

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

October 5, 2000

CASE NO: TA-2000-752

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Enclosed find certified copy of a ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of)	
Digital Access Corporation of Missouri, Inc.)	
for a Certificate of Service Authority to)	
Provide Basic Local Service, Nonswitched)	<u>Case No. TA-2000-752</u>
Local Exchange Service and Interexchange)	
Telecommunications Services within the)	
State of Missouri and for Competitive)	
Classification)	

**ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL, NONSWITCHED LOCAL EXCHANGE
AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES**

Procedural History

Digital Access Corporation of Missouri, Inc. (DACMI) applied to the Missouri Public Service Commission (Commission) on May 12, 2000, for a certificate of service authority to provide basic local, nonswitched local exchange and interexchange telecommunications services in Missouri under Sections 392.420 - .440 RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1999. On May 26, 2000, DACMI filed a supplement to its application. DACMI asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420, RSMo. DACMI also requested a protective order be issued to protect the highly confidential financial information provided as part of the application, and the Commission granted the request on May 30, 2000. DACMI is a Delaware corporation with principal offices located at 3 Bala Plaza East, Suite 605, Bala Cynwyd, Pennsylvania 19004.

¹ All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

12

The Commission issued a notice and schedule of applicants on May 23, 2000, directing interested parties wishing to intervene in the interexchange and nonswitched local exchange service authority of its application to do so by June 7, 2000, and in the basic local and nonswitched local exchange service authority portion of its application to do so by June 22, 2000. On May 26, 2000, Southwestern Bell Telephone Company (SWBT) timely filed its application to intervene, which the Commission granted on June 8, 2000. No other entity intervened. In the same order that granted intervention, the Commission also ordered the parties to file a procedural schedule no later than July 10, 2000.

On July 10, 2000, DACMI filed a request for an extension of time to file a stipulation and agreement, stating that the parties were in the process of finalizing the terms of a stipulation and agreement. DACMI requested that the deadline for filing be extended to July 15, 2000. DACMI stated that Staff of the Commission (Staff), SWBT and the Office of the Public Counsel stated that they did not oppose this request for additional time. Having receiving no objections from other parties, the Commission will grant the extension of time. The parties filed a Unanimous Stipulation and Agreement (Agreement), which is included with this order as Attachment 1, on July 12, 2000.

Staff filed its suggestions in support of the Unanimous Stipulation and Agreement on July 27, 2000. In the Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing

in this case, the Commission may grant the relief requested based on the application.

Discussion

DACMI seeks certification to provide basic local telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE) and Sprint Missouri, Inc. d/b/a Sprint (Sprint) as well as nonswitched local exchange, and interexchange telecommunications service throughout the state of Missouri. DACMI is not asking for certification in any area that is served by a small incumbent local exchange carrier (ILEC). DACMI is requesting that its requested services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

A. Requirements of Commission Rule 4 CSR 240-2.060(6)

Commission Rule 4 CSR 240-2.060(6) requires an application for certification to provide telecommunications services to include a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. DACMI has provided all the required documentation, except for the proposed tariff. DACMI requested a temporary waiver of Commission Rule 4 CSR 240-2.060(6)(C) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. DACMI agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreement. The Agreement provides that DACMI will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing DACMI has agreed to provide a written disclosure of all

interconnection agreements it has entered into which affect its Missouri service areas.

The Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and when DACMI files the required tariff it will be assigned a new case number. DACMI will be directed to provide the notice and disclosures required by the Agreement when it files its proposed tariff.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1999, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

DACMI submitted as Exhibit C to its application certain financial documentation. Exhibit B to the application lists the names and qualifications of DACMI's management team. The parties agreed that DACMI

possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

DACMI has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The parties agreed that DACMI proposes to offer basic local services that satisfy the minimum standards established by the Commission.

DACMI wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint as described in their basic local tariffs. The parties agreed that DACMI has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

DACMI has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1999.

C. Competitive Classification

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. Section 392.361.2. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. In the matter of the investigation for the purpose of determining the classification of the services provided by

interexchange telecommunications companies within the State of Missouri,
30 Mo. P.S.C. (N.S.) 16 (1989); In the matter of Southwestern Bell
Telephone Company's application for classification of certain services as
transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition,
all the services a competitive company provides must be classified as
competitive. Section 392.361.3. The Commission has found that whether a
service is competitive is a subject for case-by-case examination and that
different criteria may be given greater weight depending upon the service
being considered. *Id.* at 487.

The parties have agreed that DACMI should be classified as a
competitive telecommunications company. The parties have also agreed that
DACMI's switched exchange access services may be classified as a
competitive service, conditioned upon certain limitations on DACMI's
ability to charge for its access services. DACMI has agreed that, unless
otherwise ordered by the Commission, its originating and terminating access
rates will be no greater than the lowest Commission-approved corresponding
access rates in effect for each large ILEC within whose service areas DACMI
seeks to provide service. The parties have agreed that the grant of
service authority and competitive classification to DACMI should be
expressly conditioned on the continued applicability of Section 392.200,
RSMo Supp. 1999, and on the requirement that any increases in switched
access services rates above the maximum switched access service rates set
forth in the agreement shall be made pursuant to Sections 392.220, RSMo
Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510. In
addition, the parties agreed that if the ILEC in whose service area DACMI
is operating decreases its originating and/or terminating access service
rates, DACMI shall file an appropriate tariff amendment to reduce its

originating and/or terminating access rates within 30 days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, and 392.340. The parties also agreed that application of these Commission Rules could be waived: 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, and 4 CSR 240-35.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

- A. The Commission finds that competition in the basic local exchange, nonswitched local exchange and interexchange telecommunications market is in the public interest.
- B. The Commission finds that DACMI has met the requirements of Commission Rule 4 CSR 240-2.060(6) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
- C. The Commission finds that DACMI has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that DACMI meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting DACMI a

certificate of service authority to provide basic local exchange telecommunications services is in the public interest. DACMI's certificate shall become effective when its tariff becomes effective.

- E. The Commission finds that the interexchange and nonswitched local exchange services market is competitive and that granting DACMI a certificate of service authority to provide interexchange and nonswitched local exchange telecommunications services is in the public interest. DACMI's certificate shall become effective when its tariff becomes effective.
- F. The Commission finds that DACMI is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- G. The Commission finds that DACMI's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement shall be made pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510. In addition, if the ILEC, in whose service area DACMI is operating, decreases its originating and/or terminating access service rates, DACMI shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within 30 days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. DACMI has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1999, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1999, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1999.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1999. Based upon the Commission's review of the applicable law and the Agreement of the parties, and upon its findings of fact, the Commission concludes that the Unanimous Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Unanimous Stipulation and Agreement of the parties, filed on July 12, 2000, is approved.

2. That Digital Access Corporation of Missouri, Inc. is granted a certificate of service authority to provide interexchange and local exchange access telecommunications services in the state of Missouri,

subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order.

The certificate of service authority shall become effective when Digital Access Corporation of Missouri, Inc.'s tariff becomes effective.

3. That Digital Access Corporation of Missouri, Inc. is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when Digital Access Corporation of Missouri, Inc.'s tariff becomes effective.

4. That Digital Access Corporation of Missouri, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules to interexchange and local exchange telecommunications services shall be waived:

Statutes

392.210.2	-	uniform system of accounts
392.270	-	valuation of property (ratemaking)
392.280	-	depreciation accounts
392.290	-	issuance of securities
392.300.2	-	acquisition of stock
392.310	-	stock and debt issuance
392.320	-	stock dividend payment
392.340	-	reorganization(s)
392.330, RSMo Supp. 1999	-	issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	-	depreciation fund income
4 CSR 240-30.010(2)(C)	-	posting of tariffs
4 CSR 240-30.040	-	uniform system of accounts
4 CSR 240-33.030	-	minimum charges
4 CSR 240-35	-	reporting of bypass and customer-specific arrangements

And application of the following statutes and regulatory rules to basic local telecommunications services shall be waived:

Statutes

392.210.2 - uniform system of accounts
392.270 - valuation of property (ratemaking)
392.280 - depreciation accounts
392.290 - issuance of securities
392.300.2 - acquisition of stock
392.310 - stock and debt issuance
392.320 - stock dividend payment
392.340 - reorganization(s)
392.330, RSMo Supp. 1999 - issuance of securities,
debts and notes

Commission Rules

4 CSR 240-10.020 - depreciation fund income
4 CSR 240-30.010(2)(C) - posting of tariffs
4 CSR 240-30.040 - uniform system of accounts
4 CSR 240-32.030(4)(C) - exchange boundary maps
4 CSR 240-33.030 - minimum charges
4 CSR 240-35 - reporting of bypass and customer-
specific arrangements

5. That the request for waiver of Commission Rule 4 CSR 240-2.060(6)(C), which requires the filing of a 45-day tariff, is granted.

6. That Digital Access Corporation of Missouri, Inc. shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement that will allow Digital Access Corporation of Missouri, Inc. to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

7. That Digital Access Corporation of Missouri, Inc. shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, Digital Access Corporation of Missouri, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

8. That Digital Access Corporation of Missouri, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement shall be made pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510. Further, if the ILEC in whose service area Digital Access Corporation of Missouri, Inc. is operating decreases its originating and/or terminating access service rates, Digital Access Corporation of Missouri, Inc. shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within 30 days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

9. That the Request For Additional Time To File Stipulation And Agreement filed by Digital Access Corporation of Missouri, Inc., on July 10, 2000, is granted.

10. That this order shall become effective on October 15, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Shelly A. Register, Regulatory Law
Judge, by delegation of authority
pursuant to Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 5th day of October, 2000.

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED²
JUL 12 2000

Missouri Public
Service Commission

In the Matter of the Application of)
Digital Access Corporation of Missouri, Inc.)
for a Certificate of Service Authority to)
Provide Basic Local Service,)
Nonswitched Local Exchange Service)
and Interexchange Telecommunications)
Services within the State of)
Missouri and for Competitive Classification)

Case No. TA-2000-752

UNANIMOUS STIPULATION AND AGREEMENT

Digital Access Corporation of Missouri, Inc., d/b/a Digital Access (Applicant or Digital Access) initiated this proceeding on May 12, 2000, by filing an Application requesting certificate of service authority to provide basic local telecommunications services in those portions of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT), GTE Midwest, Incorporated (GTE) and Sprint Missouri, Inc. d/b/a Sprint (Sprint), as well as nonswitched local exchange and interexchange service throughout the state of Missouri.

The Missouri Public Service Commission (Commission) has granted the timely application to intervene of Southwestern Bell Telephone Company (SWBT).

A. Standards and Criteria

1. 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)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 §386.020 RSMo. In Missouri, the current large LECs are SWBT, GTE and Sprint.

2. In determining whether Digital Access's application for certificate of service authority should be granted, the Commission should consider Applicant's technical, financial and managerial resources and abilities to provide basic local telecommunications service. Applicant 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 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 (ILECs) with which applicant seeks to compete. Further, Applicant agrees to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the ILECs with which applicant seeks to compete. Notwithstanding the provisions of §392.500 RSMo., as a condition of certification and competitive classification, Applicant agrees that, unless otherwise ordered by the Commission, Digital Access's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each large ILEC within whose service area(s) Applicant seeks authority to provide service. Additionally, Applicant agrees that if the ILEC in whose service area the Applicant is operating decreases its originating and/or terminating access service rates, Applicant 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, consistent with the Commission's Report and Order in Case No. TO-99-596. Further, Applicant agrees to offer basic local telecommunications service as a separate and distinct service and has sufficiently identified the geographic service area in which it proposes to offer basic local service. Such area follows exchange boundaries of the ILECs in the same area and is no smaller than an exchange. Finally,

Applicant 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 §392.455 RSMo.

3. Digital Access submitted its application without a tariff and seeks a temporary waiver of 4 CSR 240-2.060(6)(C). Digital Access agrees to file its initial tariff in this certification docket and serve all parties thereto with written notice at the time the initial tariff is submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff 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 a tariff for service has become effective. When filing its initial basic local tariff, Digital Access 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.

4. Digital Access has, pursuant to §392.420 RSMo., requested that the Commission waive the application of the following statutory provisions and rules to its basic local telecommunications services, and the parties agree that the Commission should grant such request provided that §392.200 RSMo. should continue to apply to all of Digital Access's services:

STATUTORY PROVISIONS

§392.210.2
§392.270
§392.280
§392.290
§392.300.2
§392.310

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

Statutory Provisions, continued

§392.320

§392.330

§392.340

Digital Access has, pursuant to §392.420 RSMo., requested that the Commission waive the application of the following statutory provisions and rules to its interexchange and local exchange telecommunications services, and the parties agree that the Commission should grant such request provided that §392.200 RSMo. should continue to apply to all of Digital Access's services:

STATUTORY PROVISIONS

COMMISSION RULES

§392.210.2

4 CSR 240-10.020

§392.270

4 CSR 240-30.010(2)(C)

§392.280

4 CSR 240-30.040

§392.290

4 CSR 240-33.030

§392.300.2

4 CSR 240-35

§392.310

§392.320

§392.330

§392.340

5. In negotiating the remaining provisions of this Unanimous Stipulation and Agreement, the parties employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and §§392.450 and 392.455 RSMo. regarding applications for certificates of local exchange service authority to provide basic local telecommunications service

B. Digital Access' Certification

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

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

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service, including exchange access service;
- 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 incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;
- 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 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.

8. Digital Access asserts, and no party opposes, that Digital Access's application and request for authority to provide basic local telecommunications services and interexchange and local exchange telecommunications services should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of §392.200 RSMo. continue to apply, and Digital Access shall remain classified as a competitive telecommunications company. Digital Access 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 Digital Access'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 §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 Applicant's switched exchange access services may be classified as competitive services. The parties further agree that Applicant's intrastate switched exchange access services are subject to §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 2 herein shall be made pursuant to §§392.220 and 392.230 RSMo. and not §§392.500 and 392.510 RSMo. Applicant agrees that if the ILEC in whose service area Applicant is operating decreases its originating and/or terminating access service rates, Applicant 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 §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 §392.220 and 392.230 RSMo. and not §392.500 and 392.510 RSMo. Furthermore, if the ILEC in whose service area Applicant is operating decreases its originating and/or terminating access service rates, Applicant 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.

9. Digital Access'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. Digital Access does not yet have approved resale and/or interconnection agreements with any incumbent local exchange companies. Applicant 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. Digital Access 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 temporary waiver of 4 CSR 240-2.060(6)(C) is hereby granted for good cause in that applicant does not yet have approved resale and/or interconnection agreements with incumbent local exchange companies within whose service areas it seeks to provide service. 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.

10. Digital Access's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of Applicant's basic local services should be granted:

STATUTORY PROVISIONS

§392.210.2
§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

Digital Access's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of Applicant's interexchange and local exchange services should be granted:

STATUTORY PROVISIONS

§392.210.2
§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 240-33.030
4 CSR 240-35

11. 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 Unanimous Stipulation in total, then this Unanimous 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 are made without prejudice to the rights of the signatories to take other positions in other proceedings.

12. 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 §536.070(2) and §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 §536.080.2 RSMo.; and their respective rights to seek rehearing pursuant to §386.500 RSMo. and to seek judicial review pursuant to §386.510 RSMo. The parties agree to cooperate with the Applicant and with each other in presenting this Unanimous Stipulation for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of Digital Access's application made herein.

13. The Staff shall file suggestions or a memorandum in support of this Unanimous 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.

14. 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 Staff. The Staff's oral explanation shall be subject to public disclosure, except to the extent

that it refers to matters that are privileged or protected from disclosure pursuant to any Protective Order issued in this case.

15. The Office of 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.

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

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 waiver of certain statutes and rules, as requested by Digital Access, subject to the conditions described above, at its earliest convenience.

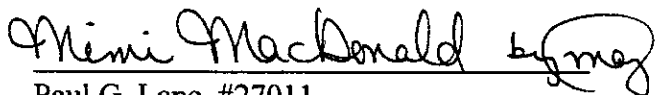
Respectfully submitted,



Mary Ann (Garr) Young #27951 -
WILLIAM D. STEINMEIER, P.C.
2031 Tower Drive
P. O. Box 104595
Jefferson City, MO 65102-4595

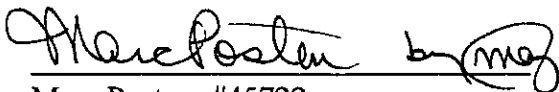
Phone: 573-634-8109
Fax: 573-634-8224
Email: myoung0654@aol.com

FOR: Digital Access Corporation
of Missouri, Inc.



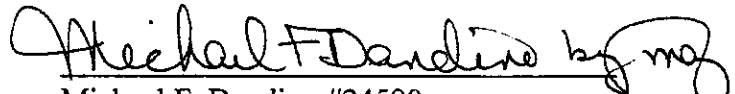
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FOR: Southwestern Bell Telephone
Company



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FOR: Staff of the Missouri
Public Service Commission

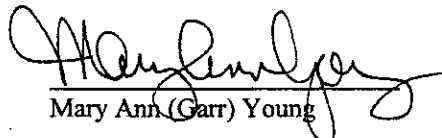


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FOR: Office of the Public Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document has been hand delivered or mailed by first class mail, postage prepaid, to the Office of Public Counsel, General Counsel and counsel for Southwestern Bell Telephone Company this 12th day of July 2000.



Mary Ann (Garr) Young

FYI: To Be Issued By Delegate)

AL/Sec'y: Register/Boyer

9-25

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10/14

TH 2000-752
CASE NO.

JS
Lumpe, Chair

addo
Drainer, Vice Chair

mw

MS
Murray, Commissioner

JS
Schemenauer, Commissioner

Sheet

Simmons, Commissioner

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 5th day of Oct. 2000.



Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge