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

In the Matter of the Application of NewPath)
Holdings, Inc. for a Certificate of Service)
Authority to Provide Switched and Dedicated)
Resold and Facilities-Based Local Exchange)
Telecommunications Services and Facilities-) Case No. TA-2000-491
Based Local Exchange Telecommunications)
Services within the State of Missouri and to)
Classify Said Services and the Company as)
Competitive)

**ORDER GRANTING CERTIFICATE TO PROVIDE BASIC
LOCAL AND EXCHANGE ACCESS TELECOMMUNICATIONS SERVICES**

Procedural History

NewPath Holdings, Inc. (NewPath) applied to the Missouri Public Service Commission (Commission) on February 10, 2000, for a certificate of service authority to provide basic local and local exchange telecommunications services in Missouri under Sections 392.420 - .440 RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1999. NewPath 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. NewPath is a Delaware corporation with principal offices located at 11260 Aurora Avenue, Des Moines, Iowa 50322.

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

Commission Rule 4 CSR 240-2.080(4) states, in part: "One (1) copy of the pleading . . . and a copy of the cover letter shall be served on the public counsel." NewPath did not comply with Commission Rule 4 CSR 240-2.080(4) in that it did not provide a certificate of service with its application demonstrating that it had served the Office of the Public Counsel. On February 16, 2000, the Commission ordered NewPath to file a pleading no later than February 28, 2000, showing that it had complied with this rule. On February 28, 2000, NewPath filed such a pleading and cured this defect.

The Commission issued a notice and schedule of applicants on February 22, 2000, directing interested parties wishing to intervene in the interexchange and nonswitched local exchange service authority of its application to do so by March 8, 2000, and in the basic local and nonswitched local exchange service authority portion of its application to do so by March 23, 2000.

On March 3, 2000, Southwestern Bell Telephone Company (SWBT) timely filed its application to intervene which the Commission granted on March 24, 2000. On March 21, 2000, the Small Telephone Company Group (STCG) timely filed its application to intervene which the Commission granted on March 24, 2000. No other entity intervened.

In the same order which granted intervention, the Commission also ordered the parties to file a procedural schedule no later than April 24, 2000.

On March 22, 2000, NewPath filed its amended application, clarifying the scope and location of its proposed services. NewPath stated that it

wished to provide switched and dedicated basic local exchange telecommunications service on a facilities and resold basis, only in those territories within the state of Missouri presently served by SWBT, GTE Midwest Incorporated (GTE) and Sprint Missouri, Inc. (Sprint). NewPath stated that it will initially provide data transmission services via high-speed, high quality data connections. However, NewPath added, it seeks authority to provide the full range of local exchange and interexchange services in its later service offerings and further reserves the right to expand the territories served.

Due to the amendment in NewPath's application, STCG filed its motion for leave to withdraw its intervention on March 30, 2000, which was granted on April 4, 2000.

On April 25, 2000, NewPath filed what it termed an "unopposed" motion for an extension of time to file a procedural schedule. NewPath stated that it also requested leave to file its motion one day out of time; however, NewPath did not state any reason for the late filing.

Commission Rule 4 CSR 240-2.050(4)(B) states, in part:

When an act is required...to be done at or within a specific time,...the commission, at its discretion, may...[p]ermit the act to be done after the expiration of the specified period...where the failure to act was the result of excusable neglect.

NewPath did not comply with Commission Rule 4 CSR 240-2.050(4)(B) since it did not state what its excusable neglect was in filing its motion out of time. Thus, the Commission entered its notice of default on April 27, 2000, indicating that NewPath's motion failed to adequately state a reason for filing it out of time as required by Commission Rule

4 CSR 240-2.050(4)(B), and also noting that the motion did not state the position of the Office of the Public Counsel.

On May 2, 2000, NewPath filed an amended unopposed motion for an extension of time to file a procedural schedule, stating that it had consulted with all the other parties and that none of them objected to the granting of NewPath's amended motion. On May 12, 2000, the Commission granted the parties until May 24, 2000, to file a procedural schedule.

On May 24, 2000, the parties filed an unopposed motion for additional extension of time for the filing of a procedural schedule, which motion is rendered moot by this order.

