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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 20th
day of May, 1999.

In the Matter of the Application of WorkNet)
Communications, Inc., for a Certificate of)
Service Authority to Provide Basic Local) Case No. TA-99-292
Telecommunications Services in the State of)
Missouri and to Classify Said Services as)
Competitive.)

**ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES**

Procedural History

WorkNet Communications, Inc. (WorkNet), applied to the Commission on January 5, 1999, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under 4 CSR 240-2.060(4). WorkNet is a Delaware corporation with its principal place of business at 7777 Bonhomme Avenue, Suite 2000, St. Louis, Missouri 63105. The Commission issued a notice and schedule of applicants on January 19, 1999, directing interested parties wishing to intervene to do so by February 18, 1999. The Commission granted intervention to Southwestern Bell Telephone Company (SWBT) on March 16, 1999.

On April 26, 1999, the parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment 1. The Staff of the Commission (Staff) filed Suggestions in Support of the Stipulation and Agreement on April 27, 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

WorkNet seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, Sprint/United Telephone Company (United), and GTE Midwest, Inc. (GTE). WorkNet is not asking for certification in any area that is served by a small incumbent local exchange provider. WorkNet proposes to operate in all of the exchanges described in the incumbent providers' respective local tariffs. WorkNet states that it will not offer service in areas smaller than an exchange.

A. Requirements of 4 CSR 240-2.060(4)

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing 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. WorkNet has provided all the required documentation except for the proposed tariff. WorkNet 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.

The Commission will require WorkNet to file its tariff after approval of an 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 WorkNet files the required tariff, it will be assigned a new case number.

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.

WorkNet submitted as Exhibit 2 to its application financial documentation detailing its financial resources. Exhibit 3 to the application lists the names and qualifications of WorkNet's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry, including experience in developing, implementing, financing and maintaining telecommunications services. The parties agreed that WorkNet proposes to offer basic local services that satisfy the minimum standards established by the Commission.

WorkNet wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and United. The parties agreed that WorkNet 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.

WorkNet 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 such service.

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. § 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. § 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. *Supra*, 1 Mo. P.S.C. 3rd at 487.

Although the Stipulation and Agreement, in paragraph 10, notes that WorkNet is classified as a competitive telecommunications company, the parties expressed concern about classifying exchange access services as competitive. Consequently, the parties devised an access rate "cap" that places an upper limit on access rates at the lowest level charged by the LECs in whose service territories WorkNet will be initially certificated. This access rate cap is discussed and stipulated to in paragraph 4 of the Stipulation and Agreement. Although access services would technically be classified as competitive, WorkNet may not avail itself of the near-automatic rate changes normally afforded to competitive services in Sections 392.500 and .510. Instead, if WorkNet

can establish to the Commission's satisfaction that its costs of providing access exceed the capped rate, it could increase its rates through the rate change process set out in Sections 392.220 and .230. The Staff notes that the Commission may allow such a mechanism because Section 392.361.5 and .6 authorize the Commission to impose conditions on competitive classification rate changes that are reasonably necessary to protect the public interest.

WorkNet 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 incumbent LECs within those service areas in which WorkNet seeks to operate. The parties have agreed that the grant of service authority and competitive classification to WorkNet 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 parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.340, RSMo 1994, and 392.330, RSMo Supp. 1998. The parties also agreed that application of the following 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 WorkNet 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 WorkNet 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 WorkNet 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 WorkNet a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. WorkNet's certificate shall become effective when its tariff becomes effective.

- E. The Commission finds that WorkNet should be classified as 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 WorkNet'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. WorkNet has requested certification under Sections 392.420 - .440, and Sections 392.410 and .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 .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.

The Commission has the legal authority to accept a stipulation and agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1998. Based upon the Commission's review of the applicable law and Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on April 26, 1999, is approved.

