

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of 2nd Century)
 Communications, Inc. for a Certificate of)
 Service Authority to Provide Basic Local) Case No. TA-2000-323
 Telecommunications Services in the State of)
 Missouri and to Classify Such Services and the)
 Company as Competitive)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL AND EXCHANGE ACCESS TELECOMMUNICATIONS SERVICES

Procedural History

2nd Century Communications, Inc. (2nd Century) applied to the Missouri Public Service Commission (Commission) on November 9, 1999, for a certificate of service authority to provide basic local and local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1999. 2nd Century asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. 2nd Century is a Delaware corporation with principal offices located at 7702 Woodland Center, Tampa, Florida 33614.

The Commission issued a notice and schedule of applicants on November 16, 1999, directing interested parties wishing to intervene to do so by December 16, 1999. On December 3, 1999, Southwestern Bell

1 All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated. 2nd Century cited only Sections 392.420, 392.430, and 392.450 RSMo Supp. 1998. Also, the better practice would have been to cite Section 392.455 RSMo Supp. 1999.

Telephone Company (SWBT) filed an application to intervene, which was granted on April 4, 2000.

On May 11, 2000, 2nd Century filed its motion for leave to amend its application. 2nd Century stated that it requested leave to amend its application to comply with the Commission's new rules regarding waivers of statutes and rules. No party responded to the motion. The Commission will grant that motion.

The parties filed a Unanimous Stipulation and Agreement (Agreement), which is included with this order as Attachment 1, on May 31, 2000. The Agreement was signed by all the parties. The Agreement stated that the Office of the Public Counsel was a signatory to the Agreement for the sole purpose of stating that it had no objection to the Agreement.

Staff filed Suggestions in Support of the Stipulation and Agreement on June 5, 2000. In the Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the application.

Discussion

2nd Century seeks certification to provide basic local and exchange access telecommunications services in portions of Missouri that are

currently served by SWBT and GTE Midwest Incorporated (GTE). 2nd Century is not asking for certification in any area that is served by a small incumbent local exchange carrier (ILEC). 2nd Century proposes to provide service in the exchanges currently served by SWBT and GTE as listed in Exhibit A of its application. 2nd Century is requesting that it be classified as competitive and that the application of certain statutes and regulatory rules be waived.

A. Requirements of 4 CSR 240-2.060(4)

Commission rule 4 CSR 240-2.060(4) requires that an applicant who is not a Missouri corporation and is applying for certification to provide telecommunications services, shall include in its application a certificate from the Secretary of State showing that it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. 2nd Century has provided all the required documentation except for the proposed tariff. 2nd Century requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. 2nd Century agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreement. The Agreement provides that 2nd Century will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing 2nd Century has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas. The

Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and when 2nd Century files the required tariff it will be assigned a new case number. 2nd Century will be directed to provide the notice and disclosures required by the Agreement when it files its proposed tariff.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1999, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the ILEC and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

2nd Century submitted as Exhibit E to its application certain financial documentation. Exhibit E is designated as confidential. Exhibit D to the application lists the names and qualifications of 2nd Century's management team. The parties agreed that 2nd Century possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

2nd Century has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The parties agreed that 2nd Century proposes to offer basic local services that satisfy the minimum standards established by the Commission.

2nd Century wishes to be certificated to offer services in all the exchanges presently served by SWBT and GTE as described in their basic local tariffs. The parties agreed that 2nd Century has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

2nd Century has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1999.

C. Competitive Classification

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. Section 392.361.2. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. In the matter of the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the matter of Southwestern Bell

Telephone Company's application for classification of certain services as transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, the commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services pursuant to Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

The parties have agreed that 2nd Century should be classified as a competitive telecommunications company. The parties have also agreed that 2nd Century's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on 2nd Century's ability to charge for its access services. 2nd Century has agreed that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for the large ILEC(s) within whose service area(s) 2nd Century seeks to operate. The parties have agreed that the grant of service authority and competitive classification to 2nd Century should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1999, and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.010(2)(C), 4 CSR 240-30.040(1)&(2), 4 CSR 240-33.030, and 4 CSR 240-35.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

- A. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that 2nd Century has met the requirements of Commission rule 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services, with the exception of the filing of a tariff with a 45-day effective date.
- C. The Commission finds that 2nd Century has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that the local exchange services market is competitive and that granting 2nd Century a certificate of service authority to provide local exchange telecommunications services is in the public interest. 2nd

Century's certificate shall become effective when its tariff becomes effective.

- E. The Commission finds that 2nd Century meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting 2nd Century a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. 2nd Century's certificate shall become effective when its tariff becomes effective.
- F. The Commission finds that 2nd Century is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- G. The Commission finds that 2nd Century's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. 2nd Century has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1999 which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1999, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1999.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1999. Based upon the Commission's review of the applicable law and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That 2nd Century Communication, Inc.'s motion for leave to amend filed on May 14, 2000, is granted.

2. That the Unanimous Stipulation and Agreement of the parties, filed on May 31, 2000, is approved.

3. That 2nd Century Communications, Inc. is granted a certificate of service authority to provide local exchange telecommunications services in the state of Missouri, subject to the conditions of

certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when 2nd Century's tariff becomes effective.

4. That 2nd Century Communications, Inc. is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when 2nd Century's tariff becomes effective.

5. That 2nd Century Communications, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2	- uniform system of accounts
392.270	- valuation of property (ratemaking)
392.280	- depreciation accounts
392.290	- issuance of securities
392.300.2	- acquisition of stock
392.310	- stock and debt issuance
392.320	- stock dividend payment
392.340	- reorganization(s)
392.330, RSMo Supp. 1999	- issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	- depreciation fund income
4 CSR 240-30.010(2)(C)	- rate schedules
4 CSR 240-30.040(1),(2)	- uniform system of accounts
4 CSR 240-33.030	- minimum charges
4 CSR 240-35	- reporting of bypass and customer-specific arrangements

6. That the request by 2nd Century Communications, Inc. for waiver of Commission rule 4 CSR 240-2.060(4)(H), which requires the filing of a 45-day tariff, is granted.

7. That 2nd Century Communications, Inc. shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within thirty (30) days after the effective date of a Commission order approving an interconnection agreement that will allow 2nd Century to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

8. That 2nd Century Communications, Inc. shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, 2nd Century Communications, Inc. shall file 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, and an explanation of why no interconnection agreement is necessary for those areas.

9. That 2nd Century Communications' certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

10. That this order shall become effective on June 19, 2000.

11. That this case may be closed on June 20, 2000.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Bill Hopkins, Senior Regulatory Law Judge,
by delegation of authority pursuant
to 4 CSR 240-2.120(1) (November 30,
1995) and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 8th day of June, 2000.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

MAY 31 2000

Missouri Public
Service Commission

In the Matter of the Application of)
2ND CENTURY COMMUNICATIONS, INC.)
for a Certificate of Service Authority)
to Provide Basic Local)
Telecommunication Services)
in the State of Missouri and to)
Classify Such Services and the Company)
As Competitive)

Case No. TA-2000-323

UNANIMOUS STIPULATION AND AGREEMENT

2ND CENTURY COMMUNICATIONS, INC. (hereinafter "2ND CENTURY" or "Applicant") initiated this proceeding on November 9, 1999 by filing an Application requesting certificate of service authority to provide basic local exchange and local exchange services in exchanges currently served by Southwestern Bell Telephone Company, and GTE of the Midwest, Inc. (GTE).

Southwestern Bell Telephone Company (SWB) applied to intervene in this matter and its application was granted.

A. STANDARDS AND CRITERIA

1. The parties employed the following standards and criteria, which are intended to meet the requirements of existing law, particularly Sections 392.450 and 392.455, RSMo. Cum Supp. 1999 regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service, in negotiating the provisions of this Unanimous Stipulation and Agreement (referred to hereafter for brevity as the "Stipulation").

2. For purposes of this Stipulation, the parties agree that applications for local exchange and 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 authority are currently handled.

3. In determining whether 2ND CENTURY's application for certificate of service authority should be granted, the Commission should consider 2ND CENTURY's technical, financial and managerial resources and abilities to provide basic local telecommunications service. 2ND CENTURY 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 applicant seeks to compete. Further, 2ND CENTURY must agree 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, 2ND CENTURY agrees that, unless otherwise ordered by the Commission, its 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 those service area(s) applicant seeks authority to provide service. Further, 2ND CENTURY 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 in the same area and must be no smaller than an exchange. Finally, 2ND CENTURY agrees to provide

¹Large 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.

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. See Section 392.455 RSMo Cum. Supp. 1999.

4. 2ND CENTURY submitted its application without a tariff and seeks a temporary waiver of 4 CSR 240-2.060(4)(H).² 2ND CENTURY has agreed to file its initial tariff(s) in the certification docket and serve all parties thereto with written notice at the time the initial tariff(s) are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by 2ND CENTURY to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariff(s) for services have become effective. When filing its initial basic local tariff, 2ND CENTURY shall also file and serve a written disclosure of all interconnection agreements that affect its Missouri service areas, and, where applicable, a written disclosure of all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier and an explanation of why such an interconnection agreement is unnecessary for such areas.

5. 2ND CENTURY has, pursuant to §392.420 RSMo. 1994 requested that the Commission waive the application of certain statutory provisions and rules. Since the filing of its application, several rules of the Commission had been revised and 2ND CENTURY requested leave to amend its application to reflect those rule revisions. The parties hereto have no objection to Applicant's motion for leave to amend. 2ND CENTURY's application as amended requests the Commission to waive any or all of the following statutory provisions and rules to basic local telecommunications services, and the parties agree that the Commission should grant such request provided that Section

²Good 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.

392.200 RSMo should continue to apply to all of 2ND CENTURY'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(1), (2)
4 CSR 240-33.030
4 CSR 240-35

B. 2ND CENTURY CERTIFICATION

6. 2ND CENTURY hereby agrees that its application should be deemed amended to include by reference the terms and provisions described in paragraphs 2-4 hereinabove.

7. Based upon its verified application, as amended, 2ND CENTURY asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that 2ND CENTURY:

- 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 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;³

- d. will offer basic local telecommunications service as a separate and distinct service;
- e. has agreed to provide equitable access for all Missourians 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;⁴
- f. has sought authority which will serve the public interest.

8. 2ND CENTURY asserts, and no party opposes, that 2ND CENTURY'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 Section 392.200 continue to apply, and 2ND CENTURY shall remain classified as a competitive telecommunications company. 2ND CENTURY 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 2ND CENTURY'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

³ The identification of specific geographic areas within which 2ND CENTURY proposes to offer service as referred to in this paragraph shall not be construed to foreclose 2ND CENTURY from 1) petitioning the Commission pursuant to Section 392.200.4 RSMo. for authority to serve an area smaller than an exchange; and 2) offer customer specific pricing pursuant to Section 392.200.8, RSMo.

⁴ The agreement in Paragraph 7. e. of this Stipulation is without prejudice to 2ND CENTURY's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's considerations of equitable access under Section 392.455.(5), RSMo. Furthermore, such agreement should not be construed as an admission or conclusion by 2ND CENTURY that Section 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access.

stipulated above) and have become effective. The Commission's Order should state the foregoing conditions 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 the applicant's switched exchange access services are subject to Section 392.200. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 3 herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230 and not 392.500 and 392.510. The Commission's order should state the foregoing conditions 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 above the maximum switched access service rates set forth herein shall be cost-justified and pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

9. 2ND CENTURY's request for a 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 its application, it did not yet have approved interconnection agreements with any underlying carriers. 2ND CENTURY agrees that within thirty (30) days of an order approving an interconnection agreement with an underlying carrier, 2ND CENTURY 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 as stipulated above. 2ND CENTURY shall serve notice to all parties and participants in this docket of the filing of its tariffs at the time that they are filed with the Commission together with the aforesaid written disclosure and shall

immediately upon request provide any party with a copy of those tariffs. The Commission's order should state these obligations as conditions to the waiver of 4 CSR 240-2.060(4)(H), as follows:

"Applicant's request for temporary waiver of 4 CSR 240-2.060(4)(H) is hereby granted. Within thirty (30) days of the effective date of an order approving its interconnection agreement with and underlying carrier, Applicant shall submit its tariffs for Commission approval. Such tariffs shall have a minimum of a 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 tariff in this docket, the Applicant shall also file and serve upon the parties hereto a written disclosure of: all interconnection agreements that affect its Missouri service areas; and where applicable 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."

10. 2ND CENTURY's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of 2ND CENTURY's services should be granted:

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(1), (2)
4 CSR 240-33.030
4 CSR 240-35

11. Finally, 2ND CENTURY will comply with all applicable Commission rules and

regulations except those which specifically are waived by the Commission.

12. This Stipulation 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 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 all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

13. In the event the Commission accepts the specific terms of this Stipulation, the parties and participants waive, with respect to the issues resolved herein the following rights: their respective rights pursuant to §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 §536.080.2, RSMo 1994; and their respective rights to seek rehearing pursuant to §386.500 RSMo 1994 and to seek judicial review pursuant to §386.510, RSMo 1994. The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the 2ND CENTURY application made herein.

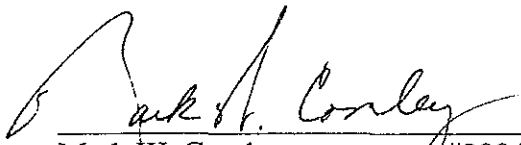
14. The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that Staff shall, to the extent reasonably practicable, provide the other Parties with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure, except to the extent it refers to matters that are privileged or protected from disclosure pursuant to any protective order issued in this case.

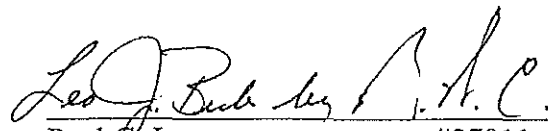
15. The Staff shall file suggestions or a memorandum in support of this Stipulation and the other Parties shall have the right to file responsive suggestions or prepared testimony.

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

WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and issue its Order granting authority and classification as requested by 2ND CENTURY, subject to the conditions described above.


Respectfully submitted,

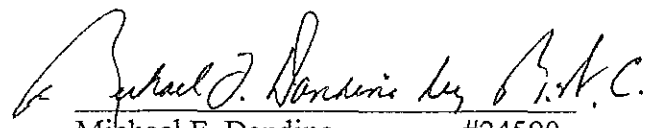

Mark W. Comley #28847
Newman, Comley & Ruth P.C.
205 East Capitol Avenue
P.O. Box 537
Jefferson City, MO 65102-0537


Paul G. Lane #27011
Leo J. Bub #34326
Anthony K. Conroy #35199
Katherine C. Swaller #34271
One Bell Center, Room 3520
St. Louis, Missouri 63101

FOR: 2ND CENTURY COMMUNICATIONS, INC.

FOR: Southwestern Bell Telephone Company


Bruce Bates #35442
Assistant General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102-0360


Michael F. Dandino #24590
Senior Public Counsel
301 West High Street
Jefferson City, MO 65102

FOR: Staff

FOR: Office of Public Counsel

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JUN 08 2000

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION