

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 12th
day of January, 1999.

In the Matter of the Application of)
NEXTLINK MISSOURI, INC., for a)
Certificate of Authority to Provide Basic) Case No. TA-99-48
Exchange and Local Exchange Intrastate)
Telecommunications Services within the)
State of Missouri.)

ORDER APPROVING STIPULATION AND AGREEMENT

On August 4, 1998, NEXTLINK MISSOURI, INC. (NEXTLINK) filed its application requesting that a certificate of service authority be issued to NEXTLINK authorizing it to provide basic local exchange and local exchange intrastate telecommunications services in the State of Missouri. NEXTLINK's application requested authority to offer basic local and local exchange intrastate telecommunications services in exchanges currently served by Southwestern Bell Telephone Company (SWBT), GTE Midwest Incorporated (GTE), and Sprint Missouri, Inc. (Sprint).

On August 11, the Commission issued its order directing interested parties to file applications to intervene by September 10. On August 27, SWBT filed its application to intervene. On September 16, the Commission granted SWBT's application to intervene. The Commission also ordered the parties to file a proposed procedural schedule no later than October 16. NEXTLINK filed a proposed procedural schedule on October 14. No objection was filed by the other parties. In its proposed procedural schedule, NEXTLINK

indicated that the matter may be resolved by the filing of a stipulation and agreement.

The parties filed a Nonunanimous Stipulation and Agreement (Stipulation) on December 2. The parties entering into the Stipulation include NEXTLINK, SWBT, and the Staff of the Public Service Commission (Staff). The Office of the Public Counsel (OPC) advised the Commission that it did not intend to file any objection regarding this Stipulation. Staff filed its Suggestions in Support of the Stipulation And Agreement on December 11. No party requested a hearing, so the Commission will treat the Stipulation as unanimous pursuant to 4 CSR 240-2.115.

The Stipulation provides that NEXTLINK's application should be deemed amended to include by reference the terms and provisions described in paragraphs 2 through 4 of the Stipulation. NEXTLINK sought temporary waiver of 4 CSR 240-2.060(4)(H) which requires the proposed tariffs to be filed with the application unless good cause is shown. The Stipulation noted that good cause exists because lack of an approved interconnection agreement under 47 USC § 252 constitutes good cause. The Stipulation further provides that NEXTLINK's application for certification may be granted on the condition that its tariffs become effective and that NEXTLINK file final tariffs with a minimum 45-days effective date following the date of filing, subject to suspension. Since the filing of its application, NEXTLINK has entered into negotiations toward an interconnection agreement with SWBT.

NEXTLINK also agrees as a part of the Stipulation to file a list of its interconnection or resell agreements or explain why the

applicant does not need an interconnection or resell agreement in order to begin business. The Stipulation further provides that NEXTLINK will adhere to the same quality of service and billing standards to which the incumbent local exchange companies (LECs) must adhere. In addition, as a condition of certification and competitive classification, NEXTLINK agreed that 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 incumbent LEC(s) within those service areas(s) applicant seeks authority to provide service, notwithstanding the provisions of Section 392.455, RSMo (1994).

In its application, NEXTLINK requested that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services pursuant to Section 392.200, RSMo:

Statutes

392.210.2
392.270
392.280
392.290.1
392.300.2
392.310
392.320
392.330
392.340

Commission Rules

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

By stipulation, the parties agreed that the Commission should grant such request provided that Section 392.200, RSMo, should continue to

apply to all of NEXTLINK's services.

Based upon its verified application, as amended in the Stipulation, NEXTLINK asserted, and no party made a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that NEXTLINK:

- 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 telecommunication 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 for all Missourians as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services; and,
- f. has sought authority which will serve the public interest.

The Stipulation provides that NEXTLINK's assertion that its application and request for authority to provide basic local telecommunications services and local exchange telecommunications services should be granted and no party opposes NEXTLINK's assertion. The Stipulation also provides that all services authorized by this certificate of service authority should be classified as competitive telecommunications services provided that the requirements of Section

392.200 continue to apply and NEXTLINK shall remain classified as a competitive telecommunications company.

Since no proper party filed an application to intervene and there are no outstanding requests for hearing, the Commission determines that an oral hearing is not necessary and the Applicant may submit evidence in support of its Application by verified statement. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission finds that granting a certificate of service authority for basic local exchange services in exchanges currently served by SWBT, GTE and Sprint according to the terms of the Stipulation is not detrimental to the public interest. Pursuant to Section 536.060 RSMo 1994, the Commission may accept the Stipulation and Agreement as a resolution of the issues in this case. The Commission has reviewed the Stipulation and Agreement and verified application and finds the Stipulation to be reasonable and in the public interest and will, therefore, approve it. The service authority and service classification herein granted are subject to the requirements of Section 392.200, RSMo (Cum. Supp. 1997), are conditionally granted and shall not be exercised until such time as tariffs for services have become effective. The service authority and service classification for switched exchange access granted will be expressly conditioned on the continued applicability of Section 392.200, RSMo (Cum. Supp. 1997), and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the Stipulation and Agreement shall

be cost-justified and pursuant to Sections 392.220 and 392.230, RSMo, and not Sections 392.500 and 392.510, RSMo.

Waiver of all statutory provisions and rules requested to be waived in the Stipulation will be granted.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement filed on December 2, 1998, by the parties, Attachment A to this order, is approved.

2. That NEXTLINK MISSOURI, INC.'s application for certificate of service authority to provide basic exchange and local exchange intrastate telecommunication services is approved, upon the conditions as set forth in the Stipulation and Agreement.

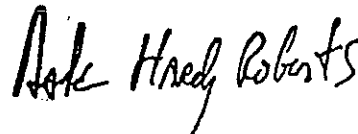
3. That NEXTLINK MISSOURI, INC. shall submit its tariffs for Commission approval within 30 days of the effective date of an order approving its interconnection agreement with Southwestern Bell Telephone Company. Such tariffs shall have a minimum 45-day effective date. NEXTLINK MISSOURI, INC. shall serve written notice upon the parties upon submission and shall provide copies of the tariffs to the parties immediately upon request.

4. NEXTLINK MISSOURI, INC.'s request for a temporary waiver of 4 CSR 240-2.060(4)(H) is hereby granted. Within 30 days of the effective date of an order approving its interconnection agreement with SWBT, NEXTLINK shall submit its tariffs for Commission approval. Such tariffs shall have a minimum of a 45-day effective date and the applicant shall serve written notice upon the parties of such submission. NEXTLINK shall provide copies of tariffs to any party immediately upon request when filing its basic local tariff in this

docket. NEXTLINK shall also file and serve upon the parties a written disclosure of all interconnection agreements which affect its Missouri service areas. In addition, NEXTLINK shall identify 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 an interconnection agreement is unnecessary for any such areas.

5. That this order shall become effective on January 22, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Register, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the matter of the Application of NEXTLINK,)
MISSOURI, INC. for a Certificate of Authority)
to Provide Basic Exchange and Local Exchange) Case No. TA-99-48
Intrastate Telecommunications Services within)
the State of Missouri.)

STIPULATION AND AGREEMENT

NEXTLINK MISSOURI, INC. (hereinafter "NEXTLINK,") initiated this proceeding on August 4, 1998 by filing an Application requesting certificate of service authority to provide basic local exchange and local exchange services in exchanges currently served by Southwestern Bell Telephone Company, GTE of the Midwest, Inc. (GTE) and Sprint Missouri (Sprint).

Southwestern Bell Telephone Company (SWB) timely applied to intervene in this matter and its application was granted.

A. STANDARDS AND CRITERIA

1. The parties employed the following standards and criteria, which are intended to meet the requirements of existing law, particularly Sections 392.450 and 392.455, RSMo. Cum Supp. 1997 regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service, in negotiating the provisions of this Stipulation and Agreement.

2. 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.

¹Large LECs are defined as LECs who serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1997. In Missouri, the current large LECs are SWBT, GTE and Sprint.

3. In determining whether NEXTLINK's application for certificate of service authority should be granted, the Commission should consider NEXTLINK's technical, financial and managerial resources and abilities to provide basic local telecommunications service. NEXTLINK must demonstrate that the basic local services it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to the applicant agreeing to file and maintain basic local service tariff(s) with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which applicant seeks to compete. Further, NEXTLINK must agree to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange telecommunications companies with which the applicant seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo (1994), as a condition of certification and competitive classification, NEXTLINK must agree 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 incumbent LEC(s) within those service area(s) applicant seeks authority to provide service. Further, NEXTLINK must agree to offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic service area in which it proposes to offer basic local service. Such area must follow exchange boundaries of the incumbent local exchange telecommunications companies in the same area and must be no smaller than an exchange. Finally, NEXTLINK must agree to provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services. See Section 392.455 RSMo Cum. Supp. 1997.

4. NEXTLINK submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H).² NEXTLINK has agreed to file its initial tariff(s) in the certification docket and serve all parties thereto with written notice at the time the initial tariff(s) are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by NEXTLINK to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariff(s) for services have become effective. When filing its initial basic local tariff, NEXTLINK 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 such areas.

