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January 5, 2001

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

FILED²
JAN 5 2001 *mw*
Missouri Public
Service Commission

Re: Cypress Communications Operating Company, Inc.; Basic Local Application
Case No. TA-2000-829

Dear Judge Roberts:

Enclosed for filing in the above-referenced matter, please find the original and eight copies of a Unanimous Stipulation and Agreement.

If you have any questions, please advise. Thank you very much for your attention to this matter:

Sincerely,

NEWMAN, COMLEY & RUTH, P.C.

By:

Cathleen A. Martin

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CAM/slw

Enclosures

cc: Office of Public Counsel
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Gregory Fickling
Alexander Stokas
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BEFORE THE PUBLIC SERVICE
COMMISSION OF THE STATE OF MISSOURI

FILED

JAN 5 2001

In the Matter of the Application of)
)
Cypress Communications Operating Company, Inc.)
)
for a Certificate of Service Authority to Provide)
Basic Local Telecommunications Services)
in the State of Missouri and to Classify)
Such Services and the Company as Competitive.)

Missouri Public
Service Commission

Case No. TA-2000-829

UNANIMOUS STIPULATION AND AGREEMENT

CYPRESS COMMUNICATIONS OPERATING COMPANY, INC. (hereinafter "Cypress" or "Applicant") initiated this proceeding on June 19, 2000 by filing an Application requesting certificate of service authority to provide facilities based and resold basic local telecommunication services in the State of Missouri in the exchanges currently served by Southwestern Bell Telephone Company (SWB) and GTE of the Midwest, Inc. (GTE) and Sprint/United Telephone Company ("Sprint").

SWB applied to intervene in this matter and its application was granted.

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

3. In determining whether Cypress' application for certificate of service authority should be granted, the Commission should consider Cypress' technical, financial and managerial resources and abilities to provide basic local telecommunications service. Cypress 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 applicant seeks to compete. Further, Cypress must agree 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 (1994), as a condition of certification and competitive classification, Cypress agrees that, unless otherwise ordered by the Commission, its originating and terminating access rates will be capped at the levels authorized by the Commission in *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 Cypress may submit tariffs providing for originating and terminating exchange access rates equal to or less than those of the directly competing incumbent local exchange carrier in each exchange in which Cypress is authorized to provide basic local telecommunications services. Additionally, Cypress agrees that if the directly

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.

competing ILEC, in whose service area Cypress is operating, decreases its originating and/or terminating access service rates, Cypress 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, Cypress 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, Cypress agrees to provide equitable access, 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, to affordable telecommunications services. *See* § 392.455, RSMo Cum. Supp. 1999.

4. Cypress submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(6)(C). Cypress has agreed to file its initial tariff(s) in the 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 Cypress 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. Cypress has, pursuant to §392.420, RSMo 1994, requested that the Commission

²This provision shall not be construed to require Cypress to file a tariff amendment if: 1) Cypress has concurred in the directly competing ILEC's access tariff, or 2) if Cypress' 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.

waive the application of any or all of the following statutory provisions and rules to basic local 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 Cypress' services:

STATUTORY PROVISIONS

§392.210.2
§392.240(1)
§392.270
§392.280
§392.290.1
§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. CYPRESS CERTIFICATION

6. Based upon its verified application, as amended by any Order of the Commission, Cypress asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that Cypress:

- 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 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;³
- d. will offer basic local telecommunications service as a separate and distinct service;
- e. has agreed to provide equitable access for all Missourians 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, to affordable telecommunications services;⁴
- f. has sought authority which will serve the public interest.

7. Cypress asserts, and no party opposes, that Cypress' 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 continue to apply, and Cypress shall remain classified as a competitive telecommunications company. Cypress asserts, and no party opposes, that in such services it will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of Cypress' services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective

³ The identification of specific geographic areas within which Cypress proposes to offer service as referred to in this paragraph shall not be construed to foreclose Cypress 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.

⁴ The agreement in Paragraph 6.e. of this Stipulation is without prejudice to Cypress' 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 Cypress that Section 392.455.(5), RSMo, creates new or specific duties or obligations on telecommunications companies to provide equitable access.

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 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 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. 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 and not 392.500 and 392.510. Cypress agrees that if the directly competing ILEC, in whose service area Cypress is operating, decreases its originating and/or terminating access service rates, Cypress 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.⁵ 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. Cypress agrees that if the directly competing ILEC, in whose service area Cypress is operating, decreases its originating and/or terminating access service rates, Cypress 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

⁵See footnote 2.

and/or terminating access rates in order to maintain the cap. Cypress will not be required to file a tariff amendment if: 1) Cypress has concurred in the directly competing ILEC's access tariff, or 2) if Cypress' 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."

8. Cypress' 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, it did not yet have approved interconnection agreements with any underlying carrier. Cypress agrees that within thirty (30) days of an order approving an interconnection agreement with any underlying carrier, Cypress will submit tariffs in this docket, with a minimum 45-day proposed effective date, to the Commission for its approval. Cypress 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 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. Within thirty (30) days of the effective date of an order approving its interconnection agreement with and 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."

9. Cypress' request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of Cypress' services should be granted:

STATUTORY PROVISIONS

§392.210.2
§392.240(1)
§392.270
§392.280
§392.290.1
§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

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

11. 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.

12. 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 §536.080.1, 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 Cypress application made herein.

13. The Staff shall file suggestions or a memorandum 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.

14. 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 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. 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.

15. The Office of 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 Cypress, subject to the conditions described above.

Respectfully submitted,


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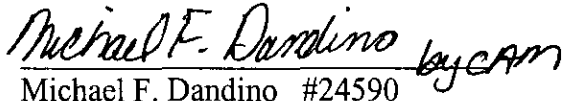
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