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August 9, 2000

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General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No.TA-2000-701

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **SUGGESTIONS IN SUPPORT OF THE UNANIMOUS STIPULATION AND AGREEMENT.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Bruce H. Bates
Assistant General Counsel
(573) 751-7434
(573) 751-9285 (Fax)

Enclosure

cc: Counsel of Record

FILED²
AUG 09 2000

Missouri Public
Service Commission

FILED²

AUG 09 2000

Missouri Public
Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Phone)
Bank, Inc. d/b/a Phone Banc, Inc. for a)
Certificate of Service Authority to Provide)
Basic Local Telecommunications Service in)
Portions of the State of Missouri and to)
Classify Said Services and the Company as)
Competitive.)

Case No. TA-2000-701

**SUGGESTIONS IN SUPPORT OF
THE UNANIMOUS STIPULATION AND AGREEMENT**

Comes now the Staff of the Missouri Public Service Commission ("Staff") and in support of the *Unanimous Stipulation and Agreement* filed in this matter states as follows:

1. Phone Bank, Inc. d/b/a Phone Banc, Inc. ("Phone Bank" or "Applicant") agreed in the *Unanimous Stipulation and Agreement*, Paragraph 3, that its *Application for Certificate of Service Authority and for Competitive Classification* ("Application") may be granted on condition that its tariffs become effective. Applicant also agrees to file a list of its interconnection or resale agreements or explain why the Applicant does not need an interconnection or resale agreement in order to begin business.¹

2. The application process envisioned in the *Unanimous Stipulation and Agreement* requires that Applicant: a) file a complete application, including such undertakings as the Parties have deemed essential; b) enter into an interconnection or resale agreement and file it for approval (except as discussed in Paragraph 1); and c) file tariffs for approval. Staff believes this

¹ The Parties were reluctant to completely rule out the possibility that an applicant could do business in a way that would not require an interconnection agreement, although no one could imagine such a scenario at this time; this provision would afford incumbent LECs the opportunity to challenge the feasibility of an assertion that no interconnection agreements were necessary.

three-step process provides the necessary protections without unduly burdening or delaying certification.

3. As indicated in Paragraph 8 of the *Unanimous Stipulation and Agreement*, all parties to this docket agreed that the Applicant should be classified as a competitive telecommunications company, and all of the telecommunications services it offers should be classified as competitive. However, the Staff and other parties expressed concern about classifying exchange access service as competitive. The end user, not the access customer (presently the interexchange carrier [IXC]), determines whose services will be used. Accordingly, an IXC does not have the option to avoid a certain LEC because its access charges are too high; if the IXC's customer is served by that LEC, the IXC will have to buy access from that LEC. To address this concern, the Parties devised an access rate "cap" that places an upper limit on access rates at the lowest level charged by the LECs in whose service territories the Applicant will be initially certificated. This access rate cap is discussed and stipulated to in Paragraph 8. Although access services would technically be classified as competitive, the Applicant may not avail itself of the near automatic rate changes normally afforded to competitive services in Sections 392.500 and .510, RSMo. (1994). Instead, any increases in switched access service rates above the cap shall be made pursuant to Sections 392.220, RSMo. (Cum.Supp. 1999), and 392.230, RSMo. (1994). Such a mechanism is permissible because Sections 392.361.5 and .6, RSMo (1994) authorize the Commission to impose conditions on competitive classification rate changes that are reasonably necessary to protect the public interest.

4. The *Unanimous Stipulation and Agreement* provides, in Paragraph 2, that the Applicant will adhere to the same quality of service and billing standards as those to which the

incumbent LECs must adhere. The requested waivers in the *Unanimous Stipulation and Agreement* include the waivers listed in the *Notice of Applications* except Subsection 392.240(1) is omitted from the *Unanimous Stipulation and Agreement* at the request of intervenor Southwestern Bell Telephone Company ("SWBT"). Because the Applicant was willing to sign the *Unanimous Stipulation and Agreement* that did not include this waiver, Staff was willing to do likewise rather than potentially delaying Applicant's certification. Following the filing of the *Unanimous Stipulation and Agreement* in this case, the Commission issued decisions in Cases Nos. TA-2000-347, 661, and 665, in which the Commission determined that the inclusion of this waiver was appropriate. Based upon the comments of SWBT's counsel at the Agenda meeting on August 3, 2000, it appears that SWBT will not dispute that decision.

5. Applicant agrees, in Paragraph 2 of the *Unanimous Stipulation and Agreement*, that it will provide equitable access, as determined by the Commission, to all Missourians. Staff believes that such an affirmative statement is not necessarily required, as the statutory section in question is couched in terms of a Commission finding rather than an affirmative undertaking.² However, Staff can see a potential benefit in such an undertaking, so it does not object to including equitable access as an affirmative statement in the *Unanimous Stipulation and Agreement*.³

² Section 392.455 RSMo (Cum.Supp. 1999).

³ As equitable access is a concern, the Commission must address in the certification process. The Parties wanted to bring it to the Commission's attention and assert their belief that this application is in no way inconsistent with equitable access.

6. The *Unanimous Stipulation and Agreement* was specifically designed to address the five criteria set out in Section 392.455 RSMo (Cum.Supp. 1999), which the Commission must address in the process of certificating new basic local telecommunications service providers.

Applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. In Exhibit 3 of its *Application*, Applicant demonstrates its managerial and technical abilities. In Exhibit 4 of its *Application*, Applicant demonstrates its financial resources and abilities.

Applicant has demonstrated that the services it proposes to offer satisfy the minimum standards established by the Commission. Staff has reviewed the Applicant's services and has concluded that the Applicant satisfies the minimum standards established by the Commission.

Applicant has set forth the geographic area in which it proposes to offer service and has demonstrated that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange. Staff has concluded that the geographic area in which the Applicant proposes to offer service follows exchange boundaries and is no smaller than an exchange.

Applicant will offer basic local telecommunications service as a separate and distinct service. Staff has concluded that Applicant will offer basic local telecommunications service as a separate and distinct service.

Applicant has agreed to provide equitable access to affordable telecommunications services for all Missourians, regardless of where they live or their income. Staff has concluded that Applicant will provide equitable access to affordable telecommunications services for all Missourians, regardless of where they live or their income.

For all of the foregoing reasons, Staff believes the *Unanimous Stipulation and Agreement* has adequately addressed the relevant issues and should be approved by the Commission. Staff thereby prays the Commission approve the *Application* of Phone Bank, Inc. d/b/a Phone Banc, Inc. for a certificate of authority to provide basic local telecommunications services in those exchanges listed in its *Application*, and to classify those services as competitive.

Respectfully submitted,

DANA K. JOYCE
General Counsel

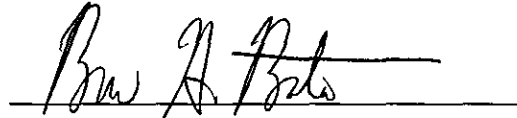


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the service list below this 9th day of August 2000.



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