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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Kansas City)
Fiber Network, L.P., for Certification to Provide)
Basic Local Telecommunications Service in the) Case No. TA-96-354
Kansas City Metropolitan Area and for Designation)
of That Service as a Competitive Service.)
)

REPORT AND ORDER

Issue Date: January 14, 1997

Effective Date: January 24, 1997

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APPEARANCES

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Fiber Network, L.P.

Diana J. Harter, Attorney, Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630, St. Louis, Missouri 63101, for Southwestern Bell Telephone Company.

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Sondra B. Morgan and W.R. England, III, Brydon, Swearingen & 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; Bourbeuse Telephone Company and Fidelity Telephone Company

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

James C. Stroo, Associate General Counsel-Midwest, GTE Operations,
1000 GTE Drive, Wentzville, Missouri 63385, for GTE Midwest Incorporated.

Paul S. DeFord, Lathrop & Gage L.C., 2345 Grand Boulevard, Kansas City, Missouri 64106, for AT&T Communications of the Southwest, Inc.

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 F. Dale, Deputy General Counsel, and Timothy J. McClellan, Assistant General 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: L. Anne Wickliffe, Deputy Chief.

REPORT AND ORDER

Procedural History

Kansas City Fiber Network, L.P. (KC FiberNet) applied to the Commission on April 24, 1996, for a certificate of service authority to provide basic local telecommunications service in Missouri under § 392.410 - .450 RSMo (1994)¹. KC FiberNet asked the Commission to classify it as a competitive company and waive certain statutes and Commission rules as authorized by §§ 392.361 and 392.420. The company amended its application on October 28, 1996, to specify that it seeks authority to provide basic local services only in exchanges served by Southwestern Bell Telephone Company (SWBT), United Telephone Company of Missouri d/b/a Sprint (Sprint-United) or GTE Midwest Incorporated (GTE). KC FiberNet is a limited partnership organized under the laws of the state of Delaware and is authorized to do business in Missouri. The company's principal place of business is at 1111 Main Street, Suite 300, Kansas City, Missouri. KC FiberNet is a limited partnership made up of

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

Kansas City Cable Partners, TeleCable Corporation, TeleCable KCFN Holding Corporation and FiberNet Holdings, Inc.

The Commission issued an Order and Notice on April 30, 1996, directing parties wishing to intervene in the case to do so by May 30, 1996. The Commission granted permission to intervene to the following entities on June 14, 1996:

Southwestern Bell Telephone Company
MCI Telecommunications Corporation
The Small Telephone Company Group²
Bourbeuse Telephone Company
Fidelity Telephone Company
United Telephone Company of Missouri d/b/a Sprint
AT&T Communications of the Southwest, Inc.
GTE Midwest Incorporated

The parties filed a Stipulation and Agreement (SA), Attachment A to this order, on October 30, 1996, and requested the Commission to establish a hearing date to consider approval of the agreement. The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on November 14, 1996. Staff's suggestions included sworn testimony by a member of the Commission's telecommunications staff. The Commission conducted a hearing on November 20, 1996, where the parties made presentations and were available for Commission questions.

²The following companies make up 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, 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.

Background

KC FiberNet, which is certificated to provide intrastate interexchange and local exchange services in Missouri, wishes certification to provide and resell basic local telecommunications service as well. KC FiberNet wants to provide basic local services in portions of the Kansas City Metropolitan Calling Area that are currently served by SWBT, GTE and Sprint-United. KC FiberNet is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which KC FiberNet proposes to operate are described in the Amendment to Application filed on October 28, 1996 (Attachment B to this order). KC FiberNet is requesting that its basic local exchange services be classified as competitive and that application of certain statutes and regulatory rules be waived.

Discussion

A. Requirements of 4 CSR 240-2.060(4). Commission rule 4 CSR 240-2.060(4) requires a foreign limited partnership 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 copy of its partnership agreement, 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. KC FiberNet provided all the required documentation either with its application or by reference to documents on file under other case numbers (as permitted by 4 CSR 240-2.060(4)(E)), except for the proposed tariff. The company filed its 1995 financial statement and a Motion to Incorporate Applicant's 1995 Financial Statement into the Record on December 12, 1996. No objections to the motion were filed with the

Commission. The company has requested a temporary waiver of 4 CSR 240-2.060(4)(H) because it is impractical for KC FiberNet to submit a tariff until it has executed interconnection agreements with the incumbent local exchange carriers (ILECs) involved. KC FiberNet 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. KC FiberNet will file the tariff in Case No. TA-96-354 and give notice of the tariff filing to all the parties and participants. Along with that filing KC FiberNet has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas (SA page 5, ¶ 3).

B. Basic local service certification. Section 392.455, RSMo (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. KC FiberNet submitted Appendices 2 and 3 with its application listing the names and describing the qualifications of its management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including utility accounting and regulation, technology, engineering, construction and marketing. KC FiberNet submitted its 1993, 1994 and 1995 financial statements. The parties agreed that KC FiberNet possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service (SA page 7, ¶ 7(A)).

2. The entrant's proposed services satisfy the minimum standards established by the Commission. KC FiberNet stated in its application that, through use of its state-of-the-art optical fiber network and associated technologies, it will provide reliable, low cost service to consumers. KC FiberNet has agreed to meet the Commission's minimum basic local service standards (SA page 7, ¶ 7(B)).

3. The geographic area in which the company proposes to offer service. KC FiberNet set out in its Amendment to Application all the exchanges in which it proposes to offer services. KC FiberNet has defined its service area as the Kansas City Metropolitan Calling Area exchanges that are presently receiving basic local service from SWBT, GTE and Sprint-United. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange (SA page 7, ¶ 7(C)). The parties agreed that KC FiberNet has sufficiently identified

the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries (SA page 7).

4. **The offering of basic local telecommunications service as a separate and distinct service.** KC FiberNet has agreed to offer basic local telecommunications service as a separate and distinct service (SA page 7, ¶ 7(D)).

5. **Equitable access for all Missourians to affordable telecommunications services.** KC FiberNet 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 (1996) (SA page 8, ¶ 7(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 re 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 re Southwestern Bell Telephone Co.'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 KC FiberNet should be classified as a competitive telecommunications company (SA pages 8-9). The parties have also agreed that KC FiberNet's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on KC FiberNet's ability to charge for its access services. KC FiberNet 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 KC FiberNet seeks to operate (SA page 4). The parties have agreed that the grant of service authority and competitive classification to KC FiberNet should be expressly conditioned on the continued applicability of § 392.200 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 and 392.230, rather than §§ 392.500 and 392.510 (SA page 9).

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 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 (SA pages 10-11).

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 KC FiberNet 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 KC FiberNet 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 KC FiberNet 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 KC FiberNet a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. KC FiberNet's certificate should become effective when its tariff becomes effective.
5. The Commission finds that KC FiberNet 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 KC FiberNet's certification and competitive status are expressly conditioned upon the continued applicability of § 392.200 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 and 392.230, rather than §§ 392.500 and 392.510.

Conclusions of Law

The Missouri Public Service Commission has arrived at 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. KC FiberNet 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 (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 offered as a resolution of the issues raised in this case, pursuant to § 536.060. Based upon the information contained within the Stipulation and Agreement of the parties, the supporting information offered at the hearing on November 20, 1996, and on its findings of fact,

the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That Kansas City Fiber Network, Inc.'s Motion to Incorporate Applicant's 1995 Financial Statement Into the Record, filed on December 12, 1996, is granted.

2. That Kansas City Fiber Network, 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 Kansas City Fiber Network, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2	- uniform system of accounts
392.270	- valuation of property (ratemaking)
392.280	- depreciation accounts
392.290.1	- issuance of securities
392.300.2	- acquisition of stock
392.310	- stock and debt issuance
392.320	- stock dividend payment
392.330	- 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

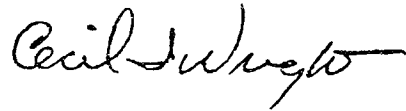
4. That the filing of a 45-day tariff as required by 4 CSR 240-2.060(4) (H) is waived until Kansas City Fiber Network, Inc. has entered

into a Commission-approved interconnection agreement that enables it to provide basic local exchange services.

5. That Kansas City Fiber Network, 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 sheets shall reflect the rates, rule, regulations and the services the company will offer. The tariff filing shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 3.

6. That this Report and Order shall become effective on January 24, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 14th day of January, 1997.

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FILED

OCT 30 1996

MISSOURI
PUBLIC SERVICE COMMISSION

In the Matter of the Application of)
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Certification to Provide Basic Local)
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Kansas City Metropolitan Area and)
for Designation of that Service as)
a Competitive Service.)

STIPULATION AND AGREEMENT

Kansas City Fiber Network, L.P. ("KC FiberNet") initiated this proceeding on April 24, 1996, by filing an Application requesting a certificate of service authority to provide basic local telecommunications services in the Kansas City Metropolitan Calling Area ("Kansas City MCA"). Concurrent with the filing of this Stipulation and Agreement, KC FiberNet has filed an amendment to its Application to exclude those portions of the Kansas City MCA other than those served by Southwestern Bell Telephone Company ("SWBT"), Sprint-United Telephone Company ("Sprint-United"), and GTE Midwest, Inc. ("GTE"). In that amendment, KC FiberNet specifically lists the exchanges in which it seeks authority to provide basic local telecommunications service. The exchanges specifically excluded from the Application are listed below.