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

3. That WorkNet Communications, Inc., is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived as they relate to the regulation of its new services:

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

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

5. That WorkNet Communications, 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 it to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

6. That WorkNet Communications, Inc., shall give notice of the filing of the tariff described above to all parties or participants in this case.

7. That WorkNet Communications, 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.

8. That this order shall become effective on June 2, 1999.

9. That this case may be closed on June 3, 1999.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Ruth, Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
APR 26 1999
Missouri Public
Service Commission

In the Matter of WorkNet Communications,)
Inc. for a Certificate of Service Authority to)
Provide Basic Local Telecommunications)
Services in the State of Missouri and to)
Classify Such Services as Competitive)
)

Case No. TA-99-292

STIPULATION AND AGREEMENT

1. WorkNet Communications, Inc. ("Applicant" or "WorkNet") initiated this proceeding on January 5, 1999, by filing an Application requesting certificate of service authority to provide basic local and exchange access telecommunications services in exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), Sprint/United Telephone Company ("United"), and GTE Midwest, Inc. ("GTE").

2. SWBT filed a timely Application to Intervene, which was granted by the Commission on March 16, 1999. The Commission also ordered the parties to file a procedural schedule, no later than April 15, 1999, including dates for filing testimony or a date for filing a Stipulation and Agreement.

3. For purposes of this Stipulation and Agreement, the parties agree that applications for basic local exchange authority in exchanges served by "large" local exchange companies (LECs) 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 WorkNet's application for certificate of service authority should be granted, the Commission should consider its technical, financial and managerial

resources and abilities to provide basic local telecommunications services. The Applicant must also 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 ("ILECs") with which the Applicant seeks to compete. Further, the Applicant must agree to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the ILECs with which the Applicant seeks to compete. Notwithstanding the provisions of 392.500,¹ as a condition of certification and competitive classification, the Applicant 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 ILEC(s) within whose service area(s) the Applicant seeks authority to provide service.² The Applicant must agree to offer basic local telecommunications services as a separate and distinct service and has identified the geographic service area in which it proposes to offer basic local service. Such area must follow the exchange boundaries of the ILECs in the same area and must be no smaller than an exchange. Finally, the Applicant must agree 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.³

¹ All statutory reference are to Mo. Rev. Stat. (1994), unless otherwise noted.

² In this case, SWBT's current access rates.

³ See Mo. Rev. Stat. Sec. 392.455 (Supp. 1999).

5. WorkNet seeks a temporary waiver of 4 CSR 240-2.060(4)(H)4 and agrees to file its initial tariff(s) in the certification docket and to serve all parties with written notice at the time the initial tariff(s) are submitted to afford those parties an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by the Applicant to the other 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(s), WorkNet shall also file and serve a written disclosure of all resale or interconnection agreements which affect its Missouri service areas and all portions of its Missouri service areas for which it does not have an interconnection agreement with the ILEC with its explanation of why such an interconnection agreement is unnecessary for such areas.

6. In its Application, WorkNet requested the following waivers for its basic local service offering:

STATUTORY PROVISIONS

§392.210.2	§392.300.2	§392.340
§392.270	§392.310	
§392.280	§392.320	
§392.290.1	§392.330 ⁵	

COMMISSION RULES

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

The parties agree that the Commission should grant this request provided that Section

⁴ Good cause for failure to file proposed tariffs with the Application must be shown. The lack of an approved interconnection agreement (47 U.S.C. 252) constitutes good cause.

⁵ Mo. Rev. Stat. (Supp. 1999).

392.200⁶ continues to apply to all of the Applicant's services.

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 392.455⁷ regarding applications for certificates of service authority to provide basic local telecommunications service.

The Applicant's Certification

8. The Applicant hereby agrees that its original Application should be deemed amended as required to include by reference the terms and provisions described in paragraphs 4 through 7, above, and paragraphs 10 and 11, below, to the extent that its original Application is inconsistent with these paragraphs.

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

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications services;
- 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 ILECs in the same areas, and such area is no smaller than an exchange;
- D. will offer basic local telecommunications services as a separate and distinct service;
- E. has agreed to provide equitable access to affordable telecommunications services as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income; and

⁶ Mo. Rev. Stat. Sec. 392.455 (Supp. 1999).

⁷ Both references are to Mo. Rev. Stat. (Supp. 1999).

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

10. The Applicant asserts, and no party opposes, that the Applicant's request for authority to provide basic local telecommunications service should be granted. All authorized services should be classified as competitive telecommunications services, provided that the requirements of Section 392.200⁸ continue to apply, and the Applicant shall be classified as a competitive telecommunications company. The Applicant 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 for the Applicant's services consistent with the protection of ratepayers and the promotion of the public interest. The Applicant's classification and authority should become effective upon the tariffs for the services becoming effective and its authority should not be exercised until such time as tariffs for services have been filed (together with the written disclosure as stipulated above) and are 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 are effective.

The parties agree that 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 392.200.⁹ Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 4 shall be cost-justified and

⁸ Mo. Rev. Stat. (Supp. 1999).

⁹ Mo. Rev. Stat. (Supp. 1999).

be made pursuant to 392.220¹⁰ and 392.230, 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 is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230, not Sections 392.500 and 510.

11. The Applicant'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 the Applicant does not yet have approved resale or interconnection agreements with the large ILECs. The 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 as stipulated above. The Applicant shall serve notice to all parties and participants in this docket that its tariffs have been filed at the time they are filed with the Commission. The Applicant shall serve its tariffs with the written disclosure described in paragraph 5 of this Stipulation 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 temporary waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

The 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 resale or interconnection agreement

¹⁰ Mo. Rev. Stat. (Supp. 1999).

with the incumbent local exchange carriers within whose service areas it seeks authority to provide service. When the Applicant submits its tariffs in this docket to the Commission those tariffs shall have a minimum 45-day effective date, the Applicant shall serve written notice upon the parties of that submittal, and the Applicant shall provide copies of the tariffs to the other parties immediately upon request. When filing its initial basic local tariff in this docket, the Applicant shall also file and serve upon the parties a written disclosure of all interconnection agreements which affect its Missouri service area and all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier with its explanation of why such interconnection agreement is unnecessary for any such areas.

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

STATUTORY PROVISIONS

392.210.2	392.300.2	392.340
392.270	392.310	
392.280	392.320	
392.290.1	392.330 ¹¹	

COMMISSION RULES

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

13. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and its terms 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 its agreements or provisions. The stipulations in this document are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to

¹¹ Mo. Rev. Stat. (Supp. 1999).

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, their respective rights pursuant to Section 536.080.1¹² to present testimony, cross-examine witnesses, and present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2;¹³ and their respective rights to seek rehearing pursuant to Section 386.500 and seek judicial review pursuant to Section 386.510. 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 Applicant's application.

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 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

¹² Mo. Rev. Stat. (1988).

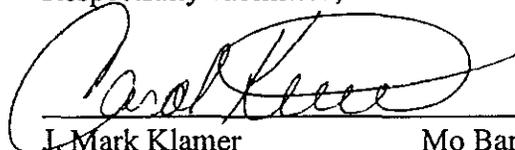
¹³ Mo. Rev. Stat. (1988).

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 the Staff. The Staff's oral explanation shall be subject to public disclosure.

16. Although not a signatory to this Stipulation and Agreement, Office of Public Counsel has reviewed it and is not opposed.

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

Respectfully submitted,



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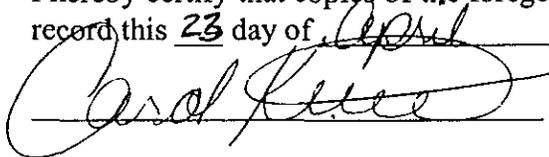


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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record this 23 day of April, 1999.



RECEIVED

MAY 20 1999

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION