

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Sprint)
Communications Company L.P. for a Certificate)
of Service Authority to Provide Basic Local)
Telecommunications Service and Local Exchange)
Telecommunications Service.)
)

Case No. TA-97-269

REPORT AND ORDER

Issue Date: April 21, 1998

Effective Date: May 1, 1998

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OF THE STATE OF MISSOURI

In the Matter of the Application of Sprint)
Communications Company L.P. for a Certificate)
of Service Authority to Provide Basic Local) **Case No. TA-97-269**
Telecommunications Service and Local Exchange)
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)

APPEARANCES

Julie Thomas Bowles, Attorney, Sprint Communications Company L.P., 8140 Ward Parkway, Post Office Box 8417, Kansas City, Missouri 64114-0417, for Sprint Communications Company L.P.

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 Spring (now Sprint Missouri, Inc. d/b/a Sprint)

Thomas R. Schwarz, Jr., Deputy 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

Sprint Communications Company L.P. (Sprint) applied to the Commission on January 14, 1997, for a certificate of service authority to provide basic local telecommunications services and local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1997. Sprint

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

subsequently filed an amended application on March 17. Sprint was previously granted a conditional certificate of service authority to provide basic local and local exchange telecommunications services in the territories currently served by Southwestern Bell Telephone Company (SWBT) and GTE Midwest Incorporated (GTE) on February 28 in Case No. TA-96-424. In the present application Sprint seeks authority to provide those services in the territory currently served by United Telephone of Missouri d/b/a Sprint (Sprint-United)², an incumbent local exchange company (ILEC) with which it is affiliated. Sprint asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. Sprint is a Delaware limited partnership with offices located at 8140 Ward Parkway, 5th Floor, Kansas City, Missouri 64114.

The Commission issued an Order and Notice on March 10, directing parties wishing to intervene in the case to do so by April 9. The Commission granted intervention to SWBT and GTE³ on April 24.⁴ Sprint-United subsequently filed an application for intervention on July 15, and

² United Telephone Company of Missouri d/b/a Sprint changed its name to Sprint Missouri, Inc. d/b/a Sprint on December 29, 1997 in Case No. TO-98-107. Because most of the pleadings in this case were filed prior to the name change, the Commission will refer to the Company in this Report And Order as "Sprint-United."

³ SWBT subsequently withdrew its intervention on May 9, and GTE withdrew its intervention on May 16.

⁴ MCI Telecommunications Corporation (MCI) filed an application for intervention on February 6, but subsequently withdrew its intervention request on March 13, prior to the Commission's issuance of its Order Granting Intervention and Directing the Filing of Procedural Schedule on April 24.

the Commission issued its Order Granting Intervention Out of Time on August 25.⁵

The parties filed a Stipulation and Agreement (Stipulation, Attachment A to this order) on August 1. The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on November 10. MCI filed an application for intervention on November 13, and filed a motion to consolidate this case with Case No. TA-98-152⁶ on December 19. Responses to the motions were filed by the parties, and on January 20, 1998, the Commission issued its Order Denying Intervention and Consolidation, and Setting Stipulation Hearing. A stipulation hearing was held as scheduled on February 6.

Background

Sprint, which is certificated to provide intrastate interexchange services in Missouri, and basic local and local exchange services in the exchanges of SWBT and GTE, wishes certification to provide both resold and facilities-based basic local telecommunications service and local exchange telecommunications services. Local exchange services are considered competitive services and are subject to different rules and statutory requirements than are basic local services. Therefore, they will be considered separately in the discussion below.

⁵ Sprint-United was granted intervention out of time because its participation in this case had been solicited by the Staff of the Commission, so that Sprint-United could sign the Stipulation. Staff wished to include additional conditions of certification which would bind both Sprint and Sprint-United. Those additional conditions are discussed in section E of this Report And Order, *infra*.

⁶ Case No. TA-98-152 involves the application of GTE Communications Corporation (GTE-CC) for a certificate of service authority to provide basic local telecommunications service in the territory of GTE. GTE is an ILEC with which GTE-CC is affiliated.

Sprint wants to provide basic local and local exchange services in portions of Missouri that are currently served by Sprint-United. Sprint is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which Sprint proposes to operate are described in Exhibit D to Sprint's amended application (Attachment B to this order). Sprint is requesting that its basic local exchange services be classified as competitive and that 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 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. Sprint 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 Sprint to submit a tariff until it has executed an interconnection or resale agreement with the ILEC involved. Sprint cannot price its resold services until it has reached price agreements with the ILEC 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. Sprint will file the tariff in Case No. TA-97-269 and give notice of the tariff filing to all the parties and participants. Along with that filing Sprint has agreed to provide a written disclosure of all

interconnection or resale agreements it has entered into which affect its Missouri service areas.

B. Local exchange certification

The Commission finds that Sprint's entry into competition in the local exchange telecommunications market is in the public interest and the company should be granted a certificate of service authority. The Commission finds that the local exchange services Sprint proposes to offer are competitive and the company should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in Ordered Paragraph 4 is reasonable and not detrimental to the public interest.

C. Basic local exchange certification

Section 392.455, RSMo Supp. 1997, 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.

Sprint filed Exhibit C with its amended application, which lists the names

and qualifications of its management team. The team members have experience in various areas of the telecommunications industry including technical, customer service, legal, sales, marketing, accounting and finance. Sprint also submitted as Exhibit B a copy of the 1995 Annual Report to Shareholders for Sprint Corporation, the parent company of both Sprint and Sprint-United. The parties agreed in the Stipulation that Sprint possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

2. The entrant's proposed services satisfy the minimum standards established by the Commission. Sprint stated in its amended application that its services will include dial-tone access to the public switched telecommunications network, 911 service, directory assistance, dual-party relay service, a universal telephone directory, and various features and functions which will be available through the resale of Sprint-United's services by Sprint.

Sprint has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards. The parties agreed that Sprint 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. Sprint sets out in Exhibit D to its amended application all the exchanges in which it proposes to offer services. Sprint has defined its service area by means of the tariffed exchange areas of the ILEC presently providing basic local service in those exchanges. Exhibit D consists of Commission-approved tariff sheets filed by Sprint-United, describing local exchanges. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange. The parties agreed

that Sprint 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. Sprint has agreed to offer basic local telecommunications service as a separate and distinct service.

5. Equitable access for all Missourians to affordable telecommunications services. Sprint 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), RSMo Supp. 1997.

D. 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 Sprint should be classified as a competitive telecommunications company. The parties have also agreed that Sprint's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on Sprint's ability to charge for its access services. Sprint 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 Sprint seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Sprint should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1997, 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. 1997 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. 1997 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.

E. Additional conditions of certification

In addition to the terms and condition described above, the Stipulation contains a number of additional terms designed to apply specifically to the provision of basic local and local exchange services

by Sprint in the territory served by Sprint-United. The additional terms are intended to address the affiliate relationship between Sprint and Sprint-United, in order to minimize the opportunity for abuse of the relationship. The specific provisions may be summarized as follows:

- (a) Sprint will follow service quality rules, including reporting, to the same extent as other CLECs.
- (b) Sprint-United will treat Sprint as any other nonaffiliated CLEC with regard to interconnection, unbundling, resale, dissemination of technical information, the provision of new services, or the modification of facilities.
- (c) Sprint will not receive preferential treatment with regard to the display of its number and information in Sprint-United's phone directories.
- (d) Sprint and Sprint-United will conduct operations independently.
- (e) Sprint shall maintain separate books, records, and accounts;
- (f) Sprint may not obtain credit in a way which would permit the creditor to have direct recourse to the assets of Sprint-United.
- (g) Sprint shall conduct all transactions with Sprint-United at arm's length and in writing.
- (h) Sprint-United may not engage in discrimination between Sprint and any other entity with regard to the provision or procurement of goods, services, facilities, information, and the establishment of standards.
- (i) Sprint-United shall account for any transactions with Sprint in accordance with accounting principles and rules of the FCC and the Commission.
- (j) Both Sprint-United and Sprint shall fill requests for phone exchange service or exchange access on the same terms for unaffiliated entities as they do for affiliated entities.
- (k) Both Sprint-United and Sprint shall fill any requirement to provide telecommunications facilities or services, or network information, to any other entity under the same terms and conditions, consistent with 47 U.S.C. § 251.
- (l) Both Sprint-United and Sprint shall charge its affiliate or impute to itself an amount for access to its phone exchange service and exchange access that is not less than the amount charged to unaffiliated carriers for such service.

- (m) Sprint-United will offer unbundled network element (UNEs) or resale throughout its territory, on the same terms, prices, and conditions, regardless of whether Sprint-United or Sprint provides the underlying facilities. However, the terms, prices, and conditions may vary if the underlying facilities are provided by a nonaffiliated CLEC.
- (n) Sprint shall not offer local services or functionalities based on Sprint-United's services or functionalities that Sprint-United does not offer on a retail basis to its own end user customers.
- (o) Sprint-United and Sprint shall be treated as one company for purposes of determining the effective level of competition in Sprint-United's territory under S.B. 507.

The Commission finds that the question of what protections may be necessary in a situation where a CLEC seeks a certificate of service authority to provide basic local service in the territory of an ILEC with which it is affiliated is a case of first impression. Concerns were raised about the potential for abuses in such a situation. One example discussed in Staff's Suggestions in Support of the Stipulation and Agreement and at the stipulation hearing is the possibility that an affiliated CLEC could place new facilities and offer new services instead of the ILEC, which could encourage the migration of customers to the CLEC by limiting the offerings of the ILEC, and could circumvent the requirements of the Federal Telecommunications Act of 1996 by depriving competitors of access to new facilities or new services through the purchase from an ILEC of services for resale or UNEs.

The Commission finds that the provisions of the Stipulation address the major concerns relating to the provision of basic local service by a CLEC in the territory of an affiliated ILEC. In this case the ILEC, Sprint-United, and the CLEC, Sprint, both have made affirmative commitments and have signed the Stipulation and agreed to be bound thereby. The Commission finds that the Stipulation, in conjunction with the

explanations, answers to questions, and commitments given at the stipulation hearing, should ensure that adequate protections are in place to prevent abuses.

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 local exchange and basic local exchange telecommunications markets is in the public interest.
- B. The Commission finds that Sprint 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 Sprint has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that the local exchange services market is competitive and that granting Sprint a certificate of service authority to provide local exchange telecommunications services is in the public interest. Sprint's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that Sprint 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 Sprint a

certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Sprint's certificate shall become effective when its tariff becomes effective.

- F. The Commission finds that Sprint is a competitive company and shall be granted waiver of the statutes and rules set out in Ordered Paragraph 4.
- G. The Commission finds that Sprint's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997 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. 1997 and 392.230, rather than Sections 392.500 and 392.510.
- H. The Commission finds that the Stipulation and Agreement filed by the parties is a reasonable resolution of the issues.
- I. The Commission finds that the provisions in the Stipulation and Agreement which address Sprint's affiliated relationship with Sprint-United should provide adequate protection against potential abuses.

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. Sprint has requested certification under Sections 392.420 - .440

and Sections 392.410 and .450, RSMo Supp. 1997. 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. 1997 were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. Section 392.185, RSMo Supp. 1997 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 by the parties as a resolution of the issues raised in this case, pursuant to § 536.060, RSMo Supp. 1997. Based upon the information contained within the Stipulation and Agreement of the parties, the supporting information offered at the hearing on February 6, 1998, and on its findings of fact, the Commission concludes that the Stipulation and Agreement shall be approved and that Sprint 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 on February 6, 1998 (Attachment A to this Report And Order) is adopted.

2. That Sprint Communications Company L.P. is granted a certificate of service authority to provide local exchange telecommunications services in the State of Missouri, to become effective when the company's tariff becomes effective, subject to all applicable statutes and Commission rules except as specified in this order.

3. That Sprint Communications Company L.P. 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.

4. That Sprint Communications Company L.P. 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. 1997
 - 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

5. That the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) is waived until Sprint Communications Company L.P. has entered into a Commission-approved interconnection or resale agreement that enables it to provide basic local exchange services.

6. That Sprint Communications Company L.P. shall file tariff sheets for approval reflecting the rates, rules, regulations and the services it will offer within 30 days after Commission approval of the necessary interconnection or resale agreement(s). The tariff shall be filed in Case No. TA-97-269 and shall include a listing of the statutes and Commission rules waived under Ordered Paragraph 4.

7. That Sprint Communications Company L.P. shall give notice of the filing of the tariffs described in Ordered Paragraph 6 to all parties or participants. In addition, Sprint shall file a written disclosure of all interconnection or resale agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection or resale agreement, and an explanation of why no interconnection or resale agreement is necessary for those areas.

8. That the certification and competitive status of Sprint Communications Company L.P. are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997, and upon 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. 1997, and 392.230, rather than Sections 392.500 and 392.510.

9. That this Report And Order shall become effective on May 1,
1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 21st day of April, 1998.

FILED

AUG 1 1997

**MISSOURI
PUBLIC SERVICE COMMISSION**

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

In the Matter of the Application of Sprint)
Communications Company L.P. for a Certificate)
of Service Authority to Provide Basic Local)
Telecommunications Service and Local Exchange)
Telecommunications Service.)

Case No. TA-97-269

STIPULATION AND AGREEMENT

Sprint Communications Company L.P. ("Sprint") initiated this proceeding on January 14, 1997, by filing an application for certificates of service authority to provide basic local telecommunications service, and local exchange telecommunications service in all exchanges currently serviced by United Telephone Company of Missouri d/b/a Sprint ("United"). Sprint filed its initial Application on June 6, 1996, in Case No. TA-96-424 to provide facilities-based and resold basic local telecommunications service and local exchange telecommunications service in those portions of Missouri that are currently served by Southwestern Bell Telephone Company ("SWBT"), GTE of the Midwest, Incorporated ("GTE"), and United. Sprint filed a Motion to Bifurcate on August 21, 1996, to bifurcate the portion of its application to provide service in those portions of Missouri that are currently served by United. A hearing was held for submission of a stipulation regarding Sprint's application to provide facilities-based and resold basic local telecommunications service and local exchange telecommunications service in those portions of Missouri that are currently served by SWBT and GTE on October 23, 1996. Sprint's certificate was issued in Case No. TA-96-424 on February 28, 1997, with an effective date of March 11, 1997. Sprint filed this separate application to provide facilities-based and resold basic local telecommunications service and local exchange

telecommunications service in those portions of Missouri that are currently served by United on January 14, 1997, at Commission Staff's request. On Friday, March 7, 1997, Sprint was notified by ALJ Bensavage that its application contained certain deficiencies in that Sprint referred to certain attachments in a previous application improperly, and that the application failed to make the statement that Sprint's service territory will follow United's exchange boundaries and is not smaller than an exchange. Sprint filed an Amended Application on March 14, 1997, to correct such deficiencies. 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 LECs should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

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 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. Notwithstanding the provisions of Section 392.500 RSMo., as a conditions of certification and competitive classification, the applicant agrees 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

LEC(s) within those service area(s) the applicant seeks authority to provide service.¹ 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. 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 to affordable telecommunications services as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income.² See Section 392.455 RSMo. (1996 Supp.).

3. Such applications submitted without tariffs should generally be processed in due course, provided the applicant seeks a temporary waiver of 4 CSR 240-2.060(4)(H).³ 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

¹ For the applicant, this places an effective cap at ~~United's~~ ^{SWBT's TRS 576 by TRS} access rates.

² This Stipulation and Agreement is intended to address procedural standards for applications for authority to provide or resell basic local telecommunications service and local exchange telecommunications service. Applications for other than basic local authority should be processed pursuant to Sections 392.430-440 RSMo. and the Commission should simply apply a public interest standard in determining whether such authority should be granted.

