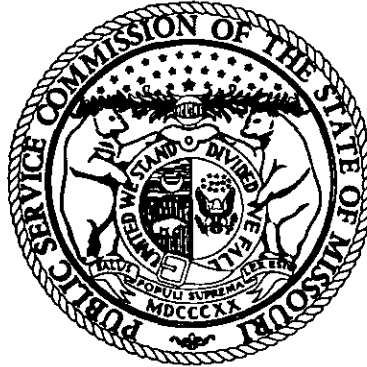


**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**



In the Matter of the Application of ExOp of
Missouri, Inc., for a Certificate of Service
Authority to Provide Local Exchange Telecom-
munications Services.

)
) Case No. TA-97-193
)
)
)

REPORT AND ORDER

Issue Date: November 25, 1997

Effective Date: December 5, 1997

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of ExOp of Missouri, Inc., for a Certificate of Service Authority to Provide Local Exchange Telecommunications Services.)
) Case No. TA-97-193
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APPEARANCES

Peter Mirakion III, Spencer, Fane, Britt & Browne, LLP, 1010 Grand Avenue, Suite 500, Kansas City, Missouri 64106, for ExOp of Missouri, Inc.

Anthony K. Conroy, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

James C. Stroo, Associate General Counsel-Midwest, GTE Telephone Operations, 1000 GTE Drive, Post Office Box 307, Wentzville, Missouri 63385-0307, for GTE Midwest Incorporated.

Craig S. Johnson, Andereck, Evans, Milne, Peace & Baumhoer, 305 East McCarty Street, Post Office Box 1438, Jefferson City, Missouri 65102, for: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Modern Telecommunications Co., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company (the Mid-Missouri Group of Local Exchange Telephone Companies).

Linda K. Gardner, Senior Attorney, United Telephone Company of Missouri d/b/a Sprint, 5454 West 110th Street, Overland Park, Kansas 66211, for United Telephone Company of Missouri d/b/a Sprint.

Sondra B. Morgan, Brydon, Swearingen & England, P.C., 312 East Capitol Avenue, Post Office Box 456, Jefferson City, Missouri 65102-0456, 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, Iamo 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 (the Small Telephone Company Group); 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.

Carol M. Keith, Assistant General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Elaine E. Bensavage.

REPORT AND ORDER

Procedural History

ExOp of Missouri, Inc. (ExOp) applied to the Missouri Public Service Commission (Commission) on November 13, 1996, for a certificate of service authority to provide basic local telecommunications services in Missouri under Section 392.410 - .450, RSMo 1994.¹ Because of some inconsistencies regarding the type of certificate(s) being requested, the type of services being offered, and the geographic area in which ExOp sought to do business, ExOp was requested to file an Amended Application, which it did on January 7, 1997. In the Amended Application ExOp specified that it wished to provide basic local telecommunications services, and included a list of wire centers for every incumbent local exchange company (ILEC) in the state, in lieu of a list of exchanges. However, ExOp also indicated that it intended to provide service primarily in Missouri's rural communities. ExOp asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by

¹ All statutory references are to Revised Statutes of Missouri 1994, except where otherwise noted.

Sections 392.361 and 392.420. ExOp is a Missouri corporation, with its offices located at 402-A East Bannister Road, Kansas City, Missouri 64131.

The Commission issued an Order and Notice on January 29, 1997, directing parties wishing to intervene in the case to do so by February 28, 1997. On March 10, 1997, ExOp filed a letter which further clarified the types of service it wished to offer, and indicated that it intended to be a facilities-based provider of service, but also might resell some services. On March 21, 1997, the Commission granted permission to intervene to the following entities:

Southwestern Bell Telephone Company (SWBT)
The Small Telephone Company Group²
Bourbeuse Telephone Company
Fidelity Telephone Company
MCI Telecommunications Corporation
GTE Midwest Incorporated (GTE)
United Telephone Company of Missouri
d/b/a Sprint (Sprint-United)
The Mid-Missouri Group of Local Exchange
Telephone Companies³

² For purposes of this proceeding, 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 Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo 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.

³ For purposes of this proceeding, The Mid-Missouri Group of Local Exchange Telephone Companies is composed of: Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, MoKan Dial, Inc., Modern Telecommunications Co., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

The parties filed a Stipulation and Agreement (Stipulation, Attachment A to this order) on May 19, 1997, and on the same date ExOp filed a Second Amended Application and a motion asking that the Commission establish a hearing date to consider approval of the Stipulation, or in the alternative waive a hearing. The Stipulation does not contain the signature of the Staff of the Commission (Staff); however, on May 20, 1997, Staff separately filed a document entitled "Assent to Stipulation." The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on May 28, 1997. The Second Amended Application, which apparently is intended to modify ExOp's application, contains an amended list of certain wire centers located only in the territories of GTE and Sprint-United.⁴ The Second Amended Application also modifies the list of requested waivers to include only those waivers which have been previously granted by the Commission in conjunction with certificates of service authority to provide basic local telecommunications service.

Because the record was confused concerning the type of service ExOp intends to offer and the location where it intends to offer it, the Commission scheduled a hearing on the Stipulation on October 3, 1997. At the hearing ExOp made clear which services it wishes to offer, that it wishes to be totally facilities-based, and that it also wishes to offer service in certain portions of the territory of SWBT. As a result of the questions raised during the hearing, ExOp submitted a late-filed exhibit which it designated as Exhibit No. 2, and which the Commission has designated as Late-filed Exhibit No. 1, titled "Supplement to Exhibit B of ExOp's Second Amended Application, Which Lists the Geographic Area in Which

⁴ The Stipulation, however, states that ExOp is confining its requested service area to those exchanges in the Kansas City area served by SWBT, GTE, and Sprint-United.

ExOp Intends to Do Business." ExOp also subsequently submitted another late-filed exhibit which it designated as Exhibit No. 3, and which the Commission has designated as Late-filed Exhibit No. 2, titled "ExOp's Projected Financial Statements #2 and Accountants' Compilation Report -- Periods Ended 1997 through 2006."

Background

ExOp wishes certification to provide facilities-based basic local telecommunications service. ExOp wants to provide basic local services in portions of Missouri that are currently served by SWBT, GTE and Sprint-United. ExOp is no longer asking for certification in any area that is served by a small incumbent local exchange provider. The specific wire centers in which ExOp proposes to operate are described in Exhibit B to the Second Amended Application, and in Late-filed Exhibit 1 (Attachment B to this Order). ExOp is requesting that its basic local exchange services be classified as competitive and that certain statutes and regulatory rules be waived for ExOp.

Discussion

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

Commission Rule 4 CSR 240-2.060(4) requires a Missouri 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 certified copy of its Articles of Incorporation, 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. ExOp 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 ExOp to submit a tariff until it has executed interconnection agreements with the incumbent local exchange carriers (ILECs) involved. ExOp cannot price its services until it has reached agreements with the ILECs with which it seeks to interconnect. 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. ExOp will file the tariff in Case No. TA-97-193 and give notice of the tariff filing to all the parties and participants. Along with that filing ExOp has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

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.

On September 19, 1997, ExOp filed an exhibit which 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 management, technical and engineering, design, and sales and marketing.

ExOp also submitted as Exhibit D a two-year forecasted financial statement, which is attached to the Amended Application. ExOp explained that it intends to file an application for certificates of service authority to provide interexchange and local exchange telecommunications service in the near future, and that because of the impracticality of forecasting the basic local aspect of ExOp's proposed business without including the other two portions of the business, the financial information in Exhibit D does not separately segregate the basic local portion of the business.

Subsequently, on October 21, 1997, ExOp filed what it designated as Exhibit No. 3 and what the Commission has designated as Late-filed Exhibit No. 2, which shows updated financial projections for ExOp. The parties agreed in the Stipulation that ExOp possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

The Commission notes generally that it has concerns about the quality and adequacy of the financial information that has been provided by applicants in the past to support a finding that they possess sufficient financial resources and abilities to provide basic local telecommunications service. The Commission expects its Financial Analysis Department to evaluate the financial information provided and make an assessment of the

financial qualifications of applicants, prior to entering into a stipulation and agreement or otherwise recommending approval of an application. In addition, the Commission will be looking closely at the interconnection and resale agreements filed by applicants to see what protections are provided for in the agreements.

2. The entrant's proposed services satisfy the minimum standards established by the Commission. ExOp stated in its Amended Application and Second Amended Application that it intends to provide basic local telecommunications service. In the letter filed on March 10, 1997, ExOp further explained that it proposes to provide facilities-based service, and will either "tag along" with ILECs by offering affiliated services such as video teleconferencing, utility monitoring, alarm services, and high-speed Integrated Services Digital Network (ISDN)-based Internet connections, or will resell basic local service in conjunction with the affiliated services. At the hearing on the Stipulation, ExOp indicated on the record that it intended to be solely facilities-based, and would provide dial tone (two-way switched voice service), Custom Local Area Signaling Services (CLASS services), ISDN, and Asynchronous Digital Service loop line [sic] (ADSL).

ExOp has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards. The parties agreed that ExOp proposes to offer basic local services that satisfy the minimum standards established by the Commission.

3. The geographic area in which the company proposes to offer service. ExOp sets out in Exhibit B to its Second Amended Application, as supplemented by Commission-designated Late-filed Exhibit No. 1, all of the wire centers in which it proposes to offer services. At the hearing on the

Stipulation, Staff witness Gay Smith testified that use of wire centers rather than exchanges would still adequately describe the geographic area in which ExOp will provide service. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange. The parties agreed that ExOp 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.

4. **The offering of basic local telecommunications service as a separate and distinct service.** ExOp has agreed to offer basic local telecommunications service as a separate and distinct service.

5. **Equitable access for all Missourians to affordable telecommunications services.** ExOp 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 Section 392.455(5).

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 ExOp should be classified as a competitive telecommunications company. The parties have also agreed that ExOp's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on ExOp's ability to charge for its access services. ExOp 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 ExOp seeks to operate. The parties have agreed that the grant of service authority and competitive classification to ExOp should be expressly conditioned on the continued applicability of Section 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 Sections 392.220, RSMo Supp. 1996 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, 392.330, 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:

- A. The Commission finds that competition in the basic local exchange telecommunications markets is in the public interest.
- B. The Commission finds that ExOp 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 ExOp 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 ExOp 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 ExOp a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. ExOp's certificate should become effective when its tariff becomes effective.
- E. The Commission finds that ExOp is a competitive company and should be granted waiver of the statutes and rules set out in Ordered Paragraph 3.
- F. The Commission finds that ExOp's certification and competitive status are expressly conditioned upon the continued

applicability of Section 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 Sections 392.220, RSMo Supp. 1996 and 392.230, rather than Sections 392.500 and 392.510.

- G. 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. ExOp has requested certification under Section 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. 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 Sections 392.185 and 392.455, RSMo Supp. 1996, 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 Section 536.060, RSMo Supp. 1996. Based upon the information contained within the Stipulation and Agreement of the parties, and on its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved and that ExOp should be granted the certificate of service authority requested.

IT IS THEREFORE ORDERED:

1. That the Stipulation And Agreement filed on May 19, 1997 (Attachment A to this Report And Order) is adopted.

2. That ExOp of Missouri, 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 ExOp of Missouri, 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, RSMo Supp. 1996
 - 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 ExOp of Missouri, Inc. has entered into a Commission-approved interconnection agreement or agreements that enable it to provide basic local exchange services.

5. That ExOp of Missouri, Inc. shall file tariff sheets for approval reflecting the rates, rule, regulations and the services it will offer within 30 days after Commission approval of the necessary interconnection agreement(s). The tariff shall be filed in Case No. TA-97-193 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3.

6. That ExOp of Missouri, Inc. shall give notice of the filing of the tariffs described in Ordered Paragraph 5 to all parties or participants. In addition, ExOp 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.

7. That the certification and competitive status of ExOp of Missouri, Inc. are expressly conditioned upon the continued applicability of Section 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 Stipulation must be cost-justified

pursuant to Sections 392.220, RSMo Supp. 1996, and 392.230, rather than Sections 392.500 and 392.510.

7. That this Report And Order shall become effective on December 5, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 25th day of November, 1997.

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

MAY 19 1997

MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
ExOp of Missouri, Inc. for Certificate of) Case No. TA-97-193
Service Authority to Provide Local)
Exchange Telecommunications Services)

STIPULATION AND AGREEMENT

1. ExOp of Missouri, Inc. ("ExOp" or "Applicant") filed an Amended Application on January 7, 1997, requesting certificate of service authority to provide basic local telecommunications service in the State of Missouri. Contemporaneously with this Stipulation and Agreement, ExOp is filing a Second Amended Application, which limits the geographical scope of the first Amended Application by confining ExOp's request to those exchanges in the Kansas City area served by Southwestern Bell Telephone Company ("SWB"), GTE Midwest Incorporated ("GTE"), and United Telephone Company of Missouri d/b/a Sprint ("United").

2. The Commission has granted the timely applications to intervene of SWB, the "Small Telephone Company Group,"¹ the "Mid-Missouri Group of Local Exchange 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; Iamo 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.

Companies,"² Bourbeuse Telephone Company and Fidelity Telephone Company ("Fidelity"), MCI Telecommunications Corporation, GTE, and United.

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 held on April 4, 1997.

4. For purposes of this Stipulation and Agreement, the parties agree that applications for local exchange authority in exchanges served by "large" local exchange companies (LECs)³ 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 ExOp's application for certificate of service authority should be granted, the Commission should consider ExOp's technical, financial and managerial resources and abilities to provide basic local telecommunications service. ExOp 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's 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, ExOp agrees to meet the minimum basic local service standards, including quality

² The following companies comprise the "Mid-Missouri Group of Local Telephone Companies": Alma Telephone Company; Chariton Valley Telephone Corporation; Chocktaw Telephone Company; Mid-Missouri Telephone Company; Modern Telecommunications Company; MoKan Dial, Inc.; Northeast Missouri Rural Telephone Company; Peace Valley Telephone Company.

³ Large LECs are defined as LECs which serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1996. In Missouri, the current large LECs are SWB, GTE and United.

of service and billing standards, as the Commission requires of the incumbent local exchange telecommunications companies with which the Applicant seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo. (1994), as a condition of certification and competitive classification, ExOp agrees that, unless otherwise ordered by the Commission, ExOp'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 whose service area(s) Applicant seeks authority to provide service. Further, ExOp 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 and must be no smaller than an exchange. Finally, ExOp 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.)

6. ExOp has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H).⁴ ExOp 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 them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by ExOp to such parties immediately upon request. Any service authority shall be regarded as

⁴ 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. At this time, ExOp does not have an approved interconnection agreement.

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), ExOp 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. ExOp 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 all parties agree that the Commission should grant such request provided that Section 392.200 RSMo. should continue to apply to all of ExOp's services:

STATUTORY PROVISIONS

COMMISSION RULES

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

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

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 authority to provide or resell basic local telecommunications service, in negotiating the remaining provisions of this Stipulation and Agreement.

B. ExOp's Certification

9. ExOp submitted as Exhibit B to its Amended Application a listing of the specific exchanges in which it sought authority to provide service. In accordance with the agreement reached at the prehearing conference, ExOp has limited the exchanges for which it seeks authority in the Second Amended Application and this Stipulation and Agreement to those exchanges in the Kansas City area served by SWB, GTE, and United.

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

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

"The service authority and service classification herein granted are subject to the requirements of Section 392.200 and are conditional and shall not be exercised until such time as tariffs for services have become effective."

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

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. ExOp'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, at the time of the filing of the application, ExOp did not yet have approved interconnection agreements with the large incumbent LECs. ExOp 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. ExOp 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 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 did 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. ExOp's request for waiver of the applications of the following rules and statutory provisions as they relate to the regulation of ExOp's new services should be granted:

STATUTORY PROVISIONS

COMMISSION RULES

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

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 each of the following, 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 ExOp application made herein.

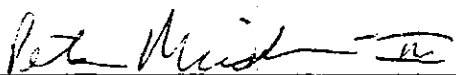
16. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any 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 or bind or prejudice the party submitting such memorandum in any future 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. 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 ExOp of Missouri, Inc., subject to the conditions described above, as expeditiously as possible.

Respectfully submitted,


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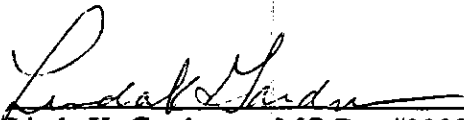
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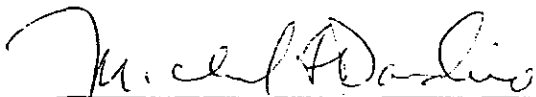
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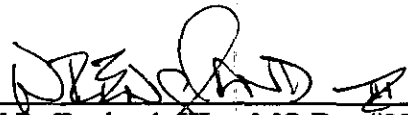
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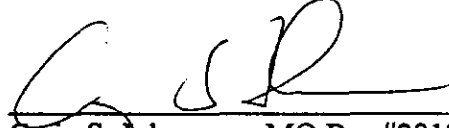
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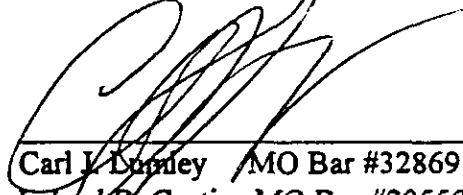
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For: GTE Midwest Incorporated

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Stipulation and Agreement was served upon the following persons by depositing a true copy thereof in the United States Mail, postage prepaid, or by hand delivery, this 16th day of May, 1997.

A handwritten signature in cursive, appearing to read "Peter M. ...", is written over a horizontal line.

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EXHIBIT B

List of Exchanges and Carriers

See attached list.

United
United
United
United
United
United
United
United
United
United
United
United
United
United

Pleasant Hill
Smithton
Strasburg
Sweet Springs
Syracuse
Tartio
Tipton
Urich
Warrensburg
Warsaw
Waverly
Wellington
Weston
Windsor

182852.01

Supplement to Exhibit B of ExOp's Second Amended Application, Which Lists the Geographic Area in Which ExOp Intends to do Business

<u>TELEPHONE COMPANY</u>	<u>EXCHANGE</u>	<u>WIRE CENTER</u>
SWBT	Adrian	Adrian
SWBT	Agency	Agency
SWBT	Archie	Archie
SWBT	Blue Springs	Blue Springs, Grain Valley
SWBT	Blue Springs	Blue Springs
SWBT	Brookfield	Brookfield
SWBT	Camdenton	Camdenton North
SWBT	Camdenton	Camdenton South
SWBT	Chillicothe	Chillicothe
SWBT	Excelsior Springs	Excelsior Springs
SWBT	Kansas City	Belton
SWBT	Kansas City	Benton
SWBT	Kansas City	East Independence
SWBT	Kansas City	Independence
SWBT	Kansas City	Independence South
SWBT	Kansas City	Lees Summit/Green Wood
SWBT	Kansas City	Liberty
SWBT	Kansas City	Nashua
SWBT	Kansas City	Parkville/Farley
SWBT	Kansas City	Parkville
SWBT	Marceline	Marceline
SWBT	Richmond	Richmond
SWBT	Rushville/DeKalbe	Rushville/DeKalbe
SWBT	San Antonio	San Antonio
SWBT	Smithville	Smithville
SWBT	St. Joseph	St. Joseph, Downtown
SWBT	St. Joseph	St. Joseph, Midtown