The Commission has granted the timely applications to intervene of MCI Telecommunications Corporation ("MCI"), SWBT, the Small Telephone Company Group¹ ("STCG"), Bourbeuse Telephone

¹ The Small Telephone Company Group is comprised 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, KLM Telephone Company, (continued...)

Company and Fidelity Telephone Company (hereinafter collectively referred to as "Fidelity"), GTE, United Telephone Company of Missouri ("United"), and AT&T Communications of the Southwest, Inc. ("AT&T").

Pursuant to the Commission's Scheduling Order, representatives of the Commission Staff, the Office of Public Counsel and the aforementioned parties participated in a prehearing conference on July 22, 1996. KC FiberNet filed a proposed procedural schedule on September 30, 1996.

During the prehearing conference on July 22, 1996, KC FiberNet represented that it would amend its Application to exclude the exchanges served by rural telephone companies within the Kansas City MCA. The exchanges in the Kansas City MCA which KC FiberNet hereby excludes from its Application are:

MCA 4 Exchanges

Peculiar
Cleveland

MCA 5 Exchanges

Drexel
Garden City
East Lynne
Freeman
Lathrop

¹(...continued)

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.

As a result of negotiation and discussion, the parties stipulate and agree to the following:

A. PROCEDURAL MATTERS

1. In general, applications for basic local exchange service 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. Upon receipt of an application, the Commission should provide notice to all Missouri local exchange and interexchange telecommunications companies. An intervention deadline should be established at the time notice of the application is provided. If proper and timely applications to intervene are filed and granted, the Commission should schedule a prehearing conference to facilitate development of a procedural schedule. In the event no party requests the opportunity to be heard, cases should be promptly resolved without evidentiary hearing based upon the verified application, unless the Commission determines otherwise.

2. In determining whether such applications for authority should be granted, the Commission should consider the applicant's technical, financial and managerial resources and abilities to provide basic local telecommunications service. The applicant 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

² Large LECs are defined as LECs which serve 100,000 or more access lines. Section 386.020 RSMo. In Missouri, the current large LECs are SWBT, GTE and United.

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, 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 incumbent local exchange telecommunications companies with which the applicant seeks to compete. Notwithstanding the provisions of § 392.500 R.S.Mo. (1994), as a condition of certification and competitive classification, the applicant must agree 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 standard access rates (excluding discounted access rates allowed, for example, in return for term and volume traffic commitments) 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, the applicant must offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic 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, the applicant must agree to provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their

income, to affordable telecommunications services.³ See § 392.455 RSMo. (1996 Supp.).

3. Such applications submitted without tariffs should generally be processed in due course, provided the applicant seeks a waiver of 4 CSR 240-2.060(4)(H).⁴ The applicant should file its initial tariff(s) in the certification docket and serve all parties thereto with written notice at the time the initial tariff(s) is/are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) should be provided by the applicant to such parties immediately upon request. Any service authority shall be regarded as conditional, and shall not be exercised until such time as tariff(s) for services have become effective. When filing its initial basic local tariff, an applicant shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier, and its explanation of why such an interconnection agreement is unnecessary for any such areas.

4. In the event that an applicant shall, pursuant to § 392.420 RSMo., request that the Commission waive the application of any or all of the following statutory provisions and rules to

³ This Stipulation and Agreement is intended to address procedural standards for applications for authority to provide or resell basic local telecommunications service. Applications for other than basic local authority should be processed pursuant to §§ 392.430-440 and the Commission should simply apply a public interest standard in determining whether such authority should be granted.

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.

basic local telecommunications services, the Commission should grant such request provided that § 392.200 RSMo. should continue to apply to all of an applicant's services.

STATUTORY PROVISIONS

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

COMMISSION RULES

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

5. The parties have employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and §§ 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. CERTIFICATION

6. KC FiberNet has amended its Application, in identifying the exchanges in the Kansas City MCA in which it seeks authority to provide service.⁵ KC FiberNet hereby agrees that its Application should be deemed further amended to include by reference the terms

⁵ The identification of specific geographic areas within which KC FiberNet proposes to offer service as referred to in this paragraph shall not be construed to foreclose KC FiberNet from petitioning the Commission pursuant to §§ 392.200.4 and .8, RSMo.

and provisions described in paragraphs 2-4 hereinabove. KC FiberNet also seeks waiver of certain statutory provisions and Commission rules as to its new services enumerated in its Application.

7. Based upon KC FiberNet's verified Application, as amended, KC FiberNet asserts, and no party contests, that there is sufficient evidence from which the Commission should find and conclude that KC FiberNet:

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 service 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;⁶ and

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

8. KC FiberNet asserts, and no party opposes, that its Application and request for authority to provide basic local telecommunications service and local exchange telecommunications services (including exchange access service) should be granted. All services authorized herein should be classified as competitive telecommunications services, provided that the requirements of § 392.200 continue to apply and KC FiberNet shall remain classified as a competitive telecommunications company. KC FiberNet asserts, and no party opposes, that such new services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of KC FiberNet's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective

⁶ The agreement in Paragraph 7E of this Stipulation and Agreement is without prejudice to KC FiberNet's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's consideration of equitable access under § 392.455.(5), RSMo. Furthermore, such agreement should not be construed as an admission or conclusion by KC FiberNet that § 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access.

upon the tariffs for the services becoming effective. Such authority should be conditional, not to 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 § 392.200 and are conditional and shall not be exercised until such time as tariffs for services have become effective.

The parties agree that KC FiberNet's switched exchange access services may be classified as competitive services. The parties further agree that KC FiberNet's switched exchange access services are subject to § 392.200. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 2 herein shall be cost justified and 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 classifications for switched exchange access granted herein is expressly conditioned on the continued applicability of § 392.200 and the requirement that any increases in switched access service rates set forth herein shall be cost justified and pursuant to §§ 392.220 and 392.230 and not §§ 392.500 and 392.510.

9. KC FiberNet's request for a waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties and should be granted because KC FiberNet does not yet have

approved interconnection agreements with the large incumbent LECs. KC FiberNet 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. KC FiberNet shall serve notice to all parties and participants in this docket of the filing of its tariffs at the time they are filed with the Commission, and serve them with the aforesaid written disclosure, and shall upon request immediately provide any party with a copy of those tariffs. The Commission's Order should state these obligations as conditions to the waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

Applicant's request for 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 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.

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

STATUTORY PROVISIONS

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

COMMISSION RULES

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

11. The Commission should set this matter for hearing on an expedited schedule.

12. 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 and Agreement in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provision hereof. While the Stipulations in Part A hereof are generic, the Stipulations in Part B hereof 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.

13. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and KC FiberNet waive, with respect to the issues resolved herein, their respective rights pursuant to § 536.080.1 RSMo. (1994), to present testimony, to cross-examine witnesses, to present oral argument or written briefs, to the reading of the transcript by the Commission pursuant

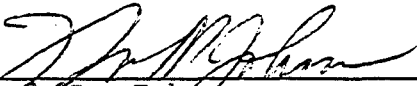
to § 536.080.2 RSMo. (1994), to seek rehearing pursuant to § 386.500 RSMo. (1994), and to seek judicial review pursuant to § 386.510 RSMo. (1994). The parties agree to cooperate with KC FiberNet and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of KC FiberNet's Application made herein.

14. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.


15. 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 KC FiberNet 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 Kansas City Fiber Network, L.P., subject to the conditions described above, in advance of December 9, 1996.

Respectfully submitted,


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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of)
Kansas City Fiber Network, L.P., for)
Certification to Provide Basic Local)
Telecommunications Service in the) Case No. TA-96-354
Kansas City Metropolitan Area and)
for Designation of that Service as)
a Competitive Service.)

AMENDMENT TO APPLICATION

Comes now Kansas City Fiber Network, L.P. ("KC FiberNet"), by its undersigned attorneys, and amends its Application in this docket to reflect the exchanges in which it seeks Commission authority to provide basic local telecommunications services. In support of its amendment, KC FiberNet states the following:

1. Each of the exchanges in which KC FiberNet seeks authority is located in the Kansas City Metropolitan Calling Area ("Kansas City MCA"). KC FiberNet's intent in filing this amendment is to exclude all exchanges in the Kansas City MCA which are not served by either Southwestern Bell Telephone Company, Sprint-United Telephone Company, or GTE Midwest, Inc.

2. The exchanges in which KC FiberNet seeks authority are as follows:

Southwestern Bell

Gladstone
Independence
Parkville
Raytown
South Kansas City
Belton
Blue Springs
East Independence
Lee's Summit
Liberty

Sprint-United

Odessa
Ferrellview
Oak Grove
Lake Lotawana
Platte City
Kearney
Weston
Camden Point
Missouri City
Buckner

GTE Midwest

Lawson
Plattsburg
Trimble

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Southwestern Bell (cont.)

Nashua
Tiffany Springs
Farley
Smithville
Grain Valley
Greenwood
Leavenworth
(MO customers)
Excelsior Springs
Richmond
Archie

Sprint-United (cont.)

Edgerton
Holt
Orrick
Lone Jack
Pleasant Hill
Harrisonville
Dearborn
Henrietta
Wellington
Holden
Kingsville
Strasburg

WHEREFORE, Kansas City Fiber Network, L.P. requests that the Commission amend the Application for Basic Local Telecommunications Service, as noted above.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing document were served via first-class mail, postage prepaid, on this 25th day of October, 1996, to the following parties:

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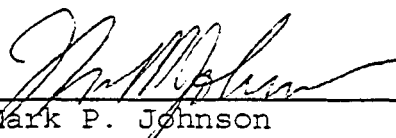
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