

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 5th
day of August, 1998.

In the Matter of the Application of)
NOW Communications, Inc. for a Certificate of)
Service Authority to Provide Resold Basic) **Case No. TA-98-390**
Local Telecommunications Service in Portions)
of the State of Missouri and for Competitive)
Classification.)

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

Procedural History

NOW Communications, Inc. (NOW) applied to the Commission on March 12, 1998, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1997. NOW 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. NOW included with its application a proposed tariff with a 90-day effective date. NOW is a Mississippi corporation with principal offices located at 713 Country Place Drive, Jackson, Mississippi 39208.

The Commission issued a notice and schedule of applicants on March 17, directing interested parties wishing to intervene to do so by April 16. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on May 1.

¹ All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

The parties filed a Stipulation and Agreement (Agreement) which is included with this order as Attachment 1 on June 3. The Staff of the Commission (Staff) filed a Memorandum with its recommendation regarding the tariff on July 30. On August 3 Staff filed Suggestions in Support of the Stipulation and Agreement. In the Agreement the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. 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. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

Discussion

NOW wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE), and Sprint Missouri, Inc. d/b/a Sprint (Sprint). NOW is not asking for certification in any area that is served by a small incumbent local exchange provider. NOW proposes to operate in all of the exchanges described in Appendix B to its application. NOW is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

A. Basic Local Service Certification

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. NOW has provided all the required documentation and a tariff with a 90-day effective date.

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.

NOW submitted as Exhibit D to its application certain financial documentation including its pro forma balance sheet showing projected assets and liabilities for the remainder of 1998 through 2002. Exhibit C to the application lists the names and qualifications of NOW's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including marketing, sales, legal issues, and financial management. The parties agreed that NOW possesses sufficient technical, financial and managerial

resources and abilities to provide basic local telecommunications service.

NOW 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. The parties agreed that NOW proposes to offer basic local services that satisfy the minimum standards established by the Commission.

NOW wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs (see Appendix B to the application). NOW has agreed that its service area must follow exchange boundaries and be no smaller than an exchange. The parties agreed that NOW has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows incumbent local exchange carrier (ILEC) boundaries and is no smaller than an exchange.

NOW has agreed to offer basic local telecommunications service as a separate and distinct service and 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.

B. 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 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). 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 NOW should be classified as a competitive telecommunications company. The parties have also agreed that NOW's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on NOW's ability to charge for its access services. NOW 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 NOW seeks to operate. The parties have agreed that the grant of service authority and competitive classification to NOW 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.

C. Tariff

In its application, NOW requested a waiver of 4 CSR 240-2.060(4)(H) which requires that the proposed tariff have a 45-day effective date. The proposed tariff filed with NOW's application included a 90-day effective date. NOW proposed the 90-day effective date in order to allow the Commission to rule on its application for approval of resale agreement with SWBT in Case No. TO-98-387 prior to the proposed effective date of the tariff. In the Stipulation and Agreement the parties agreed that the waiver should be granted. On May 22 the Commission suspended the proposed tariff until July 27 and on July 9 NOW filed a letter extending the effective date until August 10. On June 3 the Commission approved an interconnection agreement between NOW and SWBT in Case No. TO-98-387.

NOW served a copy of the tariff on SWBT, Staff, and the Office of the Public Counsel. As part of the Stipulation and Agreement, NOW agreed to give notice of any subsequent modifications or substitution of the proposed tariff to all the parties at the time they were filed with the Commission. NOW also agreed that when filing any changes or modifications to its initial basic local tariff in this case, that it would provide a written disclosure of all resale or interconnection agreements it had entered into which affect its Missouri service areas, all portions of its Missouri service areas for which it did not have a resale or interconnection agreement with the incumbent local exchange

carrier, and its explanation of why such a resale or interconnection agreement was unnecessary for any such areas.

NOW filed substitute sheets on June 21 in order to make clarifications and bring its tariff into compliance with Commission rules and regulations. The Commission's Staff reviewed the tariff sheets and filed a memorandum on July 30 recommending that the Commission approve them as amended by the substitute sheets. Staff stated that NOW proposes to offer prepaid basic local exchange service to customers on a resale basis, and to offer Call Forwarding, Call Waiting, Caller I.D., Call Trace, Speed Dial, and Call Return. Staff stated that NOW's proposed rates are comparable to the rates of other companies offering similar services. Since NOW does not offer Operator Services, it will block all 0- and 0+ operator-assisted calls in the same manner as would the underlying LEC for the LEC's customers who are subject to toll blocking or toll restriction. The company does not block 1-800 calls or access to 911 (where 911 is available). Staff stated that the tariff language regarding 911/E911 service and Caller I.D. is appropriate. Staff recommended that the tariff be approved, as amended by the substitute sheets, to become effective on August 10.

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 basic local exchange telecommunications market is in the public interest.

- B. The Commission finds that NOW has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services.
- C. The Commission finds that NOW has demonstrated good cause to support a waiver of the 45-day effective date for the tariff filing and the waiver shall be granted.
- D. The Commission finds that NOW 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 NOW a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.
- E. The Commission finds that NOW is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- F. The Commission finds that NOW's certification and competitive status should be expressly conditioned upon 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.
- G. The Commission has reviewed the tariff sheets and the Staff's recommendations and finds that the tariff sheets, as amended, should be approved to become effective on August 10.

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. NOW has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1997, which permit the Commission to grant a certificate of service authority where it 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.

Under Section 392.240.2 the Commission has the authority to determine whether the rules, regulations, or practices of any telecommunications company are unjust or unreasonable, and to determine the just, reasonable, adequate, efficient, and proper regulations, practices, and service to be observed and used by a telecommunications company.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1997, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1997.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1997. Based upon the Commission's review of the applicable law and Stipulation and

Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on June 3, 1998, is approved.

2. That the parties shall comply with each and every provision of the Stipulation and Agreement approved by this order.

3. That NOW Communications, Inc. is granted a certificate of service authority to provide basic local exchange 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.

4. That NOW Communications, Inc. 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
- 392.270 - 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
- 392.340 - reorganization(s)
- 392.330, RSMo Supp. 1997 - issuance of securities, debts and notes

Commission Rules

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- 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 request for waiver of the 45-day requirement for the tariff filing is granted.

6. That NOW Communications, Inc.'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.

7. That the tariff filed by NOW Communications, Inc. on March 12, 1998, is approved as amended to become effective on August 10, 1998. The tariff approved is:

MO. P.S.C. No. 1
Original Sheets No.1 through 36

8. That the certificates of service authority granted to NOW Communications, Inc. on August 10, 1998, to provide basic local exchange telecommunications services shall take effect on August 10, 1998.

9. That this order shall become effective on August 10, 1998.

10. That this case shall close on August 17, 1998.

BY THE COMMISSION

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, Murray
and Schemenauer, CC., concur.
Crumpton, C., absent.

Dippell, Regulatory Law Judge