

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Neutral)
Tandem-Missouri, LLC, for a Certificate of Service)
Authority to Provide Basic Local Telecommunications) **Case No. CA-2006-0035**
Services in Portions of the State of Missouri and for)
Competitive Classification.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Issue Date: November 10, 2005

Effective Date: November 20, 2005

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 July 22, 2005, Neutral Tandem-Missouri, LLC, filed its application for a certificate of service authority to provide basic local exchange telecommunications services, and for competitive classification. Applicant seeks authority to provide basic local telecommunications services on a facilities-based and resold basis throughout all of the exchanges served by Southwestern Bell Telephone, L.P., d/b/a SBC Missouri; Sprint Missouri, Inc.; CenturyTel of Missouri, LLC; and Spectra Communications Group, LLC, d/b/a CenturyTel. On October 19, 2005, Applicant filed a supplement to its application with Late-filed Appendix C, its pro forma financial statements.

On July 26, 2005, the Commission issued its Notice of Applications, which established August 10, 2005, as the deadline for applications to intervene. No requests to intervene were filed.

The Staff of the Commission filed its Memorandum and Recommendation on November 1, 2005. Staff recommended that the Commission grant Applicant a certificate to provide basic local telecommunications services in the service areas of SBC Missouri, Sprint, CenturyTel, and Spectra subject to certain conditions. Staff further recommended that the Commission grant the Applicant competitive classification and approve the waivers listed in the application.

Discussion

Applicant seeks certification to provide facilities-based and resold basic local exchange telecommunications services in portions of Missouri that are currently served by SBC Missouri, Sprint, CenturyTel and Spectra. Applicant 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

Applicant 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

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.

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 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,

³ Section 392.361.2.

⁴ Section 392.361.3.

⁵ See Sections 392.185, 392.361.3 and 392.420.

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

Having reviewed the application, the supplement to the application, and the supporting materials, the Commission finds that Applicant has complied with each of these requirements with the exception of filing a proposed tariff. In its application, Applicant acknowledged rule 4 CSR 240-3.510(1)(C), which requires that a tariff and any applicable interconnection agreements must be filed with the Commission and approved before service can be provided, and stated that it will promptly file a tariff with a 45-day effective date as soon as possible. Applicant filed a proposed tariff on October 7, 2005, and then withdrew the tariff on October 31, 2005.

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

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

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.

Applicant states that it will comply with all applicable Commission rules except those the Commission waives. The Commission rules that Applicant agrees to obey include the Commission's minimum basic local service standards, including quality of service and billing standards. Having reviewed the application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Applicant 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." Since Applicant did not file a tariff with its application, Applicant must file, and the Commission must approve, a tariff before the company 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, Applicant filed information regarding its financial resources, including pro forma financial statements. Based on its review of this information, Staff concluded that Applicant has sufficient financial resources and recommended that the Commission grant the application.

Applicant asserts that it has the technical and managerial expertise to provide the services it proposes and provided, as Appendix B to its verified application, summaries of its key employees' experience. Staff, in its Recommendation, indicates that Applicant has sufficient managerial and technical expertise to provide basic local telecommunications service. Having reviewed Applicant's application and supporting materials, as well as Staff's Recommendation, the Commission finds that Applicant 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.

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

Applicant seeks certification in all the exchanges served by SBC Missouri, Sprint, CenturyTel and Spectra. Staff agrees that Applicant has sufficiently identified the

exchanges in which it seeks certification and recommends that the Commission approve the application. The Commission finds that Applicant 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, Applicant states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that Applicant has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

Applicant also states that it will consider equitable access for all Missourians, regardless of their location or income, to affordable telecommunications service. Applicant 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, Applicant will compete with an incumbent local exchange carrier in each exchange in which it provides basic local telecommunications service. The Commission finds that Applicant will thus be subject to a sufficient level

of competition to justify a lesser degree of regulation. Furthermore, all of the services Applicant will offer are qualified for classification as competitive services.

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

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

⁷ Sections 392.430, 392.440, 392.450, and 392.455.

⁸ Section 392.361.

⁹ Section 392.470.1.

The Public Interest:

Having found that Applicant 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 certificate. 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

"[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 Applicant has met all of the requirements for the certificate, the Commission concludes that granting the certificate is in the public interest.

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.

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

¹² Section 392.185.

Competitive Classification:

Applicant seeks competitive classification. The Commission found that Applicant will be subject to sufficient competition to justify a lesser degree of regulation. The Commission further found that all of Applicant's services will be entitled to classification as competitive services. Therefore, the Commission may classify Applicant 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 Applicant 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."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 Applicant 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

¹³ Sections 392.361.5 and 392.420.

suspension of the statutory requirement.”¹⁴ Staff recommends that Applicant’s application be granted subject to the following conditions:

- A. Applicant’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 company (ILEC) within whose service area Applicant 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 Applicant is operating, decreases its originating and/or terminating access service rates, 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, concludes that they are reasonably necessary to protect the public interest, and should be adopted.

Compliance:

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

¹⁴ Section 392.361.6.

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 Neutral Tandem-Missouri, 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 Neutral Tandem-Missouri, LLC, is classified as a competitive telecommunications company.

3. That Neutral Tandem-Missouri, LLC, shall have originating and terminating access rates no greater than the lowest Commission-approved corresponding access rates

in effect for each incumbent local exchange company (ILEC) within whose service area Metropolitan Telecommunications of Missouri, Inc., 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 Neutral Tandem-Missouri, LLC, is operating, decreases its originating and/or terminating access service rates, Neutral Tandem-Missouri, 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 240-3.550(5)(C) - exchange boundary maps
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts

7. That Neutral Tandem-Missouri, LLC, shall not conduct business in Missouri until the Commission approves its tariff and interconnection agreements.

8. That prior to delivering services under its certificate of service authority, Neutral Tandem-Missouri, 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 November 20, 2005.

10. That this case may be closed on November 21, 2005.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Vicky Ruth, Senior Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 10th day of November, 2005.