

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
April 11, 2000**

**CASE NO: TA-2000-32**

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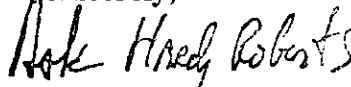
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**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

**Sincerely,**



**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

**Uncertified Copy:**

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

In the Matter of the Application of Computer	)	
Business Sciences, Inc., for Certificates	)	
of Service Authority to Provide Facilities-	)	
based Basic Local and Interexchange Tele-	)	<b>Case No. TA-2000-32</b>
communications Services in the State of	)	<b>Tariff File 0000059</b>
Missouri and to Classify Said Services and	)	
the Company as Competitive.	)	

**ORDER GRANTING CERTIFICATES TO PROVIDE**  
**BASIC LOCAL AND INTEREXCHANGE**  
**TELECOMMUNICATIONS SERVICES**  
**AND APPROVING TARIFF**

**Procedural History**

On July 15, 1999, Computer Business Sciences, Inc. (CBS or Applicant), a Delaware corporation, filed its Application for certificates of service authority to provide facilities-based basic local telecommunications services and intrastate interexchange telecommunications services in the state of Missouri. CBS further requested that the Commission classify these services and the company as competitive. CBS is a wholly-owned subsidiary of Fidelity Holdings, Inc. (FHI), a publicly-traded holding company. CBS's principal place of business is located at 80-02 Kew Gardens Road, Suite 5000, Kew Gardens, New York 11415.

On July 26, 1999, the Commission issued its Order Directing Filing, requiring CBS to cure certain defects in its initial filing. CBS complied on July 30, 1999, by filing its Supplement to Application.

On July 27, 1999, the Commission issued its Notice of Applications and established August 26, 1999, as the deadline for applications to intervene in this matter. On August 11, 1999, Southwestern Bell Telephone Company (SWBT) timely filed an application to intervene, which the Commission granted on September 8, 1999.

Together with its application and supporting documents, CBS filed on July 15, 1999, three proposed tariffs with a 45-day effective date (Tariff File No. 20000059). CBS has since extended the effective date of these tariffs several times, most recently to April 15, 2000. In its recommendation filed on April 6, 2000, Staff recommends that the Commission grant the requested certificates and waivers to CBS, classify its services and the company as competitive, and approve its proposed tariffs.

On January 26, 2000, the parties filed a unanimous Stipulation and Agreement, a copy of which is attached hereto as Attachment 1.<sup>1</sup> In the Stipulation and Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. On January 27, 2000, Staff filed Suggestions in support of the Stipulation and Agreement.

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

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<sup>1</sup>Although the Office of the Public Counsel did not join in the Stipulation and Agreement, the agreement recites that Public Counsel has no objection to it. Therefore, it may be treated as a unanimous stipulation and agreement. See Rule 4 CSR 240-2.115.

no one has requested a hearing in this case, the Commission may grant the relief requested based on the application, the supplemental information filed by CBS in support of its application, and the Stipulation and Agreement filed by the parties.

### **Discussion**

Applicant seeks certification to provide facilities-based basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT and GTE Midwest, Inc. (GTE). Applicant is not asking for certification in any area that is served by a small incumbent local exchange provider. Applicant proposes to provide service in the exchanges currently served by SWBT and GTE as listed in those companies' Missouri local exchange tariffs. Applicant is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

Applicant also seeks certification to provide interexchange services in Missouri. CBS's tariffs describe the rates, rules, and regulations it intends to use, identifies CBS as a competitive company, and lists the waivers requested. CBS intends to provide interexchange telecommunications services including 1+ long distance services, 800/888/877, Directory Assistance, and Operator Assistance services.

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

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services in Missouri to include in its application a certificate from the Missouri

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 at least a 45-day effective date. Applicant has provided all the required documentation.<sup>2</sup>

## **B. Basic Local Service Certification**

Section 392.455, RSMo Supp. 1999,<sup>3</sup> 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 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.

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<sup>2</sup>Some confusion exists concerning CBS's proposed tariffs. CBS filed proposed tariffs, with a 45-day effective date as required by Commission Rule 4 CSR 240-2.060(4)(H), with its application. Nonetheless, CBS requested a waiver of that rule in its application. Likewise, the Stipulation and Agreement filed by the parties, as well as Staff's supporting Suggestions, state that CBS seeks a waiver of Rule 4 CSR 240-2.060(4)(H). In fact, no waiver is necessary, as CBS filed proposed tariffs with its application.

<sup>3</sup>Unless otherwise specified, all statutory references herein are to the Revised Statutes of Missouri (RSMo), revision of 1994.

Applicant submitted as Exhibit 3 to its application a copy of the December 31, 1998, Income and Expense Report for FHI and its subsidiaries, a copy of FHI's 10QSB Quarterly Report of March 31, 1999, to the Securities and Exchange Commission (SEC), a copy of FHI's 10KSB Annual Report to the SEC for 1998, a copy of FHI's 10QSB Quarterly Report of September 30, 1998, to the SEC, and a copy of FHI's 8-K Debt Facility report to the SEC. These documents demonstrate that CBS's corporate parent, FHI, has the financial resources necessary to provide basic local telecommunications services. Exhibit 2 to the application lists the names and qualifications of Applicant's management team. In addition to academic credentials, the team members have experience in the telecommunications industry. The parties agreed that Applicant possesses sufficient technical, financial and managerial resources and abilities to provide basic local and interexchange telecommunications services.

Applicant 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 Applicant proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Applicant wishes to be certificated to offer services in all the exchanges presently served by SWBT and GTE as described in the basic local exchange tariffs of those companies. The parties agreed that Applicant has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows the incumbent local exchange carrier's exchange boundaries and is no smaller than an exchange.

Applicant 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, 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). 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. *Supra*, 1 Mo.P.S.C.3rd at 487. In addition, all the services a competitive company provides must be classified as competitive. Section 392.361.3.

The parties have agreed that Applicant should be classified as a competitive telecommunications company. The parties have also agreed that Applicant's switched exchange access services may be classified as a

competitive service, conditioned upon certain limitations on Applicant's ability to charge for its access services. Applicant 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 incumbent LEC(s) within those service areas in which Applicant seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Applicant 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 and rules is appropriate for competitive basic local telecommunications service providers: 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, 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

#### **D. Interexchange Telecommunications Services**

In the Stipulation and Agreement filed on January 26, 2000, the parties noted that CBS had inadvertently omitted from its application a request for waiver of statutes and rules pertaining to its competitive interexchange telecommunications services: Sections 392.240(1), 392.270, 392.280, 392.290, 392.310, 392.320, 392.320, 392.330, and 392.340, RSMo, and Rules 4 CSR 240-10.020, 4 CSR 240-30.010(2)(C), 4 CSR 240-30.040, 4 CSR



240-32.030(1)(B and 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).<sup>4</sup> Staff's execution of the Stipulation and Agreement indicates that Staff supports CBS's request for a certificate of service authority to provide interexchange telecommunications services. The parties agreed in the Stipulation and Agreement that all of CBS's services, and CBS itself, should be classified as competitive. In its recommendation and memorandum filed on April 6, 2000, Staff recommended that the following statutes and rules be waived for competitive intrastate interexchange telecommunications service providers: Sections 392.240(1), 392.270, 392.280, 392.290, 392.310, 392.320, 392.330, 392.340, 4 CSR 240-10.020, 4 CSR 240-30.010(2)(c), 4 CSR 240-30.040, 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), 4 CSR 240-32.050(4), 4 CSR 240-32.050(5), 4 CSR 240-32.050(6), 4 CSR 240-32.070(4), 4 CSR 240-33.030, and 4 CSR 240-33.040(5).

## **E. Tariffs**

CBS submitted three tariffs with its application, one pertaining to basic local service (Mo. P.S.C. No. 1), one pertaining to interexchange service (Mo. P.S.C. No. 2), and one pertaining to exchange access service (Mo. P.S.C. No. 3). These tariffs, collectively, were assigned Tariff File No. 200000059. Each of these tariffs had a 45-day effective date as

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<sup>4</sup>Despite the garbling of the list of provisions in the typing of the Stipulation and Agreement, it is clear that the parties intend the "standard" list.

originally submitted, in accordance with Commission rule, that is, August 29, 1999.

On August 24, 1999, CBS extended the effective date of these tariffs by letter. On the same date, CBS filed a corrected extension letter. CBS also extended the effective date of its tariffs by letters filed on September 9, 1999, on December 13, 1999, and on January 13, 2000. On January 18, 2000, and again on March 17, 2000, CBS filed substitute tariff sheets 1-44. Also on March 17, 2000, CBS again extended the effective date of its tariffs by letter. On March 22, 2000, CBS filed substitute tariff sheets 1-23. On March 29, 2000, and on April 4, 2000, CBS again filed substitute tariff sheets.

In its recommendation and memorandum, filed on April 6, 2000, Staff stated that CBS proposes to provide high broadband capacity bundled regulated and unregulated services to business and residential customers over copper loop. In addition to basic and interexchange telecommunications services, these services will include video, Internet and cable television. Initially, CBS will offer basic local services only in exchanges belonging to SWBT. Since this case was originally filed, CBS has decided to concur in SWBT's exchange access tariffs, thus eliminating the need for the proposed exchange access tariff, P.S.C. Mo. No. 3, it originally filed.

Staff states that CBS's proposed Mo. P.S.C. Tariff No. 1 is acceptable in format. It lists the waivers applied for, the exchanges in which basic local services will be offered, and describes the rates, terms and conditions applicable to those services. These include a 30-day

payment period, a delinquency charge of 1.5 percent, a charge for returned checks, disconnection procedures, including 7-day and 14-day notices, and other standard provisions.

Staff states that CBS's proposed Mo. P.S.C. Tariff No. 2 is also acceptable in format. It contains standard competitive interexchange tariff terms, a concurrence with SWBT's access rates, and a list of the requested waivers.

Staff also points out that, on October 19, 1999, in Case No. TO-2000-209, the Commission approved an interconnection agreement between CBS and SWBT.

### **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 and intrastate interexchange telecommunications markets is in the public interest.
- B. The Commission finds that Applicant has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services.
- C. The Commission finds that Applicant 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 Applicant a certificate of service authority to provide basic local

exchange telecommunications services is in the public interest. Applicant's certificate shall become effective when its tariff becomes effective.

- D. The Commission finds that Applicant is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.
- E. The Commission finds that Applicant'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.
- F. The Commission finds that CBS should also be granted a certificate of service authority to provide intrastate interexchange telecommunications services. The Commission finds that the services CBS proposes to offer are competitive and CBS should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraph below is reasonable and not detrimental to the public interest.

### **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. Applicant 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 the 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 January 26, 2000, is approved.
2. That Computer Business Sciences, 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 the company's tariff becomes effective.

3. That Computer Business Sciences, Inc., is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject 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 the basic local exchange telecommunications service offered by Computer Business Sciences, Inc., is classified as a competitive telecommunications service. 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
- 392.290.1 - 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

5. That the intrastate interexchange telecommunications service offered by Computer Business Sciences, Inc., is classified as a competitive telecommunications service. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.240(1)	-	ratemaking
392.270	-	valuation of property (ratemaking)
392.280	-	depreciation accounts
392.290	-	issuance of securities
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	-	Uniform System of Accounts
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

6. That Computer Business Sciences, Inc., is classified as a competitive telecommunications company.

7. That Computer Business Sciences, 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.

8. That the substitute proposed basic local exchange telecommunications service tariff filed by Computer Business Sciences, Inc., on July 15, 1999, Tariff No. 200000059, is approved as amended on April 4, 2000, for service rendered on and after April 15, 2000. The tariff approved is:

PSC MO Tariff No. 1  
Original Sheets Nos. 1-42

9. That the substitute proposed intrastate interexchange telecommunications service tariff filed by Computer Business Sciences, Inc., on July 15, 1999, Tariff No. 200000059, is approved as amended on March 22, 2000, for service rendered on and after April 15, 2000. The tariff approved is:

PSC MO Tariff No. 2  
Original Sheets Nos. 1-23

10. That the proposed exchange access tariff filed by Computer Business Sciences, Inc., on July 15, 1999, is rejected.<sup>5</sup> The tariff rejected is:

PSC MO Tariff No. 3  
Original Sheet No. 1

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<sup>5</sup>This is the exchange access tariff that is no longer necessary. However, CBS has never withdrawn it.



11. That this order shall become effective on April 15, 2000.

12. That this case may be closed on or after April 16, 2000.

BY THE COMMISSION

*Dale Hardy Roberts*

( S E A L )

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

Kevin A. Thompson, Deputy Chief  
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 11th day of April, 2000.

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

**FILED<sup>3</sup>**  
JAN 26 2000

Missouri Public  
Service Commission

In the matter of the Application of	)	
Computer Business Sciences, Inc., for	)	
Certificate of Service Authority to Provide	)	
Basic Local and Interexchange	)	Case No. TO-2000-32
Telecommunications Service in Portions	)	Tariff File 0000059
of the State of Missouri and to Classify	)	
Said Services as Competitive.	)	

**STIPULATION AND AGREEMENT**

Computer Business Sciences, Inc. (Applicant or CBS, Inc.) initiated this proceeding on July 15, 1999 by filing an Application requesting certificate of service authority to provide basic local and local exchange telecommunications services in those portions of Missouri that are currently served by Southwestern Bell Telephone Company (SWBT) and GTE Midwest, Incorporated (GTE), and other relief.

The Missouri Public Service Commission (Commission) has granted the timely application to intervene of Southwestern Bell Telephone Company (SWBT).

**A. Standards and Criteria**

1. For purposes of this Stipulation and Agreement, the parties agree that applications for local exchange and basic local exchange service 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 interexchange authority are currently handled.

2. In determining whether CBS, Inc.'s application for certificate of service authority

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<sup>1</sup> Large LECs are defined as LECs who serve 100,000 or more access lines §386.020 RSMo Supp. 1998. In Missouri, the current large LECs are SWBT, GTE and Sprint.

should be granted, the Commission should consider CBS, Inc.'s technical, financial and managerial resources and abilities to provide basic local telecommunications service. CBS, Inc. 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 filing and maintenance of basic local service tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies (ILECs) with which applicant seeks to compete. Further, CBS, Inc. 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 applicant seeks to compete. Notwithstanding the provisions of §392.500 RSMo (1994), as a condition of certification and competitive classification, CBS, Inc. agrees that, unless otherwise ordered by the Commission, CBS, Inc.'s 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 areas CBS, Inc. seeks authority to provide service. Further, CBS, Inc. agrees to offer basic local telecommunications service as a separate and distinct service and has sufficiently identified the geographic service 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, CBS, Inc. 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 RSMo. Supp. 1998.

3. The parties acknowledge that the Commission is currently examining the extent to which competitive LEC (CLEC) switched access rates should be regulated in Case No. TO-99-596. CBS, Inc. will comply with any applicable Commission order regarding intrastate CLEC switched

access rates, and the parties acknowledge that CBS, Inc. can comply with any such order notwithstanding any contrary terms contained in this Stipulation.

4. CBS, Inc. has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H). CBS, Inc. 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. Copies of the tariffs can be provided by Applicant to such parties immediately upon request. 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, CBS, Inc. shall also 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 incumbent local exchange carrier, and its explanation of why such a resale and/or interconnection agreement is unnecessary for such areas.

5. CBS, Inc. has, pursuant to §392.420 RSMo, 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 RSMo should continue to apply to all of CBS, Inc.'s services:

STATUTORY PROVISIONS

§392.210.2  
§392.270  
§392.280  
§392.290.1  
§392.300.2  
§392.310  
§392.320  
§392.330  
§392.340

COMMISSION RULES

4 CSR 240-10.020  
4 CSR 240-30.040  
4 CSR 240-35

6. Due to an oversight, the request for waiver of application of statutes and regulations as they relate to Applicant's interexchange services was omitted from the original Application for Certificate of Service Authority and for Competitive Classification.

7. Applicant requests, pursuant to Section 392.420 RSMo 1994 that the Commission waive the application of any or all of the following statutory provisions and rules as it relates to the regulation of Applicant's interexchange services and all parties agree that the Commission should grant such request:

STATUTORY PROVISIONS

§392.240(1)  
§392.270  
§392.280  
§392.290  
§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 (1-3)  
4 CSR 240-30.040(5)(6)  
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 240-321.030  
4 CSR 240-33.040(5)

8. In negotiating the remaining provisions of this 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 RSMo regarding applications for certificates of local exchange service authority to provide basic local telecommunications service.

### **B. CBS, Inc.'s Certification**

9. CBS, Inc. hereby agrees that its application should be deemed amended to include by reference the terms and provisions described in paragraphs 2-5 above.

10. Based upon its verified Application, as amended by this Stipulation and Agreement, CBS, Inc. asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that CBS, Inc.

- 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;
- d) will offer basic local telecommunications service as a separate and distinct service;
- e) has agreed 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 where they live or their income; and
- f) has sought authority which will serve the public interest.

11. CBS, Inc. asserts, and no party opposes, that CBS, Inc.'s application and request for authority to provide basic local telecommunications services should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of §392.200 RSMo continue to apply, and CBS, Inc. shall remain classified as a competitive telecommunications company. CBS, Inc. 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 CBS, Inc.'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 RSMo and are conditional and shall not be exercised until such time as tariffs for services have become effective.

The parties agree that CBS, Inc.'s switched exchange 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 RSMo. Any increases in intrastate switched access service rates above the maximum switched access service rates as set forth in paragraph 2 herein shall be cost justified and shall be made pursuant to §§392.220 and 392.230 RSMo and not §§392.500 and 392.510 RSMo. 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 RSMo 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 §§392.220 and 392.230 RSMo and not §§293.500 and 392.510 RSMo.

12. 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 filings its Application, Applicant does 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 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 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 did 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 docket 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 docket, 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.

13. CBS, Inc.'s request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of CBS, Inc.'s services should be granted:

STATUTORY PROVISIONS

§392.210.2  
§392.270  
§392.280  
§392.290.1  
§392.300.2  
§392.310  
§392.320  
§392.330  
§392.240

COMMISSION RULES

4 CSR 240-10.020  
4 CSR 240-30.040  
4 CSR 240-35

14. 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.

15. 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 §536.070(2) and §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 and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the CBS, Inc. application made herein.

16. 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 or in 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

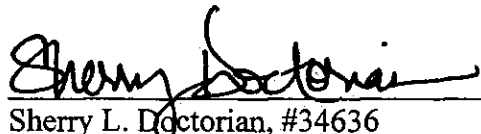
Commission's request for such explanation once such explanation is requested from Staff. Staff's oral explanation shall be subject to public disclosure.

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

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

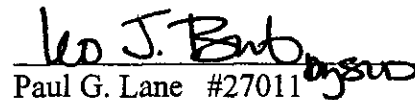
WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification as requested by CBS, Inc., subject to the conditions described above, at its earliest convenience.

RESPECTFULLY SUBMITTED,



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Service Commission

FYI: To Be Issued By Deletion

Alt/Sec'y: Thompson / Pope

4-7 4-12  
Date Circulated Return by 5 p.m.  
10am

TA-2000-32  
CASE NO.

pg 7 pp. 15, 16  
Lumpe, Chair

absent  
Crumpton, Commissioner

ms  
Murray, Commissioner

KS  
Schemenauer, Commissioner

ms  
Drainer, Vice-Chair

Note: To will effective date  
is April 15.

STATE OF MISSOURI  
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 11<sup>th</sup> day of April 2000.

Dale Hardy Roberts

Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

