

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Eagle)
 Communications Missouri, Inc. for a)
 Certificate of Service Authority to Provide) Case No. TA-2000-313
 Basic Local Telecommunications Service in)
 Portions of the State of Missouri and to)
 Classify Said Services as Competitive)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

Eagle Communications Missouri, Inc. (Eagle) applied to the Commission on November 2, 1999, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1999. Eagle 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. Eagle is a New York corporation with principal offices located at 60 East 56th Street, New York, New York 10022.

The Commission issued a notice and schedule of applicants on November 9, 1999, directing interested parties wishing to intervene to do so by December 9, 1999. The Commission granted permission to

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

intervene to Southwestern Bell Telephone Company (SWBT) on December 13, 1999.

The parties filed a Stipulation and Agreement (Agreement) which is included with this order as Attachment 1 on January 28, 2000. The Staff of the Missouri Public Service Commission (Staff) also filed Suggestions in Support of the Agreement on January 28. 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 verified application.

Discussion

Eagle wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT. Eagle is not asking for certification in any area that is served by a small incumbent local exchange provider. Eagle proposes to operate in all of the exchanges currently served by SWBT and listed in the incumbent provider's local exchange tariff. Eagle 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 4 CSR 240-2.060(4)

Commission rule 4 CSR 240-2.060(4) requires a corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing 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. Eagle has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into interconnection agreements with the underlying local exchange carriers and those agreements have been approved by the Commission. The company 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 agreements. Eagle will file the tariff and give notice of the tariff filing to all the parties. Along with that filing, Eagle has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

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.

Eagle submitted as Exhibit 2 to its application certain financial documentation including financial statements as of December 31, 1997 and 1996. Exhibit 2 also includes relevant operational and managerial experience information about Eagle's staff. The parties agreed that Eagle possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

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

Eagle wishes to be certificated to offer services in all the exchanges presently served by SWBT as described in SWBT's basic local tariffs. The parties agreed that Eagle 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.

Eagle 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 Eagle should be classified as a competitive telecommunications company. The parties have also agreed that Eagle's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Eagle's ability to charge for its access services. Eagle 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 incumbent LECs within whose service areas in which Eagle seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Eagle 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, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1999, and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

E. The Commission finds that Eagle is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.

F. The Commission finds that Eagle'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. Eagle 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

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

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 January 28, 2000, is approved.

2. That Eagle Communications Missouri, Inc. is granted a certificate of service authority to provide basic 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 the company's tariff becomes effective.

3. That Eagle Communications Missouri, 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
392.290.1 - 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 240-30.040 - uniform system of accounts
4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

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

5. That Eagle Communications 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 which will allow Eagle to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

6. That Eagle Communications Missouri, Inc. shall give notice of the filing of the tariffs described above to all parties or participants. In addition, Eagle Communications 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.

7. That Eagle Communications 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 must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

8. That this order shall become effective on March 20, 2000.

9. That this case may be closed after March 21, 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 4 CSR 240-2.120(1),
(November 30, 1995) and Section 386.240,
RSMo 1994.

Dated at Jefferson City, Missouri,
on this 10th day of March, 2000.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 28 2000

Missouri Public
Service Commission

Case No. TA-2000-313

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

STIPULATION AND AGREEMENT

1. Eagle Communications Missouri, Inc. ("Eagle") initiated this proceeding on November 2, 1999, by filing an Application seeking a certificate of service authority to provide basic local telecommunications services in the portions of the State of Missouri served by Southwestern Bell Telephone Company ("SWBT") on a facilities and resold basis, and to classify Eagle and the services it proposes to provide as competitive.

2. The Commission has granted SWBT's timely application to intervene. For the purposes of this Stipulation and Agreement, the parties agree that Eagle's Application for a certificate of service authority should be processed in the same manner in which applications for basic local exchange authority are currently handled.

3. In determining whether Eagle's Application for a certificate of service authority should be granted, the Commission should consider Eagle's technical, financial, and managerial resources and abilities to provide basic local telecommunications service. Eagle agrees that the basic local services it proposes to offer will 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 with which Eagle will compete. Further, Eagle 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 companies with which Eagle seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo. (1994), as a condition of certification and competitive classification, Eagle agrees that, unless otherwise ordered by the Commission, Eagle'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 in which Eagle seeks authority to provide service. Further, Eagle agrees to offer basic local telecommunications service as a separate and distinct service and has 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 company and is no smaller than an exchange. Finally, Eagle 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. (1996 Supp.).

4. Eagle has submitted its application without a tariff and seeks a temporary waiver of 4 CSR 240-2.060(4)(H) because Eagle has not yet executed or received Commission approval of any interconnection agreements with any of the incumbent local exchange carriers operating in Missouri. Eagle will file its initial tariff(s) in the certification docket and serve all parties thereto with written notice at the time the initial tariff(s) is/are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) should be provided by Eagle to such parties immediately upon request. Any service authority granted in this proceeding shall be regarded as conditional and shall not be exercised until such time as a tariff for services has become effective. When filing its initial basic local tariff, Eagle shall also file and serve written disclosures of : all resale or 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.

5. Eagle requests the waiver of the following Missouri statutes and Commission rules and regulations, consistent with the Commission's treatment of other certificated competitive local exchange telecommunications companies, specifically:

<u>Statutes</u>	<u>Rules and Regulations</u>
Section 392.210.2	4 CSR 240-10.020
Section 392.270	4 CSR 240-30.040
Section 392.280	4 CSR 240-35
Section 392.290.1	
Section 392.300.2	
Section 392.310	
Section 392.320	
Section 392.330	
Section 392.340	

6. 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 service authority to provide basic local telecommunications service.

7. Eagle has requested a certificate of service authority to allow the provision of basic local exchange and local exchange telecommunications service on a facilities and resold basis throughout all exchanges currently served by SWBT. The specific SWBT exchanges which Eagle seeks to serve are listed in SWBT's local exchange tariffs.

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

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local and local exchange telecommunications services, including exchange access service;
- B. proposes and agrees to offer basic local telecommunications 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 telecommunications services and such area follows the exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;
- D. will offer basic local telecommunications services as a separate and distinct service;
- E. has agreed to provide equitable access to affordable 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.

9. Eagle asserts, and no party opposes, that Eagle's application for a certificate of service authority to provide basic local telecommunications and local exchange telecommunications (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 Eagle shall be classified as a competitive telecommunications company. Eagle asserts, and no party opposes, that its services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of Eagle'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 Eagle's switched exchange access services may be classified as competitive services. The parties further agree that Eagle'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 cost-justified and be made pursuant to §§392.220 and 392.230 and not Sections 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 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 cost-justified and be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

10. Eagle's request for a temporary waiver of 4 CSR 240-2.060(4)(H), 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 Eagle does not yet have an interconnection agreement with SWBT. Eagle 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 written disclosure as stipulated above. Eagle 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(4)(H), substantially as follows:

"Applicant's request for waiver of 4 CSR 240-2.060(4)(H) is hereby granted for good cause in that applicant does not yet have an approved interconnection agreement with the incumbent local exchange carriers within whose service areas it seeks authority to provide service; provided, when applicant submits its tariffs in this docket to the Commission such tariffs shall have a minimum of a 45-day effective date and the applicant shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such tariffs to such parties immediately upon request. When filing its initial basic local tariff in this docket, the applicant shall also file and serve upon the parties hereto a written disclosure of: all interconnection agreements which affect its Missouri service area; 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."

11. Eagle's request that waiver of the application of the following statutes and Commission rules should be granted:

<u>Statutory Provisions</u>	<u>Commission Rules</u>
Section 392.210.2	4 CSR 240-10.020
Section 392.270	4 CSR 240-30.040
Section 392.280	4 CSR 240-35
Section 392.290.1	
Section 392.300.2	
Section 392.310	
Section 392.320	
Section 392.330	
Section 392.340	

12. 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.

13. In the event that 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., to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo.; and their respective rights to seek rehearing pursuant to Section 386.300 RSMo.; and to seek judicial review pursuant to Section 386.510, RSMo. The parties agree to cooperate with Eagle and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of Eagle's application made herein.


14. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation and Agreement. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any such memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding, whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

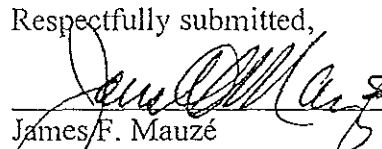
The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral

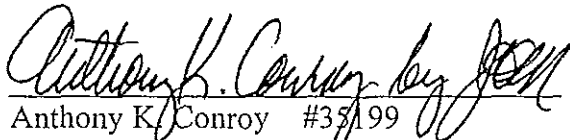
explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure.

The Office of the Public Counsel (OPC) has been advised of Eagle's application and, though it is not a signatory to this Stipulation, OPC has no objection to it.

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 as requested by Eagle Communications Missouri, Inc. subject to the conditions described above, as expeditiously as possible.

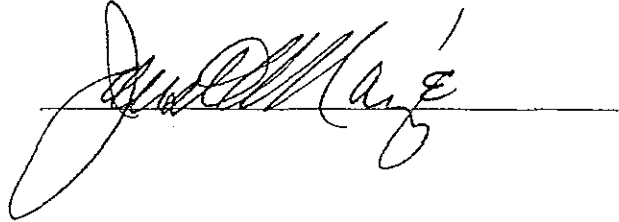

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Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed first class, postage prepaid this 27 day of January, 2000 to the Mr. Bruce Bates, Office of General Counsel, Missouri Public Service Commission, P. O. Box 360, Jefferson City, MO 65102; Mr. Anthony K. Conroy, Southwestern Bell Telephone Company, One Bell Center, Room 3518, St. Louis, MO 63101 and Office of the Public Counsel, P. O. Box 7800, Jefferson City, MO 65102.

A handwritten signature in cursive script, appearing to read "J. M. Mage", is written over a horizontal line.

RECEIVED

MAR 10 2000

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION