

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
June 4, 2002**

CASE NO: TA-2002-238


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Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Chariton Valley)
Telecom Corporation for a Certificate of Service)
Authority to Provide Basic Local Exchange Service,)
Local Exchange Service, and Exchange Access)
Service within the State of Missouri.)

Case No. TA-2002-238

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

This order grants a certificate of service authority to provide basic local telecommunications services in portions of the state of Missouri, classifies those services and the company as competitive, and waives certain statutes and regulations.

Procedural History

On November 21, 2001, Chariton Valley Telecom Corporation filed an Application for a Certificate of Service Authority to provide basic local, local exchange and exchange access telecommunications services within the state of Missouri, and for competitive classification. On December 4, 2001, the Missouri Public Service Commission issued its Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene, establishing January 3, 2002, as the deadline for intervention. No applications to intervene were received.

Chariton filed a Motion for Protective Order on March 19, 2002. This Motion was not in compliance with Commission rules and on March 21, 2002, an Order Directing Filing was issued, ordering that Chariton correct the deficiencies. On March 22, 2002, Chariton

filed a Supplemental Motion for Protective Order, correcting the deficiencies. An Order Granting Protective Order was issued on April 1, 2002. Chariton then, on April 3, 2002, filed a Supplement to Application. The Supplement provides information that is protected under the Protective Order.

In response to Staff suggestions that Chariton request additional relief in its Applications, Chariton filed a Restated Application for Certificate of Service Authority, dated April 10, 2002. Chariton filed a Revised Restated Application on April 18, 2002. Staff then suggested that Chariton more affirmatively aver, in its Application, the requirements of Commission rules. Chariton filed a Second Revised Restated Application, dated May 2, 2002.¹

On May 6, 2002, Staff of the Missouri Public Service Commission filed its Recommendation and Memorandum. Staff recommends that the requested certificate, classification and waivers be granted.

Discussion

Chariton seeks certification to provide basic local, local, and exchange access service in portions of Missouri that are currently being served by Southwestern Bell Telephone Company, Verizon (f/k/a GTE), Spectra Communications, Sprint Missouri Inc., and ALLTEL. The Commission may grant an application for a certificate of service authority to provide basic local telecommunications service upon a showing that: (1) the

¹ Unless otherwise referenced, all references to Chariton's "Application" are to the Second Revised Restated Application.

applicant has met the statutory requirements,² and (2) the grant of authority is in the public interest.³ The applicant must also comply with the Commission's procedural rules.⁴

Chariton is also requesting that it and its services be classified as competitive and that the application of certain statutes and regulatory rules be waived. The Commission may classify a telecommunications service as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.⁵ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁶ The Commission may waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁷

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. The positions and arguments of all of the parties have been considered by the Commission in making this decision. Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission had failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

² See Sections 392.450, 392.451 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

³ Sections 392.430 and 392.440.

⁴ See Chapter 2, 4 CSR 240.

⁵ Section 392.361.2.

⁶ Section 392.361.3.

⁷ See Sections 392.185, 392.361.3 and 392.420.

A. Requirements of the Commission's Rules:

Commission rules 4 CSR 240-2.060(1) and (6) require an entity seeking certification to provide basic local telecommunications services to provide certain information to the Commission in its application. These include: a description of the business organization of the applicant, supported by the certificate of the Missouri Secretary of State; names and addresses for contact purposes; a disclosure of any pending or final judgments or decisions against it from any state or federal agency or court involving customer service or rates; a verified statement that there are no outstanding annual reports or assessment fees owed to this Commission; if applicable, a request to be classified as a competitive telecommunications company; a description of the types of service the applicant intends to provide; the exchanges in which service is to be offered; and, a proposed tariff with an effective date which is not fewer than 45 days after its issue date.

Having reviewed the application and supporting materials filed by Chariton, the Commission finds that Chariton Valley has complied with each of these requirements except for the proposed tariff. Chariton requests a temporary waiver of 4 CSR 240-2.060(6)(1)(C) until it has entered into interconnection agreements and such agreements have been approved by the Commission. Chariton agrees to file tariffs after interconnection agreements have been obtained and will not provide service prior to any such tariffs being effective.

B. Requirements of Section 392.450:

Section 392.450.1 provides that the Commission may grant a basic local certificate only upon a finding, after notice and a hearing, that the applicant has complied with the certification process established under Section 392.455. Thus, an applicant's

satisfaction of the requirements of the Commission's regulations and of Section 392.455 also satisfies Section 392.450.1. As explained below, the Commission does find that Chariton has satisfied the requirements of the Commission's regulations and of Section 392.455, and consequently finds that Chariton has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.

Section 392.450.2 provides that an applicant for a basic local certificate must (1) file and maintain tariffs with the Commission in the same manner as the incumbent local exchange carriers and (2) meet the minimum service standards, including quality of service and billing standards, that the Commission requires of the competing incumbent local exchange carriers.

