

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of TCG St. Louis)
for a Certificate of Service Authority to Provide)
Basic Local Telecommunications Services in Those) Case No. TA-96-345
Portions of St. Louis LATA No. 520 Served by)
Southwestern Bell Telephone Company.)
)

REPORT AND ORDER

Issue Date: February 11, 1997

Effective Date: February 21, 1997

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OF THE STATE OF MISSOURI

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for a Certificate of Service Authority to Provide)
Basic Local Telecommunications Services in Those) Case No. TA-96-345
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Southwestern Bell Telephone Company.)
)

APPEARANCES

Paul H. Gardner, Goller, Gardner and Feather, P.C., 131 East High Street,
Jefferson City, Missouri 65101, for TCG St. Louis.

Carl J. Lumley and Leland B. Curtis, Curtis, Oetting, Heinz, Garrett &
Soule, P.C., 130 South Bemiston, Suite 200, Clayton, Missouri 63105, for
MCI Telecommunications Corporation.

Paul G. Lane, General Attorney-Missouri, and Leo J. Bub, Attorney,
Southwestern Bell Telephone Company, 100 North Tucker Boulevard, Room 630,
St. Louis, Missouri 63101-1976, for Southwestern Bell Telephone Company.

Paul S. DeFord, Lathrop & Gage L.C., 2345 Grand Boulevard, Suite 2500,
Kansas City, Missouri 64108, for AT&T Communications of the Southwest, Inc.

Sondra B. Morgan, W.R. England, III, and Paul A. Boudreau, Brydon,
Swearengen & England P.C., 312 East Capitol Avenue, Post Office Box 1069,
Jefferson City, Missouri 65102, for: BPS Telephone Company, Bourbeuse
Telephone Company, Cass County Telephone Company, Citizens Telephone
Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative,
Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity
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.

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

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

ADMINISTRATIVE

LAW JUDGE: Elaine E. Bensavage.

REPORT AND ORDER

Procedural History

TCG St. Louis applied to the Missouri Public Service Commission (Commission) on April 18, 1996, for a certificate of service authority to provide basic local telecommunications services in Missouri under § 392.410 - .450, RSMo 1994¹. TCG St. Louis subsequently filed an amended application on May 2, 1996, and a second amended application on August 26, 1996.² TCG St. Louis asked the Commission to classify its services as competitive services and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. TCG St. Louis is a New York general partnership whose partnership interests are currently owned by TCG Partners, TCI Teleport of St. Louis, Inc., and Continental Telecommunications Corporation of St. Louis County, with offices located at 1 City Place Drive, St. Louis, Missouri 63141. TCG St. Louis is registered as a fictitious name with the Missouri Secretary of State's Office.

The Commission issued an Order and Notice on April 23, 1996, directing parties wishing to intervene in the case to do so by May 24,

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

² TCG St. Louis asked that its Second Amended Application be deemed further amended by reference to provisions contained in ¶¶ 5-7 of a Stipulation and Agreement filed by the parties on September 10, 1996, at 2-4.

1996. The Commission granted permission to intervene to the following entities on June 6, 1996:

Southwestern Bell Telephone Company (SWBT)
The Small Telephone Company Group³
Bourbeuse Telephone Company
Fidelity Telephone Company
MCI Telecommunications Corporation
GTE Midwest Incorporated
AT&T Communications of the Southwest, Inc.
United Telephone Company of Missouri d/b/a Sprint

This case was consolidated with a number of other basic local certificate application cases at the request of TCG St. Louis, but was later bifurcated, also at the request of TCG St. Louis.

The parties filed a Stipulation and Agreement (Stipulation, Attachment A to this Report And Order) on September 10, 1996, and TCG St. Louis filed a motion asking that the Commission establish a hearing date to consider approval of the agreement. The Commission Staff (Staff) filed Suggestions in Support of the Stipulation and Agreement on September 16, 1996. Staff's suggestions included sworn testimony by a member of the Commission's telecommunications staff. The Commission conducted a hearing on October 3, 1996, where the parties made presentations and were available for Commission questions.

³ For purposes of this proceeding, the Small Telephone Group is composed of: BPS Telephone Company, Bourbeuse Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Inc., Craw-Kan Telephone Cooperative, Inc., Ellington Telephone Company, Farber Telephone Company, Fidelity 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

TCG St. Louis, which is currently certificated to provide intrastate interexchange services in Missouri, as well as local exchange services limited to dedicated, nonswitched private line services, wishes certification to provide facilities-based and resold basic local telecommunications services as well.

TCG St. Louis wants to provide basic local services in portions of Missouri that are currently served by SWBT. TCG St. Louis is not asking for certification in any area that is served by a small incumbent local exchange provider. The specific exchanges in which TCG St. Louis proposes to operate are described in Exhibit One to the second amended application that was filed on August 26, 1996 (Attachment B to this Report And Order). TCG St. Louis is requesting that its basic local exchange services be classified as competitive and that certain statutes and regulatory rules be waived for TCG St. Louis.

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. TCG St. Louis 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 TCG St. Louis to submit a

tariff until it has executed interconnection agreements with the incumbent local exchange carrier (ILEC) involved. TCG St. Louis 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. TCG St. Louis will file the tariff in Case No. TA-96-345 and give notice of the tariff filing to all the parties and participants. Along with that filing TCG St. Louis has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas (Stipulation at 3-4, ¶ 6 and 7-9, ¶ 12).

B. Basic local exchange certification

Section 392.455, RSMo Cum. Supp. 1996, effective August 28, 1996, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service, and demonstrate that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

1. Technical, financial and managerial resources and abilities.

TCG St. Louis submitted Exhibit B with both its initial application and its first amended application, which lists the names of its current officers. TCG St. Louis maintains that as an affiliate of Teleport Communications Group, the largest and most experienced non-LEC local telecommunications services provider in the nation, it is technically qualified to offer the proposed services in Missouri. The National Network Management Center of Teleport Communications Group will supplement the local monitoring and control capabilities of TCG St. Louis to ensure 24 hours per day, seven days per week support for customers. In addition, TCG St. Louis will maintain its own technically competent staff within Missouri. TCG St. Louis also claims that it is financially qualified to provide the proposed service, stating that it can obtain adequate financial resources from its investors. As an example TCG St. Louis points to the infrastructure already constructed in its proposed service territory.

TCG St. Louis further describes the facilities it has in place, including SONET capable self-healing fiber optic rings. Its switching network systems provide common channel signaling and database capabilities. In addition, TCG St. Louis states that it intends to install a switch within six months of Commission authorization. The parties agreed that TCG St. Louis possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service (Stipulation at 5, ¶ 10(A)).

2. The entrant's proposed services satisfy the minimum standards established by the Commission. TCG St. Louis stated in its application that its services will include, but will not be limited to, the following:

- Two Way Local Lines/Trunks
- Direct Inward/Outward Dialing Options

- Local Calling
- Operated Assisted Services
- Directory Assistance
- Dual Party Relay Service
- 911 Emergency Services
- Pay Phone Access Line Services
- Lifeline Services

TCG St. Louis also specifically states that it will voluntarily participate in the Commission's lifeline program, and will offer or make arrangements with SWBT to offer 911 emergency services and blocking of 900/976 services. Additionally, TCG St. Louis references its current infrastructure and further improvements, and notes that the switch it plans to install will assist in providing state-of-the-art switched local telecommunications services. TCG St. Louis has agreed to meet the Commission's minimum basic local service standards, including quality of service and billing standards (Second Amended Application at 3, ¶ 8). The parties agreed that TCG St. Louis proposes to offer basic local services that satisfy the minimum standards established by the Commission (Stipulation at 6, ¶ 10(B)).

3. The geographic area in which the company proposes to offer service. TCG St. Louis set out in Exhibit One to its second amended application all the exchanges in which it proposes to offer services. TCG St. Louis has defined its service area by means of a list describing the local exchanges. The company has agreed that its service area must follow ILEC exchange boundaries and be no smaller than an exchange (Stipulation at 3, ¶ 5 and 5-6, ¶ 10(C)). The parties agreed that TCG St. Louis has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange (Stipulation at 5-6, ¶ 10(C)).

4. **The offering of basic local telecommunications service as a separate and distinct service.** TCG St. Louis has agreed to offer basic local telecommunications service as a separate and distinct service (Stipulation at 3, ¶ 5 and 5-6, ¶ 10(D)).

5. **Equitable access for all Missourians to affordable telecommunications services.** TCG St. Louis 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 Cum. Supp. 1996 (Stipulation at 3, ¶ 5 and 6, ¶ 10(E)).

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 TCG St. Louis should be classified as a competitive telecommunications company. (Stipulation at 6-7, ¶ 11). The parties have also agreed that TCG St. Louis's switched exchange access services may be classified as competitive services, conditioned upon certain limitations on TCG St. Louis's ability to charge for its access services. TCG St. Louis 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 LEC within those service areas in which TCG St. Louis seeks to operate. The parties have agreed that the grant of service authority and competitive classification to TCG St. Louis should be expressly conditioned on the continued applicability of § 392.200, RSMo Cum. Supp. 1996, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to §§ 392.220, RSMo Cum. Supp. 1996, and 392.230, rather than §§ 392.500 and 392.510.

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

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

1. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
2. The Commission finds that TCG St. Louis 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 TCG St. Louis 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 TCG St. Louis 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 TCG St. Louis a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. TCG St. Louis's certificate should become effective when its tariff becomes effective.
5. The Commission finds that TCG St. Louis 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 TCG St. Louis's certification and competitive status are expressly conditioned upon the continued applicability of § 392.200, RSMo Cum. Supp. 1996, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to

SS 392.220, RSMo Cum Supp. 1996, and 392.230, rather than SS 392.500 and 392.510.

7. The Commission finds that the Stipulation and Agreement filed by the parties is a reasonable resolution of the issues.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the State of Missouri. TCG St. Louis 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 Cum. Supp. 1996, states that "the provisions of this chapter shall be construed to: (1) Promote universally available and widely affordable telecommunications services; . . . (3) Promote diversity in the supply of telecommunications services and products throughout the state of Missouri; . . . (6) Allow full and fair competition to function as a substitute for regulation when consistent with the protection of ratepayers and otherwise consistent with the public interest"

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to § 536.060. Based upon the information

contained within the Stipulation and Agreement of the parties, the supporting information offered at the hearing on October 3, 1996, and on its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved and that TCG St. Louis should be granted the certificate of service authority requested.

IT IS THEREFORE ORDERED:

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

1. That TCG St. Louis 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.

2. That TCG St. Louis is classified as a competitive telecommunications company. The following statutes and regulatory rules shall be waived:

Statutes

- 392.210.2 - Uniform System of Accounts
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290.1 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

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

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

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

6. That this Report And Order shall become effective on February 21, 1997.

BY THE COMMISSION



**Cecil I. Wright
Executive Secretary**

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 11th day of February, 1997.

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

In the Matter of the Application of)
TCG St. Louis for a Certificate of)
Public Convenience and Necessity)
to Provide Basic Telecommunications))
Services in Those Portions of)
St. Louis LATA No. 520 Served By)
Southwestern Bell Telephone Company)

Case No. TA-96-345

STIPULATION AND AGREEMENT

1. TCG St. Louis (hereinafter "TCG") initiated this proceeding on April 18, 1996 by filing an Application requesting certificate of service authority to provide local exchange and basic local exchange services in exchanges currently served by Southwestern Bell Telephone Company.

2. The Commission has granted the timely applications to intervene of MCI Telecommunications Corporation, Southwestern Bell Telephone Company, (SWB) the Small Telephone Company Group,¹ Bourbeuse Telephone Company, Fidelity Telephone Company, GTE Midwest Incorporated, (GTE) United Telephone Company of Missouri, (United) and AT&T Communications of the Southwest, Inc.

3. Pursuant to the Commission's scheduling order,

¹The 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, 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.

representatives of the Commission Staff, the Office of Public Counsel and all of the aforementioned parties participated in a prehearing conference on June 19, 1996.

4. For purposes of this Stipulation and Agreement, the parties agree that applications for local exchange and 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 authority are currently handled.

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

²Large LEC's are defined as LECs who serve 100,000 or more access lines. Section 386.020 RSMo. 1994. In Missouri, the current large LECs are SWBT, GTE and United.

392.500 RSMo (1994), as a condition of certification and competitive classification, TCG agrees that, unless otherwise ordered by the Commission, the applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect at the date of certification for the large incumbent LEC(s) within those service area(s) applicant seeks authority to provide service. Further, TCG agrees to offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic service area in which it proposes to offer basic local service. Such area must follow exchange boundaries of the incumbent local exchange telecommunications companies in the same area and must be no smaller than an exchange. Finally, TCG agrees to provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services. See Section 392.455 RSMo (1996 Supp.).

6. TCG has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H).³ TCG agrees to file its initial tariff(s) in the certification docket and serve all parties thereto with written notice at the time the initial tariff(s) are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the

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

tariff(s) will be provided by TCG 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, TCG shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for such areas.

7. TCG has, pursuant to §392.420 RSMo. requested that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services, and the parties agree that the Commission should grant such request provided that Section 392.200 RSMo should continue to apply to all of TCG'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

8. The parties have employed the foregoing standards and criteria, which are intended to meet the requirements of existing

law and Sections 392.450 and 392.455 of SB 507 regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service, in negotiating the remaining provisions of this Stipulation and Agreement.

B. TCG CERTIFICATION

9. TCG submitted a Second Amended Application with consent of the parties, on August 26, 1996 in which it identified by name the exchanges in which it seeks authority to provide service. The exchanges identified are currently served by Southwestern Bell Telephone Company. Further, TCG hereby agrees that its Second Amended Application should be deemed further amended to include by reference the terms and provisions described in paragraph 5-7 hereinabove. TCG also seeks waiver of certain statutory provisions and Commission rules as to its new services as enumerated in paragraph 18 of TCG's Second Amended application.

10. Based upon its verified Second Amended Application, TCG asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that TCG:

- 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 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 for all Missourians 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;
- F. has sought authority which will serve the public interest.

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

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

disclosure as stipulated above) and have become effective. The Commission's Order should state the foregoing conditions substantially as follows:

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

The parties agree that the applicant's switched exchange access services may be classified as competitive services. The parties further agree that the applicant's switched exchange access services are subject to Section 392.200. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 5 herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230 and not 392.500 and 392.510. The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost-justified and pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

12. TCG'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 TCG does not yet have approved interconnection agreements with the large incumbent LECs. TCG 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. TCG 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 temporary waiver of 4 CSR 240-2.060(4) (H) is hereby granted for good cause in that applicant does not yet have an approved interconnection agreement with the incumbent local exchange 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 30-day effective date and the applicant shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such tariffs to such parties immediately upon request. When filing its initial basic local tariff in this docket, the applicant shall also file and serve upon the parties hereto a written disclosure of: all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent

local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for any such areas."

13. TCG's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of TCG's 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

14. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

15. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights

pursuant to §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 §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 §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 TCG application made herein.

16. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation: In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of 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.

The Commission should approve this Stipulation and Agreement before the hearing date to establish the scope of the hearing in this case.

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 TCG, subject to the conditions described above, in advance of September 30, 1996.

Respectfully submitted,

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EXHIBIT ONE

Advance
Altenburg
Antonia
Beaufort
Bell City
Benton
Bismarck
Bloomfield
Bloomsdale
Blytheville
Bonne Terre
Bowling Green
Camdenton
Campbell
Cape Girardeau
Cardwell
Caruthersville
Cedar Hill
Center
Chaffee
Charleston
Chesterfield
Clarksville
Climax Springs
Crystal City
Deering
Delta
DeSoto
Dexter
Eldon
Elsberry
Essex
Eureka
Farmington
Fenton
Festus
Fisk
Flat River
Frankford
Fredericktown
Frohna
Fulton
Gravois Mills
Gray Summit
Hannibal
Harvester
Hayti
Herculaneum
High Ridge
Hillsboro
Holcomb
Hornersville

Imperial
Jackson
Kennett
Lake Ozark
Last Prairie
Leadwood
Lilbourn
Louisiana
Macks Creek
Malden
Manchester
Marble Hill
Marston
Maxville
Mexico
Montgomery City
Morehouse
New Wells
New Madrid
Oak Ridge
Old Appleton
Oran
Pacific
Patton
Paynesville
Perryville
Pevely
Pocahontas
Pond
Poplar Bluff
Portage Des Sioux
Portageville
Puxico
Qulin
Richwoods
Risco
Scott City
Senath
Sikeston
St. Marys
Ste. Genevieve
St. Charles
St. Louis

including: Ferguson
 Ladue
 Mehlville
 Overland
 Riverview
 Sappington
 Webster Groves
 Bridgeton
 Creve Coeur
 Florissant
 Kirkwood

Oakville
Spanish Lake

St. Clair
Tuscumbia
Union
Valley Park
Versailles
Wardell
Ware
Washington
Wellsville
Wyatt