

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of France Telecom)
Corporate Solutions, L.L.C., for a Certificate of)
Service Authority to Provide Resold Basic Local) **Case No. LA-2005-0193**
and Interexchange Telecommunications Service)
in the State of Missouri and to Classify Said)
Services and the Company as Competitive.)

ORDER GRANTING CERTIFICATES TO PROVIDE
BASIC LOCAL AND INTEREXCHANGE TELECOMMUNICATIONS
SERVICES AND ORDER APPROVING TARIFFS

Issue Date: July 11, 2005

Effective Date: July 15, 2005

Syllabus: This order grants certificates of service authority to provide basic local and interexchange 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 December 29, 2004, France Telecom Corporate Solutions, L.L.C., applied for a certificate of service authority to provide resold basic local and interexchange telecommunications services. The Commission issued its Notice of Applications establishing January 20 and February 4, 2005, as the deadlines for applications to intervene regarding the interexchange and basic local certificates, respectively. No requests to intervene were received.

France Telecom filed proposed tariffs in conjunction with its application each with an effective date of February 14, 2005. France Telecom twice extended the effective date of its tariffs. France Telecom now requests that its tariffs become effective on July 15, 2005. On June 21, 2005, France Telecom filed an amended application and substitute tariff sheets. The Staff of the Missouri Public Service Commission filed its recommendation and memorandum on June 28, 2005.

Discussion

France Telecom seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by Southwestern Bell Telephone, L.P. d/b/a SBC Missouri and Sprint Missouri, Inc.¹ France Telecom also seeks certification to provide intrastate interexchange telecommunications services throughout the state of Missouri. The Commission may grant an application for a certificate of service authority to provide basic local telecommunications service upon a showing (1) that the applicant has met the statutory requirements,² and (2) that the grant of authority is in the public interest.³ The Commission may grant an application for a certificate of service authority to provide interexchange telecommunications services upon a showing that the grant of authority is in the public interest.⁴

¹ In its original application, France Telecom also requested authority to provide basic local telecommunications service in the exchanges served by GTE; however, that request was deleted in its amended application.

² See Sections 392.450 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 Sections 392.430 and 392.440.

France Telecom is also requesting that it and its services be classified as competitive and that the Commission waive certain statutes and regulatory rules. 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.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 Commission has considered the positions and arguments of all of the parties in making this decision. 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.

A. Requirements of the Commission's Rules:

Commission Rules 4 CSR 240-2.060(1) and 4 CSR 240-3.510 require an entity seeking certification to provide telecommunications services to provide certain information to the Commission. This information includes: a description of the business organization of the applicant, supported by the certificate of the Missouri Secretary of State; names and

⁵ Section 392.361.2.

⁶ Section 392.361.3.

⁷ See Sections 392.185, 392.361.3 and 392.420.

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; a request to be classified as a competitive telecommunications company, if applicable, and a description of the types of service the applicant intends to provide; the exchanges in which service is to be offered; and before providing service, 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 France Telecom filed, the Commission finds that France Telecom has complied with each of these requirements.

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 finds that France Telecom has satisfied the requirements of the Commission's regulations and of Section 392.455, and consequently finds that France Telecom 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.

France Telecom states that it will comply with all applicable Commission rules except those the Commission waives. The Commission rules that France Telecom agrees to obey include the Commission's minimum basic local service standards, including quality of service and billing standards. Having reviewed France Telecom's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that France Telecom has met the requirements of Section 392.450.2.

C. Requirements 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, that section also requires that the Commission give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of their location or income.

In support of its application, France Telecom filed its financial statements. Based on its review of this information, Staff concluded that France Telecom has sufficient financial resources and recommended that the Commission grant the application.

In its verified application, France Telecom asserts that it has the technical and managerial expertise to provide the services it proposes. With its application, France Telecom filed summaries of its key employees' experience. These employees have management and technical telecommunications experience. Staff, in its Recommendation, indicates that France Telecom has sufficient managerial and technical expertise to provide basic local telecommunications service. Having reviewed France Telecom's application and supporting materials, as well as Staff's Recommendation, the Commission finds that France Telecom 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.

Initially, France Telecom proposes to offer Local Exchange Service, Virtual Private Network Service, Local Dedicated Service, and Integrated Services Digital Network Primary Rate Interface (ISDN-PRI). France Telecom 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 France Telecom has demonstrated that the services it proposes to offer satisfy the minimum standards established by the Commission, in satisfaction of Section 392.455(2).

France Telecom seeks certification in the exchanges served by SBC Missouri and Sprint. France Telecom is not asking for basic local certification in any area that is served by a small incumbent local exchange provider. Staff agrees that France Telecom has sufficiently identified the exchanges in which it seeks certification and recommends that the Commission approve the application. The Commission finds that France Telecom 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 verified application, France Telecom states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that France Telecom has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

France Telecom also states that it will consider equitable access for all Missourians, regardless of their location or income, to affordable telecommunications service. France Telecom submits that the public interest will be served by Commission approval of its application because its proposed services will create and enhance competition and expand customer service options, improve the quality of telecommunications service, and decrease the cost of such services. The Commission finds these representations are consistent with the legislative goals set forth in the Telecommunications Act of 1996 and Chapter 392, RSMo. Therefore, granting the certificate will further the goal announced by the Legislature.

D. Interexchange Authority:

France Telecom requested a certificate to provide interexchange telecommunications service throughout the state of Missouri. France Telecom intends to provide interexchange services on a resale basis mainly to business customers. France Telecom intends to provide Switched Interexchange Service, Dedicated Interexchange Service, Virtual Private Network Service, Frame Relay Service, Carrier 800 Service, Private Line Service, and Travel Calling Card Service.

In its Memorandum filed on June 28, 2005, the Staff of the Commission recommended that the Commission grant France Telecom a certificate of interexchange service authority. Staff recommended that the Commission grant France Telecom competitive status, and waiver of the statutes and rules listed in the Notice. The Commission finds that competition in the intrastate telecommunications market is in the public interest and that France Telecom should be granted a certificate of service authority.

E. Requirements for Competitive Classification:

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

The Commission finds that the services France Telecom proposes to offer are competitive and France Telecom should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraphs below is reasonable and not detrimental to the public interest.

F. Approval of Tariffs:

Along with its application, France Telecom submitted proposed tariffs and substitute pages for those tariffs. The Commission has reviewed the tariffs and Staff's recommendation. The Commission finds that the proposed tariffs detail the services, equipment, and pricing France Telecom proposes to offer. In addition, the tariffs list the

waivers approved by the Commission. The Commission finds that the proposed tariffs filed on December 29, 2005, should be approved, as substituted, to become effective on July 15, 2005.

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 basic local exchange and interexchange 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.⁸ The Commission is also authorized to classify services and companies as competitive or transitionally competitive and to waive certain statutory provisions and Commission rules.⁹ The Commission may also impose any reasonable and necessary condition or conditions upon telecommunications service providers if such conditions are in the public interest and consistent with the provisions and purposes of this chapter.¹⁰

The Public Interest:

Having found that France Telecom has met all of the requirements for certification to provide basic local and interexchange telecommunications services, the

⁸ Sections 392.430, 392.440, 392.450, and 392.455.

⁹ Section 392.361.

¹⁰ Section 392.470.1.

Commission must still determine whether it is in the public interest to grant the certificates.

The public interest is found in the

positive, well-defined expression of the settled will of the people of the state or nation, as an organized body politic, which expression must be looked for and found in the Constitution, statutes, or judicial decisions of the state or nation, and not in the varying personal opinions and whims of judges or courts, charged with the interpretation and declaration of the established law, as to what they themselves believe to be the demands or interests of the public.¹¹

"[I]f there is legislation on the subject, the public policy of the state must be derived from such legislation."¹²

Turning to the statutes of Missouri, the Commission notes that the General Assembly has expressly provided that "[t]he provisions of this chapter shall be construed to . . . [p]romote 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[.]"¹³ In consideration of the foregoing, and based upon its finding that France Telecom has met all of the requirements for the certificates, the Commission concludes that granting the certificates is in the public interest.

Competitive Classification:

France Telecom seeks competitive classification. The Commission found that France Telecom will be subject to sufficient competition to justify a lesser degree of regulation. The Commission further found that all of France Telecom's services will be

¹¹ *In re Rahn's Estate*, 316 Mo. 492, 501, 291 S.W. 120, 123 (1926), *cert. den'd*, 274 U.S. 745, 47 S.Ct 591, 71 L.Ed. 1325.

