

Lance J.M. Steinhart

Attorney At Law  
6455 East Johns Crossing  
Suite 285  
Duluth, Georgia 30097

Also Admitted in New York  
and Maryland

Telephone: (770) 232-9200  
Facsimile: (770) 232-9208

July 18, 2000

FILED<sup>2</sup>

JUL 19 2000

Missouri Public  
Service Commission

VIA FEDERAL EXPRESS

Mr. Cecil Wright  
Executive Secretary  
Missouri Public Service Commission  
PO Box 360  
Jefferson City, Missouri 65102

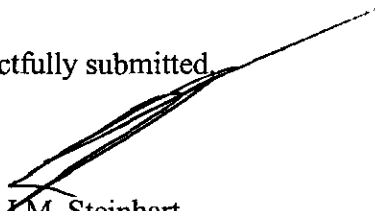
Re: U.S. TelePacific Corp. d/b/a TelePacific Communications – Case No. TA-2000-732

Dear Mr. Wright:

Enclosed please find an original and fourteen (14) copies of U.S. TelePacific Corp.'s Stipulation and Agreement with Southwestern Bell Telephone Company. U.S. TelePacific Corp., respectfully requests the Commission to issue an Order approving the terms of this Stipulation and Agreement, granting authority, and waiving certain statutes and rules as requested by U.S. TelePacific Corp.

Please note that this Stipulation and Agreement is being submitted by myself and Judith A. Rau, Esq., Missouri Counsel, Bar # 24856.

Respectfully submitted,

  
Lance J.M. Steinhart  
GA Bar No. 678222  
Attorney for U.S. TelePacific Corp.

Enclosures

cc: Jane Delahanty  
Marc Poston, Senior General Counsel  
Leo Bub, Southwestern Bell  
Michael Dandino, Senior Public Counsel

FILED<sup>2</sup>

JUL 19 2000

Missouri Public Service Commission

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

In the Matter of the Application of )  
U.S. TelePacific Corp. d/b/a TelePacific )  
for a Certificate of Service Authority to )  
Provide Basic Local Telecommunications Service )  
in Portions of the State of Missouri and to Classify )  
said Service as Competitive )

Case No. TA-2000-732

UNANIMOUS STIPULATION AND AGREEMENT

1. U.S. TelePacific Corp. d/b/a TelePacific Communications ("TelePacific" or "Applicant") initiated this proceeding on February 7, 2000, by filing an Application requesting a certificate of service authority to provide basic local exchange telecommunications service and exchange access service in exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), GTE Midwest Incorporated ("GTE"), and Sprint Missouri, Inc. d/b/a Sprint ("Sprint").

2. The Commission has granted the timely application to intervene of SWBT. GTE and Sprint did not seek and have not been granted intervention in this proceeding.

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

4. In determining whether TelePacific's application for a certificate of service authority should be granted, the Commission should consider TelePacific's

<sup>1</sup> Large 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.

technical, financial and managerial resources and abilities to provide basic local telecommunications service. TelePacific 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 with which the applicant seeks to compete. Further, TelePacific 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 the applicant seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo., as a condition of certification and competitive classification, TelePacific agrees that, unless otherwise ordered by the Commission, the Applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each large incumbent LEC within whose service area(s) Applicant seeks authority to provide service. Additionally, TelePacific agrees that if the ILEC, in whose service area the Applicant is operating, decreases its originating and/or terminating access service rates, TelePacific shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap. Further, TelePacific 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 incumbent local exchange telecommunications companies in the same area and must be no smaller than an exchange. Finally, TelePacific 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 their income. See Section 392.455 RSMo. (1999 Supp.)

5. TelePacific has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(6)(C). TelePacific has not obtained approved Resale Agreements with SWBT, Sprint, or GTE.<sup>2</sup> TelePacific agrees to file its initial tariffs in this certification docket and serve all parties thereto with written notice at the time the initial tariffs are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by Applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariffs for services have become effective. When filing its initial basic local tariff, TelePacific shall also file and serve a written disclosure of all resale and/or interconnection agreements which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local exchange carrier, and its explanation of why such a resale and/or interconnection agreement is unnecessary for such areas.

6. TelePacific has, pursuant to Section 392.420 RSMo., requested that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo., should continue to apply to all TelePacific's services:

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<sup>2</sup> Good cause for failure to file proposed tariffs with the Application must be shown. The lack of approved interconnection agreement (47 U.S.C. §252) constitutes good cause.

**STATUTORY PROVISIONS**

**COMMISSION RULES**

Section 392.210.2	4 CSR 240-10.020
Section 392.270	4 CSR 240-30.010(2)(C)
Section 392.280	4 CSR 240-30.040
Section 392.290	4 CSR 32.030(4)(C)
Section 392.300.2	4 CSR 240-33.030
Section 392.310	4 CSR 240-35
Section 392.320	
Section 392.330	
Section 392.340	

7. In negotiating the remaining provisions of this Unanimous 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 RSMo., regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications services.

**TELEPACIFIC'S CERTIFICATION**

8. TelePacific has submitted as Appendix B to its Application a listing of the specific exchanges in which it seeks authority to provide service. The exchanges identified are those currently served by SWBT, GTE and Sprint. TelePacific hereby agrees that its Application should be deemed further amended as required to include by reference the terms and provisions described in paragraphs 4-6 hereinabove and paragraph 11 below to the extent that its Application might be inconsistent therewith.

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

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;

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 to affordable basic local 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 where they live or their income; and

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

10. TelePacific asserts, and no party opposes, that TelePacific's application and request for authority to provide basic local telecommunications service and local exchange telecommunications service (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 continue to apply, and TelePacific shall remain classified as a competitive telecommunications company. TelePacific asserts, and no party opposes, that such services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of

regulation of TelePacific'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 RSMo., 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 RSMo. Unless otherwise determined by the Commission, any increases in intrastate-switched access service rates above the maximum switched access service rates as set forth in Paragraph 4 herein shall be made pursuant to Sections 392.220 and 392.230 RSMo., and not Sections 392.500 and 392.510 RSMo. TelePacific agrees that if the ILEC, in whose service area TelePacific is operating, decreases its originating and/or terminating access service rates, TelePacific shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap. The Commission's order should state the foregoing conditions substantially 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 RSMo., 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 RSMo., and not Sections 392.500 and 392.510 RSMo. Further, if the ILEC, in whose service area TelePacific is operating, decreases its originating and/or terminating access service rates, TelePacific shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap."

11. TelePacific'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 the filing of the application, TelePacific does not yet have approved resale or interconnection agreements with SWBT, Sprint and GTE. TelePacific agrees that at such time as all facts necessary for the development of tariffs become known, it will submit tariffs in this docket, with a minimum 45-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above. TelePacific shall serve notice to all parties and participants in this docket of the filing of its tariffs at the time they are filed with the Commission and serve them with the aforesaid written disclosure 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 waiver of 4 CSR 240-2.060(6)(C) is hereby granted for good cause in that applicant does not yet have approved resale or interconnection agreements with the incumbent local exchange carriers within whose service areas it seeks authority to provide service; provided, when



applicant submits its tariffs in this docket to the Commission, 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. When filing its initial basic local tariff in this docket, the applicant shall also file and serve upon the parties hereto a written disclosure of: all resale and/or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local exchange carrier; and its explanation of why such a resale and/or interconnection agreement is unnecessary for any such areas.”

12. TelePacific’s request for waiver of the applications of the following rules and statutory provisions as they relate to the regulation of TelePacific’s new services should be granted:

**STATUTORY PROVISIONS**

**COMMISSION RULES**

Section 392.210.2	4 CSR 240-10.020
Section 392.270	4 CSR 240-30.010(2)(C)
Section 392.280	4 CSR 240-30.040
Section 392.290	4 CSR 240-32.030(4)(C)
Section 392.300.2	4 CSR 240-33.030
Section 392.310	4 CSR 240-35
Section 392.320	
Section 392.330	
Section 392.340	

13. This Unanimous Stipulation and Agreement 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 Unanimous 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 Unanimous Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1, RSMo., 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 RSMo.; and their respective rights to seek rehearing pursuant to Section 386.500 RSMo.; and to seek judicial review pursuant to Section 386.510, RSMo. The parties agree to cooperate with the Applicant and with each other in presenting this Unanimous Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the TelePacific application made herein.

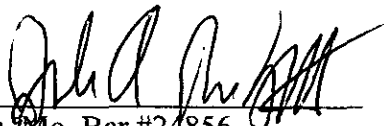
15. The Staff shall file suggestions or a memorandum in support of this Unanimous Stipulation and Agreement and the other parties shall have the right to file responsive suggestions or prepared testimony. All responsive suggestions, prepared testimony, or memorandum shall be subject to the terms of any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

16. The Staff shall also have the right to provide, at any agenda meeting at which this Unanimous 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. 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 issued in this case.

17. TelePacific will comply with all applicable Commission rules and regulations except those which are specifically waived by the Commission.

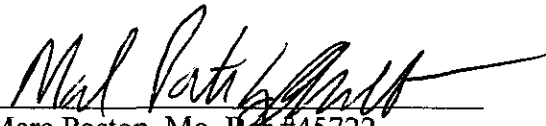
18. The Office of the Public Counsel is a signatory to this Unanimous Stipulation and Agreement for the sole purpose of stating that it has no objection to this Unanimous Stipulation and Agreement.

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



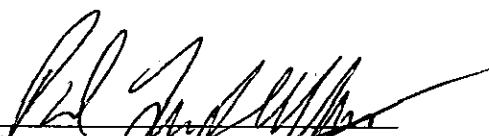
Judith Rau, Mo. Bar #24856  
Rau & Rau  
Attorneys at Law  
119 East Mill Street  
Waterloo, Illinois  
Phone: 618-939-7186  
Fax: 618-939-7185

FOR: U.S. TelePacific Corp.



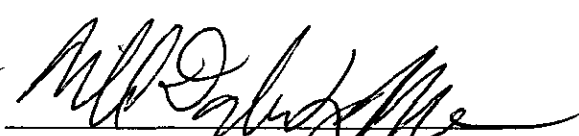
Marc Poston, Mo. Bar #45722  
Senior General Counsel  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri  
Phone: 573-751-8701  
Fax: 573-751-9285  
mposton@mail.state.mo.us

FOR: Staff of the Public Service  
Commission



Paul G. Lane, Mo. Bar #27044  
Leo J. Bub, Mo. Bar #34326  
Anthony K. Conroy, Mo. Bar #35199  
Mimi B. MacDonald, Mo. Bar #37606  
Southwestern Bell Telephone Company  
One Bell Center, Rm. 3518  
St. Louis, Missouri 63101  
Phone: 314-235-2508  
Fax: 314-247-0014

FOR: Southwestern Bell Telephone  
Company

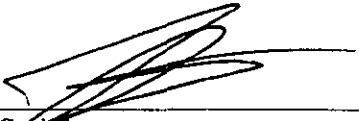


Michael Dandino, #24390  
Senior Public Counsel  
Office of Public Counsel  
301 West High Street  
Jefferson City, Missouri 65102  
Phone: 573-751-5559  
Fax: 573-751-5562

FOR: Staff of the Public Counsel

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Unanimous Stipulation and Agreement was served upon the following persons by depositing a true copy thereof in the United States Mail, postage prepaid, or by hand delivery, this 18th day of July, 2000.

  
\_\_\_\_\_  
Lance J.M. Steinhart

Marc Poston  
Senior General Counsel  
Missouri Public Service Commission  
Post Office Box 360  
Jefferson City, Missouri 65102

Leo J. Bub  
Southwestern Bell Telephone Company  
One Bell Center, Rm. 3518  
St. Louis, Missouri 63101

Michael Dandino  
Office of Public Counsel  
301 West High Street  
Jefferson City, Missouri 65102