

Exhibit No. \_\_\_\_\_  
Issue: All Issues  
Witness: Edward J. Cadieux  
Type of Exhibit: Direct Testimony  
Sponsoring Party: MCIMetro Access  
Transmission Service, Inc.  
Case No.: TM-96-62

MCIMetro Access Transmission Service, Inc.

Case No. TM-96-62

DIRECT TESTIMONY

OF

Edward J. Cadieux

FILED  
MAR 15 1996  
MISSOURI  
PUBLIC SERVICE COMMISSION

March 15, 1996

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

In the Matter of the Application )  
of MCIMetro Access Transmission Services, ) Case No. TM-96-62  
Inc. for determination of no jurisdiction over )  
a sale of assets. )

AFFIDAVIT OF EDWARD J. CADIEUX

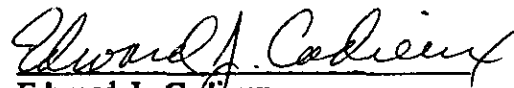
STATE OF MISSOURI )  
 ) SS.  
CITY OF ST. LOUIS )

I, Edward J. Cadieux, of lawful age, being duly sworn, depose and state:

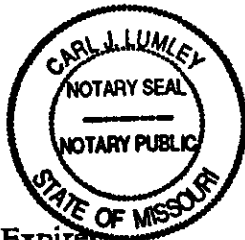
1. My name is Edward J. Cadieux. I am senior attorney for MCI  
Telecommunications Corporation.

2. Attached hereto and made a part hereof for all purposes is my direct testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony  
to the questions therein propounded are true and correct to the best of my knowledge,  
information and belief.


  
Edward J. Cadieux

Subscribed and sworn to before me, a Notary Public, this 14 day of March,  
1996.



My Commission Expires:

CARL J. LUMLEY  
NOTARY PUBLIC - STATE OF MISSOURI  
ST. LOUIS COUNTY  
MY COMMISSION EXPIRES 6-3-1998

  
Notary Public

Direct Testimony of Edward J. Cadieux  
on Behalf of  
MCIMetro Access Transmission Service, Inc.

1

**Table of Contents**

2	Introduction and Background . . . . .	1
3	Evaluation of Asset Purchase Transaction . . . . .	2
4	Certification of MCIMetro . . . . .	6
5	Prior Western Union Proceedings . . . . .	8
6	Court and PSC Orders Regarding this Case . . . . .	9
7	Conclusion . . . . .	12

1 Direct Testimony of Edward J. Cadieux  
2 on Behalf of  
3 MCIMetro Access Transmission Service, Inc.

1 **Introduction and Background**

2 **Q. Please identify yourself to the Commission.**

3 A. My name is Edward J. Cadieux. I am currently a senior attorney for MCI  
4 Telecommunications Corporation working out of the St. Louis office with responsibilities  
5 for regulatory matters in Missouri, Kansas, and Oklahoma, as well as legislative  
6 responsibilities in Kansas. I have been working as an attorney for MCI since 1987. I  
7 will be leaving the company soon to accept a position with Brooks Fiber Properties, Inc.

8 **Q. Please describe your background to the Commission.**

9 A. I have a Bachelor of Arts degree in political science from St. Louis University, which  
10 I obtained in 1975, and a law degree from St. Louis University, which I obtained in  
11 1978. I have been licensed to practice law in the State of Missouri since 1979.

12 I worked for the Missouri Public Service Commission from 1980 through 1987, first as  
13 a hearing examiner for two years, and then in the General Counsel's office as an  
14 Assistant General Counsel and then as a Deputy General Counsel.

15 After leaving the PSC, I worked briefly for the Massachusetts Attorney General's office  
16 on public utility matters, before I was hired by MCI.

17 **Q. What were your responsibilities while you were in the PSC General Counsel's office?**

1 A. My focus was primarily on regulation of telecommunications companies during that time.

2 Q. In the course of working for MCI Telecommunications Corporation, have you done  
3 legal work involving MCIMetro Access Transmission Services, Inc?

4 A. Yes.

5 Q. Can you identify that company?

6 A. It is a Delaware corporation, its principal place of business is in Richardson, Texas, and  
7 it is authorized to conduct business in Missouri by the Secretary of State, and authorized  
8 to conduct competitive telecommunications business by the Missouri PSC and the FCC.  
9 Originally it was named Western Union ATS, Inc., but it later changed its name to  
10 Access Transmission Services, Inc., and recently to MCIMetro Access Transmission  
11 Services, Inc.

12 Q. What is the connection of that company to MCI Telecommunications Corporation?

13 A. It is a wholly owned subsidiary of MCI Telecommunications Corporation.

14 **Evaluation of Asset Purchase Transaction**

15 Q. What was your first involvement with MCIMetro?

16 A. In early 1990, MCIMetro (then known as Western Union ATS) agreed to purchase the  
17 national assets of Western Union Corporation's Advanced Transmission Systems division  
18 for \$27 million. Between the time the asset acquisition agreement was made on February  
19 23, 1990, and the time the transaction closed on March 8, 1990, MCI's General  
20 Counsel's office coordinated a nationwide review of issues related to the transaction.  
21 During that review, my office was responsible for determining whether the transaction

1 had to be approved by the state regulatory authorities in our area of responsibility,  
2 including the Missouri PSC.

3 **Q. How did MCI make the determination regarding whether the transaction required**  
4 **the approval of the Missouri PSC?**

5 A. We supplied information regarding the transaction to our Missouri outside counsel, Lee  
6 Curtis and Carl Lumley of the Curtis, Oetting firm, and asked them to research the  
7 question of whether the assets being acquired were of a type that made PSC approval of  
8 the transaction necessary under Section 392.300 R.S.Mo. or otherwise. They conducted  
9 their research, considered the facts presented, and provided us with their oral opinion  
10 that such approval was not required under Section 392.300 R.S.Mo. or otherwise. We  
11 examined their oral opinion and concurred and passed the results on to MCI's General  
12 Counsel.

13 **Q. Can you identify Schedule 1 to your testimony?**

14 A. Yes, that is the written opinion we received from the Curtis, Oetting law firm in May  
15 1990, in which they confirmed the oral opinion they provided earlier in advance of the  
16 closing of the asset acquisition, as well as express opinions regarding other issues  
17 surrounding the start-up of MCIMetro. I would point out that this was a privileged  
18 communication, but we have chosen to waive the privilege as to this document given the  
19 nature of these proceedings.

20 **Q. And you and your office, and MCI's General Counsel's office, agreed with that**  
21 **opinion?**

22 A. Yes.

1     **Q.     And you and the other MCI inside attorneys held that opinion to a reasonable**  
2     **degree of legal certainty?**

3     A.     Yes, based on the nature of the assets and the way they had been used by Western  
4     Union, and our interpretation of Section 392.300.1 R.S.Mo., we concluded that there  
5     was no need to seek Missouri PSC approval of the transaction, under Section 392.300.1  
6     R.S.Mo. or otherwise.

7     **Q.     Explain that conclusion further.**

8     A.     Western Union owned conduit in Kansas City and St. Louis. Records now available  
9     reflect that it owned approximately 232,000 linear feet of conduit (in 44,000 feet of  
10    trenches) in Kansas City and approximately 820,000 linear feet of conduit (in 175,000  
11    feet of trenches) in St. Louis. Western Union also leased above and below ground right-  
12    of-way (conduits and poles) from railroads and utility companies in both cities. It had  
13    wires and fiber optic cables in these conduits and on these poles. At the time of the  
14    transaction, Western Union did not use these assets to serve the public or to provide  
15    telecommunications services as defined by Missouri law, but rather Western Union made  
16    the assets available to telecommunications companies like MCI for dedicated access  
17    capacity and to a small number of railroad and utility customers to provide them with  
18    dedicated private line capacity. In other words, Western Union leased wires or fibers  
19    (or capacity thereon) to utilities and railroads and those customers were themselves  
20    responsible for handling their own transmissions over such dedicated wires or fibers (or  
21    capacity). Additionally, assets such as conduit and poles were made available to other  
22    entities for them to install their own communications systems. The customers were all

1 telecommunications companies and other utilities and railroads. Annual Missouri  
2 revenues from these private capacity contracts in 1990 were under \$10,000.00 as best  
3 as we can determine.

4 **Q. Was state regulatory approval of the transaction sought anywhere in the United**  
5 **States?**

6 A. To the best of my knowledge, similar determinations were made across the country and  
7 no state regulatory approval was sought.

8 **Q. Other than this proceeding, has there been a review of the transaction by state**  
9 **regulatory agencies?**

10 A. No.

11 **Q. Have you reviewed additional information regarding the manner in which Western**  
12 **Union was using the assets since the time of the transaction?**

13 A. Yes.

14 **Q. In what context?**

15 A. I was involved as a witness before the Circuit Court of the City of St. Louis in the case  
16 which led to this proceeding before the PSC, and I have been involved in this proceeding  
17 as well.

18 **Q. Have you come across any information which would cause you to question the**  
19 **determination that the transaction did not require PSC approval?**

20 A. No, all the information I have seen is consistent with our initial determination that these  
21 assets were not devoted to public use and, therefore, could be properly sold without  
22 application to the Missouri PSC for approval of the transaction.



**Certification of MCIMetro**

**Q. Did you have occasion to do other work for MCIMetro?**

A. Yes, I supervised the process of obtaining a certificate of authority and approval of a tariff from the Missouri PSC once MCIMetro decided to expand upon the line of business which had been acquired and start providing telecommunications services to the public. I have also been involved in processing the company name changes and the filing of annual reports to the Commission.

**Q. When did MCIMetro seek a certificate of authority and file a tariff?**

A. In late 1992 and early 1993.

**Q. And from the time MCIMetro acquired the assets of Western Union's ATS division which were located in Missouri until the time that MCIMetro acquired a certificate of authority from the Missouri PSC to provide telecommunications services, what did MCIMetro do with the assets?**

A. It continued to use them in the same manner that Western Union had done immediately before the transaction, making them available strictly on a leased capacity basis to utilities and railroads.

**Q. And was it your opinion to a reasonable degree of legal certainty that MCIMetro did not need a certificate of authority from the Missouri PSC during that period of time?**

A. Yes. In fact, the PSC had made it clear that the private line capacity business was not regulated in decisions involving Western Union, and it was not until the emergence of limited local telecommunications competition in 1992, in the form of non-switched

1 telecommunications services, with the market entry of firms such as St. Louis Fiber,  
2 MFS, and Digital Teleport, that MCIMetro decided to expand its business and seek the  
3 same type of authority that the Commission was granting to such other firms  
4 (specifically, interexchange or long distance authority, and unswitched dedicated point  
5 to point local authority). And of course we are only now on the verge of the  
6 commencement of true local competition involving switched services, with the recent  
7 enactment of the federal Telecommunications Act of 1996, and even now there is still  
8 a lot of work to do before such competition can truly begin.

9 **Q. And similarly, was it your opinion to a reasonable degree of legal certainty that**  
10 **MCIMetro did not need to have an approved tariff in Missouri during that period**  
11 **of time between acquisition of the assets and the application for a certificate of**  
12 **service authority?**

13 **A.** Yes. During that period in Missouri MCIMetro was strictly involved in leasing capacity  
14 to a limited number of utility and railroad customers by means of the same individualized  
15 contracts that the PSC had previously acknowledged were unregulated in decisions  
16 regarding Western Union. It was only when MCIMetro decided to expand its business  
17 to provide public service that it needed a tariff to establish the generally applicable terms  
18 and conditions of service, and even then the PSC approved individual customer pricing  
19 because of the specialized nature of the business, the circumstances of service and the  
20 necessary sophistication of the customer base.

**Prior Western Union Proceedings**

**Q. What are the PSC decisions regarding Western Union to which you are referring?**

A. Western Union had a series of proceedings before the Missouri PSC. In Case No. TR-84-177, the Commission dismissed a case involving Western Union's proposed telecommunications service tariffs, on the grounds that Western Union had no certificate of authority and had abandoned its prior rights, as a company which provided service in advance of the creation of the PSC in 1913, by cancelling its prior tariffs in 1982. The Commission stated in its Order: "The Commission finds that failure to keep tariffs for the provision of telephone services in the State of Missouri on file and in effect with the Commission is an act that shows the intent to abandon any right [Western Union] may have had to provide intrastate telephone service." As a result, in 1987 Western Union obtained a certificate of public convenience and necessity and had its tariff approved in Case No. TA-86-66.

Subsequently, in 1989, Western Union applied to discontinue telecommunications service and cancel its tariff, which application was assigned Case No. TD-89-219. While that action was pending, Western Union also applied to sell its regulated customer accounts to Teleconnect, which application was assigned Case No. TM-90-52. In September, 1989, the Commission approved the sale of these 316 residential customer accounts and 78 business accounts to Teleconnect (these are the customers to which MCIMetro referred in its December 18, 1995, pleading in this case as evidence of Western Union's very small role in the regulated telecommunications business shortly before its transaction

1 with MCIMetro). In the same time frame, the Commission also approved Western  
2 Union's application to exit the regulated telecommunications business and cancelled its  
3 tariffs in Case No. TD-89-219. The Commission acknowledged the sale of the regulated  
4 customer base, and acknowledged that Western Union would continue to provide its  
5 deregulated services, including the digital cable and fiber optic systems which were  
6 ultimately purchased by MCIMetro. On rehearing, the Commission allowed Western  
7 Union to retain its certificate of public convenience and necessity for a period of one year  
8 to give Western Union the option of deciding whether to return to the provision of  
9 regulated services at some point in the near future. The Commission again expressly  
10 acknowledged Western Union was no longer offering regulated services.

11 Shortly after it sold its deregulated ATS assets to MCIMetro, Western Union returned  
12 to the PSC and cancelled its certificate of public convenience and necessity, under Case  
13 No. TD-90-348. In all these proceedings, the PSC made it clear that Western Union's  
14 ATS business was not regulated service to the public.

15 **Court and PSC Orders Regarding this Case**

16 **Q. Have you reviewed the Circuit Court opinion in the case between MCIMetro and the**  
17 **City of St. Louis which led to this proceeding?**

18 **A. Yes.**

1     **Q.     Do you have an opinion to a reasonable degree of legal certainty as to whether the**  
2           **trial court correctly interpreted Section 392.300 R.S.Mo. to require PSC approval**  
3           **of the asset transaction between Western Union and MCIMetro?**

4     A.    Yes, it is my opinion that the court erred in at least three respects. First, under the  
5           doctrine of primary jurisdiction, the court should have declined to rule on the issue and  
6           left it for consideration by the PSC. Second, even though the Court improperly decided  
7           to examine the issue, the court should have concluded, nonetheless, upon a review of the  
8           underlying PSC cases, that the assets were not devoted to public use and therefore PSC  
9           approval was unnecessary, as I have already explained. Third, the court should not have  
10          ruled that MCIMetro could not be a good faith purchaser under the statute, because we  
11          in fact made a good faith determination that the assets were not devoted to public use and  
12          PSC approval was not required under the statute.

13    **Q.     Have you reviewed the PSC's March 5, 1996, order in this proceeding in which it**  
14          **makes a similar interlocutory determination regarding the availability of the good**  
15          **faith exception to MCIMetro?**

16    A.    Yes, and in my opinion, to a reasonable degree of legal certainty, the PSC has  
17          misinterpreted the statute. All purchasers are deemed to be aware of the statute, Section  
18          392.300 R.S.Mo. Good faith is not a question of being ignorant of the statute. Rather,  
19          it is a question of whether, given the available facts, the purchaser makes a good faith  
20          determination that the assets involved are not of a type such that the Commission would  
21          have any jurisdiction over the transaction. The statute could have required all transfers  
22          to be approved, but it does not. It only requires that the Commission be asked to

1 approve the sale of assets upon which the public is dependant for service, for the reason  
2 of ensuring public service will not be interrupted. The statute also recognizes that no  
3 purchaser can be absolutely certain as to how assets are used, and rather than create a  
4 situation under which even the most trivial transactions are presented to the Commission  
5 out of extreme caution, instead the statute allows purchasers to make a reasonable, good  
6 faith, assessment of the transaction and interpretation of the statute and accordingly either  
7 seek approval if it appears to be required, or not seek it if it does not appear to be  
8 required.

9 **Q. Do you have any other comments regarding that order?**

10 A. Yes, the purported quote of my trial testimony set forth on page 5 is not a quote from  
11 my testimony, but rather from legal pleadings prepared by counsel based on both my  
12 testimony and other sources. Nonetheless, the substance of the quote matches my  
13 testimony in court and herein. The May date refers to the date of the written opinion of  
14 the Curtis, Oetting firm, which did complete the process of reviewing the legal issues  
15 regarding the start-up of MCIMetro, but again, we made our initial determination that  
16 no PSC approval was required in advance of the closing of the asset purchase transaction.  
17 Also, the citations to the Telecommunications Act of 1996 as 47 USC 229 and 57 USC  
18 229 are incorrect. However, based on my study of the Act, it has no implications upon  
19 this proceeding.

**Conclusion**

**Q. What relief does MCIMetro seek from the Commission in this proceeding?**

A. First and foremost, we seek a declaration by the Commission that our determination was correct back in 1990 and the transaction involving the purchase of the deregulated assets of Western Union's ATS division did not require PSC approval.

Second, in the alternative, we seek a declaration, of the Commission that our 1990 determination was made in good faith, so that even if for some reason (still unknown to us) approval was required, the transaction remains valid under the good faith purchaser exception to Section 392.300.1 R.S.Mo.

Third, again in the alternative, we ask the Commission to approve the transaction because there is no reason to disrupt the business of MCIMetro, which is an authorized telecommunications company with an unblemished record of service in Missouri that stands poised to bring the benefits of switched local competition to Missouri consumers in accordance with the PSC's publicly stated goals. Even if for some hyper-technical reason MCIMetro is deemed to have "held" these assets as agent for Western Union since 1990 (as suggested by the trial court), it would be contrary to the public interest to require the "return" of these assets at this point in time. MCIMetro will continue to hold a certificate of authority, will continue to provide service to Missouri customers, and will continue to have a tariff on file with the Commission. It has no pending or final judgment or decisions against it from any state or federal agency involving customer

1 service or rates. The transaction has had and will have no impact on the tax revenue of  
2 any political subdivision of the State of Missouri. On the other hand, to the best of my  
3 knowledge, Western Union Corporation, now known as New Valley Corporation (see  
4 Schedule 2 hereto), is not even a Missouri telecommunications company. If the  
5 Commission is concerned about the "public interest" in these assets, it is best served by  
6 leaving them with MCIMetro. Hence, under the Commission's standards of approving  
7 such transactions, there is no reason to withhold approval.

8 **Q. Is MCIMetro under a time constraint?**

9 A. Yes, according to the Circuit Court order, MCIMetro needs relief before August 10,  
10 1996.



CURTIS, OETTING, BRACKMAN & CROSSEN, P.C.  
ATTORNEYS AT LAW

130 SOUTH BEMISTON, SUITE 200  
ST. LOUIS, MISSOURI 63106  
(314) 725-8788  
FACSIMILE (314) 725-8789

CARL J. LUMLEY

May 11, 1990

C.K. Casteel, Jr.  
Director of Regulatory and  
Governmental Affairs  
MCI Telecommunications Corporation  
100 S. Fourth Street, Suite 1200  
St. Louis, Missouri 63102

Re: Western Union ATS

Dear Chip:

Per your request, by this letter we confirm our prior oral opinion that Western Union Corp. did not have to obtain Missouri PSC approval for its sale of assets to the new MCI Telecommunications Corp. subsidiary, Western Union ATS, Inc., and that Western Union ATS, Inc. will not need to obtain a certificate from and file tariffs with the Missouri PSC. We base our opinion upon the information set forth in memoranda from H. Brian Thompson dated 2/21/90, from John M. Scorce dated 2/22/90 and 2/23/90, from Michael A. Beach dated 2/22/90, and from Daniel J. Perka dated 4/18/90, our discussions with you, and applicable Missouri law. We did not investigate the accuracy of the information provided to us.

It is our understanding that the acquired assets were used by Western Union Corp. solely in connection with the business of its Advanced Transmission Systems division. Further, we understand that said division was engaged solely in the business of leasing unswitched point to point fiber pairs to IXC's, resellers and end users without a certificate or tariff in Missouri. Note that Western Union Corp. did obtain a certificate from the Missouri PSC to provide intrastate interLATA and intraLATA toll services and filed tariffs pursuant to that certificate. See Report and Order, Case No. TA-86-66 (May 29, 1987); Order Approving Tariff Sheets, Case No. TA-86-66 (July 15, 1987).

Section 392.300.1 R.S.Mo. (1989 Supp.) addresses the question of whether the PSC had to approve the subject transaction. The statute requires PSC approval of a sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger, or consolidation of a telecommunications company's franchise, permit, facilities, line or system, or any part thereof, to the extent such

C.K. Casteel, Jr.  
May 11, 1990  
Page 2

items are necessary or useful in the performance of the company's duties to the public. Any transaction made without required approval is void. On the other hand, the statute provides:

Nothing in this subsection contained shall be construed to prevent the sale, lease or other disposition by any telecommunications company of a class designated in this subsection of property which is not necessary or useful in the performance of its duties to the public, and any sale of its property by such company shall be conclusively presumed to have been of property which is not useful or necessary in the performance of its duties to the public, as to any purchaser of such property in good faith for value.

Based on our understanding of the facts, Western Union Corp. sold assets which were not used in its business as a common carrier, but rather in its business as a contract carrier; hence, those assets were not "necessary or useful in the performance of its duties to the public" and PSC approval was not required. Further, so long as MCI qualifies as a good faith purchaser, the statute establishes a conclusive presumption that PSC approval was not required.

Sections 392.410 to 392.450 address the need to obtain certification from the PSC. Section 392.410 requires all telecommunications companies offering local or interexchange telecommunications services to obtain a certificate of service authority, but exempts those companies which possessed a certificate of public convenience and necessity or a state charter at the time the statute took effect (9/28/87). Section 392.440 requires telecommunications companies offering or providing the resale of local exchange or interexchange services to obtain a certificate of service authority. Under Sections 392.430 and 392.440, the PSC must grant a certificate of service authority upon proof that same is in the public interest. Section 392.450 prohibits the issuance of a certificate of authority to sell or resell basic local exchange services to more than one provider absent proof that the initial provider is not offering reasonably safe and adequate service.

According to Section 386.020 (29) and (39), an entity that owns, operates, controls or manages any facilities used to provide telecommunications service for hire, sale or resale in Missouri is a telecommunications company and a public utility. "Telecommunications service" is defined as the transmission of information by wire, radio, optical cable, electronic impulses, or

C.K. Casteel, Jr.

May 11, 1990

Page 3

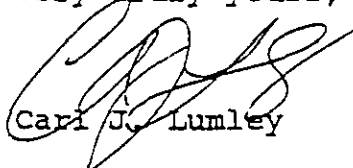
other similar means. It does not include the following: customer premises equipment; answering and paging service; public mobile service; hospital, hotel, motel services; private system service; cable television; and inside wire. See Section 386.020(41). "Interexchange telecommunications service" is service between points in two or more exchanges; "Local exchange telecommunications service" is service between points within an exchange; "Basic local" is two-way switched wire service within a local calling scope (excluding shared tenant services). See Section 386.020(2), (19), (22).

Although there is no case law on the subject, we believe proper interpretation of the definition of "telecommunications company" would exclude entities (i.e. suppliers) that lease facilities that others use to provide telecommunications services. Based on our understanding that Western Union ATS, Inc. will continue the business of Western Union Corp.'s Advanced Transmission System division and thereby lease facilities, but not participate in the transmission of information thereover (i.e. switching), we conclude that the new MCI subsidiary will not be providing telecommunications services. Hence, it will not be a telecommunications company and will not need to obtain a certificate of service authority from the PSC.

Similarly, under Section 392.480 Western Union ATS, Inc. will not need to file tariffs, in that it will not be a telecommunications company offering telecommunications services, but rather will be a supplier of facilities by contract.

In summary, based on the information made available to us, it is our opinion that Western Union Corp. did not need to obtain Missouri PSC approval for the sale of assets to Western Union ATS, Inc., and that Western Union ATS, Inc. will not need to obtain a certificate from or file tariffs with the Missouri PSC, so long as it continues to serve only as a passive lessor of facilities. Please let us know if you require any further assistance in connection with this matter.

Very truly yours,



Carl J. Lumley

CJL:db

# STATE OF MISSOURI



Rebecca McDowell Cook  
Secretary of State

CORPORATION DIVISION  
CERTIFICATE OF CORPORATE ABSTRACT

NEW VALLEY CORPORATION

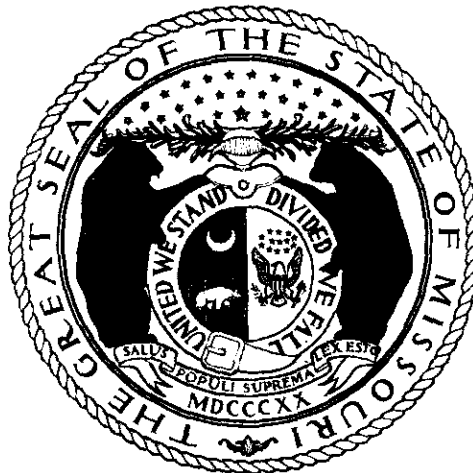
USING IN MISSOURI THE NAME

NEW VALLEY CORPORATION

I, REBECCA MCDOWELL COOK, SECRETARY OF STATE OF THE STATE OF MISSOURI AND KEEPER OF THE GREAT SEAL THEREOF, DO HEREBY CERTIFY THAT THE ANNEXED ABSTRACT CONTAINS A TRUE COPY OF THE ORIGINAL DOCUMENTS ON FILE AND OF RECORD IN THIS OFFICE.

IN TESTIMONY WHEREOF, I HAVE SET MY HAND AND IMPRINTED THE GREAT SEAL OF THE STATE OF MISSOURI, ON THIS, THE 7TH DAY OF MARCH, 1996.

*Rebecca McDowell Cook*  
Secretary of State



\* \* \* \* \* BILLING INFORMATION \* \* \* \* \*

WE HAVE RECEIVED YOUR \$10.00 FEE FOR  
THIS ABSTRACT. THANK YOU.

\* \* \* \* \* MAIL TO \* \* \* \* \*

CURTIS, DETTING

OFFICE OF THE SECRETARY OF STATE  
111 NORTH 7TH STREET  
SAINT LOUIS, MISSOURI 63101

MAR 7, 1996 REBECCA McDOWELL COOK  
SECRETARY OF STATE (314)340-7490

ABSTRACT OF CORPORATE RECORD

CHARTER NUMBER F00001649 STATE OF INCORPORATION NEW YORK

NAME OF CORPORATION NEW VALLEY CORPORATION

NAME NEW VALLEY CORPORATION  
IN PARENT  
STATE

FORMER NAME WESTERN UNION CORPORATION

NAME CHANGED ON	APR 30, 1991	EXTENSION DATE	N/A
FILING DATE	FEB 3, 1908		
DATE OF INCORPORATION	FEB 3, 1908	CHARTER EXPIRES	PERPETUAL

REGISTERED AGENT C T CORPORATION SYSTEM  
REGISTERED OFFICE 906 OLIVE STREET  
ST. LOUIS MO 63101

AGENT CHANGED ON	JAN 25, 1988	AGENT RESIGNED ON	N/A
ANNUAL REPORT FILED ON	APR 12, 1994		
STATUS	NOT IN GOOD STANDING - ADMINISTRATIVELY DISSOLVED AUG 31, 1995 FOR: 1. NO ANNUAL REPORT 2. FRANCHISE TAX NOT PD.		

State of New York | ss:  
Department of State

I hereby certify, that the certificate of incorporation of NEW VALLEY CORPORATION was filed on 04/08/1851, under the name of THE NEW YORK AND MISSISSIPPI VALLEY PRINTING TELEGRAPH COMPANY, fixing the duration as perpetual, and that I have made a diligent examination of the index of corporation papers filed in this Department for a certificate, order, or record of a dissolution, and upon such examination, I find no such certificate, order or record, and that so far as indicated by the records of this Department, such corporation is a subsisting corporation. I further certify that I find the following:

A Certificate of Amendment THE NEW YORK AND MISSISSIPPI VALLEY PRINTING TELEGRAPH COMPANY, changing name to THE WESTERN UNION TELEGRAPH COMPANY was filed on pursuant to Chapter , Laws of .

A Certificate of Merger and Name Change of THE WESTERN UNION TELEGRAPH COMPANY, changing name to WESTERN UNION CORPORATION was filed on 12/30/1987.

Restated Certificate was filed on 12/30/1987.

A Certificate of Amendment was filed on 06/16/1988.

A Certificate of Merger was filed on 04/21/1989.

A Certificate of Amendment was filed on 01/07/1991.

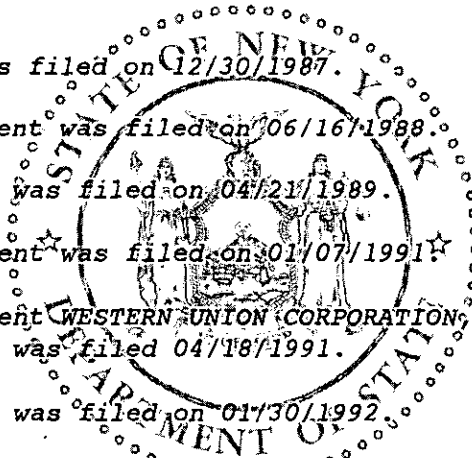
A Certificate of Amendment WESTERN UNION CORPORATION, changing name to NEW VALLEY CORPORATION, was filed 04/18/1991.

A Certificate of Merger was filed on 01/30/1992.

A Statement of Addresses and Directors was filed 12/29/1993.

A Certificate of Amendment was filed on 12/13/1994.

I further certify, that no other certificates have been filed by such corporation.



(page 2) - NEW VALLEY CORPORATION

\*\*\*

*Witness my hand and the official seal  
of the Department of State at the City  
of Albany, this 05th day of March  
one thousand nine hundred and  
ninety-six.*

*Alexander F. Trenchard*

199603060331 63

