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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of January, 1999.

In the Matter of the Application of United States)
Telecommunications, Inc. d/b/a Tel Com Plus for)
a Certificate of Authority to Provide Basic Local) Case No. TA-99-58
Telecommunications Service in Missouri, for Com-)
petitive Classification, and for Waiver of Statu-)
tory Provisions and Rules.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

United States Telecommunications, Inc. d/b/a Tel Com Plus
(Tel Com Plus) applied to the Commission on August 12, 1998, for a
certificate of service authority to provide basic local exchange telecom-
munications services in Missouri under Sections 392.420 - .440,
RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1997. Tel Com Plus
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.
Tel Com Plus is a Florida corporation with principal offices located at
13902 North Dale Mabry, Suite 212, Tampa, Florida 33618.

The Commission issued a notice and schedule of applicants on
August 18, directing interested parties wishing to intervene to do so by
September 17. There were no requests for intervention filed. The Staff

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

of the Commission (Staff) filed a Memorandum containing its recommendation on November 12.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing, the Commission may grant the relief requested based on the verified application.

Discussion

Tel Com Plus wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE), and United Telephone Company of Missouri d/b/a Sprint (Sprint). Tel Com Plus is not asking for certification in any area that is served by a small incumbent local exchange provider. Tel Com Plus is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

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 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. Tel Com Plus has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into interconnection agreements with the underlying local exchange carriers and those agreements have been approved by the Commission. The company states that it will submit to the Commission for approval a proposed tariff once it is party to the appropriate interconnection agreements.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1997, 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.

Tel Com Plus submitted as Exhibit B to its application certain financial documentation including its balance sheet and income statement

showing assets and liabilities as of July 31, 1998. Exhibit C to the application lists the names and qualifications of Tel Com Plus's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including marketing, sales, and sales management of cellular service, accounting, billing systems implementation, and product development. The Staff states in its recommendation that Tel Com Plus possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

The Staff states that Tel Com Plus will provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. Staff also states that Tel Com Plus proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Tel Com Plus wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs. Staff states that Tel Com Plus 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.

Tel Com Plus states that it will offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services.

Staff recommends that the Commission grant Tel Com Plus a certificate of service authority conditioned on the requirement that if Tel Com Plus provides access services, 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 local exchange company within whose service area Tel Com Plus seeks authority to provide service. Staff also recommends the Commission order Tel Com Plus to file a tariff within 30 days of the Commission approving an interconnection agreement, and that the tariff have an effective date 45 days following the date the tariff is filed with the Commission.

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.

Tel Com Plus requests waivers of the following statutes: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1997, and 392.340. Tel Com Plus also requests waiver of the following Commission rules: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35. The Staff states in its recommendation that waivers of these statutes and rules have been routinely granted.

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 basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that Tel Com Plus 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.

- C. The Commission finds that Tel Com Plus has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that Tel Com Plus 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 Tel Com Plus a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Tel Com Plus's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that Tel Com Plus is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- F. The Commission finds that Tel Com Plus's certification and competitive status should be expressly conditioned on the requirement that if Tel Com Plus provides access services, 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 local exchange company within whose service area Tel Com Plus seeks authority to provide service.

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. Tel Com Plus has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1997, which permit the Commission to grant a certificate of service authority where it 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 Section 392.455, RSMo Supp. 1997, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1997.

Based upon the Commission's review of the applicable law and upon its findings of fact, the Commission concludes that the application should be granted.

IT IS THEREFORE ORDERED:

1. That United States Telecommunications, Inc. d/b/a Tel Com Plus is granted a certificate of service authority to provide basic local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and

to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

2. That United States Telecommunications, Inc. d/b/a Tel Com Plus 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. 1997 - 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

3. That the request for waiver of the filing of 4 CSR 240-2.060(4)(H) which requires the filing of a 45-day tariff is granted.

4. That United States Telecommunications, Inc. d/b/a Tel Com Plus shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement which will allow United States Telecommunications, Inc. d/b/a Tel Com Plus to provide services. The

tariff shall be filed in Case No. TA-99-58 and shall include a listing of the statutes and Commission rules waived above.

5. That United States Telecommunications, Inc. d/b/a Tel Com Plus shall give notice of the filing of the tariffs described above to all parties or participants. In addition, United States Telecommunications, Inc. d/b/a Tel Com Plus shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

6. That United States Telecommunications, Inc. d/b/a Tel Com Plus's certification and competitive status are expressly conditioned upon the requirement that if United States Telecommunications, Inc. d/b/a Tel Com Plus provides access services, 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 local exchange company within whose service area United States Telecommunications, Inc. d/b/a Tel Com Plus seeks authority to provide service.

7. That this order shall become effective on January 22, 1999.

BY THE COMMISSION

A handwritten signature in cursive script that reads "Dale Hardy Roberts".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dippell, Senior Regulatory Law Judge

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