

BEFORE THE

MISSISSIPPI PUBLIC SERVICE COMMISSION

IN RE: ORDER OF THE MISSISSIPPI DOCKET NO. 95-UA-358

PUBLIC SERVICE COMMISSION SUB-DOCKET: ENTRY

ESTABLISHING A DOCKET TO

CONSIDER COMPETITION IN

THE PROVISION OF LOCAL

TELEPHONE SERVICE

ORDER ADOPTING ENTRY REQUIREMENTS

COMES NOW, the Mississippi Public Service Commission (Commission) and issues this Order Adopting Entry Requirements for the provision of local exchange telephone service.

**I. Procedural Background**

Docket 95-UA-358 was initially established to determine if competition in the local exchange marketplace within Mississippi was in the public interest. Since the establishment of said Docket, the Federal Telecommunications Act of 1996 (TA96) was enacted establishing a national policy mandating competition in the provision of local exchange telephone service. This event mooted the need for this Commission to decide if local competition would be permitted within Mississippi.

Subsequently, on April 23, 1996, this Commission changed the scope of this Docket to one considering the implementation of competition in the provision of local exchange telephone service.

This Commission established the instant Sub-docket to consider useful entry requirements for new entrants desiring to provide local exchange telephone service in the State of Mississippi. This Commission sought and received comments from all parties concerning its "Exemplar Entry Rules for Local Exchange Telephone Competition."

All parties to the original Docket 95-UA-358 were made parties to the present Sub-Docket by Order of April 23, 1996.

The following parties filed comments regarding the Commission's "Exemplar Entry Rules for Local Exchange Telephone Competition":

BellSouth Telecommunications, Inc.

AT&T Communications of the South Central States, Inc.

Mississippi Independent Telephone Group

Sprint Communications Company L.P.

WorldCom, Inc. d/b/a LDDS WorldCom

MCI Telecommunications Corporation

Mississippi Attorney General

CommuniGroup, Inc.

Mississippi Cable Television Association

Time Warner Entertainment Company, L.P.

Telecommunications Resellers Association

Brooks Fiber Communications of Mississippi

The Commission conducted a hearing on this Sub-Docket on June 10, 1996. All parties were given the opportunity to present their position and comments regarding the "Entry Requirements" and were permitted to cross-examine all other parties.

During the course of the hearing on June 10, 1996, the Mississippi Independent Telephone Group attempted to apply for an exemption pursuant to Section 251(f) (2) of TA96. An objection was entered during the hearing to this request for an exemption. This Commission ruled that the present Sub-docket was an inappropriate forum for the Commission to determine whether the Mississippi Independent Telephone Group should be granted an exemption pursuant to Section 251(f)(2) of TA96. This finding does not prejudice the Mississippi Independent Telephone Group from petitioning this Commission for such exemption in a separate proceeding.

## **II. State Regulatory Authority**

Pursuant to Section 253(b) of TA96, this Commission is not prohibited from imposing (on a competitively neutral basis and consistent with Section 254, regarding universal service) requirements necessary to:

1. Preserve and advance universal service;
2. Protect the public safety and welfare;
3. Ensure the continued quality of telecommunication services; and,
4. Safeguard the rights of consumers.

Also, this Commission may adopt "Entry Requirements" so long as they do not thwart competition or deregulation, and are not inconsistent with the provisions of TA96.

Therefore, this Commission is guided by these provisions and principles in determining the appropriate "Entry Requirements" for new entrants who desire to

provide local exchange telephone services.

### III. Findings of the Commission

After reviewing all of the comments filed in this Sub-Docket, and after hearing the testimony and other evidence presented by all parties in this Sub-Docket, the Commission hereby adopts the attached "Entry Requirements" for all parties who are desirous of furnishing local exchange telephone services within the State of Mississippi.

Certain parties, for example, the Telecommunications Resellers Association and AT&T Communications of the South Central States, Inc., submitted that certain of the provisions contained in the "Exemplar Entry Rules For Local Exchange Telephone Competition" had the potential to create barriers and/or had the potential to create unnecessary burdens to entry. In response to these concerns and those expressed by other parties, the Commission has revised the "Exemplar." The revision is attached hereto as "Entry Requirements."

This Commission finds unpersuasive any comments that the attached "Entry Requirements" have the potential to create barriers and/or create unnecessary burdens to entry.

Pursuant to Miss. Code Ann., §77-2-3, (1972), as amended, the Commission's functions are "regulatory and quasi-judicial in nature." In performing these functions, the Commission is often called upon to make "policy decisions." Policy decisions by the Commission are those decisions that rest, at least in part, on considerations not entirely susceptible to proof or disproof. The determination of what "Entry Requirements" the Commission will establish for new entrants in the provision of local exchange telephone service is such a policy decision. In making this determination, the Commission is guided by the principles that the "Entry Requirements": not create a barrier to entry for new entrants; be consistent with the authority granted to the States by TA96; not thwart competition or deregulation; and, be in the public's welfare.

The Commission finds that the adoption of the attached "Entry Requirements" is not a barrier to entry for new entrants; is consistent with the authority granted to the States by TA96; does not thwart competition or deregulation; and, is in the public's welfare.

The Commission further finds that the attached "Entry Requirements" protect the public welfare, ensure the continued quality of telecommunications services and safeguard the rights of consumers.

To further promote competition and facilitate entry in the provision of local exchange telephone service, this Commission finds that an applicant may petition this Commission for a waiver of any of the "Entry Requirements." Upon an adequate showing by the applicant that compliance with any of the "Entry Requirements" is unnecessary, unreasonably burdensome, impossible, impractical, or not in the public's welfare, this Commission may grant the requested waiver.

This Commission further finds that the "Entry Requirements" also provide that applicants may file a request to have any of their services deregulated or detariffed.

IT IS THEREFORE ORDERED that the attached "Entry Requirements" are hereby

adopted.

IT IS FURTHER ORDERED, that an applicant may petition this Commission for a waiver of any of the "Entry Requirements" upon an adequate showing that compliance with any of the "Entry Requirements" is unnecessary, unreasonably burdensome, impossible, impractical, or not in the public's welfare. The Commission may grant such waiver.

IT IS FURTHER ORDERED that this Order shall be effective upon issuance.

Chairman Nielsen Cochran voted aye; Vice-Chairman Bo Robinson voted aye; Commissioner Curt Hebert voted aye.

SO ORDERED on this the \_\_\_\_ day of July 1996.

MISSISSIPPI PUBLIC SERVICE COMMISSION

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Nielsen Cochran, Chairman

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Bo Robinson, Vice Chairman

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Curt Hebert, Commissioner

ATTEST: A True Copy

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BRIAN U. RAY

Executive Secretary

**ENTRY REQUIREMENTS FOR LOCAL EXCHANGE TELEPHONE SERVICE**

**1. Definitions.**

The following words and terms, when used in this docket, shall have the following meanings unless the context clearly indicates otherwise:

'Incumbent local exchange telephone company' or 'incumbent' means a public service company providing local exchange telephone service in Mississippi on February 8, 1996, pursuant to a certificate of public convenience and necessity.

'Local exchange carriers' means all certificated providers of local exchange telephone service, whether incumbents or new entrants.

'New entrant' means an entity certificated to provide local exchange telephone service in Mississippi after February 8, 1996. An incumbent local exchange telephone company shall be considered a new entrant in any territory for which it obtains a certificate to provide local exchange service on or after February 8, 1996, in accordance with these rules and which is outside the territory it is certificated to serve as of February 8, 1996.

## **2. Certification requirements.**

A. An original and 14 copies of an application for a certificate of public convenience and necessity shall be filed with the Executive Secretary of the Commission.

B. Notice of the application shall be given by the applicant to all local exchange carriers. The Executive Secretary of the Commission shall publish notice in a newspaper having general circulation in the proposed service territory as required by law and regulation.

C. The application shall identify the applicant including (i) its name, address, and telephone number; (ii) the name, address, and telephone number of its corporate parent or parents, if any; (iii) the names and addresses of the current board of directors, officers and any person owning fifteen percent (15%) or more of its stock; if not a corporation, the names of all owners or partners; (iv) the names, addresses, and telephone numbers of its legal counsel; (v) a copy of its corporate charter or articles of incorporation or, if a partnership, a copy of any written partnership agreement; and (vi) any other identifying information the Commission determines to be necessary.

D. Each incorporated applicant shall demonstrate that it is authorized to do business in the State of Mississippi.

E. Applicants shall be required to show their financial, managerial, and technical ability to render local exchange telephone service.

1. As a minimum requirement, a showing of financial ability shall include the applicant's most recent audited financial statements, most recent stockholders annual report and most recent SEC Form 10-K if the company is publicly traded.

2. To demonstrate managerial experience, each applicant shall attach a brief description of its history of providing telecommunications or other relevant services, if any; shall list the geographic areas in which it has and is currently providing service; and shall list the experience of each principal officer.

3. The applicant shall demonstrate its technical ability by attaching a description of its experience in providing telecommunications or other relevant services, if any, or the applicant may provide other documentation which supports its technical abilities.

F. Each application for a certificate to provide local exchange service shall include the applicant's proposed tariffs, which shall include rules, regulations, terms, and conditions. Applicants that desire to have any of their services deregulated or detariffed shall file a request in accordance with Section 4 herein.

G. The applicant shall file maps or other acceptable documents with the application for certification in sufficient detail to designate the actual geographic area or areas to be served. Such maps shall also identify each proposed initial local calling area of the applicant. If the applicant is a facilities-based company, the applicant shall file a copy of engineering drawings, plans and specifications of its facilities.

H. Each application shall include the applicant's proposed form of regulation for its services if such form of regulation differs from that set forth in Section 4 herein.

I. The applicant shall file a list of states where applicant is authorized to provide local exchange telephone service and a list of states where applicant has been denied authority to provide any telecommunications service.

J. The applicant shall file all testimony and exhibits of its case-in-chief.

### **3. Conditions for certification.**

A. In evaluating the applicant's request for a certificate to provide local exchange telephone service, the Commission will, at a minimum, require a new entrant, either directly or through arrangements with others, to provide the following:

1. Access to 911 and E911 services;
2. White page directory listings;
3. Access to telephone relay services;
4. Access to directory assistance;
5. Access to operator services;
6. Equal access to interLATA long distance carriers, so long as the same requirements apply to incumbent local exchange companies;
7. Free blocking of 900- and 700-type services so long as the same requirements apply to incumbent local exchange companies; and
8. Interconnection on a nondiscriminatory basis with other local exchange companies.

B. To the extent economically and technically feasible, the new entrant should

be willing and able to provide service to all customers in the same service classification in its designated geographic service area in accordance with its tariff offerings.

C. The new entrant shall formulate and file its internal procedures to prevent deceptive and unfair marketing practices.

D. The new entrant shall formulate and file its internal procedures to handle complaints, including quality of service complaints.

E. The new entrant shall comply with all applicable Commission service rules and billing standards.

F. The new entrant shall, at a minimum, comply with the applicable intraLATA access requirements of incumbent local exchange telephone companies.

#### **4. Rate regulation of new entrants providing local exchange telephone service.**

A. Unless otherwise allowed by the Commission, tariffs are required for all local exchange service offerings except those that are comparable to 'Competitive' offerings of the incumbent telephone company that do not require tariffs. The Commission may convene a hearing to determine the applicable requirements and classification of any new entrant's local exchange service offerings.

B. The new entrant may petition the Commission to consider deregulation or detariffing treatment for any of its specific service offerings.

C. Unless otherwise allowed by the Commission, prices for local exchange services provided by the new entrant shall not exceed one hundred twenty percent (120%) of the highest of the comparable tariffed services provided by the incumbent local exchange telephone company or companies in the same local serving areas. Tariff changes within this price ceiling plan shall be implemented as follows:

1. Price decreases shall become effective on one-day notice to the Commission.

2. Price increases below ceiling rates shall become effective after 30-days notice is provided to the Commission, and notice to customers as provided by rule.

3. Price ceilings shall be one hundred twenty percent (120%) of the highest tariffed rates as of February 8, 1996, for comparable services of any incumbent local exchange telephone company or companies serving within the certificated local service area of the new entrant. Price ceilings shall be increased as the highest tariffed rate of an incumbent is raised through applicable regulatory procedures. Unless otherwise determined by the Commission, price decreases for an incumbent's service, whether initiated by the carrier or adopted by the Commission, shall not require a corresponding decrease in the price ceilings applicable to the new entrant.

4. The Commission may permit pricing structures or rates of a new entrant's local exchange service(s) that do not conform with the established price ceilings, unless there is a showing that the public interest will be harmed.

5. These pricing requirements shall not apply to a new entrant's services that: (i) are comparable to services classified as competitive for the incumbent or (ii) have been provided regulatory treatment different from that specified by these rules.

D. Services offered by the new entrant that are not comparable to services offered by the incumbent and for which the Commission has not provided regulatory treatment different from that specified by these rules shall be filed with 30-days notice to the Commission. Price decreases for these services shall become effective on one-day notice to the Commission. Price increases shall become effective after 30-days notice to the Commission and notice to customers in the manner prescribed by rule.

E. A new entrant may submit an alternative regulatory plan to that described in this section for the Commission's consideration in the applicant's certification proceeding or at a later date.

F. No form of earnings regulation shall be required for the regulation of new entrants. However, new entrants shall be required to file financial and other reports as identified in Section 5 of this regulation to enable the Commission to evaluate the effectiveness of local exchange telephone competition.

G. No new entrant providing local exchange telephone service shall abandon or discontinue local exchange service, except upon notice to customers, approval of the Commission, and upon such other terms and conditions as the Commission may prescribe.

H. Should the Commission determine that the form of regulation of new entrants does not effectively, or is no longer necessary to, regulate the prices of their services, it may modify the form of regulation.

#### **5. Financial and reporting requirements for new entrants.**

A. All providers of local exchange telephone service certificated herein shall be required to file the following reports with the Commission's Executive Secretary and the Executive Director of the Public Utilities Staff.

1. Annual report on the number of access lines by local exchange area and classified by residential and business lines.

2. Annual price list for all detariffed competitive local exchange telephone services provided by the applicant.

3. Quarterly statement of units and revenues for all competitive telephone services provided by the applicant.

4. Audited financial statements, stockholders annual report, SEC Form 10-K and FCC Form M for the parent company and the new entrant, if available.

B. A new entrant shall be required to remit the telecommunications relay surcharge and any other charge as provided by Commission order.

C. Any expansion or reduction of the geographic service area of a new entrant shall require the filing of amended maps or other acceptable documentation with the Commission's Executive Secretary.

D. In the event any of the board of directors, officers or major stockholders of the company changes, the new entrant shall immediately file such amended information with the Executive Secretary of the Commission and the Executive Director of the Public Utilities Staff.

E. Upon request of the Public Utilities Staff, any new entrant shall file such other information with respect to any of its services or practices as may be required.

