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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 29th
day of September, 1998.

In the Matter of the Application of Digital)
Broadcast Network Corporation for a Certificate)
of Service Authority to Provide Basic Local) Case No. TA-98-538
Telecommunications Services and Exchange Access)
Telecommunications Services in the State of)
Missouri.)

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

Procedural History

Digital Broadcast Network Corporation (Digital) applied to the Commission on May 29, 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. Digital 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. Digital is a Missouri corporation with principal offices located at 977 Charter Commons, Chesterfield, Missouri 63017.

The Commission issued a notice and schedule of applicants on June 9, directing interested parties wishing to intervene to do so by July 9. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on July 14.

¹All 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 in this case, the Commission may grant the relief requested based on the verified application.

Discussion

Digital 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)². Digital is not asking for certification in any area that is served by a small incumbent local exchange provider (ILEC). Digital proposes to operate in all of the exchanges described in Exhibit B of its application. Digital is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

² In its application, Digital identified Sprint by its former name of Sprint United Telephone Company.

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

Commission rule 4 CSR 240-2.060(4) requires a Missouri corporation applying for certification to provide telecommunications services to include in its application a certified copy of its Articles of Incorporation and its Certificate of Incorporation 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. Digital 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. Digital will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing Digital 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.

Digital submitted as Exhibit E to its application certain financial documentation including balance sheets showing its actual ending assets and liabilities for the months of January through June, 1998. Digital also submitted projected balance sheets showing the estimated ending assets and liabilities for the months of July through December 1998. Exhibits C and D to Digital's application list the names and qualifications of Digital's management team and technical personnel. In addition to academic credentials, they have experience in various areas of the telecommunications industry including marketing, sales and sales management, public relations, finance, engineering, and product development. The parties agreed that Digital possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

Digital 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 Digital proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Digital wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in Exhibit B to the application. The parties agreed that Digital 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.

Digital 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 Digital should be classified as a competitive telecommunications company. The parties have also agreed that Digital's exchange access services may be classified as a competitive service, conditioned upon certain limitations on Digital's ability to charge for its access services. Digital 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 Digital seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Digital 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 Digital 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 Digital 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 Digital 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 Digital a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Digital's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that Digital 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 Digital'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. Digital 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 Digital Broadcast Network Corporation 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 Digital Broadcast Network Corporation 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 Digital Broadcast Network Corporation 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 Digital to provide services. The tariff shall be filed in Case No. TA-98-538 and shall include a listing of the statutes and Commission rules waived above.

6. That Digital Broadcast Network Corporation shall give notice of the filing of the tariffs described above to all parties or participants. In addition, Digital Broadcast Network Corporation 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 Digital Broadcast Network Corporation'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 9, 1998.

BY THE COMMISSION

(S E A L)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

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

Harper, Regulatory Law Judge

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

In the Matter of the Application of)	
digital broadcast network corporation)	
for a Certificate of Service Authority)	
to Provide Basic Local)	Case No. TA-98-538
Telecommunications Services and)	
Exchange Access Telecommunications)	
Services in the State of Missouri)	

FILED
AUG 20 1998
Missouri Public
Service Commission

STIPULATION AND AGREEMENT

1. digital broadcast network corporation ("digital" or "Applicant") initiated this proceeding on May 29, 1998, by filing an Application requesting a certificate of service authority to provide basic local telecommunications services and exchange access telecommunications services in exchanges currently served by Southwestern Bell Telephone Company ("SWB"), GTE Midwest and United Telephone of Missouri.

2. The Missouri Public Service Commission (hereinafter "Commission") has granted the timely application to intervene of SWB.

3. Pursuant to the Commission's ORDER GRANTING PROTECTIVE ORDER, INTERVENTION AND DIRECTING FILING OF PROCEDURAL SCHEDULE, representatives of the Commission Staff, digital and SWB have agreed to file a Stipulation and Agreement with the Commission on or before August 20, 1998.

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

5. In determining whether digital's application for certificate of service authority should be granted, the Commission should consider digital's technical, financial, managerial resources and abilities to provide basic local telecommunications service. digital 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, digital 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, digital 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) that digital seeks authority to provide service. Further, digital agrees to offer basic local telecommunications services as a separate and distinct service and must sufficiently identify the geographic service area in which it

¹ Large 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.

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, digital 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. digital has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H).² digital 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 tariff(s) will be provided by digital 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, digital shall also file and serve a written disclosure of all interconnection agreements which affects 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.

² Good cause for failure to file proposed tariffs with the Application must be shown. The lack of an approved interconnection agreement (47 USC 252) constitutes good cause.

7. digital has, pursuant to § 392.420 RSMo., requested that the Commission waive the application of any or all of the following statutory provisions and rules for 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 digital's services:

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

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

digital'S CERTIFICATION

9. digital has submitted as Exhibit B to its Application a listing of the specific exchanges in which it seeks authority to provide service. The exchanges identified are those currently served by SWB, GTE Midwest and United Telephone of Missouri. Further, digital hereby agrees that its Application should be deemed further amended, to the extent necessary, to include by reference the terms and provisions described in paragraphs 5-7 hereof.

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

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and 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 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; and
- F. has sought authority which will serve the public interest.

11. digital asserts, and no party opposes, that digital'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 continue to apply, and digital shall remain classified as a competitive telecommunications company. digital

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 digital's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's Order should state the foregoing conditions substantially as follows:

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

The parties agree that the Applicant's switched exchange access services may be classified as competitive services. The parties further agree that the Applicant's switched exchange access services are subject to Section 392.200. Any increases in switched access service rates 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 be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

12. digital'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 digital does not yet have approved interconnection or

resale agreements with the large incumbent LECs. digital 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 45-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above. digital 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 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 resale or interconnection agreement with the incumbent local exchange carriers within whose service areas it seeks authority to provide service; provided, when Applicant submits its tariffs in this docket to the Commission such tariffs shall have a minimum 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 area, 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 interconnection agreement is unnecessary for any such areas."

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

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 Sections §§ 536.070(2) and 536.080.1, RSMo., 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.; 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 digital 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 digital's application made herein.

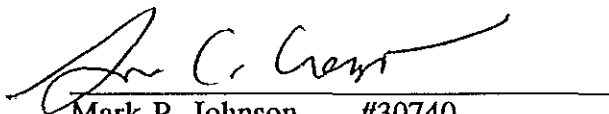
16. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party 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 Office of the Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with respect to this filing and has offered no objection.

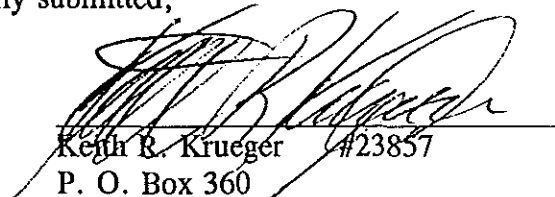
WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification as requested by digital broadcast network corporation, subject to the conditions described above, as expeditiously as possible.

Respectfully submitted,



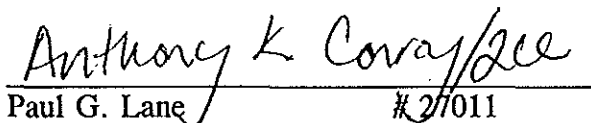
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