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**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of October, 1998.

In the Matter of the Application of Megsinet-CLEC,)
Inc., for a Certificate of Service Authority to)
Provide Resold Basic Local Telecommunications) Case No. TA-98-524
Service in Portions of the State of Missouri and)
for Competitive Classification.)

**ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES**

Procedural History

Megsinet-CLEC, Inc. (Megsinet) applied to the Commission on August 20, 1998, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1997. Megsinet 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. Megsinet is an Illinois corporation with principal offices located at 225 West Ohio, Suite 200, Chicago, Illinois 60610.

The Commission issued a notice and schedule of applicants on May 26, directing interested parties wishing to intervene to do so by June 25. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on July 13.

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

The parties filed a Stipulation and Agreement (Agreement) on August 20 which is included with this order as Attachment 1. The Staff of the Commission (Staff) filed Suggestions in Support of the Agreement on September 11. In the Agreement the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing, the Commission may grant the relief requested based on the verified application.

Discussion

Megsinet wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE), and Sprint Missouri, Inc. d/b/a Sprint (Sprint). Megsinet is not asking for certification in any area that is served by a small incumbent local exchange provider (ILEC). Megsinet proposes to operate in all of the exchanges described in Appendix B to its application. Megsinet is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

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. Megsinet has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into interconnection agreements with the underlying local exchange carriers and those agreements have been approved by the Commission. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreements. Megsinet will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing Megsinet has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

B. Basic Local Service 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.

Megsinet submitted as Appendix D to its application its balance sheet showing assets and liabilities as of January 21, 1998. On July 9, Megsinet submitted Supplemental Appendix D to provide additional financial documentation including projected balance sheets, income statements, and statements of cash flows. Appendix C to the application lists the names and qualifications of Megsinet's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including marketing, sales, computer design, system engineering, accounting, and product development. The parties agreed that Megsinet possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Megsinet has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The parties agreed that Megsinet proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Megsinet wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs (see Appendix B to the application). The parties agreed that Megsinet 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.

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

C. Competitive Classification

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. § 392.361.2. In making that determination the Commission may consider such factors as market share, financial resources and name recognition, among others. In the Matter of the Investigation for the Purpose of Determining the Classification of the Services Provided by Interexchange Telecommunications 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 Megsinet should be classified as a competitive telecommunications company. The parties have also agreed that Megsinet's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Megsinet's ability to charge for its access services. Megsinet 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 ILECs within those service areas in which Megsinet seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Megsinet 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.

Findings of Fact

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

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

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. Megsinet has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1997 which permit the Commission to grant a certificate of service authority where it 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 Section 392.455, RSMo Supp. 1997, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1997.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1997. Based upon the Commission's review of the applicable law and Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on August 20, 1998, is approved.

2. That Megsinet-CLEC, Inc. is granted a certificate of service authority to provide basic local exchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

3. That Megsinet-CLEC, 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
- 392.340 - reorganization(s)
- 392.330, RSMo Supp. 1997 - issuance of securities,
debts and notes

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 request for waiver of the filing of 4 CSR 240-2.060(4) (H) which requires the filing of a 45-day tariff is granted.

5. That Megsinet-CLEC, Inc. shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement which will allow Megsinet to provide services. The tariff shall be filed in Case No. TA-98-524 and shall include a listing of the statutes and Commission rules waived above.

6. That Megsinet-CLEC, Inc. shall give notice of the filing of the tariffs described above to all parties or participants. In addition, Megsinet-CLEC, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection

agreement, and an explanation of why no interconnection agreement is necessary for those areas.

7. That Megsinet-CLEC, Inc.'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.

8. That this order shall become effective on October 20, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Dippell, Regulatory Law Judge

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

In the Matter of the Application of)
Megsinet-CLEC, Inc. for a)
Certificate of Service Authority to Provide)
Resold Basic Local Exchange Service in)
Portions of the State of Missouri and for)
Competitive Classification.)

Case No. TA-98-~~24~~524

FILED
AUG 20 1998
Missouri Public
Service Commission

JOINT STIPULATION AND AGREEMENT

1. Megsinet-CLEC, INC. ("Megsinet" or "Applicant") initiated this proceeding on May 20, 1998 by filing an Application requesting certificate of service authority to provide basic local telecommunications service, including exchange access service, in exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), GTE Midwest Incorporated ("GTE") and Sprint Missouri, Inc. d/b/a Sprint ("Sprint"). Initially Megsinet intends to offer prepaid basic local service through a resale arrangement with SWBT and only in SWBT exchanges. In the future Applicant may expand its service areas pursuant to resale arrangements with GTE and Sprint.

2. The Commission granted SWBT's timely application to intervene on July 13, 1998. No other party has sought or has been granted intervention.

3. For purposes of this Stipulation and Agreement, the parties agree that applications for local exchange authority in exchanges served by "large" local exchange companies (LEC's)¹ should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

¹ Large LEC's are defined as LEC's who serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1997. In Missouri, the current large LEC's are SWB, GTE and Sprint.

4. In determining whether Applicant's application for certificate of service authority should be granted, the Commission should consider Applicant's technical, financial and managerial resources and abilities to provide basic local telecommunications service. 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. Further, Applicant 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 392.500 RSMo 1994, as a condition of certification and competitive classification, Applicant 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, Applicant agrees to offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic service area in which it proposes to offer basic local service. Such area must follow exchange boundaries of the incumbent local exchange telecommunications companies and must be no smaller than an exchange. Finally, Applicant agrees 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 residence or their income. See Section 392.455 RSMo Supp. 1997.

5. Applicant has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H)². Applicant agrees to file its initial tariff(s) in the certification docket and serve all parties with written notice at the time the initial tariff(s) are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by Applicant to such parties immediately upon request. Any service authority granted pursuant to this Application shall be regarded as conditional and shall not be exercised until such time as the tariff for services shall have become effective. When filing its initial basic local tariff(s), Applicant shall also file and serve a written disclosure of all resale or interconnection agreements which affect Applicant's 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.

6. Applicant has requested, pursuant to Section 392.420 RSMo 1994 that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo Supp. 1997 should continue to apply to all of Applicant's services:

STATUTORY PROVISIONS

Section 392.210.2
Section 392.270

COMMISSION RULES

4 CSR 240-10.020
4 CSR 240-30.040

²Good 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.

Section 392.280
Section 392.290.1
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

4 CSR 240-35

7. In negotiating the remaining provisions of this Stipulation and Agreement, 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 authority to provide basic local telecommunications services.

B. MEGSINET's CERTIFICATION

8. Applicant has submitted, as Appendix B to its Application, a listing of the specific exchanges in which it seeks authority to provide service. Applicant hereby agrees that its Application should be deemed further amended as required to include by reference the terms and provisions described in paragraphs 4-6 hereinabove and paragraph 11 below to the extent that its Application might be inconsistent therewith.

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

A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service;

B. proposes and agrees to offer basic local services that will satisfy the minimum

standards established by the Commission;

C. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;

D. will offer basic local telecommunications services as a separate and distinct service;

E. has agreed to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services; and

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

10. Applicant asserts, and no party opposes, that Applicant's application and request for authority to provide basic local telecommunications service, including exchange access service, should be granted. All services authorized herein should be classified as competitive telecommunications services, provided that the requirements of Section 392.200 RSMo Supp. 1997 continue to apply, and Applicant shall be classified as a competitive telecommunications company. Applicant 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 Applicant'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

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

STATUTORY PROVISIONS

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

COMMISSION RULES

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

Applicant agrees to comply with all applicable rules, regulations and statutory obligations except for those which are specifically waived by the Commission.

13. 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.

14. 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 Sections 536.070(2) and 536.080.1, RSMo 1994, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section

536.080.2 RSMo 1994; and their respective rights to seek rehearing pursuant to Section 386.500 RSMo 1994 and to seek judicial review pursuant to Section 386.510, RSMo 1994.

The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of Applicant's application made herein.

15. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff will 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 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 the meeting in which the Staff will respond to the Commission's request if such explanation once such explanation is requested from the Staff. Staff's oral explanation shall be subject to public disclosure.

16. The Office of the Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing, and to the signatory parties' best information and belief, has offered no objection.

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 Megsinet-CLEC, Inc. subject to the conditions described above, as expeditiously as possible.

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Respectfully submitted,

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Commission

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Stipulation and Agreement was served upon counsel for all parties of record in Case No. TA-98-524 by depositing a true copy thereof in the United States Mail, postage prepaid, or by hand delivery, this 20th day of August, 1998.

Charles Brent Stewart