecessary.

The Commission finds that ActiveTel's STS applications meet the appropriate statutory standard under Section 386.020 RSMo 1994 and that the

granting of ActiveTel's STS applications is in the public interest. Thus, the Commission finds that ActiveTel's applications should be granted.

#### Conclusions of Law

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

The Commission has jurisdiction over the applications for STS pursuant to Sections 386.250 and 392.520 RSMo 1994. Upon a grant of authority from the Commission, the applicant would become a public utility subject to Commission jurisdiction pursuant to the provisions of Chapters 386 and 392, RSMo 1994. Section 392.520 provides that the Commission may approve such application upon a showing by the applicant and a finding by the Commission, after notice and hearing, that the grant of authority is in the public interest. The Commission concludes that it has jurisdiction over the provision of STS subsequent to the granting of a certificate and "shall establish the rates or charges and terms of connection for access by such services to the local exchange network," pursuant to Section 392.520.2, RSMo 1994.

The Commission concludes that "basic local telecommunications service" is two-way switched voice within a local calling scope as determined by the Commission, but does not include the offering or provision of basic local telecommunications service at private shared tenant service locations. Section 386.020(3), RSMo 1994. The Commission concludes STS is the sale of access to basic local telecommunications service but STS does not constitute the provision of basic local telecommunications service.

The Commission concludes that because STS providers do not provide basic local telecommunications service pursuant to Section 392.520 RSMo 1994, the Commission has specifically refrained from requiring STS applicants to obtain a certificate of public convenience and necessity under Section 392.440, RSMo 1994. ***Re Investigation of the Provision of Local Exchange Telephone Services by Entities Other than Certified Telephone Corporations***, 27 Mo. P.S.C. (N.S.) 602, 613 (1985).

The Missouri legislature has authorized the provision of STS within Missouri under the supervision and minimum regulation of the Commission pursuant to Sections 386.020(30) and 392.520, RSMo 1994. "Private shared tenant services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises as authorized by the Commission. These services may be offered by a commercial shared services provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services. STS includes the provision of connections to the facilities of local exchange telecommunications companies and to inter-exchange telecommunications companies. Section 386.020(30), RSMo 1994.

The appropriate definition of "discrete private premise" is as follows:

- (1) all buildings must be located on either a continuous tract of land or upon adjacent and abutting tracks of land, only separated by a public thoroughfare;
- (2) all buildings and land must be subject to common ownership interest or associated ownership interests; and
- (3) all buildings and land should be located on the same wire center.

***GE Capital ResCom L.P.***, Case No. TA-95-125 (October 27, 1995).

The proposed STS locations meet the standards set forth in the **ResCom** decision and in Section 386.020, RSMo 1994. In addition, ActiveTel is technically and financially qualified to undertake the provision of STS in Missouri.

Based upon all of the competent and substantial evidence on the record, ActiveTel has met the appropriate statutory standards for the provision of STS and the granting of ActiveTel's STS applications is in the public interest. Thus, the Commission concludes that ActiveTel's STS applications should be granted.

**IT IS THEREFORE ORDERED:**

1. That each of ActiveTel L.D. Inc.'s applications within Case Nos. TA-95-380, TA-95-381, TA-95-382, and TA-95-410 for authority to provide shared tenant services is hereby granted.

2. That ActiveTel L.D. Inc. is hereby granted a certificate of service authority to provide shared tenant services for each of its applications within Case Nos. TA-95-380, TA-95-381, TA-95-382, and TA-95-410.

3. That the certificates granted herein apply only to the buildings and locations described in the respective applications. It does not extend to any other building or to any other geographic location and ActiveTel L.D. Inc. shall not connect or interconnect these locations to each other.

4. That this Report and Order shall become effective on April 23, 1996.

BY THE COMMISSION

A handwritten signature in cursive script, reading "David L. Rauch".

David L. Rauch  
Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe,  
Crompton and Drainer, CC., Concur  
and certify compliance with the  
provisions of Section 536.080, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 10th day of April, 1996.