

NEWMAN, COMLEY & RUTH

PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

MONROE BLUFF EXECUTIVE CENTER

601 MONROE STREET, SUITE 301

P. O. BOX 537

JEFFERSON CITY, MISSOURI 65102-0537

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TELEPHONE: (573) 634-2266

FACSIMILE: (573) 636-3306

ROBERT K. ANGSTEAD
MARK W. COMLEY
CATHLEEN A. MARTIN
STEPHEN G. NEWMAN
JOHN A. RUTH
D. GREGORY STONEBARGER
ALICIA EMBLEY TURNER

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

Re: OnSite Access Local, LLC
Case No. TA-2000-691

FILED²

DEC 12 2000

Missouri Public
Service Commission

Dear Judge Roberts:

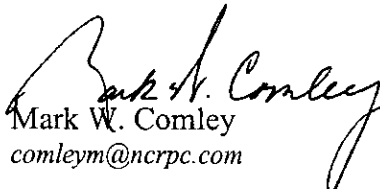
Please find enclosed for filing in the referenced matter an original and eight copies of a Unanimous Stipulation and Agreement.

Please contact me if you have any questions regarding this filing. Thank you.

Very truly yours,

NEWMAN, COMLEY & RUTH P.C.

By:


Mark W. Comley
comleym@ncrpc.com

MWC:ab

Enclosure

cc: Michael F. Dandino, Office of Public Counsel
Nathan Williams, General Counsel's Office
Leo J. Bub
Tony S. Lee

BEFORE THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI

FILED²

DEC 12 2000

Missouri Public
Service Commission

In the Matter of the Application of)

ONSITE ACCESS LOCAL, LLC)

for a Certificate of Service Authority to Provide)
Basic Local Telecommunications Services)
in portions of the State of Missouri)
and for Competitive Classification)

Case No. TA-2000-691

UNANIMOUS STIPULATION AND AGREEMENT

ONSITE ACCESS LOCAL, LLC (hereinafter "OnSite" or "Applicant") initiated this proceeding on April 27, 2000, by filing an Application requesting a certificate of service authority to provide basic local exchange and local exchange services in exchanges currently served by Southwestern Bell Telephone Company (SWBT), GTE of the Midwest, Inc. (GTE), and Sprint Missouri, Inc. (Sprint).

SWBT applied to intervene in this matter and the Missouri Public Service Commission granted the application. No other party has sought or been granted intervention herein.

A. STANDARDS AND CRITERIA

1. The parties employed the following standards and criteria, which are intended to meet the requirements of existing law, particularly Sections 392.450 and 392.455, RSMo. Supp. 1999 regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service, in negotiating the provisions of this Unanimous Stipulation and Agreement (hereinafter referred to as the "Stipulation").

2. For purposes of this Stipulation, the parties agree that applications for local exchange and basic local exchange service authority in exchanges served by "large" local exchange companies

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(LECs)¹ should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

3. In determining whether OnSite's application for certificate of service authority should be granted, the Commission should consider OnSite's technical, financial and managerial resources and abilities to provide basic local telecommunications service. OnSite must demonstrate that the basic local services it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to the applicant agreeing to file and maintain basic local service tariff(s) with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies (ILECs) with which OnSite seeks to compete. Further, OnSite must agree to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the ILECs with which OnSite seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo (1994), as a condition of certification and competitive classification, OnSite agrees that, unless otherwise ordered by the Commission, OnSite's originating and terminating access rates will be capped at the levels authorized by the Commission in the case *In the Matter of the Access Rates to be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, Case No. TO-99-596. Accordingly, the parties acknowledge and agree that OnSite may submit tariffs providing for originating and terminating exchange access rates equal to or less than those of the directly competing ILEC in each exchange in which OnSite is authorized to provide basic local telecommunications services. Additionally, OnSite agrees that if the directly competing ILEC, in whose service area OnSite is operating, decreases its originating and/or terminating access service

¹Large LECs are defined as LECs who serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1999. In Missouri, the current large LECs are SWBT, GTE and Sprint.

rates, OnSite shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within thirty (30) days of the directly competing ILEC's reduction of its originating and /or terminating access rates in order to maintain the cap.² Further, OnSite agrees to offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic service area in which it proposes to offer basic local service. Such area must follow exchange boundaries of the ILECs in the same area and must be no smaller than an exchange. Finally, OnSite 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 RSMo Supp. 1999.

4. OnSite submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(6)(C).³ OnSite agrees to file its initial tariff(s) in this certification docket and serve all parties thereto with written notice at the time the initial tariff(s) are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by OnSite to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariff(s) for services have become effective.

5. OnSite has, pursuant to §392.420 RSMo. 1994 requested that the Commission waive the application of any or all of the following statutory provisions and rules to its basic local

²This provision shall not be construed to require OnSite to file a tariff amendment if: 1) OnSite has concurred in the directly competing ILEC's access tariff, or 2) if OnSite's existing corresponding originating and/or terminating access rates are not higher than the ILEC's originating and/or terminating access rates following the ILEC's reduction of rates.

³OnSite's application cites to 4 CSR 240-2.060(4)(H); however, the requirement of filing a proposed tariff with an application is now found at 4 CSR 240-2.060(6)(C). Good cause for failure to file proposed tariffs with the Application must be shown. The lack of an approved interconnection agreement (47 USC §252) constitutes good cause.

telecommunications services, and the parties agree that the Commission should grant such request provided that Section 392.200 RSMo should continue to apply to all of OnSite's services:

STATUTORY PROVISIONS

§392.210.2
§392.240(1)
§392.270
§392.280
§392.290⁴
§392.300.2
§392.310
§392.320
§392.330
§392.340

COMMISSION RULES

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-32.030(4)(C)
4 CSR 240-33.030
4 CSR 240-35

B. ONSITE CERTIFICATION

6. OnSite hereby agrees that its application should be deemed amended to include by reference the terms and provisions described in paragraphs 2-5 hereinabove.

7. Based upon its verified application, as amended herein, OnSite asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that OnSite:

- 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;

⁴OnSite listed §392.290.1, RSMo, in its application, but the parties agree to waiver of §392.290, RSMo.

- b. proposes and agrees to offer basic local services that 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 ILECs in the same areas, and such area is no smaller than an exchange;⁵
- d. will offer basic local telecommunications service as a separate and distinct service;
- e. has agreed to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which OnSite proposes to offer basic local service, regardless of where they live or their income;⁶
- f. has sought authority which will serve the public interest.

8. OnSite asserts, and no party opposes, that OnSite's application and request for authority to provide basic local telecommunications services and local exchange telecommunications services (including exchange access service) should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of Section 392.200, RSMo continue to apply, and OnSite shall remain classified as a competitive telecommunications company. OnSite asserts, and no party opposes, that such services will be subject to sufficient competition by the services of the ILECs to justify a lesser degree of regulation of OnSite's services consistent with the protection of ratepayers and the promotion of the public

⁵ The identification of specific geographic areas within which OnSite proposes to offer service as referred to in this paragraph shall not be construed to foreclose OnSite from 1) petitioning the Commission pursuant to Section 392.200.4 RSMo. for authority to serve an area smaller than an exchange; and 2) offer customer specific pricing pursuant to Section 392.200.8, RSMo.

⁶ The agreement in Paragraph 7. e. of this Stipulation is without prejudice to OnSite's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's considerations of equitable access under Section 392.455.(5), RSMo. Furthermore, such agreement should not be construed as an admission or conclusion by OnSite that Section 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access.

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 and have become effective. The Commission's Order should state the foregoing conditions as follows:

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

The parties agree that OnSite'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, RSMo. Unless otherwise determined by the Commission, any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 3 herein shall be made pursuant to Sections 392.220 and 392.230, RSMo, and not 392.500 and 392.510, RSMo. OnSite agrees that if the directly competing ILEC, in whose service area OnSite is operating, decreases its originating and/or terminating access service rates, OnSite shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within thirty (30) days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.⁷ The Commission's order should state the foregoing conditions as follows:

"The service authority and service classification for switched exchange 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 made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510. OnSite agrees that if the directly competing ILEC, in whose service area OnSite is operating, decreases its originating and/or terminating access service rates, OnSite shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates

⁷See footnote 2.

in the directly competing ILEC's service area within thirty (30) days of the directly competing ILEC's reduction of its originating and /or terminating access rates in order to maintain the cap. OnSite will not be required to file a tariff amendment if: 1) OnSite has concurred in the directly competing ILEC's access tariff, or 2) if OnSite's existing corresponding originating and/or terminating access rates are not higher than the directly competing ILEC's originating and/or terminating access rates following the ILEC's reduction of rates."

9. OnSite's request for a temporary waiver of 4 CSR 240-2.060(6)(C), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties and should be granted because at the time of its application, OnSite did not, and still does not have an approved resale or interconnection agreement with any ILEC. OnSite agrees that within thirty (30) days of an order approving an interconnection agreement with any ILEC or underlying carrier, OnSite will submit tariffs in this docket, with a minimum 45-day proposed effective date, to the Commission for its approval. OnSite shall serve notice to all parties and participants in this docket of the filing of its tariff(s) at the time they are filed with the Commission and shall upon request immediately provide any party with a copy of those tariffs. The Commission's order should state these obligations as conditions to the waiver of 4 CSR 240-2.060(6)(C), substantially as follows:

"Applicant's request for temporary waiver of 4 CSR 240-2.060(6)(C) is hereby granted for good cause shown in that Applicant does not yet have an approved interconnection agreement with any of the incumbent local exchange carriers within whose service area it seeks authority to provide services. Within thirty (30) days of the effective date of an order approving its interconnection agreement with an ILEC or underlying carrier, Applicant shall submit its tariffs for Commission approval. Such tariffs shall have a minimum of a 45-day effective date and the Applicant shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such tariffs to such parties immediately upon request.

10. Waiver of the application of the following rules and statutory provisions as they relate to the regulation of OnSite's basic local telecommunication services should be granted:

STATUTORY PROVISIONS

§392.210.2
§392.240(1)
§392.270
§392.280
§392.290
§392.300.2
§392.310
§392.320
§392.330
§392.340

COMMISSION RULES

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-32.030(4)(C)
4 CSR 240-33.030
4 CSR 240-35

11. Finally, OnSite will comply with all applicable Commission rules and regulations except those which specifically are waived by the Commission.

12. This Stipulation has resulted from extensive 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 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 all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

13. In the event the Commission accepts the specific terms of this Stipulation, the parties and participants waive, with respect to the issues resolved herein the following rights: their respective rights pursuant to §§536.072(2) and 536.080.1, RSMo 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 §536.080.2, RSMo 1994; and their respective rights to seek rehearing pursuant to §386.500 RSMo 1994 and to seek judicial review pursuant to §386.510, RSMo 1994. The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the OnSite application made herein.


14. The Staff shall file suggestions and shall have the right to file prepared testimony in support of this Stipulation and the other parties shall have the right to file responsive suggestions or prepared testimony. All responsive suggestions, prepared testimony or memorandum shall be subject to the terms of any Protective Order that may be entered in this case.

15. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order that may be issued in this case.

16. The Office of the Public Counsel is a signatory to this Stipulation for the sole purpose of stating that it has no objection to this Stipulation.

WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and issue its Order granting authority and classification as requested by OnSite, subject to the conditions described above.

Respectfully submitted,




Mark W. Comley #28847
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537

FOR: **ONSITE ACCESS LOCAL, LLC**



Nathan Williams #35512
Assistant Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

FOR: Staff



Paul G. Lane #27011
Leo J. Bub #34326
Anthony K. Conroy #35199
Mimi B. MacDonald #37606
One Bell Center, Room 3520
St. Louis, Missouri 63101

FOR: Southwestern Bell Telephone
Company



Michael F. Dandino #24590
Senior Public Counsel
301 West High Street
Jefferson City, MO 65102

FOR: Office of Public Counsel