

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the matter of the Application of Universal Telecom,)
 Inc., for a Certificate of Service Authority to Provide)
 Prepaid Basic Local Telecommunications Services) **Case No. TA-2002-183**
 in the State of Missouri (Small Incumbent Local)
 Exchanges) and to Classify Said Services and the)
 Company as Competitive.)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES

This order grants Universal Telecom, Inc., a certificate of service authority to provide basic local exchange telecommunication service in the exchanges currently served by Southwestern Bell Telephone Company, Sprint/United Telephone Company, GTE Midwest, Inc., ALLTEL, Spectra Communications, and TDS Telecom.

Universal Telecom, Inc., applied to the Missouri Public Service Commission on October 12, 2001, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.361, 392.410 – .450, RSMo 2000.

[1] Universal Telecom also asked the Commission to classify it as a competitive company and to waive certain statutes and rules as authorized by Sections 392.361 and 392.420. On December 31, 2001, Universal Telecom filed an amendment to its application.

The Commission issued a Notice of Applications on October 30, 2001, directing interested parties wishing to intervene to do so by November 29, 2001. On February 4, 2002, the Commission issued a corrected notice *nunc pro tunc*. In the corrected notice, interested parties were directed to intervene no later than March 6, 2002. No requests for intervention or requests for an evidentiary hearing were filed. On January 30, 2002, the Staff of the Missouri Public Service Commission filed its recommendation.

Findings of Fact

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.^[2] Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application and the agreement and stipulations of the parties.

The Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

In Commission Case No. TA-2000-598, Universal Telecom was granted a certificate to provide basic local and interexchange telecommunications services in Missouri. Small incumbent local exchanges, however, were specifically excluded from that grant of authority. Universal Telecom is now seeking to add authority to provide basic local telecommunications service in the exchanges of certain small incumbent local carriers' exchanges.

Universal Telecom is a Kentucky corporation with its principal offices located in LaGrange, Kentucky. Commission Rule 4 CSR 240-2.060 requires that an application for certification to provide telecommunications services include documentation showing that 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.^[3] Universal Telecom has provided all the required documentation with the exception of the tariff.

Universal Telecom has an approved tariff on file at the Commission but would need to amend its tariff to provide service in the small incumbent local exchange companies' territory. Universal Telecom requested a temporary waiver of 4 CSR 240-2.060(6)(C) and indicated that it would file the tariff revisions at a later date.

Universal Telecom proposes to provide prepaid basic local telecommunications service on a resold basis. Universal Telecom alleges that it possesses the managerial and technical qualifications to provide local exchange service in Missouri. Exhibit C to the application describes the extensive experience and expertise of Universal Telecom's management. Universal Telecom stated that it possesses the necessary financial resources to provide basic local telecommunications services. Universal Telecom demonstrated its financial resources by submitting a copy of Universal Telecom's financial statements, marked as

Exhibit D to its application. Staff agreed in its recommendation that Universal Telecom has sufficient financial and managerial resources and abilities to provide the service. Therefore, the Commission finds that Universal Telecom possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Universal Telecom stated in its application that it will comply with all applicable Commission rules and is willing to meet all relevant service standards, including billing, quality of service, tariff filings, and maintenance. The Commission finds that Universal Telecom proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Staff indicates that Universal Telecom has identified the geographic area in which it proposes to offer basic local service and that the areas are no smaller than an exchange. Furthermore, Universal Telecom alleges that those areas follow exchange boundaries of the ILECs in the territory to be served. The Commission finds that Universal Telecom has sufficiently identified the geographic area in which it proposes to offer service and that Universal Telecom has demonstrated that the area follows ILEC exchange boundaries and is no smaller than an exchange.

Universal Telecom stated that it will offer basic local telecommunications service as a separate and distinct service and that, in compliance with Section 392.455(5), 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. Therefore, the Commission finds that Universal Telecom will provide basic local exchange service as a separate and distinct service and that Universal Telecom has committed to provide equitable access.

Universal Telecom stated in its verified application that it will offer each of the telecommunications services defined by the Commission as essential to qualify for state universal service fund support as found in 4 CSR 240-31.010(5), in any area served by a small ILEC. Universal Telecom also agreed to advertise the availability of essential services and the charges for those services using media of general distribution, in any area served by a small

ILEC. Therefore, the Commission finds that Universal Telecom will offer all telecommunications services, which the Commission has determined are essential for purposes of qualifying for state universal service fund support, throughout the service area of the small ILEC. The Commission also finds that Universal Telecom will advertise the availability of such essential services and the charges for those services using media of general distribution, throughout the service area of the small ILEC.

Universal Telecom stated that approval of its application is in the public interest because its proposed services will create and enhance competition and expand customer service options consistent with the legislative goals of the federal Telecommunication Act of 1996 and Chapter 392, RSMo. Universal Telecom stated that granting its application will expand the availability of innovative, high quality, and reliable telecommunication services within the state of Missouri.

Universal Telecom stated that it seeks classification of itself and its services as competitive, with accompanying reduced regulation pursuant to Sections 392.361 and 392.420. Staff recommended that all services proposed should be classified as competitive telecommunications services, provided that the requirements of Section 392.200, RSMo, continue to apply. Universal Telecom alleges that its services will be subject to sufficient competition by the services of ILECs to justify a lesser degree of regulation.

Staff recommended that Universal Telecom and its services be classified as competitive based on certain conditions. Universal Telecom agrees to have its certificate conditioned upon certain limitations on its ability to charge for its access services. The conditions are as follows:

- A. Universal Telecom'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 the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.
- B. The service authority and service classification for switched exchange access is conditioned on the continued applicability of Section 392.200, RSMo, and the 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 Universal Telecom is operating, decreases its originating and/or terminating access service rates, Universal Telecom 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.
- D. If the service area in which Universal Telecom seeks to compete is served by a small ILEC, Universal Telecom will offer services essential to qualify for state universal service fund support, advertise the availability of such essential services and the charges for those services, and comply with the Commission rules and regulations for tariffs, service standards, reports, and other information filings as the Commission requires of the incumbent with which the Applicant seeks to compete, pursuant to Section 392.451, RSMo.

The Commission finds that all the telecommunications services Universal Telecom proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the Commission finds that all of Universal Telecom's proposed telecommunications services are competitive telecommunications services.

Conclusions of Law

Certificate of Service Authority

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. Universal Telecom has requested certification under Sections 392.410, 392.420, 392.430, 392.440, 392.450 and 392.451, which permit the Commission to grant a certificate of service authority where it is in the public interest. The federal Telecommunications Act of 1996 and Section 392.455 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers.^[4]

Section 392.455 sets out the requirements for granting certificates to provide basic local telecommunications service. 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 the area follows exchange boundaries of the ILEC 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.

Section 392.451 sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants in an area served by a small incumbent local exchange telecommunications company. The applicant must (1) offer telecommunications services defined by the Commission as essential to qualify for state universal service fund support, throughout the service area of the small ILEC, and (2) advertise the availability of essential services and the charges for those services using media of general distribution.

The Commission finds that Universal Telecom meets the statutory requirements for provision of basic local telecommunications services generally, and for service areas served by a small ILEC, and has stated it will abide by those requirements in the future. The Commission determines that granting Universal Telecom a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.

Competitive Classification

Universal Telecom requested that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived. 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.^[5] In making that determination, the Commission may consider a number of factors including market share, financial resources, and name recognition, among others.^[6] In addition, the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by the company are competitive telecommunications services pursuant to Section 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.^[7]

The Commission finds that competition in the basic local exchange telecommunications market is in the public interest. The Commission has found that all the telecommunications services offered by Universal Telecom are competitive telecommunications services and that the telecommunication services Universal Telecom proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the Commission concludes that Universal Telecom should be classified as a competitive company.

Waivers and Conditions

Subsection 392.470.1 authorizes the Commission to impose conditions upon a telecommunications service provider which the Commission deems reasonable and necessary and which are in the public interest and consistent with the purposes of Chapter 392. 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.

Universal Telecom requested a waiver of standard statutes and rules that the Commission ordinarily waives for competitive companies. The parties agreed that the Commission should grant Universal Telecom waiver of all the standard statutes and rules waived for competitive basic local exchange carriers.

Sections 392.361 and 392.420, RSMo, 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 Commission has found that the telecommunication services Universal Telecom proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. The Commission has also found that Universal Telecom is a competitive company. Therefore, the Commission finds that Universal Telecom should be granted the same waivers of the statutes and rules as the Commission usually grants to competitive companies. The waivers are set out in the ordered paragraph below.

The Commission also finds that the conditions as recommended by Staff are reasonable and necessary to protect the public interest and that they further the purposes of Chapter 392 as stated in Section 392.185. Therefore, the Commission finds that Universal Telecom' competitive classification and certification should be expressly conditioned as recommended by Staff and as ordered below.

Universal Telecom has stated that it intends to file an amendment to its current tariff. The amendment would contain the rules and regulations applicable to its customers and the additional exchanges where Universal Telecom will offer services. The tariff will also set forth the services offered and the rates for those services. The Commission concludes that under the provisions of Chapter 392, RSMo, Universal Telecom may not provide service in its additional service areas until it has been granted a certificate of service authority and has approved tariffs.

IT IS THEREFORE ORDERED:

1. That Universal Telecom, 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 below and to all applicable statutes and Commission rules except as specified in this order.

2. That Universal Telecom, Inc., 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 |
| 392.240(1) | - | rates-rentals-service & physical connections |
| 392.270 | - | valuation of property (ratemaking) |
| 392.280 | - | depreciation accounts |
| 392.290 | - | 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 | - | issuance of securities, debts and notes |

Commission Rules

- | | | |
|------------------|---|--------------------------|
| 4 CSR 240-10.020 | - | depreciation fund income |
|------------------|---|--------------------------|

- | | |
|------------------------|---|
| 4 CSR 240-30.010(2)(C) | - posting of tariffs |
| 4 CSR 240-30.040 | - uniform system of accounts |
| 4 CSR 240-32.030(4)(C) | - exchange boundary maps |
| 4 CSR 240-33.030 | - minimum charges |
| 4 CSR 240-35 | - reporting of bypass and
customer-specific arrangements |

3. That Universal Telecom, Inc.'s request for a temporary waiver of 4 CSR 240-2.060(6)(C) is granted.

4. That if Universal Telecom, Inc., provides access service, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area Universal Telecom is providing service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo 2000.

5. That the certification and competitive status herein granted to Universal Telecom, Inc., 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 out above must be cost-justified pursuant to Sections 392.220 and 392.230, RSMo 2000, rather than Sections 392.500 and 392.510, RSMo 2000.

6. That if a directly competing incumbent local exchange carrier, in whose service area Universal Telecom, Inc., is operating, decreases its originating or terminating access service rates, Universal Telecom, Inc., shall file an appropriate tariff amendment to reduce its originating or terminating access rates in that directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates.

7. That the service authority and service classification granted above are subject to the requirements of Section 392.200, RSMo, and are conditional and shall not be exercised until such time as tariffs for services have become effective.

8. That this order shall become effective on March 31, 2002.

9. That this case may be closed on April 1, 2002.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Nancy Dippell, Senior Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 21st day of March, 2002.

[1] All further statutory references are to Revised Statutes of Missouri 2000, unless otherwise indicated.

[2] *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

[3] 4 CSR 240-2.060(1) and (6)(C), effective April 30, 2000.

[4] See Section 392.185.

[5] Section 392.361.2.

[6] *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).

[7] *Id.* at 487.