

OF THE STATE OF MISSOURI

Case No. TA-96-455

April 1, 1997

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of American)
Communication Services of Kansas City, Inc. for)
Certificates of Service Authority to Provide)
Basic Local Telecommunications Services, Local)
Exchange Telecommunications Services, Exchange) Case No. TA-96-455
Access Services, and IntraLATA Interexchange)
Telecommunications Services in the State of)
Missouri, and to Classify the Company and Its)
Services as Competitive.)
)

APPEARANCES

Charles Brent Stewart, French & Stewart, 1001 Cherry Street, Suite 302,
Columbia, Missouri 65201-7931,

and

Charles H.N. Kallenbach, American Communication Services, Inc.,
131 National Business Parkway, Suite 100, Annapolis, Maryland 20701, for
American Communication Services of Kansas City, Inc.

Elaine M. Walsh, Curtis, Oetting, Heinz, Garrett & Soule, P.C., 130 South
Bemiston, Suite 200, Clayton, Missouri 63105, for MCI Telecommunications
Corporation.

Sondra B. Morgan and W.R. England, III, Brydon, Swearengen & England, P.C.,
312 East Capitol Avenue, Post Office Box 456, Jefferson City,
Missouri 65102, for: BPS Telephone Company, Cass County Telephone Company,
Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan
Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone
Company, Goodman Telephone Company, Inc., Granby Telephone Company,
Grand River Mutual Telephone Corporation, Green Hills Telephone
Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom
Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company,
Mark Twain Rural Telephone Company, McDonald County Telephone Company,
Miller Telephone Company, New Florence Telephone Company, New London
Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual
Telephone Company, Ozark Telephone Company, Rock Port Telephone Company,
Seneca Telephone Company, Steelville Telephone Exchange, Inc., and
Stoutland Telephone Company; and Bourbeuse Telephone Company and Fidelity
Telephone Company.

Michael F. Dandino, Senior Public Counsel, Office of the Public Counsel,
Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of the
Public Counsel and the public.

Colleen M. Dale, Deputy Public Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

ADMINISTRATIVE

LAW JUDGE: Elaine E. Bensavage.

REPORT AND ORDER

Procedural History

American Communications Services of Kansas City, Inc. (ACS-KC) applied to the Commission on June 28, 1996, for a certificate of service authority to provide basic local telecommunications services, local exchange telecommunications services, and intraLATA interexchange telecommunications services in Missouri under § 392.410 - .450, RSMo 1994¹. ACS-KC asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. ACS-KC is a Maryland corporation and a wholly owned subsidiary of American Communications Services, Inc. (ACSI), with offices located 131 National Business Parkway, Suite 100, Annapolis Junction, Maryland 20701.

The Commission issued an Order and Notice on July 2, 1996, directing parties wishing to intervene in the case to do so by August 2, 1996. The Commission granted permission to intervene to the following entities on August 13, 1996:

Southwestern Bell Telephone Company (SWBT)
The Small Telephone Company Group²

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

²For purposes of this case, the Small Telephone Company Group consists of: BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River

Bourbeuse Telephone Company
Fidelity Telephone Company
MCI Telecommunications Corporation
GTE Midwest Incorporated (GTE)
AT&T Communications of the Southwest, Inc.

The parties filed a Stipulation and Agreement (Stipulation, Attachment A to this order) on October 15, 1996, and ACS-KC filed a motion asking that the Commission establish a hearing date to consider approval of the agreement. The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on October 28, 1996. Staff's suggestions included sworn testimony by a member of the Commission's telecommunications staff. The Commission conducted a hearing on November 13, 1996, where the parties made presentations and were available for Commission questions.

Background

Subsequent to its original application, ACS-KC withdrew its request for certification to provide interexchange and local exchange telecommunications services.³ ACS-KC now desires only certification to provide facilities-based and resold basic local telecommunications service.

Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Lathrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

In the Stipulation ACS-KC indicates its intent to withdraw its initial request for authority to provide intraLATA interexchange services. (Stipulation at 3, ¶ 5). ACS-KC later further clarified its request in a letter filed February 26, 1997. In the letter ACS-KC states that it seeks authority only to provide basic local telecommunications services, and that to the extent it desires to provide local exchange and interexchange services, it will seek authority to do so in a separate, subsequent filing.

