

LAW OFFICES
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PROFESSIONAL CORPORATION

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OF COUNSEL
RICHARD T. CIOTTONE

September 2, 2004

Mr. Dale Hardy Roberts
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

FILED

SEP 02 2004

**Re: BPS Telephone Company
Case No. IO-2004-0597**

Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing on behalf of BPS Telephone Company, please find an original and eight (8) copies of a Stipulation of Facts in the above referenced matter.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: *Sondra B. Morgan*

Sondra B. Morgan

SBM/lar
Enclosure
cc: Cliff Snodgrass
Mike Dandino

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

SEP 02 2004

Missouri Public
Service Commission

In the Matter of BPS Telephone Company's)
Election to be Regulated under Price Cap)
Regulation as Provided in Section 392.245,)
RSMo 2000.)

Case No. IO-2004-0597

STIPULATION OF FACTS

BPS Telephone Company ("BPS"), the Staff of the Missouri Public Service Commission ("Staff"), and the Office of Public Counsel ("Public Counsel") (collectively "the Parties"), pursuant to 4 CSR 240-2.130(9), respectfully stipulate as to the following facts to be received into evidence in this matter:

1. BPS previously made a written election to be regulated by price cap election which was considered by the Commission in Case No. IO-2003-0012. An evidentiary hearing was held before the Commission on February 7, 2003, and the complete record and transcript of that proceeding, including the "Highly Confidential" portions of the record, are made a part of this Stipulation of Facts.

2. On January 20, 2004, after the Commission issued its Report and Order in Case No. IO-2003-0012, BPS and Missouri State Discount Telephone ("MSDT") filed an Application for Approval of Amendment to Resale Agreement Between BPS Telephone and Missouri State Discount Telephone Company. This amendment to the Resale Agreement removed the language found in Paragraph 6.1.1 of the agreement that restricted MSDT from "targeting" current customers of BPS which the Commission found to be noncompetitive. A copy of the Application and amendment are marked Exhibit A and attached to this Stipulation of Facts.

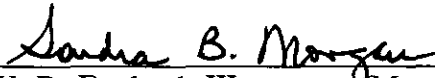
3. On January 28, 2004, BPS was notified by the Commission that the amendment was made effective, File No. VT-2004-0034. A copy of the Commission's notification is marked Exhibit B and attached to this Stipulation of Facts.

4. On May 28, 2004, BPS sent written notice of its election to be regulated under price cap regulation pursuant to § 392.245, RSMo 2000, to the Commission. BPS stated in its written election that 1) it was a small incumbent local exchange company; 2) an alternative local telecommunications company (i.e. Missouri State Discount Telephone Company) had been certified to provide basic local telecommunications service in the BPS service area; and 3) MSDT was providing basic local telecommunications service in the BPS service area.


5. The Parties stipulate and agree that there has been no material change in the Missouri State Discount Telephone Company's marketing and business methods since the evidentiary hearing held on February 7, 2003, except that the Resale Agreement was amended to remove the language found in Paragraph 6.1.1 of the agreement that restricted MSDT from "targeting" current customers of BPS. BPS acknowledges that to the best of its information none of its customers, other than those disconnected for nonpayment, have migrated to MSDT since the removal of the language from the Resale Agreement described above. Since the amendment of the Resale Agreement, there has been no material change in MSDT's advertising of telecommunications service in the BPS service area.

6. The Parties agree that the Commission may take official notice of Commission rules, tariffs, orders and any other information contained in a document on file as a public record with the Commission in its decision in this case, subject to the relevance and materiality provisions of 4 CSR 240-2.130(2).

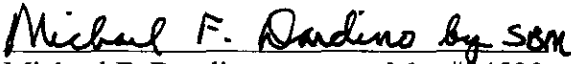
Respectfully submitted,


W. R. England, III Mo. #23975
Sondra B. Morgan Mo. #35482
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312 East Capitol Avenue
P.O. Box 456
Jefferson City, MO 65101-0456
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smorgan@brydonlaw.com (e-mail)

Attorneys for BPS Telephone Company


Cliff Snodgrass Mo. #52302
Senior Counsel
P.O. Box 360
Jefferson City, MO 65102
(573) 751-3966 (tel.)
(573) 751-9285 (fax)
cliff.snodgrass@psc.mo.gov

Attorneys for the Staff of the
Missouri Public Service Commission


Michael F. Dandino Mo. #24590
Senior Public Counsel
P.O. Box 7800
Jefferson City, MO 65102
(573) 751-4857 (tel.)
(573) 751-5559 (fax)
mdandino@ded.state.mo.us


Attorneys for Office of the Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 2nd day of September, 2004, to the following parties:

Cliff Snodgrass
Senior Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Michael F. Dandino
Senior Public Counsel
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102



Sondra B. Morgan

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of)	
BPS Telephone Company for Approval)	
of a Resale Agreement with Missouri)	Case No. TO-2002-0062
State Discount Telephone under the)	
Telecommunications Act of 1996.)	

**APPLICATION FOR APPROVAL OF AMENDMENT TO
RESALE AGREEMENT BETWEEN BPS TELEPHONE COMPANY
AND MISSOURI STATE DISCOUNT TELEPHONE COMPANY**

Comes now BPS Telephone Company ("BPS" or "BPS Telephone") and for its Application for Approval of Amendment to Resale Agreement Between BPS Telephone Company and Missouri State Discount Telephone Company states to the Missouri Public Service Commission ("Commission") as follows:

1. BPS is a local exchange telecommunications company with its office and principal place of business located at 120 Stewart Street, Bernie, Missouri 63822. BPS's phone number is (573) 292-2277 and its fax number is (573) 293-2299. BPS provides basic local telecommunications services to its customers in the Missouri exchanges of Bernie, Parma and Steele pursuant to a certificate of authority from the Commission . BPS is a Missouri corporation, and a Certificate of Good Standing from the Missouri Secretary of State was filed with the Commission with its original application seeking approval of the Resale Agreement in this case, and more recently in Case No. TC-2002-1077.

2. All inquiries, correspondence, communications, pleadings, notices, orders and decisions relating to this Application should be directed to:

W. R. England, III
Sondra B. Morgan
Brydon, Swearingen & England, P.C.
312 East Capitol Avenue
Jefferson City, MO 65102-0456
(573) 635-7166 (tel.)
(573) 634-7432 (fax)
smorgan@brydonlaw.com (e-mail)

3. BPS does not have any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of the application.

4. On October 16, 2001, in Case No. TO-2002-62, the Commission issued its Order Approving Interconnection Agreement in which it approved the Resale Agreement between BPS and Missouri State Discount Telephone ("MSDT"). In the "Modification Procedure" section of the Order, the Commission stated, "Modifications to an agreement must be submitted to the Staff for review." Later in the Order the Commission further stated, "Staff will review the modification and its effects, and prepare a recommendation advising the Commission whether the modification should be approved."

5. On January 6, 2004, counsel for BPS forwarded to Mr. John Van Eschen, Manager-Telecommunications Department, a "Modification of Resale Agreement between BPS Telephone Company and Missouri State Discount Telephone." The cover letter to Mr. Van Eschen explained that attached were three (3) pages of the Resale Agreement and that text limiting MSDT's ability to market its services had been removed on two (2) pages, while the third page contained changes in telephone and fax numbers for MSDT. Also attached were signature pages

from both BPS and MSDT showing acquiescence to the changes. A copy of the modified pages along with the cover letter to Mr. Van Eschen are marked Appendix A and attached hereto.

6. Because there is ambiguity in the Commission's Order regarding the modification procedure, BPS is formally filing this modification to the Resale Agreement with the Commission as well as presenting it to the Staff. BPS now seeks approval of the modification consistent with the provisions of the Telecommunications Act of 1996 ("the Act") and Missouri law. The amendment to the Resale Agreement complies fully with § 252(e) of the Act because it is non-discriminatory and consistent with the public interest, convenience and necessity.

7. BPS respectfully requests that the Commission grant approval of the amendment without change, suspension or other delay in implementation. This is a bilateral amendment entered into as a result of agreement between the parties. BPS believes that the procedures for review of the amendment should be designed to permit expeditious implementation consistent with the scope of review specified by the Act and the Commission's applicable rules.

8. The statutory standards of review are set forth in Section 252(e) of the Telecommunications Act of 1996 which provides as follows:

- (1) **APPROVAL REQUIRED.** -- Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement, with written findings as to any deficiencies.
- (2) **GROUND FOR REJECTION.** -- The State commission may only reject --
 - (A) an agreement (or any portion thereof) adopted by negotiation

under subsection (a) if it finds that –

- (I) the agreement (or portion thereof) discriminates against a telecommunications carrier not a party to the agreement; or
- (ii) the implementation of such agreement or portion is not consistent with the public interest, convenience, and necessity; . . .

9. The affidavit of Ms Lisa Winberry, Manager of BPS, which is attached hereto as Appendix B and incorporated herein, establishes that the Agreement submitted herein satisfies these standards.

WHEREFORE, BPS respectfully requests that the Commission approve the Amendment to the Resale Agreement executed between BPS and MSDT to be effective upon approval by the Commission, and for any other relief appropriate in the circumstances.

Respectfully submitted:

Sandra B. Morgan

Sondra B. Morgan, Mo. Bar # 35482
BRYDON, SWEARENGEN & ENGLAND P.C.
312 E. Capitol Avenue
P.O. Box 456
Jefferson City, MO 65102
(573) 635-7166
(573) 635-0426 (Facsimile)
smorgan@brydonlaw.com

ATTORNEYS FOR BPS TELEPHONE
COMPANY

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 20th day of January, 2004, to the following parties:

General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Michael F. Dandino
Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Harry Thielepape
Missouri State Discount Telephone
804 Elkins Lake
Huntsville, TX 77340

Sandra Morgan

Sondra B. Morgan

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DIANA C. FARR
JANET E. WHEELER

OF COUNSEL
RICHARD T. CIOTTONI

January 6, 2004

Mr. John Van Eschen
Manager-Telecommunications Department
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Re: Modification of Resale Agreement between BPS Telephone Company and Missouri State Discount Telephone, approved in Case No. TO-2002-62.

Dear Mr. Van Eschen:

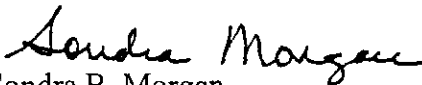
Attached to this letter are three pages of the Resale Agreement between BPS Telephone Company and Missouri Discount Telephone for substitution in the document on file with the Commission. Also included are signature pages for officers of both BPS and MSDT showing their agreement to these changes. In its "Order Approving Interconnection Agreement," the Commission directed that modifications to the agreement be submitted to the Staff for review. The substitute pages are numbered in the lower right-hand corner and can simply be substituted for the current pages when approved. Text has been removed from paragraph 6.1.1 on pages 6 and 7 and a change to the telephone and fax numbers of Mr. Thielepape on page 15 has been made to reflect the change in area code.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Sondra B. Morgan

SBM/sm

Enclosures

cc: Mr. W.F. Provance

Mr. Harry Thielepape

the nature and location of the problem and that, unless promptly rectified, a temporary discontinuance of the use of any circuit, facility or equipment may be required. The Parties agree to work together to attempt to promptly resolve the Impairment of Service. If the Parties are unable to promptly remedy the Impairment of Service, then the Party with the impaired service, may at its option, temporarily discontinue the use of the affected circuit, facility or equipment.

SECTION VI RESTRICTIONS ON SERVICES AND RESALE

6.1 Restrictions.

6.1.1. The resale of services under this Agreement shall be limited to users and uses conforming to class of service restrictions. All services provided under this Agreement shall be toll restricted, so that the services cannot be used to incur direct dial toll charges. If Telephone Company discovers that Missouri State Discount has sold services in violation of class of service restrictions, Telephone Company shall notify Missouri State Discount of this fact and shall begin billing Missouri State Discount at the appropriate class of service rates. Missouri State Discount also shall be responsible for service order changes between classes of service, back billing to correct the appropriate class of service and late charges for back billing. Missouri State Discount shall not rearrange, move, disconnect, remove, or attempt to repair any facilities owned by Telephone Company, other than by connection or disconnection to any interface means.

