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October 16, 1998

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Missouri Public Service Commission
P. O. Box 360
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FILED
OCT 16 1998
Missouri Public
Service Commission

RE: Case No. TA-98-575 - MCImetro Access Transmission Services LLC

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of the **Suggestions in Support of the 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,

William K. Haas

William K. Haas
Senior Counsel
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WKH:sw
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

OCT 16 1998

Missouri Public
Service Commission

In the Matter of the Application of MCImetro)
Access Transmission Services LLC for)
Certificates of Service Authority to Provide)
Basic Local Telecommunications Services,)
Local Exchange Telecommunications)
Services, Exchange Access Services, and)
Interexchange Telecommunications Services)
in the State of Missouri and for Competitive)
Classification.)

Case No. TA-98-575

SUGGESTIONS IN SUPPORT OF THE STIPULATION AND AGREEMENT

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

1. MCImetro Access Transmission Services LLC ("MCImetro" or "Applicant") has filed a concurrent Application for Approval of Merger (Case No. TM-98-576) and upon approval intends to adopt the tariffs of MCImetro Access Transmission Services, Inc. Approval of local exchange service and access service tariffs is pending in Case No. TA-96-355. MCImetro has agreed in the Stipulation and Agreement, paragraph 5, that its application for certification may be granted on condition that such tariffs become effective for MCImetro. The Applicant also agrees 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

¹ The 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.

2. The application process for certification as a provider of basic local telecommunications services 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 an interconnection or resale agreement and file it for approval (except as discussed in paragraph 1 above); 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 Stipulation and Agreement, in paragraph 10, notes that the Applicant is classified as a competitive company and that all of the 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), determines whose services will be used. The access customer does not have the option to avoid a certain LEC because its access charges are too high - if its customer is served by that LEC, it 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 LECs in whose service territories the Applicant will be initially certificated. This access rate cap is discussed and stipulated to in paragraphs 4 and 10. 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 (1994).² Instead, if the Applicant can establish

² The rate cap solution set out in the Stipulation and Agreement is not the optimal solution, but it is the most practicable at this time. It may appear to be more reasonable for the companies that resell access to pass through to their customers whatever rate they are charged by the incumbent LEC. This could not be

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 RSMo (Supp. 1997) and 392.230 RSMo (1994). Such a mechanism is permissible because Subsections 392.361.5 and .6 RSMo (1994) authorize the Commission to impose conditions on competitive classification rate changes that are reasonably necessary to protect the public interest.

4. The Stipulation and Agreement, in paragraph 4, provides that the Applicant will adhere to the same quality of service and billing standards to which the incumbent LECs must adhere. The requested waivers in the Stipulation are generally the waivers granted to competitive local exchange carriers.

5. The Applicant agrees, in paragraphs 4 and 9 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.³ 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.⁴

accomplished in the present docket because to do so would allow companies to geographically de-average rates. Pursuant to §392.200.4. RSMo (Supp. 1997) the Commission has the authority to allow such de-averaged rates, but requires that the Commission find, based on clear and convincing evidence, that such de-averaged rates are in the public interest.

³ §392.455 RSMo (Supp. 1997).

⁴ As 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.

6. The Stipulation and Agreement was specifically designed to address the five (5) criteria set out in §392.455 RSMo (Supp. 1997), which the Commission must address in the process of certificating new basic local telecommunications service providers.

- The Applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service. Staff has specifically reviewed the financial information submitted by the Applicant. Staff concludes that the Applicant meets a minimum standard of cash or equivalent working capital of at least four (4) months operating expenses inclusive of interest expenses and taxes, and is financially able to provide basic local telecommunications services in the State of Missouri.
- The Applicant has demonstrated that the services it proposes to offer satisfy the minimum standards established by the Commission. The Staff has reviewed the Applicant's services and has concluded that the Applicant satisfies the minimum standards established by the Commission.
- The Applicant has set forth the geographic area in which it proposes to offer service and has demonstrated that such area follows exchange boundaries of the incumbent local exchange telecommunications company and is no smaller than an exchange. The Staff has concluded that the geographic area in which the Applicant proposes to offer service follows exchange boundaries and is no smaller than an exchange.
- The Applicant will offer basic local telecommunications service as a separate and distinct service. The Staff has concluded that the Applicant will offer basic local telecommunications service as a separate and distinct service.
- The Applicant has agreed to provide equitable access to affordable telecommunications services for all Missourians, regardless of where they live or their income. The Staff has concluded that the Applicant will provide equitable access to affordable telecommunications services for all Missourians, regardless of where they live or their income.

7. In this Application, MCImetro is requesting certificates of service authority to provide basic local telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services. The Stipulation and Agreement, in paragraph 12, first lists the statutory provisions and rules to be waived as to all of MCImetro's

services and then separately lists additional statutory provisions and rules to be waived as to all of its services other than basic local telecommunications services. These waivers are consistent with the Commission's treatment of other companies.

For all of the foregoing reasons, the Staff believes the Stipulation and Agreement has adequately addressed the relevant issues and should be approved by the Commission, thereby approving the application of MCImetro.

Respectfully submitted,

William K. Haas

William K. Haas
Senior Counsel
Missouri Bar No. 28701

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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 16th day of October, 1998.

William K. Haas

**SERVICE LIST FOR
CASE NO. TA-98-575
October 16, 1998**

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