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

In the Matter of the Application of	)	
C.C.O. Telecom, Inc. for a Certificate	)	
of Service Authority to Provide Basic	)	<u>Case No. TA-99-473</u>
Local Telecommunications Services	)	
in the State of Missouri.	)	

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

**Procedural History**

C.C.O. Telecom, Inc. (C.C.O.) applied to the Commission on April 19, 1999, for a certificate of service authority to provide basic local telecommunications services in portions of the State of Missouri under Sections 392.420-.440, RSMo 1994<sup>1</sup>, and Sections 392.410 and 392.450, RSMo Supp. 1998. C.C.O. 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. C.C.O. is a Missouri corporation with principal offices located at 7265 North Oak Trafficway, Gladstone, Missouri 64118.

The Commission issued a notice and schedule of applicants on April 27, 1999, directing interested parties wishing to intervene to do so by May 27, 1999. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on June 7, 1999. No other party intervened.

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

The parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment 1, on June 28, 1999. Staff filed Suggestions in Support of the Stipulation and Agreement on July 6, 1999. 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

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

4 CSR 240-2.060(4)(A) requires that a Missouri corporation applying for a certificate of service authority to provide basic local exchange telecommunications services include a certified copy of its Articles of Incorporation and Certificate of Incorporation from the secretary of state, 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. C.C.O. has provided all the required documentation except for the proposed tariff. C.C.O. 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. C.C.O. agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreement. The 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 C.C.O. files the required tariff it will be assigned a new case number. C.C.O. 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.

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

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

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

C.C.O. 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. 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 Commission finds that C.C.O. should be classified as a competitive telecommunications company. The Commission finds that C.C.O.'s switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on C.C.O.'s ability to charge for its access services. C.C.O. 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 C.C.O. seeks to operate. The Commission finds that the grant of service authority and competitive classification to C.C.O. 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.

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. The Commission finds that application of these Commission rules could 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 C.C.O. 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 C.C.O. 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 C.C.O. a certificate of service authority to provide local exchange telecommunications services is in the public interest. C.C.O.'s certificate shall become effective when its tariff becomes effective.
- D. The Commission finds that C.C.O. 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 C.C.O. a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. C.C.O.'s certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that C.C.O. 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 C.C.O.'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.

### 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. C.C.O. 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 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 C.C.O. Telecom, Inc. is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when C.C.O. Telecom, Inc.'s tariff becomes effective.

2. That C.C.O. Telecom, 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. 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 C.C.O. Telecom, Inc. shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date

of a Commission order approving an interconnection agreement that will allow C.C.O. Telecom, Inc. to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

5. That C.C.O. Telecom, Inc. shall give notice of the filing of the tariffs described above. In addition, C.C.O. Telecom, 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.

6. That C.C.O. Telcom, Inc.'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.

7. That this order shall become effective on July 19, 1999.

8. That this case may be closed on July 20, 1999.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

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

Dated at Jefferson City, Missouri,  
on this 9th day of July, 1999.

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

In the Matter of the Application of C.C.O. )  
Telecom, Inc. for a Certificate of Service )  
Authority to Provide Basic Local )  
Telecommunications Services in the )  
State of Missouri )

Case No. TA-99-473

**FILED**  
JUN 28 1999

Missouri Public  
Service Commission

STIPULATION AND AGREEMENT

1. C.C.O. Telecom, Inc. ("CCO") initiated this proceeding on April 19, 1999 by filing an Application requesting a certificate of service authority to provide basic local telecommunications services in selected exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), Sprint/United Telephone Company ("United") and GTE Network, Inc. ("GTE") in the State of Missouri.
2. Only Southwestern Bell Telephone Company has intervened in this proceeding.
3. For purposes of this Stipulation and Agreement, the parties agree that applications for basic local exchange service authority in exchanges served by "large" local exchange companies (LECs)<sup>1</sup> should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.
4. In determining whether CCO's application for certificate of service authority should be granted, the Commission should consider the applicant's technical, financial and managerial resources and abilities to provide basic local telecommunications service. CCO 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

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<sup>1</sup> Large LECs are defined as LECs who serve 100,000 or more access lines Section 386.020 R.S.Mo.Supp. 1996 in Missouri. The current large LECs are Southwestern Bell Telephone Company, GTE, and United.

maintain basic local service tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which CCO seeks to compete. Further, CCO 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 telecommunications companies with which CCO seeks to compete. Notwithstanding the provisions of Section 392.500 R.S.Mo. (1994), as a condition of certification and competitive classification, CCO agrees that, unless otherwise ordered by the Commission, CCO's 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 LECs within whose service areas CCO seeks authority to provide service. Further, CCO 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 companies in the same area, and is no smaller than an exchange. Finally, CCO 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 R.S.Mo. (1996 Supp.).

5. CCO has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H).<sup>2</sup> Applicant will file its initial tariff in this certification docket and

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<sup>2</sup> Good 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.

serve all parties thereto with written notice at the time the initial tariff is submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff will be provided by the applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as such tariff(s) for service have been approved by the Commission and such tariffs have become effective.

When filing its initial basic local tariff, CCO shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for any such areas.

6. CCO has, pursuant to Section 392.420 R.S.Mo. requested that the Commission waive the application for the following statutory provisions and rules regarding all of its services, and all parties agree that the Commission should grant such request provided that Section 392.200 R.S.Mo. should continue to apply to all of CCO's services.

<u>Statutes</u>	<u>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	

7. 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 R.S.Mo., regarding

applications for certificates of local exchange authority to provide basic local telecommunications services.

8. CCO has submitted a listing of the specific exchanges in which it seeks authority to provide service, which is attached hereto as Exhibit 1. The exchanges identified are currently served by SWBT, United and GTE. CCO agrees that its original Application should be deemed amended as required to include by reference the terms and provisions described in paragraphs 4-6 hereinabove to the extent that its original Application might be inconsistent therewith.

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

A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service;

B. proposes and agrees to offer basic local services that will satisfy the minimum standards established by the Commission;

C. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;

D. will offer basic local telecommunications services as a separate and distinct service;

E. has agreed to provide equitable access as determined by the Commission for all

Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services; and

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

10. CCO asserts, and no party opposes, that CCO's application and request for authority to provide basic local exchange telecommunications 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 CCO shall remain classified as a competitive telecommunications company. CCO 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 CCO's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's order should state the foregoing conditions substantially as follows: "The service authority and service classification herein granted are subject to the requirements of Section 392.200 and are conditional and shall not be exercised until such time as tariffs for services have become effective."

The parties agree that the applicant's switched exchange access services may be classified as competitive services. The parties further agree that applicant's switched exchange access services are subject to Section 392.200. Any increases in switched access service rates above the maximum switched access service rates as set forth herein shall be



cost-justified and be made pursuant to 392.200 and 293.230 and not 392.500 and 392.510.

The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates set forth herein shall be cost-justified and made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

11. CCO'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 applicant does not yet have approved interconnection agreements with the large LECs. Applicant agrees that at such time as all facts necessary for the development of tariffs become known, it will submit tariffs in this docket, with a minimum 45-day proposed effective date, to the Commission for its approval, together with the written disclosure stipulated above. Applicant shall serve notice to all parties to this docket of the filing of its tariff(s) at the time they are filed with the Commission, and serve them with the aforesaid written disclosure, and shall upon request immediately provide any party with a copy of those tariffs. The Commission's order should state the temporary waiver of 4 CSR 240-2.060(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 an approved interconnection agreement with SWBT, United or GTE; provided, when applicant files its tariffs in this docket to the Commission such tariffs shall have a minimum of a 45-day effective date and applicant shall serve written notice upon the parties hereto of such filing, and shall provide copies of such tariffs to such parties immediately upon request. When filing its initial basic local tariff in this docket, the applicant shall also file and serve a written disclosure of: all interconnection agreements which affect its Missouri service areas; all portions of Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an inter-connection agreement is not necessary for such areas."

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

**Statutes**

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

**Rules**

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

13. 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.


14. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein; their respective rights pursuant to Section 536.080.1, R.S.Mo. (1994), to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 R.S.Mo. (1994); and their respective rights to rehearing pursuant to Section 386.500 R.S.Mo. (1994) and to seek judicial review pursuant to Section 386.510 R.S.Mo. (1994). The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval of CCO's application made herein.

15. 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 such memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of the 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 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 the Stipulation and Agreement are noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure.

16. 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.

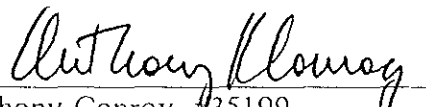
WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification and waiving certain statutes and rules as requested by C.C.O. Telecom, Inc. subject to the conditions described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

  
Jeremiah D. Finnegan, MO #18416  
FINNEGAN, CONRAD & PETERSON, LC  
1209 Penntower Office Center  
3100 Broadway  
Kansas City, Missouri 64111  
(816) 753-1122 - Telephone  
(816) 756-0373 - Fax

FOR: C.C.O. Telecom, Inc.

  
Bruce Bates, MO #35442 *By got*  
Assistant General Counsel  
Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102  
(573) 751-7434 - Telephone  
(573) 751-9285 - Fax

FOR: Staff of the  
Missouri Public Service Commission

  
Anthony Conroy, #35199  
Southwestern Bell Telephone Company  
One Bell Center, Room 3516  
St. Louis, Missouri 63101-1976  
(314) 235-6060 - Telephone  
(314) 247-0014 - Fax

FOR: Southwestern Bell Telephone  
Company

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JUL 15 1999  
COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION