

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Comtel)
Telecom Assets LP for a Certificate of)
Service Authority to Provide Basic Local and) **Case No. TA-2006-0214**
Interexchange Telecommunications Services)
in the State of Missouri and to Classify Its)
Services and the Company as Competitive)

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

Issue Date: February 2, 2006

Effective Date: February 6, 2006

This order grants certificates of service authority to provide basic local and interexchange telecommunications services in the state of Missouri, classifies those services and the company as competitive, waives certain statutes and regulations, and approves the Company's tariffs.

Procedural History

On November 21, 2005, Comtel Telecom Assets LP (Comtel) filed an Application for Certificates of Service Authority to provide basic local and interexchange telecommunications services within the state of Missouri, and for competitive classification. On November 29, 2005, the Missouri Public Service Commission issued its Notice of Applications, establishing December 14, 2005, as the deadline for intervention. No applications to intervene were received.

Comtel filed several addenda to its Application, which clarified certain matters and provided tariff pages reflecting its adoption of tariffs currently on file with the Commission. On January 26, 2006, the Staff of the Missouri Public Service Commission filed its Recommendation and Memorandum, recommending that the requested certificates, classifications and waivers be granted, and that the Company's tariff be approved.

Discussion

Comtel seeks certification to provide interexchange and basic local service under various fictitious names in portions of Missouri that are currently being served by (1) Southwestern Bell Telephone, LP, d/b/a AT&T Missouri, (2) Sprint Missouri, Inc., d/b/a Sprint, (3) Spectra Communications Group, LLC, and (4) CenturyTel of Missouri, LLC. Comtel also seeks, in a separate case, the Commission's approval for its purchase of substantially all of the assets of the "VarTec companies," known as (a) VarTec Telecom, Inc., (b) Excel Telecommunications, Inc., (c) VarTec Solutions, Inc., and (d) VarTec Telecom, Inc. d/b/a Clear Choice Communications. Comtel intends to "step into the shoes" of the VarTec companies and provide the same services in the same geographic areas as the VarTec companies using fictitious names that are substantially the same as the current VarTec companies.

Comtel requests the following certificates under the following names:

- 1) Comtel Telecom Assets LP d/b/a VarTec Telecom – Basic local exchange and interexchange services;
- 2) Comtel Telecom Assets LP d/b/a Excel Telecommunications – Basic local exchange and interexchange services;
- 3) Comtel Telecom Assets LP d/b/a VarTec Solutions – Interexchange services;

4) Comtel Telecom Assets LP d/b/a Clear Choice Communications –
Interexchange services

The Commission may grant an application for a certificate of service authority to provide basic local telecommunications service upon a showing that: (1) the applicant has met the statutory requirements,¹ and (2) the grant of authority is in the public interest.² The applicant must also comply with the Commission’s procedural rules.³

Comtel 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.⁴ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁵ 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 392.⁶

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

¹ 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.

² Sections 392.430 and 392.440.

³ See Chapter 2, 4 CSR 240.

⁴ Section 392.361.2.

⁵ Section 392.361.3.

⁶ See Sections 392.185, 392.361.3 and 392.420.

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.

Comtel is a limited partnership organized under the laws of the State of Texas. It is authorized by the Missouri Secretary of State to do business in Missouri and has filed registrations of fictitious names indicating it will do business in Missouri under the names VarTec Telecom, Excel Communications, VarTec Solutions, and Clear Choice Communications.

Requirements of the Commission's Rules:

Commission rules 4 CSR 240-2.060(1) and 4 CSR 240-3.510 require that an entity seeking certification to provide basic local telecommunications services provide certain information to the Commission in its application, including: 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 Comtel, the Commission finds that Comtel has complied with each of these requirements.

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

Comtel stated it will comply with all applicable Commission rules except those expressly waived by the Commission. Thus Comtel 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 certificates be granted. Having reviewed Comtel's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Comtel has met the requirements of Section 392.450.2.

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

In support of its application, Comtel submitted, as Exhibit C to its application, the names and qualifications of its key personnel. Upon an Order Establishing Protective Order, Comtel submitted as Exhibit D to its application, a balance sheet dated September 15, 2005, and Pro Forma sheets listing months from October 2005 through September 2006. Staff, in its Memorandum, indicated that Comtel has sufficient technical, financial and managerial resources and recommends that the application be granted.

Having reviewed Comtel's application and supporting materials, as well as Staff's Recommendation and Memorandum, the Commission finds that Comtel 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, Comtel 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 Comtel has demonstrated that the services it proposes to offer satisfy the minimum standards promulgated in Section 392.455(2).

In its Application, Comtel seeks certification in the exchanges or service areas of the incumbent local exchange companies of (1) Southwestern Bell Telephone, LP, d/b/a AT&T Missouri, (2) Sprint Missouri, Inc., (3) Spectra Communications Group, LLC, and (4) CenturyTel of Missouri, LLC. Staff agrees that Comtel has sufficiently identified the exchanges in which it seeks certification and recommends that the application be approved. Having reviewed Comtel's application and supporting material, as well as Staff's Memorandum and Recommendation, the Commission finds that Comtel 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 company and is no smaller than an exchange.

In its Application, Comtel states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that Comtel 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, Comtel 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. Comtel's statement furthers this requirement.

Interexchange Authority

Comtel requests certificates of service authority to provide interexchange telecommunications services throughout the state of Missouri. In its memorandum filed on January 26, 2006, the Staff of the Commission recommends that the Commission grant the requested certificates of services authority, competitive status and waiver of the rules listed in the Notice of Applications. The Commission finds that competition in the intrastate market is in the public interest and that Comtel will be granted certificates of service authority for interexchange services.

Requirement for Competitive Classification

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

Approval of Tariffs

Along with its application, Comtel submitted proposed substitute tariff pages. The Commission has reviewed the tariffs and Staff's recommendation. The Commission finds that the proposed tariffs detail the services, equipment and pricing Comtel proposes to offer. In addition, the tariffs list waivers approved by the Commission. The Commission finds that the proposed tariffs filed by Comtel should be approved to become effective on February 6, 2006.

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.⁷ The Commission is also authorized to classify services and companies as competitive or transitionally competitive and waive certain statutory provisions and Commission rules.⁸ The Commission may also impose any reasonable and necessary conditions upon telecommunications service providers if such conditions are in the public interest and consistent with the provisions and purposes of this chapter.⁹

The Public Interest:

Having found that Comtel has met all of the requirements for certification to provide basic local telecommunications service as a common carrier, it remains to be determined whether it is in the public interest to grant the requested certificate. It has been legislated¹⁰ 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 Comtel has met all of the requirements for the requested certification, the Commission concludes that granting the

⁷ Sections 392.430, 392.450 and 392.455.

⁸ Section 392.361.

⁹ Section 392.470.1.

¹⁰ Section 392.180.

requested certification is in the public interest. The Commission also finds that competition in the interexchange telecommunications market is in the public interest and Comtel should be granted a certificate of service authority to provide interexchange telecommunications services.

Competitive Classification:

Comtel seeks competitive classification and the Commission has found that Comtel will be subject to competition to justify a lesser degree of regulation. The Commission has further found that all of Comtel's services will be entitled to classification as competitive services. Therefore, the Commission may classify Comtel 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 Comtel 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 Section 392.361 to 392.520 and the purposes of this chapter."¹¹ 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 Comtel because to do so furthers the purposes of Chapter 392 to foster and encourage the development of competition in the telecommunications industry.

¹¹ Sections 392.361.5 and 392.420.

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.”¹² Staff recommends that Comtel’s application be granted subject to the following conditions:

1. Comtel’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 Comtel 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.

Compliance:

The Commission places Comtel on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against the company. These 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

¹² Section 392.361.6.

for a penalty of \$100 per day for each day that the violation continues. Rule 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.

- 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 \$2,000 per day of noncompliance, under Section 386.570, RSMo 2000.
- D) The obligation to keep the Commission informed of its current address and telephone number.

The company is reminded that its officers may not represent it before the Commission. The company must be represented by an attorney licensed to practice law in Missouri.

In addition, Section 392.410.6, RSMo Supp. 2005, provides that the company's certificate of service authority becomes null and void one year from the date of this order unless the company has exercised its authority under that certificate.

The Commission notes that prior to providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

IT IS THEREFORE ORDERED:

1. That Comtel Telecom Assets LP d/b/a VarTec Telecom is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of (1) Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, (2) Sprint Missouri, Inc., d/b/a Sprint, (3) Spectra Communications Group, LLC, and (4) CenturyTel of Missouri, LLC, subject to the conditions and recommendations contained in the Staff's Memorandum.

2. That Comtel Telecom Assets LP d/b/a Excel Telecommunications is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of (1) Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, (2) Sprint Missouri, Inc., d/b/a Sprint, (3) Spectra Communications Group, LLC, and (4) CenturyTel of Missouri, LLC, subject to the conditions and recommendations contained in the Staff's Memorandum.

3. That Comtel Telecom Assets LP d/b/a VarTec Telecom is granted a certificate of service authority to provide interexchange telecommunications services.

4. That Comtel Telecom Assets LP d/b/a Excel Telecommunications is granted a certificate of service authority to provide interexchange telecommunications services.

5. That Comtel Telecom Assets LP d/b/a VarTec Solutions is granted a certificate of service authority to provide interexchange telecommunications services.

6. That Comtel Telecom Assets LP d/b/a Clear Choice Communications is granted a certificate of service authority to provide interexchange telecommunications services.

7. That Comtel Telecom Assets LP and its services are granted competitive classification.

8. That Comtel Telecom Assets LP'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 Comtel seeks authority to provide service, unless authorized by the Commission pursuant to Section 392.220 and 392.230, RSMo 2000.

9. That the certificates 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.

10. That if the directly-competing incumbent local exchange carrier, in whose service area Comtel Telecom Assets LP is operating, decreases its originating or terminating access service rates, Comtel shall file an appropriate tariff amendment to reduce its originating 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.

11. That Comtel Telecom Assets LP will provide essential services, as required by Section 392.451, RSMo 2000, and delineated at 4 CSR 240-31.010(5).

12. That application of the following statutes and Commission rules are 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
392.330	- issuance of securities, debts and notes
392.340	- reorganization(s)

Commission Rules

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

13. That the following tariff adoption sheets are approved to become effective on February 6, 2006:

- a) Comtel Telecom Asset LP d/b/a VarTec Telecom adopting VarTec Telecom, Inc., PSC Mo. No. 1, Local Exchange Services Tariff, YC-2006-0569;
- b) Comtel Telecom Assets LP d/b/a Clear Choice Communications adopting VarTec Telecom, Inc., d/b/a Clear Choice Communications, Inc., PSC Mo. No. 1, Interexchange Services Tariff, YX-2006-0576;
- c) Comtel Telecom Assets LP d/b/a Excel Telecommunications adopting Excel Telecommunications, Inc., PSC Mo. No. 2, Interexchange Services Tariff, YX-2006-0572;
- d) Comtel Telecom Assets LP d/b/a VarTec Solutions adopting VarTec Solutions, Inc., (formerly eMeritus Communications, Inc.) PSC Mo. No. 2, Interexchange Services Tariff, YX-2006-0575;
- e) Comtel Telecom Assets LP d/b/a VarTec Telecom adopting VarTec Telecom, Inc., PSC Mo. No. 3, Interexchange Services Tariff, YX-2006-0570;

f) Comtel Telecom Assets LP d/b/a Excel Communications adopting Excel Telecommunications, Inc., PSC Mo. No. 3, Local Access Services Tariff, YC-2006-0573;

g) Comtel Telecom Assets LP d/b/a VarTec Telecom adopting VarTec Telecom, Inc., PSC Mo. No. 4, Intrastate Switched Access Services, YX-2006-0571; and,

h) Comtel Telecom Assets LP d/b/a Excel Telecommunications adopting Excel Telecommunications, Inc., PSC Mo. No. 4, Local Exchange Tariff, YC-2006-0574.

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

15. That Comtel Telecom Assets LP is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit Comtel to lawfully provide telecommunications services in Missouri.

16. That this order and Comtel Telecom Assets LP's certificates shall become effective on February 6, 2006.

17. That this case shall close on February 7, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Steven C. Reed, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 2nd day of February, 2006.