ACS-KC also asks that its original application be deemed amended by reference to the terms and provisions contained in ¶¶ 5-7 of the Stipulation, and that ¶ 9 of its original application be amended to request waivers of only those statutory provisions and Commission rules as are enumerated in ¶¶ 7 and 13 of the Stipulation. (Stipulation at 5, ¶ 9).

ACS-KC wants to provide basic local services in portions of Missouri that are currently served by SWBT, GTE, and United Telephone Company of Missouri d/b/a Sprint (Sprint). ACS-KC is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which ACS-KC proposes to operate are described in Exhibit II to the application that was late-filed on October 11, 1996 (Attachment B to this order). ACS-KC is requesting that its basic local exchange services be classified as competitive and that certain statutes and regulatory rules be waived for ACS-KC.

Discussion

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. ACS-KC has provided all the required documentation except for the proposed tariff. The company has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for ACS-KC to submit a tariff until it has executed interconnection agreements with the incumbent local exchange carriers (ILECs) involved. ACS-KC cannot price its resold

services until it has reached price agreements with the ILECs from which it will purchase those services. The company has agreed that, once it is possible to do so, it will submit to the Commission for approval a proposed tariff with a minimum 30-day effective date. ACS-KC will file the tariff in Case No. TA-96-455 and give notice of the tariff filing to all the parties and participants. Along with that filing ACS-KC has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas (Stipulation at 4, ¶ 6 and 7-8, ¶ 12).

B. Basic Local Exchange Certification

Section 392.455, RSMo Supp. 1996, effective August 28, 1996, 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.

1. Technical, financial and managerial resources and abilities.

ACS-KC submitted Exhibit III with its application that lists the names and qualifications of its management team. In addition to academic

credentials, the team members have experience in various areas of the telecommunications industry including technical and engineering, operations, network development, law, sales, marketing, and finance. ACS-KC also submitted as Exhibit IV the Securities and Exchange Commission (SEC) Form 10-QSB of its parent company ACSI for the quarterly period ending March 31, 1996. ACS-KC states that it has access to ample capital through its parent company ACSI, sufficient to continue developing its network and to establish itself as a going concern financially capable of competitively providing the services it proposes to offer in Missouri. The parties agreed that ACS-KC possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service (Stipulation at 5, ¶ 10(A)).

2. The entrant's proposed services satisfy the minimum standards established by the Commission.

ACS-KC states in its application that its system will provide "state-of-the-art fiber optic clarity, speed, diversity of access, and virtually complete reliability of service with automatic stand-by and rerouting in the event of a system failure." ACS-KC explains that it will construct its network using self-healing fiber optic ring technology, with high capacity backbone routes built to connect interexchange carriers (IXCs) and high volume telecommunications users, and distribution rings extended from the backbone to end-user buildings not on the initial ring. The fiber network will also be connected to the local exchange carrier (LEC) to facilitate interconnection between the two networks. State-of-the-art DDM SONET ring multiplexers will be deployed at IXC, LEC, and end-user locations, with hub sites built as well. Since ACS-KC's network will be designed to provide at least two completely diverse routes,

customers will have access to telecommunications services in the event of a fiber cable cut. In the event of a system failure, service is restored automatically. The network will also provide a backup for customers in the event of a failure or disaster in the LEC system. Moreover, the system will be constantly monitored by sophisticated network management equipment for transmission errors or deterioration in service.

ACS-KC has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards (Stipulation at 2-3, ¶ 5). The parties agreed that ACS-KC proposes to offer basic local services that satisfy the minimum standards established by the Commission (Stipulation at 5, ¶ 10(B)).

3. The geographic area in which the company proposes to offer service.

ACS-KC set out in its late-filed Exhibit II all the exchanges in which it proposes to offer services. ACS-KC has defined its service area by means of the tariffed exchange areas of the ILECs presently providing basic local service in those exchanges. Exhibit II consists of Commission-approved tariff sheets filed by SWBT, GTE, and Sprint, describing local exchanges. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange (Stipulation at 3, ¶ 5 and 6, ¶ 10(C)). The parties agreed that ACS-KC 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 (Stipulation at 6, ¶ 10(C)).

4. The offering of basic local telecommunications service as a separate and distinct service.

ACS-KC has agreed to offer basic local telecommunications service as a separate and distinct service (Stipulation at 3, ¶ 5 and 6, ¶ 10(D)).

5. Equitable access for all Missourians to affordable telecommunications services.

ACS-KC has agreed 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 § 392.455(5), RSMo Supp. 1996 (Stipulation at 3, ¶ 5 and 6, ¶ 10(E)).

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 telecommunication 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. *Id.* at 487.

The parties have agreed that ACS-KC should be classified as a competitive telecommunications company. (Stipulation at 6-7, ¶ 11). The parties have also agreed that ACS-KC's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on ACS-KC's ability to charge for its access services. ACS-KC has agreed that, unless otherwise ordered by the Commission, its originat-

ing 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 ACS-KC seeks to operate. The parties have agreed that the grant of service authority and competitive classification to ACS-KC should be expressly conditioned on the continued applicability of § 392.200, RSMo Supp. 1996 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 §§ 392.220, RSMo Supp. 1996 and 392.230, rather than §§ 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: §§ 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1996, and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

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:

1. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
2. The Commission finds that ACS-KC 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.

3. The Commission finds that ACS-KC has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
4. The Commission finds that ACS-KC 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 ACS-KC a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. ACS-KC's certificate should become effective when its tariff becomes effective.
5. The Commission finds that ACS-KC is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 3.
6. The Commission finds that ACS-KC's certification and competitive status are expressly conditioned upon the continued applicability of § 392.200, RSMo Supp. 1996, 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 §§ 392.220, RSMo Supp. 1996, and 392.230, rather than §§ 392.500 and 392.510.
7. The Commission finds that the Stipulation and Agreement filed by the parties is a reasonable resolution of the issues.

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. ACS-KC has requested certification under § 392.410 - .450. Those statutes permit the Commission to grant a certificate of service authority where the grant of authority is in the public interest.

The Federal Telecommunications Act of 1996 and Missouri Senate Bill 507 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1996 states that "the provisions of this chapter shall be construed to: (1) Promote universally available and widely affordable telecommunications services; . . . (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri; . . . (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest"

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 § 536.060, RSMo Supp. 1996. Based upon the information contained within the Stipulation and Agreement of the parties, the supporting information offered at the hearing on November 13, 1996, and on its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved and that ACS-KC should be granted the certificate of service authority requested.

IT IS THEREFORE ORDERED:

1. That the Stipulation And Agreement entered into the record as Exhibit 1 (Attachment A to this Report And Order) is adopted.

2. That American Communications Services of Kansas City, 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, to become effective when the company's tariff becomes effective.

3. That American Communications Services of Kansas City, Inc. is classified as a competitive telecommunications company. 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
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

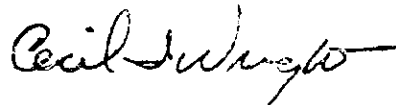
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - Uniform System of Accounts
- 4 CSR 240-35 - reporting of bypass and customer specific arrangements

4. That the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived until American Communications Services of Kansas City, Inc. has entered into a Commission approved interconnection agreement or agreements that enable it to provide basic local exchange services.

5. That American Communications Services of Kansas City, Inc. shall file tariff sheets for approval no later than 30 days after the Commission approves the required interconnection agreement or agreements. The proposed tariff shall reflect the rates, rules, regulations and the services it will offer. The tariff shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3.

6. That this order shall become effective on April 1, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

Zobrist, Chm., McClure, Crumpton
and Drainer, CC., concur.

Dated at Jefferson City, Missouri,
on this 19th day of March, 1997.

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

In the Matter of the Application of)	
American Communication Services of)	
Kansas City, Inc. for Certificates of)	
Service Authority to provide Basic Local)	
Telecommunications Service, Local)	
Exchange Telecommunications Service,)	Case No. TA-96-455
Exchange Access Services, and Intra-)	
LATA Interexchange Telecommunications)	
Services in Portions of the State of)	
Missouri, and to Classify Said Services)	
as Competitive.)	

STIPULATION AND AGREEMENT

1. American Communication Services of Kansas City, Inc. ("ACSI") initiated this proceeding on June 28, 1996, by filing an Application requesting certificate of service authority to provide basic local telecommunications service, local exchange telecommunications service, exchange access service, and intraLATA interexchange telecommunications services in exchanges currently served by Southwestern Bell Telephone Company ("SWB"), GTE Midwest Incorporated ("GTE"), and United Telephone Company of Missouri ("United").

2. The Commission has granted the timely applications to intervene of SWB, the "Small Telephone Company Group"¹, Bourbeuse Telephone Company, Fidelity Telephone

¹ The following companies comprise the "Small Telephone Company Group": BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Ladrop Telephone Company, Le-Ru Telephone Company, Mark Twain Rural Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New Florence Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Oregon Farmers Mutual Telephone

Company, AT&T Communications of the Southwest, Inc. ("AT&T"), GTE, and MCI Telecommunications Corporation ("MCI"). United did not seek and has not been granted intervention in this proceeding.

3. Pursuant to the Commission's scheduling order, representatives of the Commission Staff, the Office of Public Counsel and all of the aforementioned parties participated in a prehearing conference on September 16, 1996.

4. For purposes of this Stipulation and Agreement, the parties agree that applications for local exchange and basic local exchange authority in exchanges served by "large" local exchange companies (LECs)² should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

5. In determining whether ACSI's application for certificate of service authority should be granted, the Commission should consider ACSI's technical, financial and managerial resources and abilities to provide basic local telecommunications service. ACSI 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 the applicant seeks to compete. Further, ACSI agrees to meet the minimum basic local service standards, including quality of service and

Company, Ozark Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company.

²Large LEC's are defined as LECs who serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1996. In Missouri, the current large LECs are SWBT and United.

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, ACSI agrees that, unless otherwise ordered by the Commission, the applicant'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 LEC(s) within those service area(s) applicant seeks authority to provide service. Further, ACSI agrees 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, ACSI agrees 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 (1996 Supp.). At the suggestion of the staff and with the concurrence of all the parties, ACSI hereby withdraws its initial request for authority in this docket to provide intraLATA interexchange telecommunications services. To the extent needed, ACSI subsequently will file for interexchange authority in a separate docket.

6. ACSI has submitted its application without tariffs and seeks a temporary waiver

of 4 CSR 240-2.060(4)(H).³ ACSI agrees 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 ACSI 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(s), ACSI 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.

7. ACSI has, pursuant to Section 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 ACSI's

services:	<u>STATUTORY PROVISIONS</u>	<u>COMMISSION RULES</u>
	Section 392.210.2	4 CSR 240-10.020
	Section 392.270	4 CSR 240-30.040
	Section 392.280	4 CSR 240-35
	Section 392.290.1	
	Section 392.300.2	
	Section 392.310	
	Section 392.320	
	Section 392.330	
	Section 392.340	

³Good 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.

8. 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 of SB 507 regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service, in negotiating the remaining provisions of this Stipulation and Agreement.

B. ACSI CERTIFICATION

9. ACSI has submitted a Late Filed Exhibit II to its Application, with consent of the parties, on October 11, 1996 in which it has identified by name the exchanges in which it seeks authority to provide service. The exchanges identified are those currently served by SWB, GTE and United. Further, ACSI hereby agrees that its original Application should be deemed further amended to include by reference the terms and provisions described in paragraphs 5-7 hereinabove. ACSI hereby further amends paragraph 9 of its original application to request waiver of only those statutory provisions and Commission rules as are now enumerated in paragraphs 7 and 13 in this Stipulation and Agreement.

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

- 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 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.

11. ACSI asserts and no party opposes, that ACSI's application and request for authority to provide basic local telecommunications service and local exchange telecommunications services (including exchange access service) should be granted. All services⁴ authorized herein should be classified as competitive telecommunications services, provided that the requirements of Section 392.200 continue to apply, and ACSI shall be classified as a competitive telecommunications company. ACSI asserts, and no party opposes, that such services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of ACSI'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

⁴Switched exchange access service is further addressed in paragraph 11 below.

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 maximum switched access service rates as set forth in paragraph 5 herein shall be cost-justified and 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 Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

12. ACSI'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 ACSI does not yet have approved

interconnection agreements with the large incumbent LECs. ACSI 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 30-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above. ACSI 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 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 the incumbent local exchange carriers within whose service areas it seeks authority to provide service; provided, when applicant submits its tariffs in this docket to the Commission such tariffs shall have a minimum of a 30-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."

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

STATUTORY PROVISIONS

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

COMMISSION RULES

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

14. 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.

15. 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, 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 Section 536.080.2, RSMo 1994; and their respective rights to seek rehearing pursuant to Section 386.500 RSMo 1994 and to seek judicial review pursuant to Section 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 ACSI application made herein.

16. 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 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 to 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.

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 ACSI, subject to the conditions described above, as expeditiously as possible.

Respectfully submitted,

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