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Missouri Public
Service Commission**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**Exhibit No. 3Case No(s). 0-2005-0066Date 11-12-04 Rptr mt

In the Matter of the Application of Socket Telecom, LLC,
for a Certificate of Service Authority to Provide Basic Local)
Telecommunications Service in Portions of the State of)
Missouri and for Competitive Classification.)

Case No. TA-2001-671Tariff No. 200101172

**ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES,
APPROVING TARIFF, AND CLOSING CASE**

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 June 8, 2001, Socket Telecom, LLC, a Missouri corporation, filed its Application for a Certificate of Authority to provide Basic Local Exchange Telecommunications Services in Portions of the State of Missouri and for Competitive Classification, accompanied by a proposed tariff, effective July 23. On June 19, the Commission issued its Notice of Applications and established July 19 as the deadline for applications to intervene in this matter. The Commission received no applications to intervene.

On June 27, 2001, Socket filed supplemental financial information which it designated as Highly Confidential. Also on June 27, Socket moved for a protective order. On July 6, Socket by letter extended the effective date of its proposed tariff to August 3. On July 10, the Commission entered its standard protective order.

On July 23, 2001, the Staff of the Missouri Public Service Commission filed its Memorandum and Recommendation. Staff recommends that the requested certificate, classification and waivers be granted.

However, on July 26, the Commission suspended Socket's proposed tariff for

150 days after August 3, 2001, until December 31, 2001, because the information on file in this case was not sufficient to support a finding of fact that Socket possesses sufficient technical and managerial resources and because Socket did not provide a list of the exchanges in which it will offer services.

On July 30, 2001, Socket filed its supplement to its application, as well as a substitute proposed tariff page, to cure the deficiencies noted by the Commission in its order of July 26. On July 31, the Staff filed its Second Recommendation, again advising the Commission to grant the application.

Discussion

Socket seeks certification to provide basic local exchange telecommunications services on a resold basis, on a facilities basis, and on a mixed resold and facilities basis, in portions of Missouri that are currently served by Southwestern Bell Telephone Company, Sprint, Verizon, and Spectra, as listed in those companies' Missouri local exchange tariffs. Socket 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] The applicant must also comply with the Commission's procedural rules.^[3]

Socket 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]

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 Rule 4 CSR 240-2.060, at subsections (1) and (6), requires 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, 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; the exchanges in which service is to be offered; and a proposed tariff with an effective date which is not fewer than 45 days after its issue date.

Having reviewed the application and supporting materials filed by Socket, the Commission finds that Socket complied with each of these requirements.

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

In support of its application, Socket filed a proposed tariff. Staff reviewed this tariff and found that it meets the Commission's requirements in terms of form and content, which are equally applicable to incumbent local exchange carriers. Socket states that it will comply with all applicable Commission rules except those expressly waived by the Commission. Thereby, Socket 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 Socket's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Socket 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, Socket filed Supplemental Financial Information on June 27, 2001, consisting of a copy of a guaranty by Socket Internet Services Corporation of the obligations of Applicant, Socket Telecom, and highly confidential financial information showing the financial condition and resources of the guarantor. Based on its review of this

information, Staff concluded that Socket has sufficient financial resources and recommended that the application be granted. ^[8]

In its verified application, Socket asserts that it "possesses managerial and technical expertise to provide the competitive switched local exchange telecommunications services it proposes in Missouri." In its supplement to its application, filed on July 30,

Socket sets out summaries of the experience of six key employees. These employees have had extensive experience in managing Socket Internet Services Corporation, an internet services provider (ISP). Staff, in its Memorandum and Recommendation, indicates that it is satisfied that Socket possesses sufficient managerial and technical expertise to provide basic local telecommunications service. Having reviewed Socket's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Socket 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, Socket 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 Socket 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 verified application, Socket seeks certification "in the exchanges of Southwestern Bell Telephone Company, Sprint, Verizon and Spectra" and states that "the specific exchanges are listed in Socket's Tariff MoPSC No. 2." In substitute proposed tariff sheet PSC Mo. No. 2, Original Page 29, filed with its supplement to its application on July 30, 2001, Socket merely states that "[t]he services offered under this tariff are limited to the exchanges served by Southwestern Bell, Sprint, Verizon and Spectra. A specific list of the names of exchanges served by those companies may be found in the respective tariffs of those incumbent local carriers on file with the Missouri Public Service Commission." Socket seeks certification in all of the exchanges served by the four cited carriers, which can be identified by examination of those carriers' tariffs. Staff agrees that Socket has sufficiently identified the exchanges in which it seeks certification and recommends that the application be approved. Having reviewed Socket's application and supporting materials, as well as Staff's Memorandum and Recommendation, the Commission finds that Socket 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, Socket states that it will offer basic service as a separate and distinct service. Based on this statement, the Commission finds that Socket has met the requirements of Section 392.455(4), that all providers offer basic local telecommunications service as a separate and distinct service.

In its verified application, Socket states that it will give consideration to equitable access for all Missourians, regardless of where they reside or their income, to affordable telecommunications service. In fact, it is the Commission which the statute directs to consider this matter, not the applicant.

D. Requirements for Competitive Classification:

If the requested certification is granted, Socket will compete with an incumbent local exchange carrier in each exchange in which it provides basic local telecommunications service. The Commission finds that Socket will thus be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Socket 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.^[9] The Commission is also authorized to classify services and companies as competitive or transitionally competitive and to waive certain statutory provisions and Commission rules.^[10] 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.^[11]

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.^[12] Since no one has requested a hearing, the Commission may grant the relief requested based on the verified application and other pleadings of record.

The Public Interest:

Having found that Socket has met all of the requirements for certification to provide basic local telecommunications service as a common carrier, it remains to determine 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.^[13]

"[I]f there is legislation on the subject, the public policy of the state must be derived from such legislation."^[14]

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[.]" In consideration of the foregoing, and based upon its finding that Socket 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:

Socket seeks competitive classification and the Commission has found that Socket will be subject to sufficient competition to justify a lesser degree of regulation. The Commission has further found that all of Socket's services will be entitled to classification as competitive services. Therefore, the Commission may classify Socket 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 Socket 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."^[15] 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 Socket 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."^[16] Staff recommends that Socket's application be granted subject to the following conditions:

- A. Socket'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 Socket 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 Socket is operating, decreases its originating and/or terminating access service rates, Socket 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.

IT IS THEREFORE ORDERED:

1. That Socket 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 Socket Telecom, LLC, is classified as a competitive telecommunications company.

3. That Socket Telecom, LLC's 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 Socket Telecom, LLC'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 Socket seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230, RSMo 2000.

5. 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.

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

7. 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
- 392.290.1 - 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 240-30.010(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

8. That the proposed tariff filed by Socket Telecom, LLC, on June 8, 2001, is approved as amended on July 30, 2001, for service rendered on and after August 13, 2001. The specific tariff approved is:

_____ Mo. P.S.C. No. 2 _____
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9. That this order and Socket Telecom, LLC's certificate shall become effective on August 13, 2001.

10. That this case may be closed on August 14, 2001.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to Section 386.240,
RSMo 2000.

Dated at Jefferson City, Missouri,
on this 3rd day of August, 2001.

[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.

[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).

[8] In analyzing an applicant's resources, Staff applies two tests: First, does the applicant have a total debt-to-capital ratio not exceeding 62 percent and pretax interest coverage of at least 2.3x? Second, does the applicant have a cash balance equal to four months operating expenses, including interest expense and taxes? The applicant need only meet one of these two tests.

[9] Sections 392.430, 392.450 and 392.455.

[10] Section 392.361.

[11] Section 392.470.1.

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

[13] *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.

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

[15] Sections 392.361.5 and 392.420.

[16] Section 392.361.6.