¹² *Moorshead v. Railways Co.*, 203 Mo. 121, 165, 96 S. W. 261, 271 (banc 1907).

¹³ Section 392.185.

entitled to classification as competitive services. Therefore, the Commission may classify France Telecom 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 as announced by the General Assembly, the Commission concludes that granting competitive classification to France Telecom 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 the other provisions of sections 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 and interexchange carriers. The Commission will waive these provisions for France Telecom because to do so furthers the purpose 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 France Telecom’s application be granted subject to the following conditions:

- A. France 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 France Telecom seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.

¹⁴ Sections 392.361.5 and 392.420.

¹⁵ Section 392.361.6.

- B. The certificate and service classification for switched exchange access is granted 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 France Telecom is operating, decreases its originating and/or terminating access service rates, France 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.

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

Compliance:

The Commission places France Telecom on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against France Telecom. These obligations include, but are not limited to, the following:

1. The requirement to file an annual report, subject to a penalty of \$100 and an additional \$100 per day for each day France Telecom remains in noncompliance, pursuant to Section 392.210.1, RSMo 2000, Commission Rule 4 CSR 240-3.540(1).
2. The requirement to pay an annual assessment fee, pursuant to Section 386.370, RSMo Supp. 2004. Because assessments are facilitated by order of the Commission, failure to comply with the order will subject France Telecom to penalties ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo 2000.

3. That France Telecom shall comply with all relevant state and federal statutes and rules.
4. That France Telecom shall keep the Commission informed of its current address and telephone number.
5. That France Telecom shall comply with all orders of this Commission, subject to penalties for noncompliance ranging from \$100 to \$2000 per day of noncompliance, pursuant to Section 386.570, RSMo.

The Commission further reminds France Telecom that Section 392.410, RSMo Supp. 2004, renders France Telecom's certificate of service authority null and void one year from the date of this order unless France Telecom has exercised its authority under that certificate.

Furthermore, the company is reminded that, if it is a corporation, its officers may not represent the company before the Commission. Instead, the corporation must be represented by an attorney licensed to practice law in Missouri.

IT IS THEREFORE ORDERED:

1. That France Telecom Corporate Solutions, L.L.C., 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 in this order and to all applicable statutes and Commission rules except as specified in this order.

2. That France Telecom Corporate Solutions, L.L.C., is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to the conditions of certification set out in this order and to all applicable statutes and Commission rules except as specified in this order.

3. That France Telecom Corporate Solutions, L.L.C., is classified as a competitive telecommunications company.

4. That France Telecom Corporate Solutions, L.L.C., shall have originating and terminating access rates no greater than the lowest Commission-approved corresponding access rates in effect for each ILEC within whose service area France Telecom Corporate Solutions, L.L.C., seeks authority to provide service, unless authorized by the Commission pursuant to sections 392.220 and 392.230, RSMo 2000.

5. 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 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 2000, and not sections 392.500 and 392.510, RSMo 2000.

6. That if the directly competing ILEC, in whose service area France Telecom Corporate Solutions, L.L.C., is operating, decreases its originating and/or terminating access service rates, France Telecom Corporate Solutions, L.L.C., 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.

7. That 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
- 392.300.2 - 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 240-3.550(5)(C) - exchange boundary maps

8. That France Telecom Corporate Solutions, L.L.C., shall not conduct business in Missouri until it has an approved interconnection agreement.

9. That the tariff filed by France Telecom Corporate Solutions, L.L.C., on December 29, 2004, and revised on June 26, 2005, tariff number YL-2005-0493, is approved to become effective on July 15, 2005. The tariff approved is:

P.S.C. MO Tariff No. 1

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10. That the tariff filed by France Telecom Corporate Solutions, L.L.C., on December 29, 2004, and revised on June 26, 2005, tariff number YL-2005-0494, is approved to become effective on July 15, 2005. The tariff approved is:

P.S.C. MO Tariff No. 2

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11. That the certification granted herein is conditioned upon the company's compliance with the regulatory obligations in this order.

12. That this order shall become effective on July 15, 2005.
13. That this case may be closed on July 16, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(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 11th day of July, 2005.