³ Good cause for failure to file proposed tariffs with the Applications must be shown. The lack of an approved interconnection agreement (47 USC 252) constitutes good cause.

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 resale or 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. Section 392.200 RSMo. should apply to all of an applicant's services. Pursuant to section 392.420 RSMo., Applicant requests that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services:

STATUTORY PROVISIONS

- 392.210.2 RSMo.
- 392.270 RSMo.
- 392.280 RSMo.
- 392.290.1 RSMo.
- 392.300.2 RSMo.
- 392.310 RSMo.
- 392.320 RSMo.
- 392.330 RSMo.
- 392.340 RSMo.

COMMISSION RULES

- 4 CSR 240-2.060(4)(H)
- 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 sections 392.450 and 392.455 RSMo. (Supp. 1997) regarding applications for certificates of local exchange service authority to

provide or resell basic local telecommunications service and local exchange telecommunications service, in negotiating the remaining provisions of this Stipulation and Agreement. The parties recommend that the Commission use this proceeding to establish such standards and criteria as a basic local telecommunications certification process regarding applications for authority in areas served by large incumbent LECs.

B. SPRINT CERTIFICATION

6. Sprint submitted an Amended Application on March 14, 1997, 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 United. Further, in its Amended Application, Sprint has agreed to the items described in paragraph 2 above. Sprint also seeks waiver of certain statutory provisions and Commission rules as to its new services, as identified in paragraph 4 above.

7. Based upon its verified application, as amended, Sprint asserts, and no party contests, that there is sufficient evidence from which the Commission should find and conclude that Sprint:

- 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 to affordable telecommunications services as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income;
- f. has sought authority which will serve the public interest.

8. In addition, the parties stipulate and agree to the following terms with regard to Sprint providing Basic Local Exchange and Local Exchange Services in United's territory:

- a. Sprint agrees to abide by all service quality rules to the extent applied to other CLECs, including reporting.
- b. United will treat Sprint as it does any other non-affiliated CLEC for purposes of interconnection, unbundling, resale, establishment and dissemination of technical information and the provision of new telecommunications services or modifications of facilities relating to telecommunications services, as required under 47 USC Section 251.
- c. Sprint will not receive any preferential treatment from United relative to other non-affiliated CLECs regarding the display of its telephone number and other information in the telephone directories in United's service territory.
- d. Sprint and United shall conduct its operations independently.
 - (1) When Sprint competes in the service territory of United, Sprint shall:

- (a) maintain books, records, and accounts in the manner prescribed by the Commission which shall be separate from the books, records, and accounts maintained by United;
 - (b) may not obtain credit under any arrangement that would permit a creditor upon default, to have direct recourse to the assets of United, however, nothing prevents Sprint Corporation from issuing debt with recourse to the assets of Sprint and/or United;
 - (c) shall conduct all transactions with United on an arm's length basis with any such transactions reduced to writing;
- (2) In its dealing with Sprint, United
- (a) may not engage in discrimination between Sprint and any other entity in the provision or procurement of goods, services, facilities, and information, or in the establishment of standards;
 - (b) shall account for all transactions between Sprint and United in accordance with accounting principles and rules of the FCC and this Commission.
- (3) United and Sprint
- (a) shall fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access on the same terms, including time of installation, as it does for all affiliated entities.
 - (b) shall fulfill any requirement to provide telecommunications facilities, telecommunications services, or network information

to Sprint or any other entity under the same terms and conditions, in a manner consistent with 47 USC Section 251;

- (c) shall charge the affiliate or impute to itself (if using the access for its provision of its own services), an amount for access to its telephone exchange service and exchange access that is not less than the amount charged to any unaffiliated carriers for such service.
 - e. United will satisfy all 47 USC Section 251 obligations to offer unbundled elements or resale throughout its service territory regardless of whether United or Sprint supply the underlying facilities in satisfaction of this obligation. United will make no distinction in prices, terms, and conditions based upon whether United or Sprint supply the underlying facilities. Prices, terms, and conditions may vary if a non-affiliated CLEC supplies the underlying facilities to United or Sprint.
 - f. When Sprint is competing in United's service territory, Sprint shall not be allowed to offer local services or functionalities based on United's services or functionalities that United does not offer on a retail basis to its own end user customers.
 - g. For purposes of determining the effective level of competition within United's territory as required by SB507, United and Sprint will be treated as one company.
9. Sprint asserts, and no party opposes, that Sprint's application and request for authority to provide basic local telecommunications service and local exchange services (including exchange access service) should be granted. All services authorized herein

other than exchange access service should be classified as competitive telecommunications services, in that such services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of Sprint'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 conditional and shall not be exercised until such time as tariffs for services have become effective.

10. Sprint'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 Sprint does not yet have an approved interconnection agreement with United. Sprint 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. Sprint 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 resale or interconnection agreement with the incumbent local exchange carrier 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 45-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.

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

STATUTORY PROVISIONS

392.210.2 RSMo.
392.270 RSMo.
392.280 RSMo.
392.290.1 RSMo.
392.300.2 RSMo.
392.310 RSMo.
392.320 RSMo.
392.330 RSMo.
392.340 RSMo.

COMMISSION RULES

4 CSR 240-2.060(4)(H)
4 CSR 240-10.020
4 CSR 240-30.040
4 CSR 240-35

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 provisions 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 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 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 Sprint 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.

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 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 Sprint, subject to the conditions described above.

Respectfully submitted,

Julie Thomas Bowles
Julie E. Grimaldi MO Bar #34458
Julie Thomas Bowles KS Bar #16578
(appearing Pro Hoc Vice)
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FOR: Sprint Communications Company
L.P.

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FOR: Staff of the Missouri Public Service
Commission

Mike Dandino by jth
Mike Dandino MO Bar #24590
Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

FOR: Office of the Public Counsel and the
Public

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 1st day of August, 1997.

Thomas R. Schwarz, Jr.

P.S.C. MO.-No. 22 Section 16

GENERAL EXCHANGE TARIFF

UNITED TELEPHONE COMPANY OF MISSOURI

First Revised Page 2 Cancels Original Page 2

LOCAL EXCHANGE SERVICE RATE GROUPS

RECEIVED

I. ACCESS LIMITS AND EXCHANGES BY RATE GROUPS: (Cont'd)

FEB 03 1994

B. EXCHANGES IN EACH RATE GROUP IN "A" ABOVE

MISSOURI Public Service Commission

I

Appleton City
Calhoun
Chilhowee
Dearborn
Fairfax
Holt
King City
Malta Bend
Newburg
Pickering
Strasburg
Tarkio
Wellington

Blackburn
Camden Point
Clarksburg
Deepwater
Green Ridge
Hopkins
Kingsville
Missouri City
Norborne
Russellville
Sweet Springs
Tipton

Blairstown
Centertown
Coal
Edgerton
Hardin
Houstonia
Leeton
Montrose
Orrick
St. Thomas
Syracuse
Urich

Brazito
Centerview
Craig
Eugene
Henrietta
Ionia
Lincoln
New Bloomfield
Otterville
Smithton
Taos
Waverly

(M)

(M)

II

Buckner
Holden
Lone Jack
Pleasant Hill
Weston

Butler
Kearney
Mound City
Richland
Windsor

California
Lake Lotawana
Odessa
St. Robert

Cole Camp
Lexington
Platte City
Waynesville

(M)

(M)

III

Clinton
Lebanon
Salem

Ferrelview
Maryville
Warrensburg

Ft. Leonard Wood
Oak Grove
Warsaw

Harrisonville
Rolla

(M)

(M)

IV

Jefferson City

FILED

FEB 21 1994

94-237

MISSOURI Public Service Commission

ISSUED: February 3, 1994

BY: John L. Roe
Vice President - Administration
5454 West 110th Street
Overland Park, Kansas 66211

EFFECTIVE:

~~February 3, 1994~~
FEB 21 1994