5. NEXTLINK has, pursuant to §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, and the parties agree that the Commission should grant such request provided that Section 392.200 RSMo should continue to apply to all of NEXTLINK's services:

STATUTORY PROVISIONS

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

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

COMMISSION RULES

4 CSR 240-10.020

4 CSR 240-30.040

4 CSR 240-35

B. NEXTLINK CERTIFICATION

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

7. Based upon its verified application, as amended, NEXTLINK asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that NEXTLINK:

- a. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service;
- b. proposes and agrees to offer basic local services that satisfy the minimum standards established by the Commission;
- c. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;³
- d. will offer basic local telecommunications service as a separate and distinct service;
- e. has agreed to provide equitable access for all Missourians as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services;⁴

³ The identification of specific geographic areas within which NEXTLINK proposes to offer service as referred to in this paragraph shall not be construed to foreclose NEXTLINK from petitioning the Commission pursuant to Section 392.200.4 and .8, RSMo.

⁴ The agreement in Paragraph 6 e. of this Stipulation and Agreement is without prejudice to NEXTLINK's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's considerations of equitable access under Section 392.455.(5), RSMo.

f. has sought authority which will serve the public interest.

8. NEXTLINK asserts, and no party opposes, that NEXTLINK's application and request for authority to provide basic local telecommunications services and local exchange telecommunications services (including exchange access service) should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of Section 392.200 continue to apply, and NEXTLINK shall remain classified as a competitive telecommunications company. NEXTLINK asserts, and no party opposes, such services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of NEXTLINK'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 the applicant's switched exchange access services are subject to Section 392.200. Any increases in switched access service rates above the

Furthermore, such agreement should not be construed as an admission or conclusion by NEXTLINK that Section 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access.

maximum switched access service rates as set forth in paragraph 2 herein shall be cost-justified and be made pursuant to Sections 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 above the maximum switched access service rates set forth herein shall be cost-justified and pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

9. NEXTLINK's request for a 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 at the time of its application, it did not yet have approved interconnection agreements with the large incumbent LECs. Since the filing of NEXTLINK's application, the NEXTLINK and SWB have entered negotiations toward an interconnection agreement. NEXTLINK agrees that within thirty (30) days of an order approving its interconnection agreement with SWB, NEXTLINK 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. NEXTLINK 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. Within thirty (30) days of the effective date of an order approving its interconnection agreement with SWB, Applicant shall submit its tariffs for Commission approval. Such tariffs shall have a minimum of a 45-day effective date and the applicant shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such tariffs to such parties immediately upon request. 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 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."

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

STATUTORY PROVISIONS

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

COMMISSION RULES

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

11. 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 all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

12. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to §536.080.1, RSMo 1994, to present testimony, to cross examine

witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, RSMo 1994; and their respective rights to seek rehearing pursuant to §386.500 RSMo 1994 and to seek judicial review pursuant to §386.510, RSMo 1994. The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the NEXTLINK application made herein.

13. 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.

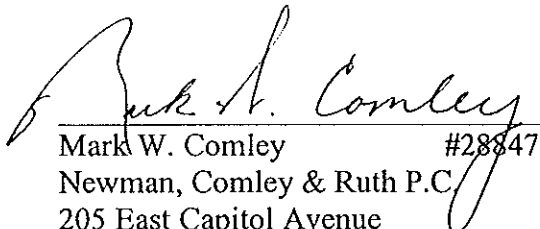
The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the

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.

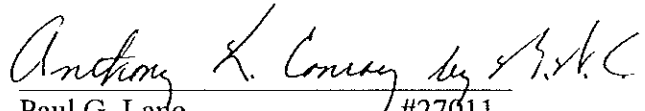
14. Finally, NEXTLINK will comply with all applicable Commission rules and regulations except those which are specifically waived by the Commission.

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 NEXTLINK, subject to the conditions described above.


Respectfully submitted,


Mark W. Comley #28847
Newman, Comley & Ruth P.C.
205 East Capitol Avenue
P.O. Box 537
Jefferson City, MO 65102-0537

FOR: NEXTLINK MISSOURI, INC.


Paul G. Lane #27011
Leo J. Bub #34326
Anthony K. Conroy #35199
Katherine C. Swaller #34271
One Bell Center, Room 3520
St. Louis, Missouri 63101

FOR: Southwestern Bell Telephone Company


Cynthia R. Bryant #47937
Assistant General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360

FOR: Staff

RECEIVED
JAN 29 1989
COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION