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PRACTICE IN KANSAS AND MISSOURI

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July 27, 2000

VIA UPS OVERNIGHT DELIVERY

FILED

JUL 28 2000

Mr. Dale Roberts
Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
301 West High Street, Room 530
Jefferson City, MO 65102-0360

Missouri Public
Service Commission

Re: Phone Bank, Inc. d/b/a Phone Banc, Inc.
Application for Certificate of Service Authority
and for Competitive Classification
Case No. TA-2000-701

Dear Mr. Roberts:

Enclosed please find an original and 9 copies of a Unanimous Stipulation and Agreement reached by all parties to this Docket for filing with the Commission. Please return the extra copy file-stamped to me in the enclosed self-addressed, stamped envelope.

Thank you for your attention to this matter.

Very truly yours,



David J. Roberts

For

SMITHYMAN & ZAKOURA, CHARTERED

DJR:pae
Enclosures

FILED

JUL 28 2000

**BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI**

In the Matter of the Application)
of Phone Bank, Inc. d/b/a)
Phone Banc, 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.)

Missouri Public
Service Commission

Case No. TA-2000-701

UNANIMOUS STIPULATION AND AGREEMENT

Phone Bank, Inc. d/b/a Phone Banc, Inc. ("Applicant") initiated this proceeding on April 28, 2000, by filing an Application requesting a certificate of service authority to provide basic local and basic local exchange telecommunications services in those portions of Missouri that are currently served by Southwestern Bell Telephone Company ("SWBT"), Sprint/United Telephone Company ("Sprint"), and GTE Midwest, Incorporated ("GTE").

The Missouri Public Service Commission ("Commission") granted SWBT's timely application to intervene.

A. Standards and Criteria

1. For purposes of this Unanimous 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 local exchange authority currently are handled.

2. 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

¹Large LECs are defined as LECs that serve 100,000 or more access lines, § 386.020 R.S.Mo. Supp. 1998. In Missouri, the current large LECs are SWBT, Sprint, and GTE.

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 filing and maintaining basic local service tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange companies ("ILECs") with which 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 ILECs with which Applicants seeks to compete. Notwithstanding the provisions of §392.500 R.S.Mo. (1994), as a condition of certification and competitive classification, Applicant agrees that, unless otherwise ordered by the Commission, Applicant's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each large ILEC within whose service area(s) Applicant seeks authority to provide service.

Additionally, Applicant agrees that if the ILEC, in whose service area Applicant is operating, decreases its originating and/or terminating access service rates, Applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap. Further, Applicant agrees to offer basic local telecommunications service as a separate and distinct service and has sufficiently identified the geographic area in which it proposes to offer basic local service. Such area follows exchange boundaries of the ILECs in the same area and is 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. See §392.455 R.S.Mo. Supp. 1999.

3. Applicant has submitted its Application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(6)(C). Applicant agrees to file its initial tariffs in this certification docket and serve all parties thereto with written notice at the time the initial tariffs are submitted to afford them an opportunity to participate in the tariff approval process. Applicant will provide copies of the tariff immediately to a requesting Party. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariffs for services have become effective. When filing its initial basic local tariff, Applicant also shall file and serve a written disclosure of all resale and/or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the ILEC; and an explanation of why such a resale and/or interconnection agreement is unnecessary for such areas.

4. Pursuant to § 392.420 R.S.Mo., Applicant has requested that the Commission waive the application of the following statutory provisions and rules to its basic local telecommunications services, and the Parties agree that the Commission should grant such request provided that § 392.200 R.S.Mo. should continue to apply to all of Applicant's services:

Statutory Provisions

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

Commission 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

5. In negotiating the remaining provisions of this Unanimous Stipulation and Agreement, the Parties employed the foregoing standards and criteria, which are intended

to meet the requirements of existing law and §§392.450 and 392.455 R.S.Mo. regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service.

B. Applicant Certification

6. Applicant hereby agrees that its Application should be deemed amended to include by reference the terms and provisions described in paragraphs 2-4 above.

