

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
March 29, 2001**

CASE NO: TA-2001-399

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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge



BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of North)
County Communications Corporation for a)
Certificate of Service Authority to Provide)
Basic Local Exchange Telecommunications) Case No. TA-2001-399
Services in Portions of the State of)
Missouri and to Classify Said Services and)
the Company as Competitive.)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL
TELECOMMUNICATIONS SERVICES

North County Communications Corporation (NCCC) applied to the Missouri Public Service Commission on January 22, 2001, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 2000,¹ and Sections 392.410 and .450. NCCC asked the Commission to classify it as a competitive company and to waive certain statutes and rules as authorized by Sections 392.361 and 392.420.

The Commission issued a Notice of Applications on January 30, 2001, directing interested parties wishing to intervene to do so by March 1, 2001. No requests for intervention were filed. On March 21, 2001, the Staff of the Missouri Public Service Commission (Staff) filed its recommendation.

¹ All further statutory references are to Revised Statutes of Missouri 2000 unless otherwise indicated.

Findings of Fact

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.² Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

The Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

NCCC is a California corporation with principal offices located at 3802 Rosecrans, Suite 485, San Diego, California 92110. Commission Rule 4 CSR 240-2.060 requires an application for certification to provide telecommunications services include documentation showing that it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date.³ NCCC has provided all the required documentation except for the proposed tariff. NCCC requested a temporary waiver of 4 CSR 240-2.060(4)(H); however, effective April 30, 2000, the Commission's rule requiring the filing of a tariff with an application for telecommunications services is found at 4 CSR 240-2.060(6)(C). NCCC requested the waiver until it has entered into an interconnection agreement with the underlying local exchange carrier and the Commission has approved that agreement. NCCC stated that it will

² *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

³ 4 CSR 240-2.060(1) and (6)(C), effective April 30, 2000.

submit to the Commission for approval a proposed tariff bearing no less than a 45-day effective date in a manner consistent with recent Commission practice in similar cases.

NCCC stated that it possesses the managerial and technical qualifications to provide resold local exchange service in Missouri. Exhibit 2 to the application describes the extensive relevant operational and managerial experience that NCCC's president and senior staff have in the telecommunications industry. Staff stated that, in its opinion, NCCC possesses sufficient technical and managerial experience to provide basic local exchange telecommunications service.

NCCC stated that it possesses the necessary financial resources to provide basic local telecommunications services. NCCC demonstrated its financial resources by submitting, as Exhibit 3 to its application, a copy of NCCC's balance sheet for the fiscal year ending February 2000 and projected income and expenses for three years. Staff stated that, in its opinion, NCCC possesses sufficient financial resources to provide basic local exchange telecommunications service. The Commission finds that NCCC possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

NCCC stated in its application that it will comply with all applicable Commission rules and is willing to meet all relevant service standards, including quality of service, billing, tariff filings, and maintenance. The Commission finds that NCCC proposes to offer basic local services that satisfy the minimum standards established by the Commission.

NCCC is seeking certification to provide basic local exchange telecommunications services throughout all the exchanges that are currently served by Southwestern Bell Telephone Company. NCCC stated that the specific SWBT exchanges in which NCCC proposes to offer services are listed in the ILEC provider's local exchange tariff. NCCC is not asking for certification in any area that is served by a small incumbent local exchange carrier. Staff stated in its recommendation that, in its opinion, NCCC has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange. The Commission finds that NCCC has sufficiently identified the geographic area in which it proposes to offer service and that NCCC has demonstrated that the area follows ILEC exchange boundaries and is no smaller than an exchange.

NCCC states that all the services it proposes to offer will be subject to sufficient competition to justify a lesser degree of regulation. NCCC is proposing to all forms of basic local telecommunications service to business and residential customers in the State of Missouri including: local dial tone services, local exchange services to single-line and multi-line customers, which includes basic business and residential lines, direct inward and outward PBX trunk service, Centrex services and ISDN services; switched and special carrier access services to other common carriers on an equal basis. NCCC stated that it would also offer through interconnection agreement, 911 and enhanced 911 emergency service, directory assistance and operator assisted dialing, dual party relay

services and other miscellaneous services currently provided by existing local exchange carriers.

NCCC stated that it will offer basic local telecommunications service as a separate and distinct service and that, in compliance with Section 392.455(5), it will provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services. In its recommendation, Staff concurs with this statement. Therefore, the Commission finds that NCCC will provide basic local exchange service as a separate and distinct service and that NCCC has committed to provide equitable access.

NCCC states that approval of its application is in the public interest because its proposed services will create and enhance competition and expand customer service options consistent with the legislative goals of the federal Telecommunication Act of 1996 and Chapter 392, RSMo. NCCC states that promptly granting its application will expand the availability of innovative, high quality, and reliable telecommunication services within the State of Missouri.

Staff recommends that NCCC be classified as a competitive telecommunications carrier. Staff also recommends that NCCC's certificate be conditioned upon certain limitations on its ability to charge for its access services and that NCCC's certificate become effective when its tariff becomes effective. Staff's recommended conditions are as follows:

- A. If NCCC provides access service, its 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 NCCC

seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo.

- B. The service authority 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 NCCC is operating, decreases its originating and/or terminating access service rates, NCCC 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 finds that all the telecommunications services NCCC proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the Commission finds that all of NCCC's proposed telecommunications services are competitive telecommunications services.

Conclusions of Law

Certificate of Service Authority

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. NCCC has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, which permit the Commission to grant a certificate of service authority where it is in the public interest. The federal Telecommunications Act of 1996 and Section 392.455 were designed to institute competition in the basic

local exchange telecommunications market in order to benefit all telecommunications consumers.⁴

Section 392.455 sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (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 the area follows exchange boundaries of the ILEC and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

The Commission finds that NCCC meets the statutory requirements for provision of basic local telecommunications services and has stated it will abide by those requirements in the future. The Commission determines that granting NCCC a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.

Competitive Classification

NCCC requested that its basic local services be classified as competitive and that the application of certain statutes and

⁴ See Section 392.185.

regulatory rules be waived. The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation.⁵ In making that determination, the Commission may consider a number of factors including market share, financial resources, and name recognition, among others.⁶ In addition, the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by the company are competitive telecommunications services pursuant to Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered.⁷

The Commission finds that competition in the basic local exchange telecommunications market is in the public interest. The Commission has found that all the telecommunications services offered by NCCC are competitive telecommunications services and that the telecommunication services NCCC proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. Therefore, the Commission concludes that NCCC should be classified as a competitive company.

⁵ Section 392.361.2.

⁶ *In the Matter of the Investigation for the Purpose of Determining the Classification of the Services Provided by Interexchange Telecommunications Companies Within the State of Missouri*, 30 Mo. P.S.C. (N.S.) 16 (1989); *In the Matter of Southwestern Bell Telephone Company's Application for Classification of Certain Services as Transitionally Competitive*, 1 Mo. P.S.C. 3d 479, 484 (1992).

⁷ *Id.* at 487.

Waivers and Conditions

Subsection 392.470.1 authorizes the Commission to impose conditions upon a telecommunications service provider which the Commission deems reasonable and necessary and which are in the public interest and consistent with the purposes of Chapter 392. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The Commission finds that NCCC has met the requirements of 4 CSR 240-2.060 for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with an effective date which is no fewer than 45 days after the tariff's issue date. The Commission finds that NCCC has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver should be granted.

In addition to the waiver of the tariff requirement, NCCC requested a waiver of standard statutes and rules that the Commission ordinarily waives for competitive companies. Staff recommends the Commission grant NCCC waiver of all the standard statutes and rules waived for competitive basic local exchange carriers.

The Commission has found that the telecommunication services NCCC proposes to offer are subject to sufficient competition to justify a lesser degree of regulation. The Commission has also found that NCCC is a competitive company. Therefore, the Commission determines that NCCC should be granted the same waivers of the statutes and rules as

the Commission usually grants to competitive companies. The waivers are set out in the ordered paragraph below.

The Commission also finds that the conditions that the Staff recommends are reasonable and necessary to protect the public interest and that they further the purposes of Chapter 392 as stated in Section 392.185. Therefore, the Commission finds that NCCC's competitive classification and certification should be expressly conditioned as recommended by Staff and as ordered below.

IT IS THEREFORE ORDERED:

1. That North County Communications Corporation 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 below and to all applicable statutes and Commission rules except as specified in this order.

2. That North County Communications Corporation is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240(1) - rates-rentals-service & physical connections
- 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
- 392.340 - reorganization(s)
- 392.330 - issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	- depreciation fund income
4 CSR 240-30.010(2)(C)	- posting of tariffs
4 CSR 240-30.040	- uniform system of accounts
4 CSR 240-32.030(4)(C)	- exchange boundary maps
4 CSR 240-33.030	- minimum charges
4 CSR 240-35	- reporting of bypass and customer-specific arrangements

3. That if North County Communications Corporation provides access service, its 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 NCCC is providing service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo 2000.

4. That the certification and competitive status herein granted to North County Communications Corporation 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 out above must be cost-justified pursuant to Sections 392.220 and 392.230, RSMo 2000, rather than Sections 392.500 and 392.510, RSMo 2000.

5. That if a directly competing incumbent local exchange carrier, in whose service area North County Communications Corporation is operating, decreases its originating or terminating access service rates, North County Communications Corporation shall file an appropriate tariff amendment to reduce its originating or terminating access rates in that 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.

6. That the request for waiver of Commission Rule 4 CSR 240-2.060(6)(C), which requires the filing of a tariff with an effective date not fewer than 45 days from the issue date, is granted.

7. That this order shall become effective on April 8, 2001.

8. That this case may be closed on April 9, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Shelly A. Register, Regulatory Law
Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 29th day of March, 2001.

FYI: To Be Issued By Dele [] Jon

Att/Sec'y:

Regester / Pope

3-27

Date Circulated

3-30

Return by 9pm

10 a.m.

TA-2001-399
CASE NO.

[Signature]
Lumpke, Chair

[Signature]
Draimer, Vice Chair

[Signature]
Murray, Commissioner

[Signature]
Schemenauer, Commissioner

[Signature]
Simmons, Commissioner

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 29th day of March 2001.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge



