

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Midwest Data  
Center, Inc. for a Certificate of Service to Provide  
Local Exchange Telecommunications Services in  
the State of Missouri

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**File No. CA-2014-0374**

## ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES

Issue Date: August 22, 2014

Effective Date: September 21, 2014

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

On June 30, 2014, Midwest Data Center, Inc., applied for a certificate of service authority to provide basic local exchange telecommunications services within the state of Missouri, and for competitive classification. The company supplemented its application on July 25 and seeks certification to provide basic local service throughout Missouri. Midwest is a Missouri corporation and is authorized to do business in Missouri by the Missouri Secretary of State.

On July 2, the Commission issued its Notice of Applications, establishing July 30 as the deadline for intervention. No applications to intervene were received. On August 11, the Staff of the Commission recommended that the requested certificate, classification, and waivers be granted.

The Commission may grant an application for a certificate of service authority to provide telecommunications service upon a showing that the applicant has met the

statutory requirements, including relevant service standards,<sup>1</sup> and that the grant of authority is in the public interest.<sup>2</sup> Based on the verified application, including Midwest's stated commitment to comply with all applicable rules, as well as Staff's uncontested recommendation, the Commission finds that Midwest satisfies the requirements for certification and that granting such certificate is in the public interest.

Midwest also requests 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.<sup>3</sup> The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.<sup>4</sup> 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.<sup>5</sup>

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

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<sup>1</sup> See Sections 392.450, 392.451 and 392.455, RSMo.

<sup>2</sup> Sections 392.430 and 392.440.

<sup>3</sup> Section 392.361.2.

<sup>4</sup> Section 392.361.3.

<sup>5</sup> See Sections 392.185, 392.361.3 and 392.420.

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.”<sup>6</sup> The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange carriers. The Commission finds that the waiver of those statutes and regulations is consistent with the purposes of Chapter 392, and will waive those provisions for Midwest.

The Commission may also require a telecommunications company to comply with any conditions reasonably necessary to protect the public interest. Staff recommends that Midwest’s application be granted subject to certain restrictions regarding switched access rates. These conditions are routinely recommended by Staff and Midwest accepted them in its application. The conditions proposed by Staff are necessary to protect the public interest and will be adopted.

The Commission places Midwest 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 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.

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<sup>6</sup> Sections 392.361.5 and 392.420.

- 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 392.410.5, RSMo, 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 before 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.

Midwest did not file a proposed tariff as part of its application. The Commission's regulations do not require that such a tariff be filed along with an application for a certificate, but Midwest is reminded that it cannot provide service in Missouri until its tariff is approved by this Commission.

### **THE COMMISSION ORDERS THAT:**

1. Midwest Data Center, Inc. is granted a certificate of service authority to provide basic local telecommunications services throughout the State of Missouri, subject to the conditions and recommendations contained in the Staff's Recommendation.

2. Midwest Data Center, Inc. and the services it offers are classified as competitive.

3. Midwest Data Center, Inc.'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 Midwest Data Center, Inc., seeks authority to provide service, unless authorized by the Commission pursuant to Section 392.220 and 392.230, RSMo.

4. If the directly competing incumbent local exchange carrier, in whose service area Midwest Data Center, Inc., is operating, decreases its originating or terminating access service rates, Midwest Data Center, Inc., 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.

5. Midwest Data Center, Inc., will undertake all necessary measures to ensure its contracts with underlying carriers do not contain provisions preventing delivery of traffic to any telephone exchange area of Missouri. Such measures include but are not limited to:

- a) Prevention of call blocking or call gaping based on the cost of traffic termination.

b) Preventing the alteration or stripping of Calling Party Number identification termination, and

c) Ensuring sufficient network capacity exists to process all traffic according to industry accepted practices.

6. Application of those statutes and Commission rules listed in the Staff of the Commission's Recommendation is waived.

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

8. Midwest Data Center, Inc., is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit it to lawfully provide telecommunications services in Missouri. Specifically, Midwest Data Center, Inc., cannot lawfully provide telecommunications services until it has a tariff in effect for such services. When Midwest Data Center, Inc., submits such a tariff, it shall do so by filing a non-case tariff submission. The tariff submission shall not be filed in this case.

9. This order and shall become effective on September 21, 2014.

10. This file shall be closed on September 22, 2014.

**BY THE COMMISSION**



A handwritten signature in dark ink, reading "Morris L. Woodruff".

Morris Woodruff  
Secretary

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

Dated at Jefferson City, Missouri,  
on this 22nd day of August, 2014.