7. Based upon its verified Application, as amended by this Unanimous Stipulation and Agreement, Applicant asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can 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 satisfy the minimum standards established by the Commission;
- c. has sufficiently identified the geographic area in which it proposes to offer basic local telecommunications service, and such area follows exchange boundaries of the ILECs in the same areas, and such area is no smaller than an exchange;
- d. will offer basic local telecommunications service as a separate and distinct service;
- e. has agreed to provide equitable access to affordable basic local telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which Applicant

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.

8. Applicant asserts, and no Party opposes, that Applicant's Application and request for authority to provide basic local telecommunications services and local exchange telecommunications services (including exchange access service) should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of § 392.200 R.S.Mo. continue to apply, and Applicant shall remain 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 ILECs 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 §392.200 R.S.Mo. and are conditional and shall not be exercised until such time as tariffs for services have become effective.

The Parties agree that Applicant's switched access services may be classified as competitive services. The Parties further agree that Applicant's intrastate switched exchange access services are subject to §392.200 R.S.Mo. Any increases in intrastate switched access service rates above the maximum switched access service rates as set forth in paragraph 2 herein shall be made pursuant to §§392.220 and 392.230 R.S.Mo. and not §§392.500 and 392.510. Applicant agrees that if the ILEC, in whose service area

Applicant is operating, decreases its originating and/or terminating access rates, Applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap. 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 §392.200 R.S.Mo. and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to §§392.220 and 392.230 R.S.Mo. and not §§392.500 and 392.510 R.S.Mo. Further, if the ILEC, in whose service area Applicant is operating, decreases its originating and/or terminating access rates, Applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates within thirty (30) days of the ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

9. Applicant'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 at the time of filing its Application, Applicant does not yet have approved a resale or interconnection agreement with any ILEC. Applicant agrees that at such time as all facts necessary for the development of tariffs become known, it will submit the tariff(s) 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. Applicant shall serve notice to all parties and participants in this docket of the filing of its tariff(s) at the time filed with the Commission and serve the tariff(s) 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(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 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 tariff(s) in this docket to the Commission such tariff(s) 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 tariff(s) to such Parties immediately upon request. When filing its initial basic local service tariff in this docket, the Applicant also shall 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 ILEC; and its explanation of why such resale or interconnection agreement is unnecessary for any such areas.

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

Statutory Provisions	Commission Rules
§ 392.210.2	4 CSR 240-10.020
§ 392.270	4 CSR 240-30.010(2)(C)
§ 392.280	4 CSR 240-30.040
§ 392.290	4 CSR 240-32.030(4)(C)
§ 392.300.2	4 CSR 240-33.030
§ 392.310	4 CSR 240-35
§ 392.320	
§ 392.330	
§ 392.340	

11. This Unanimous Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms thereof are interdependent. In the event the Commission does not adopt this Stipulation in total, 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 Unanimous Stipulation and Agreement, the Parties and participants waive with respect to the issues resolved herein their respective rights pursuant to §536.080.1 R.S.Mo. 1994 to present testimony, to cross-examine witnesses, to present oral argument or written briefs, their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2 R.S.Mo. 1994, and their respective rights to seek rehearing pursuant to §386.500 R.S.Mo. 1994 and their respective rights to seek judicial review pursuant to §386.510 R.S.Mo. 1994. The Parties agree to cooperate with Applicant and with each other in presenting this Unanimous Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the Applicant's Application made herein.

13. The Staff shall file suggestions or a memorandum in support of this Unanimous Stipulation and Agreement and the other parties shall have the right to file responsive suggestions or prepared testimony. All responsive suggestions, prepared testimony, or memorandum shall be subject to the terms of any Protective Order that may be entered in this case.

14. The Staff also shall have the right to provide, at any agenda meeting at which this Unanimous Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests; provided that Staff shall provide, to the extent reasonably practicable, 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. Staff's oral explanation shall be subject to public disclosure, except to the extent that it refers to matters that are privileged or protected by disclosure pursuant to any protective order that may be issued in this case.

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

16. Finally, Applicant will comply with all applicable Commission rules and regulations, except those which specifically are waived by the Commission.

WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Unanimous Stipulation and Agreement and issue its Order granting authority and classification as requested by Applicant subject to the conditions described above, at its earliest convenience.

Daniel J. Roberts

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