

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

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At a Session of the Public Service
Commission held at its office
in Jefferson City on the 21st
day of October, 1999.

In the Matter of the Application of Focal)
Communications Corporation of Missouri for a)
Certificate of Service Authority to Provide)
Basic Local Telecommunications Service) Case No. TA-99-403
in the State of Missouri, and to Classify)
Said Services as Competitive)

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

Procedural History

Focal Communications Corporation of Missouri (Focal) applied to the Missouri Public Service Commission (Commission) on March 25, 1999, for a certificate of service authority to provide switched and dedicated, resold and facilities-based basic local telecommunications services in portions of the state of Missouri under Sections 392.420-.440, RSMo 1994¹, and Sections 392.410 and 392.450, RSMo Supp. 1998. Focal 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. Focal is a Delaware corporation with principal offices located at 200 North LaSalle Street, Suite 800, Chicago, Illinois 60601.

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

On April 2, 1999, Southwestern Bell Telephone Company (SWBT) filed a timely application to intervene. On May 5, 1999, the Commission issued its Order Granting Intervention and Directing Filing of Procedural Schedule, allowing SWBT to intervene and ordering that a procedural schedule be filed no later than June 4, 1999. No other party intervened.

On June 3, 1999, Focal filed its Request for Additional Time to File Stipulation and Agreement. On June 16, 1999, the Commission granted the parties until June 25, 1999, to file a stipulation and agreement or a procedural schedule.

On June 25, 1999, Focal filed its second Request for Additional Time to File Stipulation and Agreement. On June 30, 1999, the Commission entered its Second Order Granting Additional Time, giving the parties until August 27, 1999, to file a stipulation and agreement or procedural schedule.

On August 27, 1999, Focal filed a third Request for Additional Time to File Stipulation and Agreement. On September 7, 1999, the Commission entered its Third Order Granting Additional Time, giving the parties until September 8, 1999, to file a stipulation and agreement or procedural schedule.

Focal and the Staff of the Missouri Public Service Commission (Staff) filed their proposed nonunanimous Stipulation and Agreement (Agreement) on September 8, 1999, which is included with this order as Attachment 1.

On the same day, Focal filed its Suggestions in Support of Stipulation and Agreement. Focal stated that it executed the Agreement

with the understanding that the reasoning employed by the Commission in TA-99-298, where the Commission approved a similar nonunanimous stipulation involving ALLTEL Communications, Inc. (ALLTEL decision), would also apply to Focal in this case. Focal stated that its position was that it was entitled to: 1) charge switched access rates that are greater than the incumbent LECs serving the same area; and 2) charge different switched access rates in Missouri, depending on the incumbent LEC serving the same geographic area, providing in each case that Focal files the requisite tariffs and demonstrates to the Commission that such rates are just and reasonable.

On September 20, 1999, SWBT filed its Comments Regarding Focal's Suggestions in Support of the Nonunanimous Stipulation and Agreement. SWBT stated that it did not sign the Agreement and did not request a hearing. SWBT stated that it recognizes that the Commission has indicated that it will address issues relating to access rates charged by CLECs in the new generic proceeding, i.e., case number TO-99-596. SWBT stated that the Agreement appropriately provides that Focal will comply with the Commission's decision in case number TO-99-596. SWBT stated that the Commission should make clear that the ALLTEL decision does not, as asserted by Focal, entitle ALLTEL to charge switched access rates that are greater than that of the incumbent LEC serving the same area, or to charge different switched access rates, depending on the level of the access rate of the incumbent LEC serving the same area.

On September 28, 1999, Staff filed its Suggestions in Support of the Stipulation and Agreement. Staff stated that the Agreement contains

language similar to that in the ALLTEL decision. Staff stated that in the ALLTEL decision, the Commission rejected SWBT's assertion that the non-unanimous stipulation and agreement filed by Staff and ALLTEL Communications, Inc. must include language stating that a CLEC must cost justify any increase in its switched access rates. Staff stated that in addition, the Commission in the ALLTEL decision rejected SWBT's argument that a CLEC's switched access rates are capped at SWBT's rates even in exchanges served by other ILECs. Staff stated that the Agreement was specifically designed to address the five criteria set out in Section 392.455, RSMo Supp. 1998, which the Commission must address in certificating new basic local telecommunication service providers. (Note: See the discussion on this point *infra*.)

In the Agreement, the parties, *inter alia*, 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

Focal seeks certification to provide basic local telecommunications services on a resold basis in the portions of Missouri that are currently served by the incumbent local exchange

telecommunications companies (ILECs) of SWBT, GTE Midwest Incorporated (GTE) and United Telephone Company of Missouri d/b/a Sprint (Sprint-United). Focal is not asking for certification in any area that is served by a small incumbent local exchange provider. Focal proposes to provide service in the exchanges currently served by SWBT, GTE and Sprint-United as listed in those ILECs' respective local exchange tariffs. Focal 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)(B)

4 CSR 240-2.060(4)(B) requires that a non-Missouri corporation applying for a certificate of service authority to provide basic local exchange telecommunications services include a certificate from the secretary of state 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. Focal has provided all the required documentation except for the proposed tariff. Focal requested a temporary waiver of 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. Focal agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is a party to the appropriate interconnection agreement. 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 Focal files the required tariff it will be assigned a new case number. Focal will be directed to provide the notice and disclosures required when it files its proposed tariff.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1998, 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.

Focal attached to its application a list of the names and qualifications of Focal's management team. The Commission finds that Focal possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Focal 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 Commission finds that

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

Focal wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint-United as described in their basic local tariffs. The Commission finds that Focal 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.

Focal 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. 1998.

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, RSMo. 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 pursuant to Section 392.361.3, RSMo. 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 Commission finds that Focal should be classified as a competitive telecommunications company. The Commission finds that Focal's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Focal's ability to charge for its access services. Focal 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 at the date of certification for the large ILEC within those service areas in which Focal seeks to operate. The Commission finds that the grant of service authority and competitive classification to Focal should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1998, 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. 1998, and 392.230, rather than Sections 392.500 and 392.510, RSMo.

The Commission finds 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. 1998, and 392.340, RSMo. The Commission finds that application of these Commission rules should be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, 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 Focal 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 Focal 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 Focal a certificate of service authority to provide local exchange telecommunications services is in the public interest. Focal's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that Focal 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 Focal

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

F. The Commission finds that Focal 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 Focal's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, 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. 1998, and 392.230, rather than Sections 392.500 and 392.510, RSMo.

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. Focal has requested certification under Sections 392.420-.440, and Sections 392.410 and 392.450, RSMo Supp. 1998, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and 392.420, RSMo, 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. 1998, 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. 1998.

Based upon the Commission's review of the applicable law and upon its findings of fact, the Commission finds that the application should be approved.

IT IS THEREFORE ORDERED:

1. That Focal Communications Corporation of Missouri 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 Focal Communications Corporation of Missouri's tariff becomes effective.

2. That Focal Communications Corporation of Missouri 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. 1998 - 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

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

4. That Focal Communications Corporation of Missouri 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 Focal Communications Corporation of Missouri to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

5. That Focal Communications Corporation of Missouri shall give notice of the filing of the tariffs described above to all the parties and participants in this case. In addition, Focal Communications Corporation of Missouri 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.

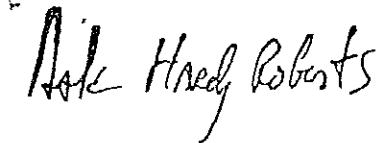
6. That Focal Communications Corporation of Missouri's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be

cost-justified pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, rather than Sections 392.500 and 392.510, RSMo.

7. That this order shall become effective on October 21, 1999.

8. That this case may be closed on October 22, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur
Schemenauer, C., absent

Bill Hopkins, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

SEP 8 1999

Missouri Public
Service Commission

In the matter of the Application of)
Focal Communications Corporation of Missouri)
for a Certificate of Service Authority to Provide)
Basic Local Exchange Telecommunications)
Service in the State of Missouri and to Classify)
Said Services as Competitive Classification)

Case No. TA-99-403

STIPULATION AND AGREEMENT

Focal Communications Corporation of Missouri, (Applicant or Focal) initiated this proceeding on March 22, 1999, by filing an Application requesting certificate of service authority to provide basic local telecommunications services in portions of the state of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT or Southwestern Bell), GTE Midwest, Inc. (GTE) and Sprint Missouri, Inc., d/b/a Sprint (Sprint), and other relief.

