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January 3, 2000

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**FILED**<sup>2</sup>

JAN 03 2000

Missouri Public  
Service Commission

**Re: Delta Phones, Inc.**  
**Case No. TA-2000-272**

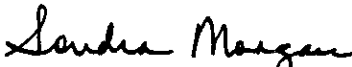
Dear Mr. Roberts:

Enclosed please find the original plus fourteen (14) copies of Stipulation and Agreement for filing on behalf of the parties in the above referenced matter. Please bring this matter to the attention of the appropriate Commission personnel. A copy of this filing is being sent to all parties of record.

Thank you for your attention to this matter.

Very truly yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:   
Sondra B. Morgan

SBM/k

Enclosures

cc: Office of Public Counsel  
Nathan Williams, PSC  
Anthony Conroy  
Jon Davis

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

JAN 03 2000

Missouri Public  
Service Commission

In the Matter of the Application of )  
Delta Phones, Inc. for a Certificate )  
of Service Authority to provide Basic )  
Local Telecommunications Service )  
in portions of the State of Missouri )  
and to classify said services and )  
the company as competitive. )

Case No. TA-2000-272

STIPULATION AND AGREEMENT

1. Delta Phones, Inc. (hereinafter "Delta" or "Applicant") initiated this proceeding on October 12, 1999, by filing an Application requesting a certificate of service authority to provide basic local telecommunications service in portions of the State of Missouri and to classify said service and the company as competitive.

2. The Commission issued an Order and Notice establishing an intervention deadline of November 18, 1999. On October 25, 1999, Southwestern Bell Telephone Company (SWBT") filed a timely application to intervene which was granted by the Commission on November 30, 1999. No other applications to intervene were filed.

3. For purposes of this Stipulation and Agreement, the parties agree that applications for basic local exchange authority in exchanges served by "large" local exchange companies (LECs)<sup>1</sup> should be processed in a manner similar to that in which applications for interexchange

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<sup>1</sup> Large LECs are defined as LECs who serve 100,000 or more access lines. Section 386.020, RSMo Supp. 1998. In Missouri, the current large LECs are Southwestern Bell Telephone Company, GTE Midwest Incorporated and Sprint Missouri, Inc.

and local exchange authority are currently handled.

4. In determining whether Delta's application for a certificate of service authority should be granted, the Commission should consider Delta's technical, financial and managerial resources and abilities to provide basic local telecommunications services. Delta must demonstrate that the basic local services that 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, Delta 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, Delta agrees that, unless otherwise ordered by the Commission, its originating and terminating intrastate access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for the large incumbent LEC(s) for each service area within which the Applicant seeks authority to provide service. Notwithstanding the preceding sentence, if the Commission determines in Case No. TO-99-596 that a different method of capping CLEC's originating and terminating intrastate access rates is in the public interest, Delta agrees to instead cap its intrastate access rates in the manner determined by the Commission in Case No. TO-99-596. Further, Delta agrees to offer basic local telecommunications service as a separate and distinct service. Delta must sufficiently identify the geographic service area in which it proposes

to offer basic local service. Such area must follow the exchange boundaries of the incumbent local exchange telecommunications companies in the same area 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 income.<sup>2</sup>

5. Delta has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(H).<sup>3</sup> Applicant has negotiated a Resale Agreement with SWBT, and that Resale Agreement was approved by the Commission on November 30, 1999, in Case No. TO-2000-273. An Interconnection Agreement with GTE Midwest Incorporated and GTE Arkansas Incorporated has been submitted to the Commission for approval in Case No. TO-2000-334. Delta agrees to file its initial tariff(s) in this certification docket and to 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 Delta 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(s), Delta shall also file and serve a written disclosure of all resale and/or interconnection agreements which affect its Missouri service areas and all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local exchange carrier and its explanation of why such an interconnection agreement

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<sup>2</sup> See Section 392.455, RSMo. Supp. 1998.

<sup>3</sup> Good cause for failure to file proposed tariffs with the Application must be shown. The lack of an approved interconnection agreement (47 U.S.C. 252) constitutes good cause.

is unnecessary for such areas.

6. Pursuant to Section 392.420 RSMo, Delta has 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 Supp. 1998, should continue to apply to all of Delta's services:

STATUTORY PROVISIONS

COMMISSION RULES

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

4 CSR 240-10.020  
4 CSR 240-30.040  
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. 1998, regarding applications for certificates of service authority to provide basic local telecommunications services.

Delta's Certification

8. Delta has submitted as Appendix B to its Application a listing of the specific exchanges in which it seeks authority to provide basic local telecommunication services. The exchanges identified are those currently served by SWBT, GTE Midwest Incorporated and Sprint Missouri, Inc. Delta hereby agrees that its original Application should be deemed further amended

as required to include by reference the terms and provisions described in paragraphs 4 through 6 herein above and paragraph 11 below to the extent that its original Application might be inconsistent therewith.

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

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications services;
- 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 telecommunication 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.

10. Delta asserts and no party opposes, that Delta's application and request for authority to provide basic local services (including exchange access services) should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of Section 392.200, RSMo 1998, continue to apply, and Delta shall be classified as a competitive telecommunications company. Delta 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 for Delta's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for their 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 intrastate switched exchange access services may be classified as competitive services. The parties further agree that the Applicant's intrastate switched exchange access services are subject to Section 392.200, RSMo. The parties recognize the pendency of MoPSC Case No. TO-99-596, regarding access rates to be charged by competitive local exchange telecommunications companies. Unless otherwise determined by the Commission in Case No. TO-99-596, any increases in intrastate switched access service rates above the

maximum intrastate switched access service rates as set forth in paragraph 4 herein shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510. The Commission's order should state the foregoing conditions substantially as follows:

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

11. Delta's request for a temporary waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties and should be granted because the Commission only recently approved its Resale Agreement with SWBT, and approval of its interconnection agreement with GTE Midwest Incorporated is still pending. Delta 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. Delta shall serve notice to all parties and participants in this docket of the filing of its tariffs at the time they are filed with the Commission, and serve them with the aforesaid written disclosure and shall upon request immediately provide any party with a copy of those tariffs. The Commission's order should state these obligations as conditions to the temporary waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

"The 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 approved interconnection agreements with all 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 and all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier with its explanation of why such interconnection agreement is unnecessary for any such areas."

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

STATUTORY PROVISIONS

COMMISSION RULES

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

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

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 that the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein, their respective rights pursuant to Section 536.080.1, RSMo 1994, to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo 1994; and their respective rights to seek rehearing pursuant to 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 Delta'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 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 such 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 the Staff. The Staff's oral explanation shall be subject to public disclosure.

16. The Office of Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard 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 Delta, subject to the conditions described above, as expeditiously as possible.

Respectfully submitted,

Sandra B. Morgan

Sandra B. Morgan Mo. Bar #35482

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FOR: Delta Phones, Inc.

Nathan Williams by SBM

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FOR: Staff of the Public Service Commission

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FOR: Southwestern Bell Telephone Company

Certificate of Mailing

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, postage prepaid, or hand-delivered this 3d day of Jan, 2000, to:

Office of Public Counsel  
Truman State Office Building  
301 W. High Street  
Jefferson City, MO 65102

Sandra Morgan  
Sandra B. Morgan