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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 23rd
day of July, 1998.

In the Matter of the Application of Mark)
Twain Communications Company for a Certificate)
of Service Authority to Provide Basic Local) Case No. TA-98-305
Telecommunications Service in Portions of the)
State of Missouri and to Classify Said)
Services and the Company as Competitive.)

ORDER CONDITIONALLY APPROVING TARIFF

The Commission granted to Mark Twain Communications Company (MTCC) a certificate of service authority to provide basic local telecommunications services in Missouri by Report and Order issued on May 19, 1998. The order, which took effect on May 29, conditionally granted MTCC authority to offer basic local telecommunications service in the areas served by GTE Midwest Incorporated (GTE), and provided that MTCC's certificate would become effective upon the effective date of the company's approved tariffs. MTCC had filed tariff sheets reflecting the rates, rules, and regulations it intends to use and the services it intends to offer on April 29, with an effective date of June 13. The Commission's May 19 order suspended the effective date of MTCC's tariff to July 28 so that the Commission could complete its review of the interconnection agreement between MTCC and GTE in Case No. TO-98-410. The Commission approved the interconnection agreement between MTCC and GTE on June 16. On June 17, MTCC filed a letter with a copy of its proposed statement of customer rights and responsibilities, seeking Commission approval to publish the statement in a directory and

distribute it to customers of MTCC when they initiate service. In addition, MTCC filed substitute tariff sheets on July 7 and 15. MTCC filed a motion to expedite Commission approval of its tariff on July 13.

On July 16, Southwestern Bell Telephone Company (SWBT) filed an application to intervene and a motion to suspend MTCC's tariff sheets. MTCC filed a response on July 16, and SWBT filed a reply on July 20. SWBT claims that MTCC's proposed access rates are not cost-based and are higher than the access rates charged by SWBT, and should therefore be suspended. According to SWBT, MTCC should be required to negotiate lower access rates with SWBT. SWBT states that it did not apply for intervention at an earlier point in time because MTCC only applied for a certificate to operate in GTE's service territory. SWBT was therefore not a party to the Stipulation and Agreement upon which the Commission approved MTCC's application for a basic local certificate, and was not aware of the access rates that MTCC intended to charge until it was notified by MTCC on July 13. MTCC responds by arguing that its rates do not have to be cost-based because MTCC was classified as a competitive company in the Commission's May 19 order, and that MTCC's access rates are not required to be the same as SWBT's. SWBT will be required to pay terminating access charges to MTCC when SWBT's customers call MTCC's customers, but MTCC will not be required to pay SWBT for access because MTCC does not intend to offer interexchange services. Finally, MTCC argues that SWBT should not be permitted to intervene at such a late date, and that SWBT received notice of MTCC's intentions on May 22.

The Commission's Staff reviewed the tariff sheets and filed a memorandum on July 17 recommending that the Commission approve them as amended by the substitute sheets. Staff states that MTCC proposes to

offer facilities-based basic local exchange service to residential and business customers at rates of \$6.25 and \$12.75, respectively. This rate will include access to local operator services, touch-tone dialing, intraLATA and interLATA presubscription, and a basic local exchange calling scope that parallels that of the incumbent, GTE. MTCC also intends to offer custom calling services such as call waiting, caller identification and 900 blocking service. Staff further states that MTCC's switched access rates comply with the Stipulation and Agreement upon which its certificate was conditioned because they are the same as, or lower than, GTE's switched access rates. Staff states that Staff and MTCC have agreed to develop a more extensive statement of customer rights and responsibilities that would be submitted for Commission approval 30 days prior to the publication of the next directory, which is scheduled to be printed on September 15, and that Staff would file a recommendation to the Commission concerning this statement no later than September 1. Staff recommends that the Commission condition its approval of MTCC's tariff on submission of a revised statement no later than August 10. Staff opposes SWBT's motion to suspend. In its recommendation, Staff states that there is no requirement for reciprocity in access rates as SWBT contends. Moreover, Staff points out that SWBT has been a party to many agreements with competitive local exchange carriers (CLECs) that contain language about the maximum access rates that such CLECs may charge which is nearly identical to the access cap language in MTCC's Stipulation and Agreement. Therefore, SWBT could have anticipated that MTCC and the other parties to this case would enter into a similar agreement in this case. Staff recommends that the tariff be approved, as amended by the substitute sheets.

The Commission has reviewed the tariff sheets, the pleadings, MTCC's letter and the Staff's recommendation. The deadline for filing an application to intervene in this case was February 27, and SWBT has not demonstrated good cause for requesting intervention at such a late date. The Stipulation and Agreement language filed by the parties, which is very similar to language approved in many agreements signed by SWBT in the past, states that:

. . . as a condition of certification and competitive classification, MTCC agrees 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 certificate for the large incumbent LEC(s) for each service area within which the Applicant seeks authority to provide service.

See Page 2 of Attachment to Commission's May 19 order. In a footnote, the Stipulation and Agreement states that for MTCC, "this places an effective cap at GTE's access rates." Id. SWBT could have anticipated that, since MTCC was applying only for certification in GTE's territory, the access rate cap applicable to MTCC would be GTE's rates if the parties entered into the same type of agreement that previous CLECs had entered into with incumbent local exchange carriers and Staff. If SWBT did not want this language to set the access rate cap for MTCC, it could have intervened in a timely manner and negotiated with the other parties for different arrangement or proceeded to hearing if no agreement was reached. The Commission finds that GTE's switched access rates do not violate the Stipulation and Agreement reached between the parties at this time. If MTCC were to amend its certificate to expand its service territory in the future and this affected the rate cap to be applied to MTCC, then the Commission would require MTCC to make appropriate changes

to its tariff at that time. For these reasons, the Commission finds that MTCC's tariff should be approved as amended.

The Commission will condition its approval of the tariff on submission of a revised customer statement no later than August 10, as recommended by Staff. The Commission will also condition its approval of the tariff on MTCC revising its switched access rates in the future if a change in its service territory triggers a change in its access rate cap under the Stipulation and Agreement that was approved on May 19.

The Commission will not expedite its review of the tariff as requested by MTCC because SWBT should be given an opportunity to apply for rehearing or reconsideration of this order. The Commission concludes that the conditions stated in the May 19 order for MTCC's certificate of service authority to provide basic local telecommunications service will be fulfilled at the time the tariff takes effect.

THEREFORE, IT IS ORDERED:

1. That the tariff filed by Mark Twain Communications Company on April 29, 1998, is approved as amended to become effective on July 28, 1998. The tariff approved is:

P.S.C. MO. NO. 1

2. That the approval granted in Ordered Paragraph 1 is conditioned upon Mark Twain Communications Company filing a revised statement of customer rights and responsibilities no later than August 10, 1998.

3. That the Motion to Expedite Approval of Tariff filed by Mark Twain Communications Company is denied.

4. That the Application to Intervene and Motion to Suspend filed by Southwestern Bell Telephone Company is denied.

5. That the certificate of service authority granted to Mark Twain Communications Company on May 19, 1998, to provide basic local telecommunications services shall take effect on July 28, 1998.

3. That this order shall become effective on July 28, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Randles, Regulatory Law Judge