

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Aero)
Communications, LLC for a Certificate of)
Service Authority to Provide Basic Local)
Exchange Telecommunications Services)
in Portions of the State of Missouri and for)
Competitive Classification)

Case No. CA-2006-0255

**ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES**

Issue Date: January 13, 2006

Effective Date: January 23, 2006

Syllabus: 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 December 14, 2005, Aero Communications, LLC, applied for a telecommunications certificate of service authority and for competitive classification. Aero seeks authority to provide basic local telecommunications services in all the exchanges served by Southwestern Bell Telephone Company L.P., d/b/a AT&T Missouri, Sprint Missouri, Inc., d/b/a/ Sprint; CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel.

On December 20, the Commission issued its Notice of Applications. That notice established January 4 as the deadline for applications to intervene. The Commission did not receive any requests to intervene.

On January 9, the Staff of the Missouri Public Service Commission filed its Memorandum and Recommendation. In its memorandum, Staff recommended that the Commission grant Aero a basic local certificate with the requested classifications and waivers. Staff asked the Commission to grant Aero a basic local certificate subject to certain conditions.

Discussion

Aero seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SBC Missouri, Sprint, CenturyTel and Spectra. Aero is not asking for certification in any area that is served by a small incumbent local exchange provider. 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,¹ and (2) that the grant of authority is in the public interest.²

Aero is also requesting that it and its basic local 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.³ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁴ The Commission may waive the

¹ 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.

² Sections 392.430 and 392.440.

³ Section 392.361.2.

⁴ Section 392.361.3.

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 392.⁵

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 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; and the exchanges in which service is to be offered.⁶

⁵ See Sections 392.185, 392.361.3 and 392.420.

⁶ The Applicant also has the option to file a tariff and applicable interconnection agreements simultaneously with the application.

Having reviewed the application and supporting materials Aero filed, the Commission finds that Aero has complied with each of these requirements with the exception of filing a proposed tariff. Aero acknowledges Commission Rule 4 CSR 240-3.510(1)(C) which prevents Aero from conducting business until it has a Commission-approved tariff and Commission-approved agreements. Aero stated that it will comply with the rule.

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

Aero states that it will comply with all applicable Commission rules except those the Commission waives. The Commission rules that Aero agrees to obey include the Commission's minimum basic local service standards, including quality of service and billing standards. Having reviewed Aero's application and supporting materials, as well as

Staff's Memorandum and Recommendation, the Commission finds that Aero has met the requirements of Section 392.450.2 with the exception of the filing of a tariff. Commission Rule 4 CSR 240-3.510(1)(C) states that finds that "filing the tariff and any applicable interconnection agreements simultaneously with the certificate application is optional." Because filing the tariff with the application is optional, the Commission will not waive the rule. Instead, Aero must file, and the Commission must approve, tariffs before Aero can conduct business in Missouri.

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, Aero filed a statement of its financial resources, including a balance sheet, income statement, and other financial statements. Based on its

review of this information, Staff concluded that Aero has sufficient financial resources and recommended that the Commission grant the application.

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

Aero 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 Aero has demonstrated that the services it proposes to offer satisfy the minimum standards established by the Commission, in satisfaction of Section 392.455(2).

Aero seeks certification in all the exchanges served by SBC Missouri, Sprint, CenturyTel and Spectra. Staff agrees that Aero has sufficiently identified the exchanges in which it seeks certification and recommends that the Commission approve the application. The Commission finds that Aero 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, Aero states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that Aero has met the

requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

Aero also states that it will consider equitable access for all Missourians, regardless of their location or income, to affordable telecommunications service. Aero 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. Requirements for Competitive Classification:

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

The Commission finds that the services Aero proposes to offer are competitive and Aero shall 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.

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 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 to waive certain statutory provisions and Commission rules.⁸ 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.⁹

The Public Interest:

Having found that Aero has met all of the requirements for certification to provide basic local telecommunications services as a common carrier, the 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.¹⁰

⁷ Sections 392.430, 392.440, 392.450, and 392.455.

⁸ Section 392.361.

⁹ Section 392.470.1.

¹⁰ *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.

"[I]f there is legislation on the subject, the public policy of the state must be derived from such legislation."¹¹

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[.]"¹² In consideration of the foregoing, and based upon its finding that Aero has met all of the requirements for the certificate, the Commission concludes that granting the certificate is in the public interest.

Competitive Classification:

Aero seeks competitive classification. The Commission found that Aero will be subject to sufficient competition to justify a lesser degree of regulation. The Commission further found that all of Aero's services will be entitled to classification as competitive services. Therefore, the Commission may classify Aero 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 Aero is consistent with the protection of ratepayers and promotes the public interest.

¹¹ *Moorshead v. Railways Co.*, 203 Mo. 121, 165, 96 S. W. 261, 271 (Mo. banc 1907).

¹² Section 392.185.

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.”¹³

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 Aero 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.”¹⁴ Staff recommends that Aero’s application be granted subject to the following conditions:

- A. Aero’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 Aero seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.
- 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 Aero is operating, decreases its originating and/or terminating access service rates, Aero 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.

¹³ Sections 392.361.5 and 392.420.

¹⁴ Section 392.361.6.

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

Compliance:

The Commission places Aero on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against Aero. 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 to a penalty of \$100 per day for each day that the violation continues. 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, pursuant to Section 386.570, RSMo 2000.

D) The obligation to keep the Commission informed of its current address and telephone number.

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

In addition, the company is reminded that Section 392.410.6, RSMo Supp. 2004, renders the company's certificate of service authority null and void one year from the date of this order unless it has exercised its authority under that certificate.

IT IS THEREFORE ORDERED:

1. That Aero Communications, LLC, 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 Aero Communications, LLC, is classified as a competitive telecommunications company.

3. That Aero Communications, LLC, 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 Aero Communications, LLC, seeks authority to provide service, unless authorized by the Commission pursuant to sections 392.220 and 392.230, RSMo 2000.

4. 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.

5. That if the directly competing ILEC, in whose service area Aero Communications, LLC, is operating, decreases its originating and/or terminating access service rates, Aero Communications, LLC, 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.

6. 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

7. That Aero Communications, LLC, shall not conduct business in Missouri until the Commission approves its tariffs and interconnection agreements.

8. That prior to delivering services under its certificate of service authority, Aero Communications, LLC, shall file, in a separate case, tariff sheets with an effective date which is not fewer than 45 days from the issue date and which reflects the rates, rules, regulations and the services it will offer. The tariff shall also include a listing of the statutes and Commission rules waived above.

9. That this order shall become effective on January 23, 2006.
10. That this case may be closed on January 24, 2006.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Ronald D. Pridgin, Regulatory Law Judge,
by delegation of authority pursuant to
Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 13th day of January, 2006.