

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 25th of  
September, 2008.

In the matter of the Application of Fidelity Communications )  
Services I, Inc., for Expanded Authority to Provide Local ) **Case No. TA-2009-0069**  
Telecommunications Services. ) **Tariff No. JC-2009-0180**

**ORDER APPROVING EXPANSION OF  
CERTIFICATE OF SERVICE AUTHORITY**

Issue Date: September 25, 2008

Effective Date: September 27, 2008

**Syllabus:** This order expands Fidelity Communications Services I, Inc.'s certificate of service authority to provide basic local telecommunications services, continues to classify those services and the company as competitive, waives certain statutes and regulations, and approves tariff sheets.

**Procedural History**

Fidelity applied to the Missouri Public Service Commission on August 29, 2008, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services in the exchanges of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, and Windstream Communications, Inc. Fidelity also sought to remain classified as a competitive company and asked the Commission to grant the "standard waivers"<sup>1</sup> as well as a waiver of Section 392.300.1, RSMo.

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<sup>1</sup> The "standard" waivers include waiver of the Revised Statutes of Missouri Sections 392.210.2; 392.240.1; 392.270; 392.280; 392.290; 392.300.2; 392.310; 392.320; 392.330; and 392.340; and Commission Rules 4 CSR 240-3.550(5)(C); 4 CSR 240-10.020; and 4 CSR 240-30.040.

On September 9, 2008, the Commission issued a Schedule of Applicants for Basic Local and Nonswitched Local Exchange Service Authority and Opportunity to Intervene. The notice told parties who wished to intervene to file their requests by September 24, 2008. No parties responded to the notice. The Staff of the Missouri Public Service Commission filed its Recommendation on September 22, 2008.

### **Findings of Fact**

The Missouri Public Service Commission has considered all of the relevant factors and makes the following findings of fact. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

1. Fidelity is a corporation organized under the laws of the State of Missouri.<sup>2</sup>
2. The Commission previously granted Fidelity a certificate to provide basic local telecommunications services in the exchanges of Embark Missouri, Inc.<sup>3</sup>
3. That certificate also classified Fidelity and its services as competitive and granted the “standard” Commission waivers.
4. Fidelity applied to the Missouri Public Service Commission on August 29, 2008, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services in the exchanges currently served by AT&T and Windstream.

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<sup>2</sup> *Application for Expanded Authority to Provide Local Exchange Telecommunications Service*, (filed August 29, 2008), hereinafter “Application,” para. 1.

<sup>3</sup> The certificate was granted in Commission Case No. TA-2000-181.

5. Fidelity is qualified to do business in the State of Missouri as evidenced by its Certificate of Authority from the Missouri Secretary of State.<sup>4</sup>
6. Fidelity provided names and addresses for contact purposes.<sup>5</sup>
7. Fidelity has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court involving customer service or rates.<sup>6</sup>
8. Fidelity filed its amended tariff including the expanded service area, Commission Tariff File Number JC-2009-0180, with an effective date of September 28, 2008, which was extended to October 9, 2008.<sup>7</sup>
9. Fidelity was previously found to be financially, managerially, and technically qualified to provide telecommunications services in the state of Missouri.<sup>8</sup>
10. Fidelity has successfully provided telecommunications services since 2000.<sup>9</sup>
11. Fidelity will comply with all applicable Commission rules, except those that are waived, will file and maintain tariffs, and meet applicable minimum standards.<sup>10</sup>
12. Fidelity will continue to offer basic local service as a separate and distinct service.<sup>11</sup>
13. Fidelity will compete directly with AT&T and Windstream in each of their exchanges.

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<sup>4</sup> *Application*, para. 1 (Appendix A).

<sup>5</sup> *Application*, para. 2.

<sup>6</sup> *Application*, para. 13.

<sup>7</sup> *Application*, para. 10.

<sup>8</sup> Case No. TA-2000-191; and *Application*, p. 1.

<sup>9</sup> *Application*, para. 5.

<sup>10</sup> *Application*, para. 9.

<sup>11</sup> *Application*, para. 8.

14. The services Fidelity will offer in the AT&T and Windstream exchanges have previously been classified as competitive services.<sup>12</sup>
15. Granting the expansion of the certificate into the AT&T and Windstream exchanges will benefit the public by increasing equitable access for Missourians, creating and enhancing competition, expanding customer service options, and increasing customer choice for telecommunications in the area.<sup>13</sup>
16. Granting the expansion of the application will also indirectly benefit the public because the competitive presence of Fidelity will increase the incentives for the incumbents and others to operate more efficiently, offer more innovative services, reduce prices, and improve the quality and coverage of services.<sup>14</sup>
17. Staff recommended that the Commission expand Fidelity's current basic local certificate, grant competitive classification, grant the waivers requested, and approve the tariff sheets.<sup>15</sup>
18. Staff recommended that the Commission grant Fidelity's expanded basic local certificate subject to the following conditions:
  - A. Fidelity's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each ILEC within whose service area Fidelity seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.
  - B. The certificate and service classification for switched access service is granted conditioned on the continued applicability of Section 392.200 RSMo, and the

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<sup>12</sup> *Application*, p. 1; see also the order granting certificate and competitive classification in Case No. TA-2000-191.

<sup>13</sup> *Application*, para. 11.

<sup>14</sup> *Application*, para. 11.

<sup>15</sup> *Staff Recommendation*, (filed Sept. 24, 2008).

requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.

- C. If the directly competing ILEC, in whose service area Fidelity is operating, decreases its originating and/or terminating access service rates, Fidelity shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.
19. Fidelity agreed in its application that it will not exceed the corresponding exchange access rates in effect for the incumbent local exchange companies in its service area. Fidelity also agreed that if one of those incumbents decreases its current originating and/or terminating access service rates, in accordance with the Commission's Report and Order in Case No. TO-99-596 and pursuant to Section 392.361.6, RSMo, as amended August 28, 2008, Fidelity will file a tariff amendment to reduce its corresponding access rates in that service area within thirty days.<sup>16</sup>
20. Fidelity is not delinquent in filing an annual report or in paying the PSC assessment, the Missouri Universal Service Fund, and Relay Missouri surcharges.<sup>17</sup>

### **Conclusions of Law**

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

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<sup>16</sup> *Application*, para. 10.

<sup>17</sup> *Staff Recommendation*, Memorandum p. 2; See also, *Application*, para. 13.

1. The requirement for a hearing is met when the opportunity for a hearing was provided and no proper party requested the opportunity to present evidence.<sup>18</sup> Notice was issued in this case and no hearing has been requested.
2. Fidelity is an “alternative local exchange telecommunications company” as that term is defined by Section 386.020, RSMo.
3. The Commission is authorized to create a process by which to certify new entrants to provide local exchange telecommunications services in Missouri as common carriers, and is further authorized to grant such certificates where it is in the public interest.<sup>19</sup>
4. Fidelity was certificated to provide basic local telecommunications service prior to August 28, 2008.
5. Fidelity has requested that the Commission grant it an expansion of its certificate to provide basic local exchange telecommunications services to include all exchanges in Missouri served by AT&T and Windstream. Fidelity has satisfied the requirements of the Commission’s regulations and of Section 392.455, and consequently, the Commission concludes that Fidelity has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.
6. The Commission shall modify the existing certificate of service authority to provide basic local telecommunications service to any alternative local exchange telecommunications company which was certificated to provide basic local telecommunications service as of August 28, 2008, as long as the alternative local

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<sup>18</sup> *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm’n*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

<sup>19</sup> Sections 392.430, 392.450 and 392.455, RSMo.

exchange company is in good standing, in all respects, with all applicable Commission rules and requirements.<sup>20</sup> Fidelity “is in good standing, in all respects, with all applicable commission rules and requirements.”<sup>21</sup> Therefore, the Commission shall grant the certificate expansion.

7. Fidelity requests that it and its basic local services continue to be classified as competitive. The Commission may classify a telecommunications service as competitive if the Commission determines that it is subject to a sufficient degree of competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest.<sup>22</sup> The Commission may classify a telecommunications carrier as competitive if the Commission finds that a majority of its services are so classified.<sup>23</sup>
8. Fidelity has been found to be a competitive company in prior Commission cases. Furthermore, the services to be provided by Fidelity in the AT&T and Windstream exchanges will be competitive. The Commission also found that the expansion of Fidelity’s certificate will benefit the public and will be in direct competition with the incumbent basic local providers. Considering these findings, the Commission concludes that Fidelity will be subject to a sufficient level of competition to justify a lesser degree of regulation and its services and the company shall continue to be classified as competitive.

