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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 20th day of May, 1998.

In the Matter of the Application of BroadSpan )  
Communications, Inc. for Certificates of Service )  
Authority to Provide Basic Local Telecommunica- )  
tions Services, Local Exchange Telecommunications ) **Case No. TA-98-181**  
Services, Exchange Access Services, and Inter- )  
exchange Telecommunications Services in the State )  
of Missouri and for Competitive Classification. )  
)

**ORDER GRANTING CERTIFICATE OF SERVICE AUTHORITY**

BroadSpan Communications, Inc. (BroadSpan) applied to the Commission on October 30, 1997, for a certificate of service authority to provide basic local, dedicated/non-switched local exchange, and intrastate interexchange telecommunications service in Missouri under Sections 392.420 - .440, RSMo 1994,<sup>1</sup> and Sections 392.410 and .450, RSMo Supp. 1996. BroadSpan 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. BroadSpan is a Missouri corporation with its principal place of business at 6631A Delmar Boulevard, St. Louis, Missouri 63130.

The Commission issued an Order and Notice on November 12, directing parties wishing to intervene to do so by December 12. No applications to intervene were filed. The Order and Notice also gave BroadSpan until December 5 to submit a list of the exchanges or wire centers in which it proposes to offer basic local exchange telecommunica-

<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

tions services. BroadSpan filed a list of such exchanges, together with a motion to accept its late-filed list of exchanges, on December 5. No objections to BroadSpan's motion were filed.

The Staff of the Commission (Staff) filed a memorandum on April 3, 1998, in which it recommended approval of BroadSpan's application. 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 asked permission to participate or requested a hearing in this case, the Commission may grant the relief requested based on the verified application and the Staff's recommendation.

## **Background**

BroadSpan wishes certification to provide facilities-based and resold basic local telecommunications service. BroadSpan also seeks to provide dedicated, non-switched local exchange telecommunications service (local exchange service) and intrastate interexchange telecommunications services. Local exchange services and interexchange 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.

BroadSpan wants to provide basic local services in portions of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT), GTE Midwest Incorporated (GTE) and Sprint Missouri, Inc. (Sprint). BroadSpan is not asking for certification in any area that is served by a small incumbent local exchange provider (ILEC). The specific exchanges in which BroadSpan proposes to operate are described in the list that was

late-filed on December 5 (Attachment A to this order). BroadSpan is requesting that its basic 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 Missouri corporation applying for certification to provide telecommunications services to include in its application a certificate of incorporation and a certified copy of its articles of incorporation from the Secretary of State, 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. BroadSpan 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 BroadSpan stated that it is impractical for the company to submit a tariff for its proposed basic local telecommunications services until it has executed interconnection agreements with the ILECs involved. BroadSpan cannot price its resold services until it has reached price agreements with the ILECs from which it will purchase those services. BroadSpan did not provide a reason for a temporary waiver of the tariff filing requirement for its proposed local exchange and interexchange telecommunications service.

### **B. 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.**

BroadSpan submitted Exhibit II with its application that lists the names and qualifications of its key personnel. The key personnel have experience in various areas of the telecommunications industry including network administration and design, sales, and customer support. BroadSpan also submitted as Exhibit III its pro forma balance sheet. The Staff reviewed this financial information and stated that the information does not contain any obvious irregularities or items that would cause concern about the application.

**2. The entrant's proposed services satisfy the minimum standards established by the Commission.** BroadSpan stated in its application that the basic local exchange 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." BroadSpan did not state in its application that it will meet the Commission's minimum basic local service standards, including quality of service and billing standards. However, BroadSpan did state

that it will comply "with all applicable statutes and Commission rules, regulations, decisions, and orders governing the provision of [its] services." The Staff recommended that issuance of a certificate to BroadSpan be expressly conditioned on BroadSpan's meeting all of the Commission's service standards relevant to the types of services BroadSpan intends to offer, including but not limited to billing, quality of service, and the filing and maintenance of tariffs.

**3. The geographic area in which the company proposes to offer service.** BroadSpan late-filed a list of all the exchanges in which it proposes to offer services (Attachment A to this order). BroadSpan has defined its service area by means of the tariffed exchange areas of the ILECs presently providing basic local service in those exchanges. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange. The Staff stated that BroadSpan 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.** BroadSpan has stated that it will offer basic local telecommunications service as a separate and distinct service.

**5. Equitable access for all Missourians to affordable telecommunications services.** BroadSpan has stated in its application that it will 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.

### 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 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 to case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

Staff recommends that BroadSpan be classified as a competitive telecommunications company. Staff also recommends that any switched exchange access service offered by BroadSpan in the future be classified as a competitive service, conditioned upon certain limitations on BroadSpan's ability to charge for its access services. Staff recommends that, unless otherwise ordered by the Commission, BroadSpan's originating and terminating access rates should 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 BroadSpan seeks to operate. According to Staff, the Commission's grant of service authority and competitive classification to BroadSpan

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. These conditions have been imposed on other certificated competitive local exchange carriers in Missouri.

Staff stated that BroadSpan's application contains a request for the standard waivers granted to other basic local telecommunications providers, plus some additional waivers granted only to interexchange carriers, for its basic local services. Staff recommends that the Commission grant only the standard waivers for basic local telecommunications service. The Staff states that waiver of the following statutes for BroadSpan's basic local services is therefore 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 Staff also states that application of these Commission rules should be waived for BroadSpan's basic local services: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

#### **D. Local Exchange and Interexchange Certification**

BroadSpan has also requested authority to offer local exchange as well as interexchange services. In its Memorandum filed on April 3 the Staff of the Commission stated that the Commission should grant BroadSpan's request for authority to provide local exchange and interexchange services and should grant the waivers of statutes and rules normally granted to interexchange carriers.