The parties filed a Unanimous Stipulation and Agreement (Agreement), which is included with this order as Attachment 1, on June 6, 2000.

The Staff of the Commission (Staff) filed suggestions in support of the Stipulation and Agreement on June 8, 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

NewPath seeks certification to provide basic local and exchange access telecommunications services in portions of Missouri that are currently served by SWBT, GTE and Sprint. NewPath is not asking for certification in any area that is served by a small incumbent local exchange carrier (ILEC). NewPath proposes to provide service in the exchanges currently served by SWBT, GTE and Sprint. NewPath is requesting that its basic local 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(4)

Commission Rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing that it is authorized to do business in Missouri, 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. NewPath has provided all the required documentation in Exhibit A of its application, except for the proposed tariff. NewPath requested a temporary waiver of Commission Rule 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. NewPath 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 Stipulation and Agreement provides that NewPath will file the tariff in this case and give notice of the tariff filing to all the parties. Along

with that filing NewPath 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 NewPath files the required tariff it will be assigned a new case number. NewPath will be directed to provide the notice and disclosures required by the Stipulation and 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.

NewPath submitted as Exhibit D to its application certain financial documentation. Exhibit C to the application lists the names and

qualifications of NewPath's management team. The parties agreed that NewPath possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

NewPath 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 NewPath proposes to offer basic local services that satisfy the minimum standards established by the Commission.

NewPath 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 NewPath 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.

NewPath 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 NewPath should be classified as a competitive telecommunications company. The parties have also agreed that NewPath's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on NewPath's ability to charge for its access services. NewPath 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 the large ILECs within whose service areas NewPath seeks to operate. The parties have agreed that the grant of service authority and competitive classification to NewPath 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 must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

) 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, 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 240-33.030, 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 telecommunications market is in the public interest.
- B. The Commission finds that NewPath has met the requirements of Commission Rule 4 CSR 240-2.060(4) 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 NewPath 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 the local exchange services market is competitive and that granting NewPath a certificate of service authority to provide local exchange telecommunications services is in the public interest.

NewPath's certificate shall become effective when its tariff becomes effective.

E. The Commission finds that NewPath 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 NewPath a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. NewPath's certificate shall become effective when its tariff becomes effective.

F. The Commission finds that NewPath 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 NewPath'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 must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

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. NewPath 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 Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on June 6, 2000, is approved.

) 2. That NewPath Holdings, Inc. is granted a certificate of service authority to provide local exchange 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 NewPath's tariff becomes effective.

3. That NewPath Holdings, 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 NewPath's tariff becomes effective.

4. That NewPath Holdings, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules 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

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

6. That NewPath Holdings, 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 NewPath to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

7. That NewPath Holdings, Inc. shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, NewPath Holdings, 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 NewPath Holdings, 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 must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

9. That this order shall become effective on June 30, 2000.

10. That this case may be closed on July 1, 2000.

BY THE COMMISSION

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Bill Hopkins, Senior Regulatory Law
Judge, by delegation of authority
pursuant to 4 CSR 240-2.120(1)
(November 30, 1995) and
Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 20th day of June, 2000.

Case No. TA-2000-491

FILED²
JUN 6 2000
Missouri Public
Service Commission

NewPath Holdings, Inc. ("NewPath" and/or "Applicant") initiated this proceeding on February 10, 2000, by filing an Application requesting a certificate of service authority to provide, *inter alia*, all forms of resold and facilities based basic local, local exchange, and interexchange telecommunications services in exchanges currently served by Southwestern Bell Telephone Company, Sprint/United Telephone Company and GTE Midwest, Inc., in the State of Missouri.

A. Standards and Criteria

¹ Large LECs are defined as LECs who serve 100,000 or more access lines in Missouri. Section 386.020 RSMo. The current large LECs are Southwestern Bell Telephone Company, GTE, and United.

local exchange authority are currently handled.

2. In determining whether NewPath's Application for certificate of service authority should be granted, the Commission should consider the applicant's technical, financial and managerial resources and abilities to provide basic local telecommunications service. NewPath 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 tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which NewPath seeks to compete. Further, NewPath 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 telecommunication companies with which NewPath seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo. (1994), as a condition of certification and competitive classification, NewPath agrees that, unless otherwise ordered by the Commission, NewPath's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large incumbent LECs within whose service areas NewPath seeks authority to provide service. Further, NewPath 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 incumbent local exchange telecommunications companies in the same area, and is no smaller than an exchange. Finally, NewPath 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.

3. NewPath has submitted its Application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(6)(C).² Applicant will file its initial tariffs 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 the applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as such tariff(s) for service have been approved by the Commission and such tariffs have become effective. When filing its initial basic local tariff, NewPath shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for any such areas.

4. NewPath 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, as amended herein from NewPath's Application, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo. should continue to apply to all of NewPath's services.

Statutes

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290
Section 392.300.2
Section 392.310

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

² Good cause for failure to file proposed tariffs with the application must be shown. The parties agree that lack of an approved interconnection agreement (47 USC 252) constitutes good cause.

Section 392.320
Section 392.330
Section 392.340

NewPath has, pursuant to Section 392.420 RSMo., requested that the Commission waive the application of the following statutory provisions and rules, as amended herein from NewPath's Application, regarding its interexchange services, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo. should continue to apply to all of NewPath's services.

<u>Statutes</u>	<u>Rules</u>
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 240-33.030
Section 392.300.2	4 CSR 240-35
Section 392.310	
Section 392.320	
Section 392.330	
Section 392.340	

5. In negotiating the remaining provisions of this 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 authority to provide or resell basic local telecommunications services.

B. NewPath Certification

6. NewPath hereby agrees that its original Application should be deemed amended as required to include by reference the terms and provisions described in paragraphs 2-4 herein above to the extent that its original Application might be inconsistent therewith.

7. Based upon its verified Application, as amended by this Stipulation and Agreement,

NewPath asserts and no other party makes a contrary assertion, that there is sufficient evidence from which the Commission should find and conclude that NewPath:

- 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 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; and
- F. has sought authority which will serve the public interest.

8. NewPath asserts, and no party opposes, that NewPath's Application and request for authority to provide basic local exchange telecommunications service, local exchange telecommunications services (including exchange access service), and interexchange telecommunications services 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 Applicant shall remain classified as a competitive telecommunications company. Applicant asserts, and no party opposes, that such new services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation

of Applicant'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 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 Applicant's switched exchange access services are subject to Section 392.200 RSMo. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 2 herein shall be cost-justified and be made pursuant to 392.220 and 392.230 and not 392.500 and 392.510. 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 and the requirement that any increases in switched access service rates set forth herein shall be cost justified and made pursuant to Sections 392.220 and 392.230 and not Section 392.500 and 392.510."

9. NewPath'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 Applicant does not yet have approved interconnection agreements with the large LECs. 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

stipulated above. Applicant 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 the temporary 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 an approved interconnection agreement with incumbent LECs within whose service area it seeks authority to provide service; provided, when Applicant files its tariffs in this docket to the Commission such tariffs shall have a minimum of a 45-day effective date and Applicant shall serve written notice upon the parties hereto of such filing, 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 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 with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is not necessary for such areas."

10. NewPath's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of all of NewPath's local exchange services should be granted:

<u>Statutes</u>	<u>Rules</u>
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	

NewPath's request for waiver of the application of the following rules and statutory provisions as

they relate to the regulation of all of NewPath's interexchange services should be granted:

<u>Statutes</u>	<u>Rules</u>
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 240-33.030
Section 392.300.2	4 CSR 240-35
Section 392.310	
Section 392.320	
Section 392.330	
Section 392.340	

11. This Stipulation and Agreement has resulted from 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 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.

12. In the event the Commission accepts the specific terms of this 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. (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 Section 536.080.2 RSMo. (1994); and their respective rights to rehearing pursuant to Section 386.500 RSMo. (1994) and to seek judicial review pursuant to Section 386.510 RSMo. (1994). The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval of NewPath's Application made herein.

13. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement and the other parties shall have the right to file responsive suggestions or prepared testimony. All suggestions, prepared testimony or memoranda shall be subject to the terms of any protective order in this case.

14. The Staff shall also have the right to provide, at any agenda meeting at which this 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. 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 Stipulation and Agreement for the sole purpose of stating that it has no objection to this Stipulation and Agreement.

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

 BLP

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