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Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

June 8, 2000

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Executive Director

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Director, Utility Operations

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Director, Utility Services

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Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

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

RE: Case No. TA-2000-491

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **SUGGESTIONS IN SUPPORT OF THE UNANIMOUS STIPULATION AND AGREEMENT.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Julie A. Kardis
Assistant General Counsel
(573) 751-8706
(573) 751-9285 (Fax)

JAK:sw
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
JUN 08 2000

Missouri Public
Service Commission

In the Matter of the Application of)
NewPath 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

SUGGESTIONS IN SUPPORT OF
THE UNANIMOUS STIPULATION AND AGREEMENT

Comes now the Staff of the Missouri Public Service Commission (Staff) and in support of the Unanimous Stipulation and Agreement filed in this matter states as follows:

1. NewPath Holdings, Inc. (Applicant) agreed in the Stipulation and Agreement, paragraph 3, that any service authority it receives shall be conditional and not exercised until tariff(s) for services have become effective. The Applicant also agreed to file a list of its interconnection or resale agreements or explain why the Applicant does not need an interconnection or resale agreement in order to begin business.¹

2. The application process envisioned in the Stipulation and Agreement requires that the Applicant: a) file a complete application, including such undertakings as the Parties have deemed essential; b) enter into interconnection and/or resale agreements and file them for

¹The Parties were reluctant to completely rule out the possibility that an applicant could do business in a way that would not require an interconnection agreement, although no one could imagine such a scenario at this time; this provision would afford incumbent LECs the opportunity to challenge the feasibility of an assertion that no interconnection agreements were necessary.

approval; and c) file tariffs for approval. The Staff believes this three-step process provides the necessary protections without unduly burdening or delaying certification.

3. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. (See § 392.361.2 RSMo 1994). All the services a competitive company provides must be classified as competitive. (See § 392.361.3 RSMo 1994). As indicated in paragraph 8 of the Stipulation and Agreement, no Party disputes that the Applicant should be classified as a competitive telecommunications company, and all of the telecommunications services it offers should be classified as competitive. However, the Staff and other parties expressed concern about classifying exchange access service as competitive. The end user, not the access customer (presently the interexchange carrier [IXC]), determines whose services will be used. Accordingly, an IXC does not have the option to avoid a certain LEC because its access charges are too high; if the IXC's customer is served by that LEC, the ICX will have to buy access from that LEC. To address this concern, the Parties devised an access rate "cap" that places an upper limit on access rates at the lowest level charged by the large incumbent LEC(s) in whose service territory(ies) the Applicant seeks authority to provide service. This access rate cap is discussed and stipulated to in paragraph 2. Although access services would technically be classified as competitive, the Applicant may not avail itself of the near automatic rate changes normally afforded to competitive services in §§ 392.500 and .510, RSMo. Instead, if the Applicant can establish to the Commission's satisfaction that its costs of providing access exceed the capped rate, it could increase its rates through the rate change process set out in §§ 392.220 and 230, RSMo. Such a mechanism is permissible because §§ 392.361.5 and .6, RSMo.,

authorize the Commission to impose conditions and competitive classification rate changes that are reasonably necessary to protect the public interest.

4. The Stipulation and Agreement provides, in paragraph 2, that the Applicant will adhere to the same quality of service and billing standards as those to which the incumbent LECs must adhere.

5. The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392 RSMo. (See §§ 392.361.3 and 392.420 RSMo 1994 and § 392.185 RSMo Supp. 1999). The requested waivers in the Stipulation and Agreement include the waivers listed in the Notice of Applications except Subsection 392.240(1) RSMo is omitted from the Stipulation and Agreement at the request of intervenor Southwestern Bell Telephone Company. Because the Applicant was willing to sign a Stipulation and Agreement that did not include this waiver, the Staff was willing to sign the Stipulation and Agreement rather than potentially delaying the Applicant's certification.

6. The Applicant agrees, in paragraph 2 of the Stipulation and Agreement, that it will provide equitable access, as determined by the Commission, to all Missourians. The Staff believes that such an affirmative statement is not necessarily required, as the statutory section in question is couched in terms of a Commission finding rather than an affirmative undertaking.² However, the Staff can see a potential benefit in such an undertaking, so it does not object to including equitable access as an affirmative statement in the Stipulation and Agreement.³

²§ 392.455, RSMo. Supp. 1999.

³As equitable access is a concern the Commission must address in the certification process, the Parties wanted to bring it to the Commission's attention and assert their belief that this application is in no way inconsistent with equitable access.

Respectfully submitted,

DANA K. JOYCE
General Counsel

Julie A. Kardis
Julie A. Kardis
Assistant General Counsel
Missouri Bar No. 44450

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 8th day of June 2000.

Julie A. Kardis