Chariton did not file a proposed tariff in support of its application. However, Chariton stated it will comply with all applicable Commission rules except those expressly waived by the Commission. Thus, Chariton has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. Staff recommends that the certificate be granted. Having reviewed Chariton's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Chariton has meet the requirements of Section 392.450.2.

C. Requirements of Section 392.451

Section 392.451 requires Chariton to offer all telecommunications services, throughout the service area of the incumbent local exchange company, which the Commission has determined are essential for purposes of qualifying for state universal

service fund support.⁸ Chariton has indicated in its Application that it will offer two-way switched voice residential service within a local calling scope as determined by the Commission, throughout the service area of any small ILECs with whom Chariton competes. Such will be comprised of the following: single line residential service, including touch tone dialing; access to local emergency services; access to basic local operator services; access to basic local directory assistance; standard intercept service; equal access to interexchange carriers; one standard white pages directory listing; and, toll blocking or toll control for qualified low-income customers. Chariton also avers that it will advertise the availability of such essential services and the charges therefor using media of general distribution.

Requirement of Section 392.455:

Section 392.455 authorizes the Commission to establish a process to grant basic local certification to new entrants and to grant certificates to new entrants to provide basic local telecommunications service on a common carriage basis. That section further requires that a new entrant: (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 the 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. Finally, Section 392.455 also requires that the Commission give due consideration to equitable access for

⁸ See 4 CSR 240-31.010(5)

all Missourians to affordable telecommunications services, regardless of where they live or their income.

In support of its application, Chariton filed a Forecasted Statement of Income with a two-year projection. Staff, in its Memorandum, indicated that Chariton has sufficient financial resources and recommends that the application be granted.

In its Supplement to Application, filed April 3, 2002, Chariton asserts that it “possesses sufficient technical, managerial, and financial resources and abilities to provide the services for which service authority is requested.” To its Supplement to Application, Chariton attached statements concerning its General, Assistance General and Accounting managers. These employees have management experience in various settings and telecommunications experience. Staff, in its Recommendation and Memorandum, indicates that it is satisfied that Chariton possesses sufficient managerial and technical expertise to provide basic local telecommunications service. Having reviewed Chariton’s application and supporting materials, as well as Staff’s Recommendation and Memorandum, the Commission finds that Chariton has met the requirements of Section 392.455(1) in that it has shown that it possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

As previously noted, Chariton has stated that it will comply with all applicable Commission rules except those expressly waived by the Commission. Based on this statement, the Commission finds that Chariton has demonstrated that the services it proposed to offer satisfy the minimum standards promulgated in Section 392.455(2).

In its Application, Chariton seeks certification “in the exchanges or service areas of the incumbent local exchange companies of Southwestern Bell Telephone Company,

Verizon (f/k/a GTE), Spectra Communications, Sprint Missouri Inc., and ALLTEL. Staff agrees that Chariton has sufficiently identified the exchanges in which it seeks certification and recommends that the application be approved. Having reviewed Chariton's Application and supporting material, as well as Staff's Memorandum and Recommendation, the Commission finds that Chariton has met the requirements of Section 392.455(3) in that it has set forth the geographic area in which it proposes to offer service and has demonstrated that such area follows the exchange boundaries of the incumbent local exchange telecommunications companies and is no smaller than an exchange.

In its Application, Chariton states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that Chariton has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

In its Application, Chariton states that it will give consideration to equitable access for all Missourians, regardless of where they reside or their income, to affordable telecommunications service. Section 392.455(5) requires the Commission give due consideration in this regard. Chariton's statement furthers this requirement.

D. Requirement for Competitive Classification:

If the requested certification is granted, Chariton will compete with an incumbent local exchange carrier in each exchange in which it provides basic local telecommunications service. The Commission finds that Chariton will thus be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Chariton will offer are thus qualified for classification as competitive services.

Conclusions of Law

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

Jurisdiction:

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, after notice and a hearing, where it is in the public interest.⁹ The Commission is also authorized to classify services and companies as competitive or transitionally competitive and waive certain statutory provisions and Commission rules.¹⁰ The Commission may also impose any reasonable and necessary condition upon telecommunications service providers if such conditions are in the public interest and consistent with the provisions and purposes of this chapter.¹¹

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party had requested the opportunity to present evidence.¹² Since no one has requested a hearing, the Commission may grant the relief requested based on the verified application and other pleadings of record.

The Public Interest:

Having found that Chariton Valley has met all of the requirements for certification to provide basic local telecommunications service as a common carrier, it remains to be

⁹ Sections 392.430, 392.450 and 392.455.

¹⁰ Section 392.361.

¹¹ Section 392.470.1.

¹² *State ex rel. Rex Deffenderder Enterprises, Inc. v. Public Service Commission*, 776 S. W. 2d 494.496 (Mo. App., W.D. 1989).

determined whether it is in the public interest to grant the requested certificate. It has been legislated¹³ that "[t]he provisions of this chapter shall be construed to . . . promote diversity in the supply of telecommunications services and products throughout the state of Missouri; [and to] . . . [a]llow 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[.]" In consideration of the foregoing, and based upon its finding that Chariton Valley has met all of the requirements for the requested certification, the Commission concludes that granting the requested certification is in the public interest.

Competitive Classification:

Chariton Valley seeks competitive classification and the Commission has found that Chariton Valley will be subject to competition to justify a lesser degree of regulation. The Commission has further found that all of Chariton Valley's services will be entitled to classification as competitive services. Therefore, the Commission may classify Chariton Valley as a competitive telecommunications company if such lesser degree of regulation is consistent with the protection of ratepayers and promotes the public interest. In consideration of these findings and of the public interest, the Commission concludes that granting competitive classification to Chariton Valley is consistent with the protection of ratepayers and promotes the public interest.

Waivers:

The Commission may waive certain statutes and administrative rules for competitively classified carriers "if such waiver or modification is otherwise consistent with

¹³ Section 392.180

the other provisions of Section 392.361 to 392.520 and the purposes of this chapter.”¹⁴

The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange carriers. The Commission will waive these provisions for Chariton Valley because to do so furthers the purposes of Chapter 392 to foster and encourage the development of competition in the telecommunications industry.

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.”¹⁵ Staff recommends that Chariton Valley’s application be granted subject to the following conditions:

1. Chariton’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 Chariton seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230.
2. The Certificate and service classification for switched access services is conditioned on the continued applicability of Section 392.200, and the requirement that any increase in switched access services rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510.
3. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant 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.

The Commission has considered the conditions proposed by Staff and concludes that they are reasonably necessary to protect the public interest and should be adopted.

¹⁴ Sections 392.361.5 and 392.420

¹⁵ Section 392.361.6

Chariton is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit Chariton to lawfully provide telecommunications services in Missouri.

IT IS THEREFORE ORDERED:

1. That Chariton Valley Telecom Corporation is granted a certificate of service authority to provide basic local telecommunications services in the large local exchange carrier exchanges of Southwestern Bell Telephone Company, Sprint Missouri, Inc., Verizon, Spectra Communications and the small local exchange carriers area of ALLTEL Communications, Inc., subject to the condition and recommendations contained in the Staff's Memorandum.
2. That Chariton Valley Telecom Corporation is granted a certificate to provide non-switched local exchange telecommunications service restricted to dedicated private line services.
3. That Chariton Valley Telecom Corporation is granted competitive classification.
4. That Chariton Valley Telecom Corporation's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo 2000, and on the requirement that any increase in switched access service rates above the maximum switched access services rates set forth in the agreement must be cost justified pursuant to Section 392.220, RSMo 2000, and 392.230, rather than Section 392.500 and 392.510.
5. That Chariton Valley Telecom Corporation's 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 Chariton Valley seeks authority to provide service, unless authorized by the Commission pursuant to Section 392.220 and 392.230, RSMo 2000.

6. That the certificate and competitive service classification for switched exchange access is granted conditioned on the continued applicability of Section 392.200, RSMo 2000, and the requirement that any increase in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Section 392.200 and 392.230, RSMo 2000, and not Section 392.500 and 392.510, RSMo 2000.

7. That if the directly-competing incumbent local exchange carrier, in whose service area Chariton Valley Telecom Corporation is operating, decreases its originating and/or terminating access service rates, Chariton Valley Telecom Corporation shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the 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 in order to maintain the cap.

8. That Chariton Valley Telecom Corporation will provide essential services, as required by Section 392.451 RSMo (2000) and delineated at 4 CSR 240-31.010(5).

9. That application of the following statutes and Commission regulating is 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 |

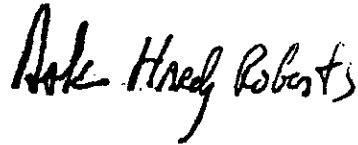
10. That Rule 4 CSR 240-2.060(4)(H) is waived. Chariton Valley Telecom Corporation may not operate until its tariffs have been submitted to the Commission and approved.

11. That Chariton Valley Telecom Corporation is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit Chariton Valley Telecom Corporation to lawfully provide telecommunications services in Missouri.

12. That this order and Chariton Valley Telecom Corporation's certificate shall become effective on June 14, 2002.

13. That this case may be closed on June 15, 2002.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

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

(S E A L)

Kennard L. Jones, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 4th day of June, 2002.

FYI: To Be Issued By Delegate

ALJ/Secretary:

Jones/Boyle

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CASE NO.

79-2001-238

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STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 4th day of June 2002 .

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

