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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 24th
day of February, 1998.

In the Matter of the Application of Frontier)
Telemanagement, Inc. for a Certificate of Service)
Authority to Provide Basic Local Telecommunications) Case No. TA-98-161
Services and Local Exchange Services in the State)
of Missouri and for Designation as a Competitive)
Telecommunications Company.)
)

**ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL AND LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES**

Procedural History

Frontier Telemanagement, Inc. (Frontier) applied to the Commission on October 14, 1997, for certificates of service authority to provide basic local exchange and local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1996. Frontier 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. Frontier is a Wisconsin corporation authorized to do business in Missouri with offices at 180 South Clinton, Rochester, New York 14646.

The Commission issued an Order and Notice on October 16 directing parties wishing to intervene to do so no later than November 17. The Commission granted the timely request for intervention filed by

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

Southwestern Bell Telephone Company (SWBT) on December 5. The parties filed a Stipulation and Agreement (SA) which is included with this order as Attachment 1 on February 2, 1998. The Staff of the Commission (Staff) filed Suggestions in Support of the SA on February 3. In the SA the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. 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 in this case, the Commission may grant the relief requested based on the verified application.

Background

Frontier wishes certification to provide resold basic local and local exchange telecommunications services. 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.

Frontier wants to provide basic local and operator services in portions of Missouri that are currently served by SWBT. Frontier is not asking for certification in any area that is served by a small incumbent local exchange provider (ILEC). The specific exchanges in which Frontier proposes to operate are listed in Exhibit C to its application (Attachment 2 to this order). Frontier is requesting that its basic local and local exchange services be classified as competitive and that the application of 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 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. Frontier 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) because, when it applied for certification, it was not party to an approved interconnection agreement with SWBT. Frontier and SWBT submitted a Resale Agreement for Commission approval in Case No. TO-98-298 on January 20, 1998. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it has an approved agreement in place. Frontier will file the tariff in this case and give notice of the tariff filing to all the parties and participants. Along with that filing Frontier has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

B. Local Exchange Certification

The Commission finds that Frontier'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 Frontier 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.

C. Basic Local Service Certification

Section 392.455, RSMo Supp. 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 their income.

1. Technical, financial and managerial resources and abilities.

Frontier submitted Exhibit D with its application that lists the names and qualifications of its management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including information technology and engineering, customer service, marketing, regulatory affairs, finance, and law. Frontier described its corporate expertise in Exhibit E. Frontier Corporation, Frontier's parent company, is the twelfth largest local exchange service provider in the United States, owning 34 telephone companies that serve approximately 954,000 access lines. Frontier

submitted as Exhibit F the 1995 and 1996 Annual Reports for Frontier Corporation. The parties agreed that Frontier possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

2. **The entrant's proposed services satisfy the minimum standards established by the Commission.** Frontier will be reselling SWBT's basic local services and, therefore, the quality of service it provides will be equivalent to the quality of SWBT's services. The parties agreed that Frontier 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.** Frontier set out in Exhibit C all the exchanges in which it proposes to offer services. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange. The parties agreed that Frontier 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.

4. **The offering of basic local telecommunications service as a separate and distinct service.** Frontier has agreed to offer basic local telecommunications service as a separate and distinct service.

5. **Equitable access for all Missourians to affordable telecommunications services.** Frontier 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 Section 392.455(5), RSMo Supp. 1996.

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 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.

The parties have agreed that Frontier should be classified as a competitive telecommunications company. The parties have also agreed that Frontier's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Frontier's ability to charge for its access services. Frontier 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 Frontier seeks to operate. The parties have agreed that the grant of service authority and

competitive classification to Frontier should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1996, 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 Sections 392.220, RSMo Supp. 1996, and 392.230, rather than Sections 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1996, 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:

- A. The Commission finds that competition in the local exchange and basic local exchange telecommunications markets is in the public interest.
- B. The Commission finds that Frontier 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 Frontier has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted. The Commission also finds that Frontier is party to a Resale Agreement and shall be

required to file appropriate tariffs 30 days after the order approving that agreement becomes effective.

- D. The Commission finds that the local exchange services market is competitive and that granting Frontier a certificate of service authority to provide local exchange telecommunications services is in the public interest. Frontier's certificate should become effective when its tariff becomes effective.
- E. The Commission finds that Frontier 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 Frontier a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Frontier's certificate shall become effective when its tariff becomes effective.
- F. The Commission finds that Frontier is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 4.
- G. The Commission finds that Frontier's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, 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 Sections 392.220, RSMo Supp. 1996, and 392.230, rather than Sections 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. Frontier has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1996. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority 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. 1996, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1996, 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 Section 536.060, RSMo Supp. 1996. Based upon the information contained within the Stipulation and Agreement of the parties,

and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the stipulation of the parties, filed on February 2, 1998, is approved.

2. That Frontier Telemanagement, 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 Frontier Telemanagement, 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 Frontier Telemanagement, 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
392.340 - reorganization(s)
392.330, RSMo Supp. 1996 - 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

5. 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.

6. That Frontier Telemanagement, Inc. shall file tariff sheets for approval reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of an order approving a resale or interconnection agreement that would enable it to provide services. The tariff shall be filed in Case No. TO-98-161 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 4.

7. That Frontier Telemanagement, Inc. shall give notice of the filing of the tariffs described in Ordered Paragraph 6 to all parties or participants. In addition, Frontier Telemanagement, Inc. 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.

8. That Frontier Telemanagement, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1996, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1996, and 392.230, rather than Sections 392.500 and 392.510.

9. That this order shall become effective on March 6, 1998.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Wickliffe, Deputy Chief Regulatory Law Judge

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FEB 25 1998

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION