

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Ozarks Telecom, LLC)
for a Certificate of Service Authority to Provide Basic)
Local Telecommunications Service in the State of) **Case NO. CA-2006-0083**
Missouri and to Classify Said Services and the)
Company as Competitive.)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES AND CLOSING CASE

Issue Date: October 20, 2005

Effective Date: October 30, 2005

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 August 18, 2005, Ozarks Telecom, LLC a Missouri corporation, filed an Application for Certificate of Service Authority to Provide Local Exchange Telecommunications Service and for Competitive Classification. On August 23, 2005, the Commission issued its Notice of Applications and established September 7, 2005, as the deadline for applications to intervene in this matter. No applications for intervention were received. On October 11, 2005, the Staff of the Missouri Public Service Commission filed its Memorandum. Staff recommends that the requested certificate, classification and waivers be granted.

Discussion

Ozarks Telecom seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by CenturyTel of Missouri, LLC and Spectra Communications Group, LLC, as listed in those companies' Missouri local exchange tariffs. 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 The applicant must also comply with the Commission's procedural rules.³

Ozarks Telecom is also requesting that it and its basic local 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 it 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

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 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.

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 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 basic local telecommunications services to provide various items of information to the Commission in its application. These include: a description of the business organization of the applicant; a certificate to do business, from 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.

Having reviewed the application and supporting materials filed by Ozarks Telecom, the Commission finds that Ozarks Telecom has complied with each of these requirements. Ozarks Telecom requested a temporary waiver of the requirement, under 4 CSR 240-3.510(1)(C), to file a tariff with its application. A change to rule 4 CSR

240-3.510(1)(C), which became effective on November 30, 2004, eliminates the need to file a tariff with the application. A waiver of the rule is therefore unnecessary.

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 does find that Ozarks Telecom has satisfied the requirements of the Commission's regulations and of Section 392.455, and consequently finds that Ozarks 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.⁷

Ozarks Telecom states that it will comply with all applicable Commission rules except those expressly waived by the Commission. Thereby, Ozarks Telecom 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 certificate be granted. Having reviewed Ozarks Telecom's application and supporting

⁷"Incumbent local exchange carrier," or "ILEC," is a term of art in the telecommunications industry, which refers to a telephone company authorized to provide local telephone service in a specific geographic area as of December 31, 1995. See Section 386.010(22).

materials, as well as Staff's Memorandum, the Commission finds that Ozarks 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 where they live or their income.

In support of its application, Ozarks Telecom filed a Pro Forma Profit and Loss, Balance Sheet and Cash Flow. Based on its review of this information, Staff concluded that Ozarks Telecom has sufficient financial resources and recommended that the application be granted.

In its verified application, Ozarks Telecom asserts that it "possesses the technical and managerial expertise to provide the services it proposes." With its application, Ozarks Telecom filed background information of: its President, Chief Executive Officer and Chief

Operations Officer; its Secretary and Chief Financial Officer; its Chief Technology Officer, and Customer Support Technical manager; its Customer Accounts Manager; and its Customer Accounts Technical Manager and Chief Information Officer. In its Memorandum, Staff indicates that it is satisfied that Ozarks Telecom possesses sufficient managerial and technical expertise to provide basic local telecommunications service. Having reviewed Ozarks Telecom's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Ozarks 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.

As noted previously, Ozarks 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 Ozarks 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).

In its application, Ozarks Telecom seeks certification in exchanges currently served by CenturyTel and Spectra. Ozarks Telecom seeks certification in all of the exchanges served by the cited carriers, which can be identified by examination of those carriers' tariffs. Staff indicates that Ozarks Telecom has sufficiently identified the exchanges in which it seeks certification and recommends that the application be approved. Having reviewed Ozarks Telecom's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Ozarks 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, Ozarks Telecom states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that Ozarks Telecom has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

Section 392.455(5) requires that the Commission give due consideration to the equitable access to affordable telecommunications service for all Missourians, regardless of where they live or their incomes. In its verified application, Ozarks Telecom affirms that consideration in this regard will be given, thus facilitating the Commission's statutory responsibility.

D. Requirements for Competitive Classification:

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

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 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.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 Ozarks Telecom 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. 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

⁸ Sections 392.430, 392.450 and 392.455.

⁹ Section 392.361.

¹⁰ Section 392.470.1.

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.

"[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 Ozarks Telecom has met all of the requirements for the requested certification, the Commission concludes that granting the requested certification is in the public interest.

Competitive Classification:

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

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

¹³ 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.”¹⁴ The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange carriers. The Commission will waive these provisions for Ozarks 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’s recommendation indicates that Ozarks Telecom should be classified as a competitive telecommunications company. Staff agrees that Ozarks Telecom’s switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Ozarks Telecom’s ability to charge for its access services. Those limitations are as follows:

- A. Ozarks 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 Ozark Telecom 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

¹⁴ Sections 392.361.5 and 392.420.

¹⁵ Section 392.361.6.

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 Ozarks Telecom is operating, decreases its originating and/or terminating access service rates, Ozarks 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 and concludes that they are reasonably necessary to protect the public interest and should be adopted.

The Commission reminds Ozarks Telecom that prior to providing telecommunications service, 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.

Compliance

The Commission places Ozarks Telecom on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against. 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, non-attorneys 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 Ozarks Telecom, 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 above and to all applicable statutes and Commission rules except as specified in this order.

2. That Ozarks Telecom, LLC, is classified as a competitive telecommunications company.

3. That Ozarks Telecom, LLC, certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo 2000, and on the requirement that any increases in switched access service rates above the maximum

switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo 2000, and 392.230, rather than Sections 392.500 and 392.510.

4. That Ozarks Telecom, LLC, 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 Ozarks Telecom seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo 2000.

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

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 Ozarks Telecom, LLC, may not operate until its tariffs have been submitted to the Commission and approved.

8. That this order and Ozarks Telecom, LLC's certificate shall become effective on October 30, 2005.

9. That this case may be closed on October 31, 2005.

BY THE COMMISSION



**Colleen M. Dale
Secretary**

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 20th day of October, 2005.