6.1.2. Missouri State Discount shall not resell to one class of customers a service that is offered by Telephone Company only to another class of customers in accordance with State requirements (e.g., R-1 to B-1, Disabled Services or Lifeline Services to Non-Qualifying Customers).

6.1.3. Missouri State Discount shall not resell Lifeline Services and services for the disabled.

6.1.4. Missouri State Discount shall not resell promotional offerings of ninety (90) days or less in duration. These promotional offerings are not available to Missouri State Discount for resale.

SECTION VII MAINTENANCE

7.1 **Maintenance Testing and Repair.** Telephone Company will provide repair and maintenance services to Missouri State Discount and its end user customers for resold services in accordance with the same standards and charges used for such services provided to Telephone Company end user customers. Missouri State Discount shall be Telephone Company's single point of contact for all repair calls on behalf of Missouri State Discount's end users. Missouri State Discount shall contact the appropriate repair center to report troubles in accordance with procedures established by Telephone Company. For all repair requests, Missouri State Discount accepts

State Discount to:

Mr. Harry L. Thielepape
Missouri State Discount Telephone
804 Elkins Lake
Huntsville, TX 77340
Office Telephone: (936) 435-1400
Fax Telephone: (936) 293-8522

And in the case of BPS Telephone Company to:

W. F. Provance, President
BPS Telephone Company
P.O. Box 550
Bernie, MO 63822
Office Telephone (573) 292-2277
Facsimile (573) 293-2299

or to such other location as the receiving Party may direct in writing.

ARTICLE XIX MISCELLANEOUS

19.1 Rural Exemption. The Parties acknowledge that Telephone Company is entitled to a rural exception as provided by 47 U.S.C. 251(f)(1) and Telephone Company does not waive such exemption. The Parties also acknowledge that Telephone Company is eligible to apply for suspension or modification of the provisions of 47 U.S.C. 251(b). Telephone Company has elected not to apply for suspension or modification from the requirement to provide services under this Agreement. The rates, terms and conditions negotiated under this Agreement played an integral part of Telephone Company's decision not to apply for a suspension or modification, and no general waiver of Telephone Company's rights to apply for suspension or modification should be construed from its election not to apply for a suspension or modification in this case.

Pursuant to § 2.4 of the Parties' Resale Agreement, pages 6, 7 and 15 are amended as attached.

BPS TELEPHONE COMPANY

By: W.F. Provance
Name

W.F. Provance
President
Title

11-11-03
Date

Pursuant to § 2.4 of the Parties' Resale Agreement, pages 6, 7 and 15 are amended as attached.

MISSOURI STATE DISCOUNT TELEPHONE

By: HARRY THIELEPAGE
Name
[Signature]
Title
11-11-03
Date

VERIFICATION

I, Lisa Winberry, the Manager of BPS Telephone Company, hereby verify and affirm that I have read the foregoing **APPLICATION FOR APPROVAL OF AMENDMENT TO RESALE AGREEMENT BETWEEN BPS TELEPHONE COMPANY AND MISSOURI STATE DISCOUNT TELEPHONE COMPANY** and that the statements contained herein are true and correct to the best of my information and belief.

Lisa Winberry

STATE OF MISSOURI)
COUNTY OF DUNKLIN) ss

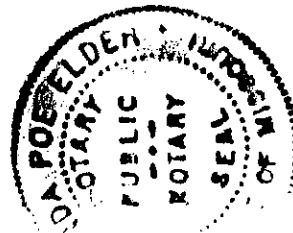
Subscribed and sworn to me, a Notary Public, on this 19th day of January, 2004

BELINDA POE ELDER
Notary Public - Notary Seal
STATE OF MISSOURI
DUNKLIN COUNTY
MY COMMISSION EXP. APR. 22, 2025

is 19th day of January, 2004.

Blenda Pol Eder
Notary Public

My Commission expires _____





Commissioners

STEVE GAW
Chair

CONNIE MURRAY

ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

ROBERT J. QUINN, JR.
Executive Director

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENGER
Director, Utility Services

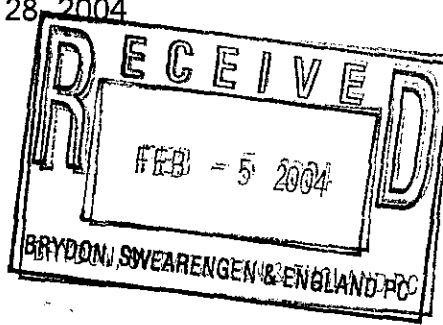
DONNA M. PRENGER
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

January 28, 2004

Ms. Sondra Morgan
BPS Telephone Company
312 East Capitol Avenue
Jefferson City, MO 65102-0456



RE: File No. VT-2004-0034

Dear Ms. Morgan:

This correspondence is to advise that the interconnection agreement amendments submitted with your letter of transmittal, a copy of which is enclosed herewith, is being made effective.

A copy of the interconnection agreement amendment, reflecting the filing record of this Commission, is enclosed for your use.

Sincerely,

Dale Hardy Roberts
Secretary of the Commission

DHR/ck

Enclosure

Cc: Missouri State Discount Telephone
ATTN: Harry Thielepape
804 Elkins Lake
Huntsville, TX 77340

LAW OFFICES
BRYDON, SWEARENGEN & ENGLAND
PROFESSIONAL CORPORATION

DAVID V.G. BRYDON
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JANET E. WHEELER

OF COUNSEL
RICHARD T. CLOTONE

January 6, 2004

RECEIVED

JAN 07 2004

Records
Public Service Commission

Mr. John Van Eschen
Manager-Telecommunications Department
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

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If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:


Sondra B. Morgan

SBM/sm

Enclosures

cc: Mr. W.F. Provance

Mr. Harry Thielepape

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6.1.2. Missouri State Discount shall not resell to one class of customers a service that is offered by Telephone Company only to another class of customers in accordance with State requirements (e.g., R-1 to B-1, Disabled Services or Lifeline Services to Non-Qualifying Customers).

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State Discount to:

Mr. Harry L. Thielepape
Missouri State Discount Telephone
804 Elkins Lake
Huntsville, TX 77340
Office Telephone: (936) 435-1400
Fax Telephone: (936) 293-8522

And in the case of BPS Telephone Company to:

W. F. Provance, President
BPS Telephone Company
P.O. Box 550
Bernie, MO 63822
Office Telephone (573) 292-2277
Facsimile (573) 293-2299

or to such other location as the receiving Party may direct in writing.

ARTICLE XIX MISCELLANEOUS

19.1 Rural Exemption. The Parties acknowledge that Telephone Company is entitled to a rural exception as provided by 47 U.S.C. 251(f)(1) and Telephone Company does not waive such exemption. The Parties also acknowledge that Telephone Company is eligible to apply for suspension or modification of the provisions of 47 U.S.C. 251(b). Telephone Company has elected not to apply for suspension or modification from the requirement to provide services under this Agreement. The rates, terms and conditions negotiated under this Agreement played an integral party of Telephone Company's decision not to apply for a suspension or modification, and no general waiver of Telephone Company's rights to apply for suspension or modification should be construed from its election not to apply for a suspension or modification in this case.

Pursuant to § 2.4 of the Parties' Resale Agreement, pages 6, 7 and 15 are amended as attached.

BPS TELEPHONE COMPANY

By: W.F. Provance
Name

W.F. Provance
President
Title

11-11-03
Date

Pursuant to § 2.4 of the Parties' Resale Agreement, pages 6, 7 and 15 are amended as attached.

MISSOURI STATE DISCOUNT TELEPHONE

By: HARRY THELEPAPÉ
Name
[Signature]
Title
11-11-03
Date