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June 5, 2000

VIA FEDERAL EXPRESS

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
The Truman State Office Building
5th Floor, 301 West High Street
Jefferson City, MO 65102

FILED²

JUN 6 2000

Missouri Public
Service Commission

Re: Case No. TA-2000-491; Stipulation and Agreement

Dear Mr. Roberts:

Enclosed please find an original and 9 copies of an Unanimous Stipulation and Agreement in case number TA-2000-491, executed on behalf of Southwestern Bell Telephone Company, NewPath Holdings, Inc., the Staff of the Missouri Public Service Commission, and the Office of the Public Counsel.

Please file stamp the extra copy of this filing and return it to us in the enclosed self addressed, stamped envelope.

As always, please do not hesitate to contact the undersigned if you have any questions.

Very truly yours,

DeSimone Pearson, LC

By


Brad I. Pearson

BIP/jmg
Enclosures

cc: Michael Dandino, Office of the Public Counsel
Julie Kardis, Office of the General Counsel
Mimi MacDonald, Counsel for Southwestern Bell

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

In the Matter of the Application of New Path Holdings, Inc. for a Certificate of Service Authority to Provide Switched and Dedicated Resold and Facilities-Based Local Exchange Telecommunications Services and Resold and Facilities-Based Interexchange Telecommunications Services within the State of Missouri and to Classify Said Services and the Company as Competitive.)

Case No. TA-2000-491

FILED²
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Missouri Public
Service Commission

UNANIMOUS STIPULATION AND AGREEMENT

NewPath Holdings, Inc, ("NewPath" and/or "Applicant") initiated this proceeding on February 10, 2000, by filing an Application requesting a certificate of service authority to provide, *inter alia*, all forms of resold and facilities based basic local, local exchange, and interexchange telecommunications services in exchanges currently served by Southwestern Bell Telephone Company, Sprint/United Telephone Company and GTE Midwest, Inc., in the State of Missouri.

The Commission granted the timely application of Southwestern Bell Telephone Company to Intervene.

A. Standards and Criteria

1. 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 and

¹ Large LECs are defined as LECs who serve 100,000 or more access lines in Missouri. Section 386.020 RSMo. The current large LECs are Southwestern Bell Telephone Company, GTE, and United.

local exchange authority are currently handled.

2. In determining whether NewPath's Application for certificate of service authority should be granted, the Commission should consider the applicant's technical, financial and managerial resources and abilities to provide basic local telecommunications service. NewPath 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 tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which NewPath seeks to compete. Further, NewPath 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 telecommunication companies with which NewPath seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo. (1994), as a condition of certification and competitive classification, NewPath agrees that, unless otherwise ordered by the Commission, NewPath's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large incumbent LECs within whose service areas NewPath seeks authority to provide service. Further, NewPath agrees to offer basic local telecommunications service as a separate and distinct service and has sufficiently identified the geographic service area in which it proposes to offer basic local service. Such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same area, and is no smaller than an exchange. Finally, NewPath 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.

See Section 392.455 RSMo.

3. NewPath has submitted its Application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(6)(C).² Applicant will file its initial tariffs in this certification docket and serve all parties thereto with written notice at the time the initial tariff is submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff will be provided by the applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as such tariff(s) for service have been approved by the Commission and such tariffs have become effective. When filing its initial basic local tariff, NewPath 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 any such areas.

4. NewPath has, pursuant to Section 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, as amended herein from NewPath's Application, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo. should continue to apply to all of NewPath's services.

Statutes

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290
Section 392.300.2
Section 392.310

Rules

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-32.030(4)(C)
4 CSR 240-33.030
4 CSR 240-35

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

Section 392.320
Section 392.330
Section 392.340

NewPath has, pursuant to Section 392.420 RSMo., requested that the Commission waive the application of the following statutory provisions and rules, as amended herein from NewPath's Application, regarding its interexchange services, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo. should continue to apply to all of NewPath's services.

Statutes

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

Rules

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-33.030
4 CSR 240-35

5. 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., regarding applications for certificates of local exchange authority to provide or resell basic local telecommunications services.

B. NewPath Certification

6. NewPath hereby agrees that its original Application should be deemed amended as required to include by reference the terms and provisions described in paragraphs 2-4 herein above to the extent that its original Application might be inconsistent therewith.

7. Based upon its verified Application, as amended by this Stipulation and Agreement,

NewPath asserts and no other party makes a contrary assertion, that there is sufficient evidence from which the Commission should find and conclude that NewPath:

- 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.

8. NewPath asserts, and no party opposes, that NewPath's Application and request for authority to provide basic local exchange telecommunications service, local exchange telecommunications services (including exchange access service), and interexchange telecommunications services should be granted. All services authorized herein should be classified as competitive telecommunications services, provided that the requirements of Section 392.200 RSMo. continue to apply and Applicant shall remain classified as a competitive telecommunications company. Applicant asserts, and no party opposes, that such new 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 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 Applicant's switched exchange access services are subject to Section 392.200 RSMo. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 2 herein shall be cost-justified and be made pursuant to 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 set forth herein shall be cost justified and made pursuant to Sections 392.220 and 392.230 and not Section 392.500 and 392.510."

9. NewPath's request for a temporary waiver of 4 CSR 240-2.060(6)(C), 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 Applicant does not yet have approved interconnection agreements with the large LECs. Applicant 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

stipulated above. Applicant 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 the temporary waiver of 4 CSR 240-2.060(6)(C), substantially as follows:

"Applicant's request for temporary waiver of 4 CSR 240-2.060 (6)(C) is hereby granted for good cause in that Applicant does not yet have an approved interconnection agreement with incumbent LECs within whose service area it seeks authority to provide service; provided, when Applicant files its tariffs in this docket to the Commission such tariffs shall have a minimum of a 45-day effective date and Applicant shall serve written notice upon the parties hereto of such filing, 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 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 with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is not necessary for such areas."

10. NewPath's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of all of NewPath's local exchange services should be granted:

<u>Statutes</u>	<u>Rules</u>
Section 392.210.2	4 CSR 240-10.020
Section 392.270	4 CSR 240-30.010(2)(C)
Section 392.280	4 CSR 240-30.040
Section 392.290	4 CSR 240-32.030(4)(C)
Section 392.300.2	4 CSR 240-33.030
Section 392.310	4 CSR 240-35
Section 392.320	
Section 392.330	
Section 392.340	

NewPath's request for waiver of the application of the following rules and statutory provisions as

they relate to the regulation of all of NewPath's interexchange services should be granted:

Statutes

Section 392.210.2
Section 392.270
Section 392.280
Section 392.290
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

Rules

4 CSR 240-10.020
4 CSR 240-30.010(2)(C)
4 CSR 240-30.040
4 CSR 240-33.030
4 CSR 240-35

11. This Stipulation and Agreement has resulted from 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.

12. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein; their respective rights pursuant to Section 536.080.1, RSMo. (1994), to present testimony, to cross examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2 RSMo. (1994); and their respective rights to 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 of NewPath's Application made herein.

13. The Staff shall file suggestions or a memorandum in support of this Stipulation and Agreement and the other parties shall have the right to file responsive suggestions or prepared testimony. All suggestions, prepared testimony or memoranda shall be subject to the terms of any protective order in this case.

14. 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, except to the extent that it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

15. The Office of Public Counsel is a signatory to this Stipulation and Agreement for the sole purpose of stating that it has no objection to this Stipulation and Agreement.

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 and waiving certain statutes and rules as requested by NewPath, subject to the conditions described above, as expeditiously as possible.

 BtP

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