

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Sprint )  
Communications Company L.P. for a Certificate )  
of Service Authority to Provide Basic Local ) **Case No. TA-97-269**  
Telecommunications Service and Local Exchange )  
Telecommunications Service. )  
)

**REPORT AND ORDER**

**Issue Date: April 21, 1998**

**Effective Date: May 1, 1998**

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**APPEARANCES**

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d/b/a Sprint)

**Thomas R. Schwarz, Jr.**, Deputy General Counsel, Missouri Public Service  
Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff

of the Missouri Public Service Commission.

## **REGULATORY**

**LAW JUDGE: Elaine E. Bensavage.**

## **REPORT AND ORDER**

### **Procedural History**

Sprint Communications Company L.P. (Sprint) applied to the Commission on January 14, 1997, for a certificate of service authority to provide basic local telecommunications services and local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994, and Sections 392.410 and .450, RSMo Supp. 1997. Sprint subsequently filed an amended application on March 17. Sprint was previously granted a conditional certificate of service authority to provide basic local and local exchange telecommunications services in the territories currently served by Southwestern Bell Telephone Company (SWBT) and GTE Midwest Incorporated (GTE) on February 28 in Case No. TA-96-424. In the present application Sprint seeks authority to provide those services in the territory currently served by United Telephone of Missouri d/b/a Sprint (Sprint-United), an incumbent local exchange company (ILEC) with which it is affiliated. Sprint asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. Sprint is a Delaware limited partnership with offices located at 8140 Ward Parkway, 5th Floor, Kansas City, Missouri 64114.

The Commission issued an Order and Notice on March 10, directing parties wishing to intervene in the case to do so by April 9. The Commission granted intervention to SWBT and GTE on April 24. Sprint-United subsequently filed an application for intervention on July 15, and the Commission issued its Order Granting Intervention Out of Time on August 25.

The parties filed a Stipulation and Agreement (Stipulation, Attachment A to this order) on August 1. The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on November 10. MCI filed an application for intervention on November 13, and filed a motion to consolidate this case with Case No. TA-98-152 on December 19. Responses to the motions were filed by the parties, and on January 20, 1998, the Commission issued its Order Denying Intervention and Consolidation, and Setting Stipulation Hearing. A stipulation hearing was held as scheduled on February 6.

### **Background**

Sprint, which is certificated to provide intrastate interexchange services in Missouri, and basic local and local exchange services in the exchanges of SWBT and GTE, wishes certification to provide both resold and facilities-based basic local telecommunications service and local exchange telecommunications services. Local exchange services are considered competitive services and are subject to different rules and statutory requirements than are basic local

services. Therefore, they will be considered separately in the discussion below.

Sprint wants to provide basic local and local exchange services in portions of Missouri that are currently served by Sprint-United. Sprint is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which Sprint proposes to operate are described in Exhibit D to Sprint's amended application (Attachment B to this order). Sprint is requesting that its basic local exchange services be classified as competitive and that certain statutes and regulatory rules be waived.

## **Discussion**

### **A. Requirements of 4 CSR 240-2.060(4)**

Commission Rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing 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. Sprint has provided all the required documentation except for the proposed tariff. The company has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for Sprint to submit a tariff until it has executed an interconnection or resale agreement with the ILEC involved. Sprint cannot price its resold services until it has reached price agreements with the ILEC from which it will purchase those services. The company has agreed that, once it is possible to do so, it will submit to the Commission for approval a proposed tariff with a minimum 30-day effective date. Sprint will file the tariff in Case No. TA-97-269 and give notice of the tariff filing to all the parties and participants. Along with that filing Sprint has agreed to provide a written disclosure of all interconnection or resale agreements it has entered into which affect its Missouri service areas.

### **B. Local exchange certification**

The Commission finds that Sprint's entry into competition in the local exchange telecommunications market is in the public interest and the company should be granted a certificate of service authority. The Commission finds that the local exchange services Sprint proposes to offer are competitive and the company should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in Ordered Paragraph 4 is reasonable and not detrimental to the public interest.

### **C. Basic local exchange certification**

Section 392.455, RSMo Supp. 1997, 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 such area follows 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. 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.

**1. Technical, financial and managerial resources and abilities.** Sprint filed Exhibit C with its amended application, which lists the names and qualifications of its management team. The team members have experience in various areas of the telecommunications industry including technical, customer service, legal, sales, marketing, accounting and finance. Sprint also submitted as Exhibit B a copy of the 1995 Annual Report to Shareholders for Sprint Corporation, the parent company of both Sprint and Sprint-United. The parties agreed in the Stipulation that Sprint possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

**2. The entrant's proposed services satisfy the minimum standards established by the Commission.** Sprint stated in its amended application that its services will include dial-tone access to the public switched telecommunications network, 911 service, directory assistance, dual-party relay service, a universal telephone directory, and various features and functions which will be available through the resale of Sprint-United's services by Sprint.

Sprint has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards. The parties agreed that Sprint proposes to offer basic local services that satisfy the minimum standards established by the Commission.

**3. The geographic area in which the company proposes to offer service.** Sprint sets out in Exhibit D to its amended application all the exchanges in which it proposes to offer services. Sprint has defined its service area by means of the tariffed exchange areas of the ILEC presently providing basic local service in those exchanges. Exhibit D consists of Commission-approved tariff sheets filed by Sprint-United, describing local exchanges. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange. The parties agreed that Sprint 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.

**4. The offering of basic local telecommunications service as a separate and distinct service.** Sprint has agreed to offer basic local telecommunications service as a separate and distinct service.

**5. Equitable access for all Missourians to affordable telecommunications services.** Sprint has agreed to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1997.

#### **D. Competitive classification**

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. ' 392.361.2. In making that determination

the Commission may consider such factors as market share, financial resources and name recognition, among others. In the Matter of the Investigation for the Purpose of Determining the Classification of the Services Provided by Interexchange Telecommunication 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). In addition, all the services a competitive company provides must be classified as competitive. ' 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. *Id.* at 487.

The parties have agreed that Sprint should be classified as a competitive telecommunications company. The parties have also agreed that Sprint's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on Sprint's ability to charge for its access services. Sprint has agreed that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the large incumbent LECs within those service areas in which Sprint seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Sprint should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1997, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1997 and 392.230, rather than Sections 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1997 and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

#### **E. Additional conditions of certification**

In addition to the terms and condition described above, the Stipulation contains a number of additional terms designed to apply specifically to the provision of basic local and local exchange services by Sprint in the territory served by Sprint-United. The additional terms are intended to address the affiliate relationship between Sprint and Sprint-United, in order to minimize the opportunity for abuse of the relationship. The specific provisions may be summarized as follows:

(a) Sprint will follow service quality rules, including reporting, to the same extent as other CLECs.

(b) Sprint-United will treat Sprint as any other nonaffiliated CLEC with regard to interconnection, unbundling, resale, dissemination of technical information, the provision of new services, or the modification of facilities.

(c) Sprint will not receive preferential treatment with regard to the display of its number and information in Sprint-United's phone directories.

(d) Sprint and Sprint-United will conduct operations independently.

(e) Sprint shall maintain separate books, records, and accounts;

(f) Sprint may not obtain credit in a way which would permit the creditor to have direct recourse to the assets of Sprint-United.

(g) Sprint shall conduct all transactions with Sprint-United at arm's length and in writing.

(h) Sprint-United may not engage in discrimination between Sprint and any other entity with regard to the provision or procurement of goods, services, facilities, information, and the establishment of standards.

(i) Sprint-United shall account for any transactions with Sprint in accordance with accounting principles and rules of the FCC and the Commission.

(j) Both Sprint-United and Sprint shall fill requests for phone exchange service or exchange access on the same terms for unaffiliated entities as they do for affiliated entities.

(k) Both Sprint-United and Sprint shall fill any requirement to provide telecommunications facilities or services, or network information, to any other entity under the same terms and conditions, consistent with 47 U.S.C. ' 251.

(l) Both Sprint-United and Sprint shall charge its affiliate or impute to itself an amount for access to its phone exchange service and exchange access that is not less than the amount charged to unaffiliated carriers for such service.

(m) Sprint-United will offer unbundled network element (UNEs) or resale throughout its territory, on the same terms, prices, and conditions, regardless of whether Sprint-United or Sprint provides the underlying facilities. However, the terms, prices, and conditions may vary if the underlying facilities are provided by a nonaffiliated CLEC.

(n) Sprint shall not offer local services or functionalities based on Sprint-United's services or functionalities that Sprint-United does not offer on a retail basis to its own end user customers.

(o) Sprint-United and Sprint shall be treated as one company for purposes of determining the effective level of competition in Sprint-United's territory under S.B. 507.

The Commission finds that the question of what protections may be necessary in a situation where a CLEC seeks a certificate of service authority to provide basic local service in the territory of an ILEC with which it is affiliated is a case of first impression. Concerns were raised about the potential for abuses in such a situation. One example discussed in Staff's Suggestions in Support of the Stipulation and Agreement and at the stipulation hearing is the possibility

that an affiliated CLEC could place new facilities and offer new services instead of the ILEC, which could encourage the migration of customers to the CLEC by limiting the offerings of the ILEC, and could circumvent the requirements of the Federal Telecommunications Act of 1996 by depriving competitors of access to new facilities or new services through the purchase from an ILEC of services for resale or UNEs.

The Commission finds that the provisions of the Stipulation address the major concerns relating to the provision of basic local service by a CLEC in the territory of an affiliated ILEC. In this case the ILEC, Sprint-United, and the CLEC, Sprint, both have made affirmative commitments and have signed the Stipulation and agreed to be bound thereby. The Commission finds that the Stipulation, in conjunction with the explanations, answers to questions, and commitments given at the stipulation hearing, should ensure that adequate protections are in place to prevent abuses.

### **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:

A. The Commission finds that competition in the local exchange and basic local exchange telecommunications markets is in the public interest.

B. The Commission finds that Sprint has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.

C. The Commission finds that Sprint has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.

D. The Commission finds that the local exchange services market is competitive and that granting Sprint a certificate of service authority to provide local exchange telecommunications services is in the public interest. Sprint's certificate shall become effective when its tariff becomes effective.

E. The Commission finds that Sprint meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting Sprint a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Sprint's certificate shall become effective when its tariff becomes effective.

F. The Commission finds that Sprint is a competitive company and shall be granted waiver of the statutes and rules set out in Ordered Paragraph 4.

G. The Commission finds that Sprint's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997 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 Supp. 1997 and 392.230, rather than Sections 392.500 and 392.510.

H. The Commission finds that the Stipulation and Agreement filed by the parties is a reasonable resolution of the issues.

I. The Commission finds that the provisions in the Stipulation and Agreement which address Sprint's affiliated relationship with Sprint-United should provide adequate protection against potential abuses.

## **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the State of Missouri. Sprint has requested certification under Sections 392.420 - .440 and Sections 392.410 and .450, RSMo Supp. 1997. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority is in the public interest. 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 Federal Telecommunications Act of 1996 and Sections 392.185 and 392.455, RSMo Supp. 1997 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1997 states that the provisions of this chapter shall be construed to: (1) Promote universally available and widely affordable telecommunications services; . . . (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri; . . . (6) Allow 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 . . . .@

The Commission has the legal authority to accept a Stipulation and Agreement offered by the parties as a resolution of the issues raised in this case, pursuant to ' 536.060, RSMo Supp. 1997. Based upon the information contained within the Stipulation and Agreement of the parties, the supporting information offered at the hearing on February 6, 1998, and on its findings of fact, the Commission concludes that the Stipulation and Agreement shall be approved and that Sprint should be granted the certificate of service authority requested.

### **IT IS THEREFORE ORDERED:**

1. That the Stipulation and Agreement entered into the record as Exhibit 1 on February 6, 1998 (Attachment A to this Report And Order) is adopted.
2. That Sprint Communications Company L.P. is granted a certificate of service

authority to provide local exchange telecommunications services in the State of Missouri, to become effective when the company's tariff becomes effective, subject to all applicable statutes and Commission rules except as specified in this order.

3. That Sprint Communications Company L.P. 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, to become effective when the company's tariff becomes effective.

4. That Sprint Communications Company L.P. is classified as a competitive telecommunications company. The following statutes and regulatory rules shall be waived:

**Statutes**

392.210.2 - Uniform System of Accounts

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, RSMo Supp. 1997

- issuance of securities, debts and notes

392.340 - reorganization(s)

**Commission Rules**

4 CSR 240-10.020 - depreciation fund income

4 CSR 240-30.040 - Uniform System of Accounts

4 CSR 240-35 - reporting of bypass and customer

specific arrangements

5. That the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived until Sprint Communications Company L.P. has entered into a Commission-approved interconnection or resale agreement that enables it to provide basic local exchange services.

6. That Sprint Communications Company L.P. shall file tariff sheets for approval reflecting the rates, rules, regulations and the services it will offer within 30 days after Commission approval of the necessary interconnection or resale agreement(s). The tariff shall be filed in Case No. TA-97-269 and

shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 4.

7. That Sprint Communications Company L.P. shall give notice of the filing of the tariffs described in Ordered Paragraph 6 to all parties or participants. In addition, Sprint shall file a written disclosure of all interconnection or resale agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection or resale agreement, and an explanation of why no interconnection or resale agreement is necessary for those areas.

8. That the certification and competitive status of Sprint Communications Company L.P. are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997, and upon the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the Stipulation must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1997, and 392.230, rather than Sections 392.500 and 392.510.

9. That this Report And Order shall become effective on May 1, 1998.

**BY THE COMMISSION**

**Dale Hardy Roberts**

**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lumpe, Ch., Crumpton, Murray,

Schemenauer and Drainer, CC., concur.

Dated at Jefferson City, Missouri,

on this 21st day of April, 1998.

