

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Qwest	)	
Communications Company, LLC to Expand its	)	
Certificate of Service Authority to Provide Basic	)	<b><u>File No. CA-2011-0263</u></b>
Local Exchange Telecommunications Service	)	Tariff No. YC-2011-0414
in the State of Missouri and to Classify Said	)	
Service and the Company as Competitive	)	

## ORDER APPROVING EXPANSION OF CERTIFICATE OF SERVICE AUTHORITY

Issue Date: March 24, 2011

Effective Date: April 2, 2011

### Background

Qwest Communications Company, LLC applied to the Missouri Public Service Commission on February 16, 2011, seeking authority to expand its basic local service area to include all exchanges in the State of Missouri. The company also requests that its services be classified as competitive, that it be granted certain waivers and that its revised tariff sheets be approved. The tariff sheets bear an effective date of April 2, 2011.

On February 17, the Commission issued an order giving notice of the application with March 4 as the deadline for requests to intervene. There were no such requests. The Staff of the Commission filed its recommendation on March 11. Qwest Communications requests, and Staff recommends, that the following statutes and Commission rules be waived:

### Statutes

392.210.2	- Uniform System of Accounts
392.240.1	- Just and Reasonable Rates
392.270	- Valuation of Property
392.280	- Depreciation Accounts
392.290	- Issuance of Evidence of Indebtedness
392.300	- Transfer of Assets/Acquisition of Stocks

392.310	- Issuance of Stock and Debt
392.320	- Stock Dividend Payment
392.330	- Accounting Requirements
392.340	- Company Reorganization

### **Commission Rules**

4 CSR 240-3.550(4) and (5)(A)	- Quality of Service Reports
4 CSR 240-10.020	- Depreciation Records
4 CSR 240-30.040	- Uniform System of Accounts
4 CSR 240-32.060	- Engineering and Maintenance
4 CSR 240-32.050(4)(B)	- White Pages Distribution, partial exemption
4 CSR 240-32.070	- Quality of Service
4 CSR 240-32.080	- Service Objectives and Surveillance Levels
4 CSR 240-33.040(1-3) and (5-10)	- Billing and Payment Standards
4 CSR 240-33.045	- Clarity of Bills
4 CSR 240-33.080(1)	- Company Identification on Bills
4 CSR 240-33.130(1),(4) and (5)	- Operator Service Requirements

### **Findings of Fact**

1. Qwest Communications is a corporation organized under the laws of the state of Delaware.<sup>1</sup>
2. The Commission granted Qwest Communications a certificate to provide basic local telecommunications service in the territories of Southwestern Bell Telephone Company, GTE Midwest and Sprint.<sup>2</sup>
3. On February 16, 2011, Qwest Communications filed an application with the Commission seeking to expand its service territory to include all exchanges in Missouri.<sup>3</sup>

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<sup>1</sup> Page 1, Application, File No. CA-2011-0263.

<sup>2</sup> Commission Case No. TA-2000-309.

<sup>3</sup> Application, paragraph 6.

4. The Commission provided notice of this application and provided an opportunity for interested entities to seek intervention.<sup>4</sup>
5. Qwest Communications is authorized to do business in the State of Missouri as evidenced by its Certificate of Authority from the Missouri Secretary of State.<sup>5</sup>
6. Qwest Communications provided names and addresses for contact purposes.<sup>6</sup>
7. Qwest Communications has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court involving customer service or rates.<sup>7</sup>
8. Qwest Communications has filed revised tariff sheets reflecting its request to enlarge its service area to all exchanges in Missouri.<sup>8</sup>
9. Qwest Communications will compete with all incumbent local exchange carriers in their respective service territories.<sup>9</sup>
10. The Commission's grant of authority sought by Qwest Communications will benefit the public interest by increasing equitable access for Missourians, creating and enhancing competition and expanding customer service options.<sup>10</sup>
11. The Staff of the Commission recommends that the Commission grant Qwest Communications' request.<sup>11</sup>

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<sup>4</sup> Case File, Item 4. Order Directing Notice of Application.

<sup>5</sup> Application, paragraph 2 and Exhibit A, Attached to Application.

<sup>6</sup> Application, paragraph 5.

<sup>7</sup> Application, paragraph 16.

<sup>8</sup> See Tariff Tracking No. YC-2011-0414, filed in this case.

<sup>9</sup> Application, paragraph 14.

<sup>10</sup> Application, paragraph 14.

<sup>11</sup> Staff Recommendation, paragraph 2.

12. Staff recommends that the Commission grant Qwest Communications' request subject to the following conditions:
- A. Qwest Communications' originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom Qwest Communications is competing pursuant to Section 392.361.6 and 392.370.
  - B. If the directly competing ILEC, in whose service area Qwest Communications is operating, decreases its originating and/or terminating access service rates, Qwest Communications 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. Qwest Communications agrees with the conditions suggested by Staff set out in paragraph 12, above.<sup>12</sup>
14. Qwest Communications has no overdue annual reports or assessments.<sup>13</sup>

### **Conclusions of Law**

1. The requirement for a hearing is met when the opportunity for a hearing was provided and no party requested the opportunity to present evidence.<sup>14</sup> Notice was issued in this case and no hearing has been requested.
2. Qwest Communications is an "alternative local exchange telecommunications company" as that term is defined in Section 386.020, RSMo.
3. The Commission is authorized to create a process to certify those providing local exchange telecommunications services in Missouri as common carriers when such certification will serve the public interest.<sup>15</sup>

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<sup>12</sup> Application, paragraph 15.

<sup>13</sup> Application, paragraph 17.

<sup>14</sup> *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm'n*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

<sup>15</sup> Sections 392.430, 392.450 and 392.455, RSMo.

4. Qwest Communications has satisfied the requirements of the Commission's regulations and of Section 392.455, and consequently, the Commission concludes that Qwest Communications has complied with the certification process of the Commission in satisfaction of Section 392.450.1.
5. The Commission shall modify the existing certificate of service authority to provide basic local telecommunications service to any alternative local exchange telecommunications company which was certificated to provide basic local telecommunications service as of August 28, 2008, as long as the alternative local exchange company is in good standing, in all respects, with all applicable Commission rules and requirements.<sup>16</sup> The Commission concludes that Qwest Communications is in compliance as such.
6. Qwest Communications requests that it and its basic local services continue to be classified as competitive. 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 and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest.<sup>17</sup>
7. The Commission may classify a telecommunications carrier as competitive if the Commission finds that a majority of the carrier's service are so classified.<sup>18</sup>
8. The Commission has found that Qwest Communications is a competitive company. Further, all the services Qwest Communications will provide in Missouri will be competitive. The Commission also found that expansion of Qwest Communications'

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<sup>16</sup> Section 392.450.3, RSMo (amended by H.B. 1779, effective Aug. 28, 2008).

<sup>17</sup> Section 392.361.2 and 4, RSMo (amended by H.B. 1779, effective Aug. 28, 2008).

<sup>18</sup> Section 392.361.3, RSMo (amended by H.B. 1779, effective Aug. 28, 2008).

certificate will benefit the public and will be in direct competition with the incumbent basic local providers. Considering these findings, the Commission concludes that Qwest Communications will be subject to a sufficient level of competition to justify a lesser degree of regulation. Its services and the company shall continue to be classified as competitive.

9. The Commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of Subsection 2 of Section 392.210, Subsection 1 of Section 392.240, and Sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340, RSMo.<sup>19</sup> In accordance with Section 392.420, RSMo, the Commission shall grant the requested waivers.
10. An applicant for a basic local certificate must meet the minimum service standards that the Commission requires of the competing incumbent local exchange carriers.<sup>20</sup> Qwest Communications has agreed to provide services that will meet the minimum basic local service standards required by the Commission. The Commission concludes that Qwest Communications has met the requirements of Section 392.450.2(2).
11. 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.”<sup>21</sup> Staff recommends that Qwest Communications’ application be granted subject to those conditions set out in paragraph 12, above. Qwest Communications has agreed to those conditions. The

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<sup>19</sup> Section 392.420 (amended by H.B. 1779, effective Aug. 28, 2008).

<sup>20</sup> Section 392.450.2(2), RSMo.

<sup>21</sup> Section 392.361.6, RSMo.

Commission concludes that those conditions are necessary to protect the public interest and shall be adopted.

### **Decision**

Having concluded that the grant of authority sought by Qwest Communications is in the public interest, the Commission will approve the company's application and accompanying tariff sheets. The Commission, however, reminds Qwest Communications that failure to comply with the Commission's regulatory obligations may result in penalties. These regulatory 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 subject the company to a penalty of \$100 per day for each day that the violation continues. 4 CSR 240-3.540 requires telecommunications utilities 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 will be 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.

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

1. Qwest Communications Company, LLC is granted an expansion of its certificate of service authority to provide basic local telecommunications services to include

all exchanges in the State of Missouri subject to the conditions set out below and to all applicable statutes and Commission rules except as waived in this order.

2. Qwest Communications Company, LLC and its telecommunications services are classified as competitive.

3. Qwest Communications Company, LLC's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom Qwest Communications is competing pursuant to Section 392.361.6 and 392.370, RSMo.

4. If the directly competing ILEC, in whose service area Qwest Communications is operating, decreases its originating and/or terminating access service rates, Qwest Communications 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.

5. The following statutes and Commission rules are waived:

**Statutes**

392.210.2	- Uniform System of Accounts
392.240.1	- Just and Reasonable Rates
392.270	- Valuation of Property
392.280	- Depreciation Accounts
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**Commission Rules**

4 CSR 240-3.550(4) and (5)(A)	- Quality of Service Reports
4 CSR 240-10.020	- Depreciation Records
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|-------------------------------------|---|
| 4 CSR 240-32.060                    | - Engineering and Maintenance                 |
| 4 CSR 240-32.050(4)(B)              | - White Pages Distribution, partial exemption |
| 4 CSR 240-32.070                    | - Quality of Service                          |
| 4 CSR 240-32.080                    | - Service Objectives and Surveillance Levels  |
| 4 CSR 240-33.040(1-3) and<br>(5-10) | - Billing and Payment Standards               |
| 4 CSR 240-33.045                    | - Clarity of Bills                            |
| 4 CSR 240-33.080(1)                 | - Company Identification on Bills             |
| 4 CSR 240-33.130(1),(4)<br>and (5)  | - Operator Service Requirements               |

6. The following tariff sheets, Tariff File No. YC-2011-0414, are approved to become effective on April 2, 2011:

Missouri PSC No. 5

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Section 1, 1<sup>st</sup> Revised Sheet 1, Cancelling Original Sheet 1  
Section 1, Original Sheet 1.1

7. This order shall become effective on April 2, 2011.
8. This case shall be closed on April 3, 2011.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

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

Dated at Jefferson City, Missouri,  
on this 24th day of March, 2011.