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April 17, 2000

FILED

APR 17 2000

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

Missouri Public  
Service Commission

Re: Case No. TA-2000-484  
Essential.com, Inc.  
Basic Local Service Certificate Application

Dear Mr. Roberts:

Please find enclosed for filing in the above-referenced case an original and fourteen copies of the Joint Stipulation and Agreement filed on behalf of all parties except for the Office of the Public Counsel. This Stipulation is being filed in lieu of a proposed procedural schedule pursuant to the Commission's Order issued on March 20, 2000. Copies of this filing have been sent to counsel for all parties of record. Thank you.

Sincerely,

  
Brent Stewart

CBS/bt

Enclosure

cc: Counsel for all parties of record  
Edward E. Madden, Jr.

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

**FILED**  
APR 17 2000  
Missouri Public  
Service Commission

In the Matter of the Application of                     )  
Essential.com, Inc. for                                     )  
a Certificate of Service Authority to                     )     Case No. TA-2000-484  
provide Basic Local Telecommunications             )  
Service in portions of the State of Missouri     )  
and for Competitive Classification.                     )

**JOINT STIPULATION AND AGREEMENT**

1. Essential.com, Inc. ("Essential" or "Applicant") initiated this proceeding on February 8, 2000 by filing an Application requesting a certificate of service authority to provide resold basic local telecommunications service in exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), GTE Midwest Incorporated ("GTE") and Sprint Missouri, Inc. d/b/a Sprint ("Sprint").

2. The Commission issued its standard Notice of Applications, which included this case, on February 15, 2000 and set an intervention deadline of March 16, 2000. SWBT filed its Application to Intervene on February 18, 2000. By Order issued on March 20, 2000 the Commission granted SWBT intervention and directed the parties to file a proposed procedural schedule on or before April 19, 2000. No other party has sought or has been granted intervention.

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

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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. 1999. In Missouri, the current large LECs are SWBT, GTE and Sprint.

interexchange and local exchange authority are currently handled.

4. In determining whether Applicant's application for certificate of service authority should be granted, the Commission should consider Applicant's technical, financial and managerial resources and abilities to provide basic local telecommunications service. Applicant 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 the applicant seeks to compete. Further, Applicant 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, Applicant 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 for the large incumbent LEC(s) within whose service area(s) Applicant seeks authority to provide service. Further, Applicant agrees to offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic service area in which it proposes to offer basic local service. Such area must follow exchange boundaries of the incumbent local exchange telecommunications companies 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 their income. See Section 392.455 RSMo Supp. 1999.

5. Applicant has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H)<sup>2</sup>. Applicant agrees to file its initial tariff(s) in this certification case and serve all parties with written notice at the time the initial tariff(s) is/are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by Applicant to such parties immediately upon request. Any service authority granted pursuant to this Application shall be regarded as conditional and shall not be exercised until such time as the tariff for services shall have become effective. When filing its initial basic local tariff(s), Applicant shall also file and serve a written disclosure of all resale or interconnection agreements which affect Applicant's 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.

6. Applicant has requested, pursuant to Section 392.420 RSMo 1994 that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications 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 Applicant's services:

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<sup>2</sup>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.

## 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

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. 1999 regarding applications for certificates of local exchange authority to provide basic local telecommunications services.

### **B. ESSENTIAL'S CERTIFICATION**

8. Applicant has submitted, as Appendix B to its Application, a listing of the specific exchanges in which it seeks authority to provide service. The exchanges so identified are those currently served by SWBT, GTE and Sprint. Applicant hereby agrees that its Application should be deemed further amended as required to include by reference the terms and provisions described in paragraphs 4-6 hereinabove and paragraph 11 below to the extent that its Application might be inconsistent therewith.

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

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.

10. Applicant asserts, and no party opposes, that Applicant'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 RSMo Supp. 1999 continue to apply, and Applicant shall be classified as a competitive telecommunications company. Applicant 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 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 RSMo and are conditional and shall not be exercised until such time as tariffs for services have become effective."

The parties also 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 RSMo Supp. 1999. The parties recognize the pendency of 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 switched access service rates above the maximum switched access service rates as set forth in paragraph 4 herein shall be cost justified and shall be made pursuant to 392.220 and 392.230 and not 392.500 and 392.510 RSMo Supp. 1999.

The Commission's order should state the foregoing conditions substantially as follows:

"Unless otherwise ordered by the Commission, the service authority and service classification for switched access service granted herein is expressly conditioned on the continued applicability of Section 392.200 RSMo Supp. 1999 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 shall be made pursuant to

Sections 392.220 and 392.230 and not Sections 392.500 and 392.510 RSMo Supp. 1999.

11. Applicant'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, at the time of filing its Application, Applicant did not yet have approved a resale or interconnection agreement with any incumbent LEC. Applicant agrees that at such time as all facts necessary for the development of tariffs become known, it will submit tariffs in this case, with a minimum 45-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above. Applicant shall serve notice to all parties and participants in this case 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 Applicant's proposed tariff(s). The Commission's order should state these obligations to the temporary 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 case 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 service tariff in this case, the Applicant shall also file and serve upon the parties hereto a written disclosure of: all resale or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale or interconnection agreement with the incumbent local exchange carrier; and its explanation of why such a resale or interconnection agreement is unnecessary for any such areas."

12. Applicant's request for waiver of the applications of the following rules and statutory provisions as they relate to the regulation of Applicant'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

Applicant agrees to comply with all applicable rules, regulations and statutory obligations except for those which are specifically waived by the Commission.

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 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 Section 536.080.2 RSMo; and their respective rights to seek rehearing pursuant to Section 386.500 RSMo and to seek judicial review pursuant to Section 386.510, RSMo. 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 Applicant'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 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 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 the meeting in which the Staff will respond to the Commission's request of such explanation once such explanation is requested from the Staff. Staff's oral explanation shall be subject to public disclosure.

16. The Office of the Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing, and to the signatory parties' best information and belief, 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 Essential.com, Inc., subject to the conditions described above, as expeditiously as possible.

Respectfully submitted,

Charles Brent Stewart

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FOR: Applicant, Essential.com, Inc.

Marc Poston *By CBS*

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FOR: Southwestern Bell Telephone Company

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Stipulation and Agreement was served upon counsel for all parties of record in Case No. TA-2000-484 by depositing a true copy thereof in the United States Mail, postage prepaid, or by hand delivery, this 17<sup>th</sup> day of April, 2000.

Charles Brent Stewart