

AP

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of BroadBand)
Office Communications, Inc., for a Certificate)
of Authority to Provide and/or Resell Basic) Case No. TA-2000-373
Local and Local Exchange and Intrastate Inter-)
exchange Telecommunications Services in the)
State of Missouri.)

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

Procedural History

On December 16, 1999, BroadBand Office Communications, Inc. (BBOC or Applicant), filed its application before the Commission. BBOC requests the Commission to classify it as a competitive company and grant it certificates of authority to provide competitive telecommunications services. The requested certificates are to authorize services provided as a competitive basic local exchange company (CLEC) and services provided as a competitive intrastate interexchange company (IXC) in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1999. BBOC asked the Commission to waive certain statutes and rules as authorized by Sections 392.361 and 392.420.

¹ All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

BBOC is a Delaware Corporation registered to transact business in Missouri, with its principal offices located at 2070 Chain Bridge Road, Suite G-99, Vienna, Virginia 22182.

The Commission issued a notice and schedule of applicants on December 21, 1999, directing interested parties wishing to intervene to do so by January 5, 2000, regarding BBOC's IXC authority and by January 20, 2000, for BBOC's CLEC authority. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on January 20, 2000.

The parties filed a Stipulation and Agreement (Agreement) which is included with this order as Attachment 1 on March 27, 2000. The Staff of the Missouri Public Service Commission (Staff) filed Suggestions in Support of the Stipulation and Agreement on March 29, 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

BBOC requests certification to provide basic local exchange and interexchange telecommunications services in portions of Missouri

) that are currently served by SWBT, GTE Midwest Incorporated (GTE), and Sprint Missouri, Inc. (Sprint). BBOC is not asking for certification in any area that is served by a small incumbent local exchange provider. BBOC proposes to operate in all of the exchanges described in the incumbent providers' respective local exchange tariffs. BBOC is requesting that its basic local services 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 a corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing 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. BBOC has provided all the required documentation except for the proposed tariff required pursuant to 4 CSR 240-2.060(4)(H).

) BBOC requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into interconnection agreements with the underlying local exchange carriers and those agreements have been approved by the Commission. The company agreed to submit a proposed tariff with a minimum 45-day effective date for the Commission's approval once it is party to the appropriate interconnection agreements. BBOC will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing, BBOC has agreed to

provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

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 incumbent local exchange telecommunications company (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.

BBOC submitted financial statements and information as Appendix 3 to its application. Appendix 4 to the application lists the names and qualifications of BBOC' management. In addition to the academic credentials, the members of management have experience and expertise in various areas of the telecommunications industry. BBOC asserted and no party denied that BBOC possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service, including exchange access service.

) BBOC 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. BBOC asserted and no party denied that BBOC proposes to offer basic local services that satisfy the minimum standards established by the Commission.

BBOC wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs. BBOC asserted and no party denied that BBOC 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.

) BBOC 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 South-

western Bell Telephone Company's application for classification of certain services as transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, all the services a competitive company provides must be classified as competitive. 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 BBOC should be classified as a competitive telecommunications company. The parties have also agreed that all services authorized in this order should be classified as a competitive service, provided that the requirements of Section 392.200, RSMo Supp. 1999, continue to apply. BBOC 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 at the date of certification for the large incumbent LECs within whose service areas BBOC seeks to operate.

The parties have agreed that the grant of service authority and competitive classification to BBOC should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1999. The parties agreed that unless any increases in switched access service rates above maximum switched access service rates described 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.

) BBOC requested the Commission waive application of the following statutes and rules to its basic local telecommunications services, and the parties agreed that waiver of the following statutes and rules is appropriate for the provision of BBOC's basic local telecommunications services: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1999, 392.340 and Commission rules 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

) BBOC also requested the Commission grant such other relief as necessary and appropriate. Consistent with BBOC's competitive status the Commission shall waive the following statutes and rules applicable to BBOC's interexchange telecommunications services: Section 392.240(1), and Commission rules 4 CSR 240-30.010(2)(C), 4 CSR 240-32.030(1)(B), 4 CSR 240-32.030(1)(C), 4 CSR 240-32.030(2), 4 CSR 240-32.050(3-6), 4 CSR 240-32.070(4), 4 CSR 240-33.030, and 4 CSR 240-33.040(5).

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 BBOC has met the requirements of 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 BBOC 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 BBOC 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 BBOC a certificate of service authority to provide basic local exchange, local exchange, exchange access, and interexchange telecommunications services is in the public interest. BBOC' certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that BBOC is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- F. The Commission finds that BBOC' 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. BBOC 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 Stipulation and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Stipulation and Agreement should be approved.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties filed on March 27, 2000 (Attachment 1) is approved.

2. That BroadBand Office Communications, Inc., is granted a certificate of service authority to provide basic local exchange telecommunications service 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 the company's tariff becomes effective.

3. That BroadBand Office Communications, Inc., is granted a certificate of service authority to provide intrastate interexchange telecommunications service 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 the company's tariff becomes effective.

4. That BroadBand Office Communications, Inc., is classified as a competitive telecommunications company.

5. That BroadBand Office Communications, Inc.'s request for waiver of the application of the following statutes and rules as they relate to basic local telecommunications services is granted:

Statutes

392.210.2 - uniform system of accounts
392.270 - valuation of property (ratemaking)
392.280 - depreciation accounts
392.290.1 - 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 240-30.040 - uniform system of accounts
4 CSR 240-35 - reporting of bypass and customer-
specific arrangements

6. That waiver of the application of the following statutes and rules as they relate to interexchange telecommunications services is granted:

Statutes

Section 392.240(1) - ratemaking

Commission Rules

4 CSR 240-30.010(2)(C) - rate schedules
4 CSR 240-32.030(1)(B) - exchange boundary maps
4 CSR 240-32.030(1)(C) - record-keeping
4 CSR 240-32.030(2) - in-state record-keeping
4 CSR 240-32.050(3) - local office record-keeping
4 CSR 240-32.050(4) - telephone directories
4 CSR 240-32.050(5) - call intercept
4 CSR 240-32.050(6) - telephone number changes
4 CSR 240-32.070(4) - public coin telephone
4 CSR 240-33.030 - minimum charges rule
4 CSR 240-33.040(5) - financing fees

7. That BroadBand Office Communications, Inc.'s request for waiver of the filing of 4 CSR 240-2.060(4)(H) which requires the filing of a 45-day tariff is granted.

8. That BroadBand Office 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 30 days after the effective date of a Commission order approving an interconnection agreement which will allow BroadBand Office Communications, Inc., to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

9. That BroadBand Office Communications, Inc., shall give notice of the filing of the tariffs described above to all parties or participants. In addition, BroadBand Office 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.

10. That BroadBand Office Communications, Inc.'s 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.

11. That this order shall become effective on April 14, 2000.

12. That this case may be closed after April 17, 2000.

BY THE COMMISSION

(S E A L)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Keith Thornburg, 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 4th day of April, 2000.

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION

FILED²
MAR 27 2000

Missouri Public
Service Commission

Case No. TA-2000-373

In the Matter of the Application of)
BroadBand Office Communications, Inc.)
For Authority to Provide and/or Resell)
Basic Local, and Local Exchange and)
Intrastate Interexchange Telecommunications)
Services in the State of Missouri)

STIPULATION AND AGREEMENT

1. BroadBand Office Communications, Inc., ("BBOC" or "Applicant") initiated this proceeding on December 16, 1999, by filing an Application requesting a certificate of service authority to provide basic local and local exchange and intrastate interexchange telecommunications services in exchanges currently served by Southwestern Bell Telephone Company, Sprint/United Telephone Company and GTE Midwest, Inc., in the State of Missouri.

2. Southwestern Bell Telephone Company is the only party to have intervened in this proceeding.

3. For purposes of this 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 are currently handled.

4. In determining whether BBOC's application for certificate of service authority should be granted, the Commission should consider the applicant's technical, financial and managerial

¹Large LECs are defined as LECs who serve 100,000 or more access lines in Missouri Section 386.020 R.S.MO. The current large LECs are Southwestern Bell Telephone Company, GTE, and United.

resources and abilities to provide basic local telecommunications service. BBOC 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 tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which BBOC seeks to compete. Further, BBOC 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 BBOC seeks to compete. Notwithstanding the provisions of Section 392.500 R.S.Mo.(1994), as a condition of certification and competitive classification, BBOC agrees that, unless otherwise ordered by the Commission, BBOC's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large incumbent LECs within whose service areas BBOC seeks authority to provide service. Further, BBOC agrees to offer basic local telecommunications service as a separate and distinct service and has identified the geographic service area in which it proposes to offer basic local service. Such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same area, and is no smaller than an exchange. Finally, BBOC 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 Section 392.455 R.S.Mo.

5. BBOC has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H).² Applicant will file its initial tariff in this certification docket and serve all parties thereto with written notice at the time the initial tariff is submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff will be provided by the applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as such tariff(s) for service have been approved by the Commission and such tariffs have become effective. When filing its initial basic local tariff, BBOC shall also file and serve a written disclosure of all interconnection agreements which affect its 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 any such areas.

6. BBOC has, pursuant to Section 392.420 R.S.Mo. requested that the Commission waive the application of the following statutory provisions and rules regarding its basic local telecommunications services, and all parties agree that the Commission should grant such requests provided that Section 392.200 R.S.Mo. should continue to apply to all of BBOC's services.

<u>Statutes</u>	<u>Rules</u>
Section 392.210.2	4 CSR 240-10.020
Section 392.270	4 CSR 240-30.040
Section 392.280	4 CSR 240-35
Section 392.290.1	
Section 392.300.2	
Section 392.310	
Section 392.320	
Section 392.330	
Section 392.340	

7. In negotiating the remaining provisions of this Stipulation and Agreement, the parties

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.

have employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and Sections 392.450 and 392.455 R.S.Mo., regarding applications for certificates of local exchange authority to provide basic local telecommunications services.

BBOC CERTIFICATION

8. BBOC hereby agrees that its original Application should be deemed amended as required to include by reference the terms and provisions described in paragraphs 4-6 hereinabove to the extent that its original Application might be inconsistent therewith.

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

A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications 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. BBOC asserts, and no party opposes, that BBOC's application and request for authority to provide basic local exchange telecommunications 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 Applicant shall remain classified as a competitive telecommunications company. Applicant asserts and no party opposes, that such new 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 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 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 4 herein shall be cost-justified and be made pursuant to 392.220 and 392.230 and not 392.500 and 392.510.³ The Commission's order should state the foregoing conditions substantially as follows:

³BBOC also asserts, and no one opposes, that its application and request for authority to provide statewide interexchange services should be granted, and such services should be classified as competitive as have the similar services of numerous other companies.

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 set forth herein shall be cost justified and made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510.

11. BBOC'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 applicant does not yet have approved interconnection agreements with the large LECs. Applicant agrees that at such time as all facts necessary for the development of tariffs become known, it 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 stipulated above. Applicant shall serve notice to all parties to this docket of the filing of its tariff(s) 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 those tariffs. The Commission's order should state 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 interconnection agreements with certain incumbent LECs within whose service areas it seeks authority to provide service; provided, when applicant files its tariffs in this docket to the Commission such tariffs shall have a minimum of a 45-day effective date and applicant shall serve written notice upon the parties hereto of such filing, 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 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 with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is not necessary for such areas.

12. BBOC's request for waiver of the application of the following rules and statutory

provisions as they relate to the regulation of all of BBOC's services should be granted:

<u>Statutes</u>	<u>Rules</u>
Section 392.210.2	4 CSR 240-10.020
Section 392.270	4 CSR 240-30.040
Section 392.280	4 CSR 240-35
Section 392.290.1	
Section 392.300.2	
Section 392.310	
Section 392.320	
Section 392.330	
Section 392.340	

13. This Stipulation and Agreement has resulted from 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 Section 536.080.1, R.S.Mo.(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 Section 536.080.2 R.S.Mo.(1994); and their respective rights to rehearing pursuant to Section 386.500 R.S.Mo.(1994) and to seek judicial review pursuant to Section 386.510 R.S.Mo.(1994). The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval of BBOC's application made herein.

15. The Staff may submit a Staff Recommendation concerning matters not addressed

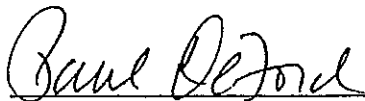
in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any memorandum 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 be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this 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 when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure.

16. The Office of Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing and has offered no objection.

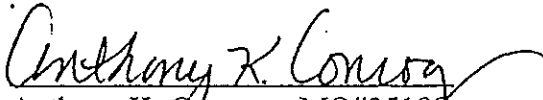
WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and

) classification and waiving certain statutes and rules as requested by BBOC, subject to the conditions described above, as expeditiously as possible.

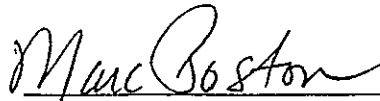


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