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

A. Standards and Criteria

1. For purposes of this Stipulation and Agreement, 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.

2. In determining whether Focal's application for certificate of service authority should be granted, the Commission should consider Focal's technical, financial and managerial resources and

¹Large LECs are defined as LECs who serve 100,000 or more access lines §386.020 RSMo. Supp. 1996. In Missouri, the current large LECs are SWBT, GTE and Sprint.

abilities to provide basic local telecommunications service. Focal 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, Focal 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 (1994), as a condition of certification and competitive classification, Focal agrees that, unless otherwise ordered by the Commission, Focal's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large ILEC(s) for each service area within which Focal seeks authority to provide service. Further, Focal 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, Focal 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 Supp. 1996.

3. The parties acknowledge that the Commission is currently examining the extent to which CLEC switched access rates should be regulated in Case No. TO-99-596. Focal will comply with this and any other applicable Commission orders regarding CLEC switched access rates, and the parties agree that no term contained in this Stipulation shall prevent such compliance.

4. Focal has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H). Focal agrees to file its initial tariffs in this certification docket and serve all parties thereto with written notice at the time the initial tariffs are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariffs will be provided by Applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariffs for services have become effective. When filing its initial basic local tariff, Focal 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.

5. Focal 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 Focal's services:

STATUTORY PROVISIONS

COMMISSION RULES

§392.210.2
§392.270
§392.280
§392.290.1
§392.300.2
§392.310
§392.320
§392.330
§392.340

4 CSR 240-10.020
4 CSR 240-30.040
4 CSR 240-35

6. In negotiating the remaining provisions of this 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. Focal Certification

7. Focal hereby agrees that its application should be deemed amended to include by reference the terms and provisions described in paragraphs 2-4 above.

8. Based upon its verified Application, Focal asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that Focal:

- 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;
- 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.

9. Focal asserts, and no party opposes, that Focal's application and request for authority to provide basic local 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 §392.200 continue to apply, and Focal shall remain classified as a competitive telecommunications company. Focal 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 Focal'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 and are conditional and shall not be exercised until such time as tariffs for services have become effective.

The parties agree that Focal'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 §392.200. Any increases in 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 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 §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 pursuant to §392.220 and 392.230 and not §392.500 and 392.510.

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

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

STATUTORY PROVISIONS

COMMISSION RULES

§392.210.2
§392.270
§392.280
§392.290.1
§392.300.2
§392.310
§392.320
§392.330
§392.340

4 CSR 240-10.020
4 CSR 240-30.040
4 CSR 240-35

12. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this 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 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 §536.070(2) and §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 and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the Focal application made herein.

14. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. 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 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 or in this 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.

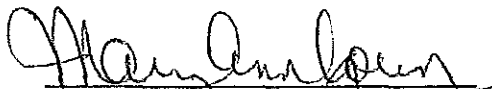
The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure.

15. The Office of Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing and has offered no objection.

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

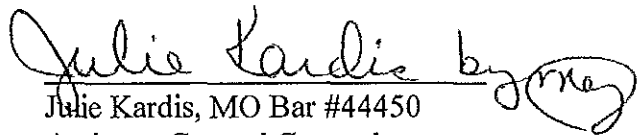
WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification as requested by Focal, subject to the conditions described above as may be appropriate, at its earliest convenience.

Respectfully submitted,


Mary Ann (Garr) Young #27951

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FOR: Focal Communications
Corporation of Missouri

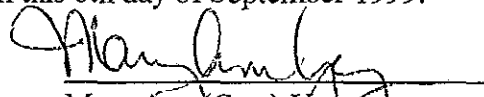


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FOR: Staff of the Missouri
Public Service Commission

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 parties of record on this 8th day of September 1999.


Mary Ann (Garr) Young

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RECEIVED

OCT 21 1999

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PUBLIC SERVICE COMMISSION