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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 6th
day of June, 1997.

In the Matter of the Application of)
Max-Tel Communications, Inc. for a)
Certificate of Service Authority to)
Provide Basic Local Telecommunications)
Service in Portions of the State of)
Missouri and to Classify Said Services)
and the Company as Competitive.)

CASE NO. TA-97-342

ORDER GRANTING CERTIFICATE OF SERVICE AUTHORITY TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICE

Procedural History

Max-Tel Communications, Inc. (Max-Tel or Applicant) applied to the Commission on February 21, 1997, for a certificate of service authority to provide basic local telecommunications service in Missouri under § 392.410 - .450 RSMo 1994¹. Max-Tel asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. Max-Tel is a Texas corporation, with offices at 102 West Franklin, Alvord, Texas 76225.

The Commission issued an Order and Notice on February 28 directing parties wishing to intervene in the case to do so by April 10. The Commission granted permission to intervene to the following entities on April 21:

Southwestern Bell Telephone Company (SWBT)
The Small Telephone Company Group
Bourbeuse Telephone Company
Fidelity Telephone Company

¹All statutory references are to Revised Statutes of Missouri, 1994, or to the 1996 Supplement.

The parties filed a Stipulation and Agreement (SA) on May 6, and Max-Tel filed a motion asking that the Commission take the Stipulation under submission without further proceedings, or in the alternative, to establish a hearing date to consider approval of the agreement. Although the Commission Staff (Staff) did not sign the May 6 Stipulation and Agreement, Staff filed on May 12 a letter of intent to be a signatory party to the Stipulation and Agreement. Staff filed Suggestions in Support of the Stipulation and Agreement on May 13. The Commission determines that no hearing is necessary and that relief may be granted based upon the verified petition. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

Background

Max-Tel wishes certification to provide resold basic local telecommunications service. Max-Tel wishes to provide basic local services in portions of Missouri that are currently served by SWBT, GTE Midwest, Inc. (GTE) and United Telephone Company of Missouri d/b/a Sprint (Sprint-United). Max-Tel is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which Max-Tel proposes to operate are described in Appendix B to the application. Max-Tel is requesting that its basic local exchange services be classified as competitive and that certain statutes and regulatory rules be waived for Max-Tel.

Discussion

A. Requirements of 4 CSR 240-2.060(4)

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of

State showing 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 forty-five day effective date. Max-Tel has provided all the required documentation except for the proposed tariff. The company has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for Max-Tel to submit a tariff until it has executed interconnection agreements with the ILECs involved. Max-Tel cannot price its resold services until it has reached price agreements with the ILECs from which it will purchase those services. A Resale Agreement between Max-Tel and SWBT has been submitted for Commission approval in Case No. TO-97-501. The company has agreed that, once it is possible to do so, it will submit to the Commission for approval a proposed tariff with a minimum 30-day effective date. Max-Tel will file the tariff in Case No. TA-97-342 and give notice of the tariff filing to all the parties and participants. Along with that filing Max-Tel has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas (SA pages 7-8, ¶ 12).

B. Basic local service certification

Section 392.455, RSMo Supp. 1996, effective August 28, 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.

Max-Tel submitted in its application a list of the names and qualifications of its management team. The team members have experience in various areas of the telecommunications industry including customer services, policy, marketing and finance. Max-Tel also submitted as Appendix C to its application a letter from its lender attesting to Applicant's financial status as of January 18, 1997. The parties agreed that Max-Tel possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service (SA page 5, ¶ 10-A).

2. The entrant's proposed services satisfy the minimum standards established by the Commission. Max-Tel stated in its application that it will meet the Commission's minimum basic local service standards, including quality of service and billing standards. The parties agreed that Max-Tel proposes to offer basic local services that satisfy the minimum standards established by the Commission (SA page 5, ¶ 10-B).

3. The geographic area in which the company proposes to offer service. Max-Tel set out in Appendix B to its Application all the exchanges in which it proposes to offer services. Max-Tel has defined its service area by means of the tariffed exchange areas of the ILECs presently providing basic local service in those exchanges. Appendix B consists of Commission-approved tariff sheets filed by SWBT, GTE and Sprint-United, and describing local exchanges. The parties agreed that Max-Tel 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 (SA page 5, ¶ 10-C).

4. **The offering of basic local telecommunications service as a separate and distinct service.** Max-Tel has agreed to offer basic local telecommunications service as a separate and distinct service (SA page 5, ¶ 10-D).

5. **Equitable access for all Missourians to affordable telecommunications services.** Max-Tel has agreed to 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 § 392.455(5). See SA pages 5-6, ¶ 10-E.

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

The parties have agreed that Max-Tel should be classified as a competitive telecommunications company. (SA page 6, ¶ 11). The parties have also agreed that Max-Tel's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on Max-Tel's ability to charge for its access services. Max-Tel has agreed 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 certification for the large incumbent LECs within those service areas in which Max-Tel seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Max-Tel should be expressly conditioned on the continued applicability of § 392.200 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 §§ 392.220 and 392.230, rather than §§ 392.500 and 392.510. (SA pages 6-7, ¶ 11).

The parties agreed that waiver of the following statutes is appropriate: §§ 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330 and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

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:

1. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
2. The Commission finds that Max-Tel 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.
3. The Commission finds that Max-Tel has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
4. The Commission finds that Max-Tel 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 Max-Tel a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Max-Tel's certificate should become effective when its tariff becomes effective.
5. The Commission finds that Max-Tel is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 3.

6. The Commission finds that Max-Tel's certification and competitive status are expressly conditioned upon the continued applicability of § 392.200 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 §§ 392.220 and 392.230, rather than §§ 392.500 and 392.510.
7. The Commission finds that the Stipulation and Agreement filed by the parties is a reasonable resolution of the issues.

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. Max-Tel has requested certification under § 392.410 - .450. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority is in the public interest.

The Federal Telecommunications Act of 1996 and Missouri Senate Bill 507 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185 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. . . ."

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to § 536.060. Based upon the information contained within the Stipulation and Agreement of the parties, the verified application, the Suggestions in Support of the Stipulation and Agreement, and on its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved and that Max-Tel should be granted the certificate of service authority requested.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement in this docket filed on May 6, 1997, is approved.

2. That Max-Tel Communications, 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 above, to become effective when the company's tariff becomes effective.

3. That Max-Tel Communications, Inc. is classified as a competitive telecommunications company. The following statutes and regulatory rules shall be waived:

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
392.330	- issuance of securities, debts and notes
392.340	- reorganization(s)

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

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

5. That Max-Tel Communications, Inc. shall file tariff sheets for approval no later than 30 days after the Commission approves the required interconnection agreement or agreements. The proposed tariff shall reflect the rates, rule, regulations and the services it will offer. The tariff shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3.

6. That this order shall become effective on June 17, 1997.

BY THE COMMISSION



Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton, Murray
and Drainer, CC., concur.
Lampe, C., absent.

ALJ: George