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<sup>20</sup> Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

<sup>21</sup> Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

<sup>22</sup> Section 392.361.2 and 4, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

<sup>23</sup> Section 392.361.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

9. In addition to the Commission's "standard waivers," Fidelity requests that the Commission waive all of Section 392.300, RSMo.<sup>24</sup> The Commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of Subsection 2 of Section 392.210, Subsection 1 of Section 392.240, and Sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340, RSMo.<sup>25</sup> In accordance with Section 392.420, RSMo, the Commission shall grant the requested waivers.
10. An applicant for a basic local certificate must meet the minimum service standards that the Commission requires of the competing incumbent local exchange carriers.<sup>26</sup> Fidelity has agreed to provide services that will meet the minimum basic local service standards required by the Commission. The Commission concludes that Fidelity has met the requirements of Section 392.450.2(2).
11. Fidelity has complied with each of the Commission's application requirements. Fidelity has successfully operated as a telecommunications company since 2000 and the Commission has examined Fidelity's qualifications in a previous certificate case.
12. The Commission may also "require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement."<sup>27</sup> Staff recommends that Fidelity's applica-

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<sup>24</sup> *Application*, para. 9.

<sup>25</sup> Subsection 392.420, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

<sup>26</sup> Section 392.450.2(2), RSMo.

<sup>27</sup> Section 392.361.6, RSMo.



tion be granted subject to the conditions set out above.<sup>28</sup> Fidelity has agreed to these conditions.<sup>29</sup> The Commission has considered the conditions proposed by Staff and concludes that they are reasonably necessary to protect the public interest and shall be adopted.

13. Fidelity has filed a proposed tariff authorizing it to provide service in the expanded areas. Staff has reviewed the tariff and recommends its approval. The Commission has reviewed the tariff and the recommendation of Staff and concludes that the tariff is in compliance with the provisions of this order. Therefore, the Commission shall approve the tariff to become effective as directed below.
14. The certificate of service authority granted in this order becomes null and void one year from the date of this order unless Fidelity has exercised its authority under that certificate.<sup>30</sup>
15. The Commission reminds the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory obligations include, but are not limited to, the following:
  - A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable to a penalty of \$100 per day for each day that the violation continues. 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.

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<sup>28</sup> See Finding of Fact 18.

<sup>29</sup> See Finding of Fact 19.

<sup>30</sup> Section 392.410.5, RSMo Cum. Supp. 2007.

- B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.
- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.
- D) The obligation to keep the Commission informed of its current address and telephone number.

**IT IS ORDERED THAT:**

1. Fidelity Communications Services I, Inc., is granted an expansion of its certificate of service authority to provide basic local telecommunications services to include the exchanges of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, and Windstream Communications, Inc., subject to the conditions of certification set out below and to all applicable statutes and Commission rules except as specified in this order.

2. Fidelity Communications Services I, Inc., and its telecommunications services are classified as competitive.

3. Fidelity Communications Services I, Inc.'s originating and terminating access rates shall be no greater than the lowest Commission-approved corresponding access rates in effect for each ILEC within whose service area Fidelity seeks authority to provide service, unless authorized by the Commission under to Sections 392.220 and 392.230, RSMo 2000.

4. Fidelity Communications Services I, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200,

RSMo 2000, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be made under Sections 392.220 and 392.230, RSMo, and not under Sections 392.500 and 392.510, RSMo.

5. If the directly competing incumbent local exchange company in whose service area Fidelity Communications Services I, Inc., is operating decreases its originating and/or terminating access service rates, Fidelity shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

6. With regard to Fidelity Communications Services I, Inc., the application of the following statutes and Commission regulations is waived:

### **Statutes**

- 392.210.2 - uniform system of accounts
- 392.240(1) - just and reasonable rates
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300 - transfer of property and acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

### **Commission Rules**

- 4 CSR 240-3.550(5)(C) - exchange boundary maps
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts

7. That the tariff filed by Fidelity Communications Services I, Inc., on August 28, 2008, (tariff file number JC-2009-0180), is approved to become effective on October 9, 2008. The tariff approved is:

**PSC MO. No. 1**

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**Section 5, 6th Revised Sheet 1, Cancels 5th Revised Sheet 1**  
**Section 25, 12th Revised Sheet 1, Cancels 11th Revised Sheet 1**  
**Section 25, 2nd Revised Sheet 4, Cancels 1st Revised Sheet 4**  
**Section 42, 3rd Revised Sheet 5, Cancels 2nd Revised Sheet 5**

8. This order shall become effective on September 27, 2008.
9. This case may be closed on September 28, 2008.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Davis, Chm., Murray, Clayton,  
and Gunn, CC., concur.  
Jarrett, C., absent.

Dippell, Deputy Chief Regulatory Law Judge