The Commission finds that BroadSpan's entry into competition in the local exchange and intrastate interexchange telecommunications markets is in the public interest and that BroadSpan should be granted a certificate of service authority to provide these types of services. The Commission finds that these types of services are competitive and BroadSpan should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in Ordered Paragraph 7 below is reasonable and not detrimental to the public interest.

### **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 markets is in the public interest.
- B. The Commission finds that BroadSpan 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 BroadSpan has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted for its proposed basic local telecommunications services.
- D. The Commission appreciates that BroadSpan requested a temporary waiver of the tariff filing requirement with respect to its proposed local exchange and interexchange telecommunications services because filing a tariff together



with a request for a basic local certificate of service authority would have been inappropriate. The Commission therefore grants the waiver for the period of time preceding this order. However, Commission approved interconnection agreements are not typically a prerequisite to pricing local exchange and interexchange services as they are for basic local services. Therefore, the Commission finds that BroadSpan should be required to either file tariffs for its proposed local exchange and interexchange services within 30 days or file a pleading requesting and justifying further waiver of the tariff filing requirement with respect to local exchange and interexchange telecommunications services.

- E. The Commission finds that BroadSpan 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 BroadSpan a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. BroadSpan's certificate shall become effective when its tariff becomes effective.
- F. The Commission finds that the local exchange and interexchange service markets are competitive and that granting BroadSpan a certificate of service authority to provide local exchange and interexchange services is in the public interest. BroadSpan's certificate shall become effective when its tariff becomes effective.

- G. The Commission finds that BroadSpan is a competitive company and shall be granted waiver of the statutes and rules set out in Ordered Paragraph 6 for its basic local services and Ordered Paragraph 7 for its local exchange and interexchange services.
- H. The Commission finds that BroadSpan'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.
- I. The Commission finds that BroadSpan's certification and competitive status are expressly conditioned upon BroadSpan meeting all relevant service standards, including, but not limited to, billing, quality of service, and the filing and maintenance of tariffs.

### **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. BroadSpan 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 Sections 392.185 and 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 . . ."

Based upon the information contained within BroadSpan's verified application as amended, the Staff's recommendation, and its findings of fact, the Commission concludes that the relief requested by BroadSpan should be granted.

**IT IS THEREFORE ORDERED:**

1. That the Motion to Accept Late-Filed List of Exchanges is granted.
2. That the application of BroadSpan Communications, Inc. is approved.
3. That BroadSpan Communications, Inc. is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri to become effective when the company's tariff becomes

effective, subject to all applicable statutes and Commission rules except as specified in this order.

4. That BroadSpan Communications, Inc. is granted a certificate of service authority to provide dedicated, non-switched local exchange telecommunications services and intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

5. That BroadSpan Communications, Inc. is classified as a competitive telecommunications company.

6. That application of the following statutes and regulatory rules shall be waived for the basic local telecommunications services to be offered by BroadSpan Communications, Inc.:

**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

7. That application of the following statutes and regulatory rules shall be waived for the interexchange and local exchange telecommunications services to be offered by BroadSpan Communications, Inc.:

### Statutes

- 392.240(1) - ratemaking
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 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 240-30.010(2)(C) - rate schedules
- 4 CSR 240-30.040 - Uniform System of Accounts
- 4 CSR 240-32.030(1)(B) - exchange boundary maps
- 4 CSR 240-32.030(1)(C) - record-keeping
- 4 CSR 240-32.030(2) - in-state record-keeping
- 4 CSR 240-32.050(3) - local office record-keeping
- 4 CSR 240-32.050(4) - telephone directories
- 4 CSR 240-32.050(5) - call intercept
- 4 CSR 240-32.050(6) - telephone number changes
- 4 CSR 240-32.070(4) - public coin telephone
- 4 CSR 240-33.030 - minimum charges rule
- 4 CSR 240-33.040(5) - financing fees

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

9. That BroadSpan Communications, Inc. shall file tariff sheets for approval reflecting the rates, rules, regulations and the services it will offer for basic local telecommunications service within 30 days after Commission approval of the necessary interconnection agreement(s). The tariffs shall be filed in Case No. TA-98-181 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 6.

10. That BroadSpan Communications, Inc. Shall file tariff sheets for approval reflecting the rates, rules, regulations and the services it will offer for dedicated, non-switched local exchange telecommunications

service and for intrastate interexchange telecommunications service no later than June 19, 1998. The tariffs shall be filed in Case No. TA-98-181 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 7. In the alternative, BroadSpan Communications, Inc. shall file a pleading requesting an additional temporary waiver of the tariff filing requirement for its dedicated, non-switched local exchange service and its interexchange service and shall include in such pleading a statement of the reasons that a waiver is needed.

11. That BroadSpan Communications, Inc. shall give notice of the filing of the tariffs described in Ordered Paragraphs 9 and 10 to all parties or participants. In addition, BroadSpan Communications, 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.

12. That the certification and competitive status of BroadSpan Communications, Inc. 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.

13. That the certification and competitive status of BroadSpan Communications, Inc. are expressly conditioned upon the company meeting all service standards applicable to telecommunications services, including billing, quality of service, and the filing and maintenance of tariffs, except as waived in this order.

billing, quality of service, and the filing and maintenance of tariffs, except as waived in this order.

14. That this order shall become effective on June 1, 1998.

**BY THE COMMISSION**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

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

Randles, Regulatory Law Judge

**RECEIVED**

MAY 20 1998

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION