

Transmission Services, Inc., MCImetro Access Transmission Services, LLC shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is not necessary for such areas.

5. That MCImetro Access Transmission Services, LLC'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.

6. That this order shall become effective on November 6, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Woodruff, Regulatory Law Judge

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of MCImetro)
Access Transmission Services LLC for)
Certificates of Service Authority to Provide)
Basic Local Telecommunications Services,)
Local Exchange Telecommunications Services,)
Exchange Access Services, and Interexchange)
Telecommunications Services in the State of)
Missouri and for Competitive Classification.)

Case No. TA-98-575

FILED

SEP 30 1998

STIPULATION AND AGREEMENT

Missouri Public
Service Commission

1. MCImetro Access Transmission Services LLC ("MCImetro" or "Applicant") initiated this proceeding on June 22, 1998, by filing an Application requesting certificates of service authority to provide basic local telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services in exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), GTE Midwest Incorporated ("GTE"), and United Telephone Company of Missouri d/b/a Sprint ("Sprint-United"), and local non-switched private line telecommunications services and switched and dedicated interexchange services throughout the State of Missouri.

2. Only Southwestern Bell Telephone Company (SWBT) has intervened in this proceeding.

3. For purposes of this Stipulation and Agreement, the parties agree that applications for basic local exchange authority in exchanges served by "large" local exchange companies (LECs)¹ should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

¹Large LECs are defined as LECs who serve 100,000 or more access lines. Section 386.020 R.S.Mo. Supp. 1996. In Missouri, the current large LECs are SWBT, GTE and United.

4. In determining whether MCImetro's application for certificates of service authority should be granted, the Commission should consider MCImetro's technical, financial and managerial resources and abilities to provide telecommunications service. MCImetro agrees that the basic local services it proposes to offer will satisfy the minimum standards established by the Commission, including but not limited to the filing and maintenance of basic local service tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which MCImetro seeks to compete. Further, MCImetro agrees to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange telecommunications companies with which MCImetro seeks to compete. Notwithstanding the provisions of Section 392.500 R.S.Mo. (1994), as a condition of certification and competitive classification, MCImetro agrees that, unless otherwise ordered by the Commission, MCImetro's 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 MCImetro seeks authority to provide service. Further, MCImetro agrees to offer basic local telecommunications service as a separate and distinct service and has identified the geographic service area in which it proposes to offer basic local service. Such area follows exchange boundaries of the incumbent local exchange telecommunications companies and is no smaller than an exchange. Finally, MCImetro agrees to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of residence or income. See Section 392.455 R.S.Mo. (1996 Supp.).

5. MCImetro has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H). MCImetro has filed a concurrent Application for Approval of Merger (Case No. TM-98-576) and upon approval intends to adopt the tariffs of MCImetro Access Transmission Services, Inc. Such circumstances provide good cause for purposes of waiving 4 CSR 240-2.060(4)(H). Any service authority shall be regarded as conditional and shall not be exercised until such time as such tariff(s) have been adopted, and such adoption has been approved by the Commission and such tariffs have become effective for MCImetro. Upon filing such adoption, MCImetro shall also file and serve a written disclosure of: all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for any such areas.

6. MCImetro has, pursuant to Section 392.420 R.S.Mo. requested that the Commission waive the application for the following statutory provisions and rules regarding all of its services, and all parties agree that the Commission should grant such request provided that Section 392.200 R.S.Mo. should continue to apply to all of MCImetro's services:

Statutes

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290.1
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

Rules

4 CSR 240-10.020
4 CSR 240-30.040
4 CSR 240-35

MCImetro also requests that the following statutes and regulations be waived regarding all of its services other than basic local telecommunications services consistent with the Commission's treatment of other companies:

Statutes

Section 392.240.1

Rules

4 CSR 240-30.010(2)(c)
4 CSR 240-32.030(1)(B) & (C), (2)
4 CSR 240-32.050(3) - (6)
4 CSR 240-32.070(4)
4 CSR 240-33.030

7. In negotiating the remaining provisions of this Stipulation and Agreement, the parties have employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and Sections 392.450 and 392.455 R.S.Mo., regarding applications for certificates of local exchange authority to provide basic local telecommunications services.

B. MCImetro'S CERTIFICATION

8. MCImetro has submitted a listing of the specific exchanges in which it seeks authority to provide service, which is attached hereto as Exhibit 1. The exchanges identified are currently served by SWBT, GTE and Sprint-United. MCImetro hereby agrees that its original Application should be deemed amended as required to include by reference the terms and provisions described in paragraphs 4-6 hereinabove to the extent that its original Application might be inconsistent therewith.

9. Based upon its verified Application, as amended by this Stipulation and Agreement, MCImetro asserts and no other party makes a contrary assertion, that there is sufficient evidence from which the Commission should find and concluded that MCImetro:

A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service, and switched and dedicated interexchange telecommunications services;

B. proposes and agrees to offer basic local services that will satisfy the minimum standards established by the Commission;

C. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;

D. will offer basic local telecommunications services as a separate and distinct service;

E. has agreed to provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services; and

F. has sought authority which will serve the public interest.

10. MCImetro asserts, and no party opposes, that MCImetro's application and request for authority to provide basic local telecommunications service and local exchange telecommunications services (including exchange access service) and interexchange telecommunications services should be granted. All services authorized herein should be classified as competitive telecommunications services, provided that the requirements of Section 392.200 continue to apply, and MCImetro should be classified as a competitive telecommunications company. MCImetro asserts and no party opposes, that its services will be subject to sufficient competition by the services of the incumbent LECs and by IXC's to justify a lesser degree of regulation of

MCImetro's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's Order should state the foregoing conditions substantially as follows:

"The service authority and service classification herein granted are subject to the requirements of Section 392.200 and are conditional and shall not be exercised until such time as tariffs for services have become effective."

The parties agree that the applicant's switched exchange access services may be classified as competitive services. The parties further agree that the applicant's switched exchange access services are subject to Section 392.200. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 4 herein shall be cost-justified and be made pursuant to 392.220 and 392.230 and not 392.500 and 392.510. The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for switched access granted herein is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

11. MCImetro's request for a temporary waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed and

should be granted for the reasons stated above. The Commission's order should state the temporary waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

"Applicant's request for temporary waiver of 4 CSR 240-2.060(4)(H) is hereby granted for good cause in that Applicant intends to adopt the tariffs of MCImetro Access Transmission Services, Inc. upon approval of the Application for Approval of Merger now pending in Case No. TM-98-576 and approval of local exchange service and access service tariffs now pending in File No. 9900225, Case No. TA-96-355. When the merger is approved, Applicant shall file its notice of adoption of the tariffs of MCImetro Access Transmission Services, Inc. and serve such notice on all parties hereto. Upon adopting the tariffs of MCImetro Access Transmission Services, Inc., Applicant shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is not necessary for such areas."

12. MCImetro's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of all of MCImetro's services should be granted:

Statutes

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290.1
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

Rules

4 CSR 240-10.020
4 CSR 240-30.040
4 CSR 240-35

MCImetro's request for waiver of the following statutes and regulations regarding all of its services other than basic local telecommunications services should also be granted:

Statutes

Section 392.240.1

Rules

4 CSR 240-30.010(2)(c)
4 CSR 240-32.030(1)(B) & (C), (2)
4 CSR 240-32.050(3) - (6)
4 CSR 240-32.070(4)
4 CSR 240-33.030

13. This Stipulation and Agreement has resulted from negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

14. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1, R.S.Mo. (1994), to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 R.S.Mo. (1994); and their

respective rights to seek rehearing pursuant to Section 386.500 R.S.Mo. (1994) and to seek judicial review pursuant to Section 386.510 R.S.Mo. (1994). The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of MCImetro's application made herein.

15. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participate herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

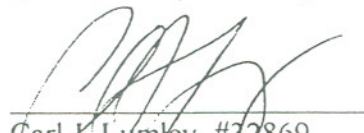
The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the

Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure.

16. The Office of Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing and has offered no objection.


WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification and waiving certain statutes and rules as requested by MCImetro Access Transmission Services, LLC, subject to the conditions described above, as expeditiously as possible.

CURTIS, OETTING, HEINZ,
GARRETT & SOULE, P.C.



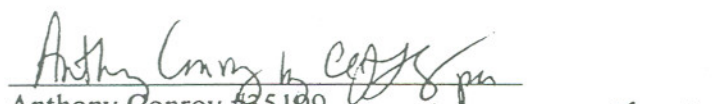
Carl J. Lumley, #32869
Leland B. Curtis, #20550
130 S. Bemiston, Suite 200
Clayton, Missouri 63105
(314) 725-8788
(314) 725-8789 (FAX)

For: MCImetro Access Transmission
Services, LLC



William K. Haas, #28701
Senior Counsel
Public Service Commission
P.O. Box 360
Jefferson City, Missouri 65102
(573) 751-7510
(573) 751-9285 (FAX)

For: Staff of the Missouri Public
Service Commission



Anthony Conroy #35199
Southwestern Bell Telephone
One Bell Center, Room 3516
St. Louis, MO 63101-1976
(314) 235-6060
(314) 247-0014 (FAX)

*telephone anthony
9/23/98 for
Anthony Conroy*

FOR: Southwestern Bell Telephone
Company

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 30th day of September, 1998.

Wm K Haas

**SERVICE LIST FOR
CASE NO. TA-98-575**

**Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102**

**Paul G. Lane, Leo J. Bub
Anthony K. Conroy, Katherine C. Swaller
Southwestern Bell Telephone Company
One Bell Center, Room 3520
St. Louis, MO 63101**

**Leland B. Curtis
Curtis, Oetting, Heinz, Garrett & Soule, P.C.
130 South Bemiston, Suite 200
Clayton, MO 63105**