

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
January 25, 2000**

CASE NO: TA-2000-272

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One Bell Center, Room 3518
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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

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Delta)	
Phones, Inc. for a Certificate of Service)	
Authority to Provide Basic Local Tele-)	<u>Case No. TA-2000-272</u>
communications Service in Portions of the)	
State of Missouri and to Classify Said)	
Services and the Company as Competitive.)	

ORDER GRANTING CERTIFICATE OF SERVICE AUTHORITY TO PROVIDE
BASIC LOCAL EXCHANGE TELECOMMUNICATIONS SERVICES

Procedural History

Delta Phones, Inc. (Delta), applied to the Commission on October 12, 1999, for a certificate of service authority to provide basic local exchange telecommunications service in Missouri under Chapter 392 of the Missouri Revised Statutes. Delta asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Section 392.420, RSMo. Delta is a Louisiana corporation with principal offices located at 105 Illinois Street, Post Office Box 784, Delhi, Louisiana 71232.

The Commission issued a notice and schedule of applicants on October 19, 1999, directing interested parties wishing to intervene to do so by November 18, 1999. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on November 30, 1999.

On January 3, 2000, the parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attach-

ment 1. The Agreement states that the Office of the Public Counsel, while not a signatory to the Agreement, has been contacted with regard to its filing and has offered no objections. The Agreement will be treated as unanimous. Commission Rule 4 CSR 240-2.115(1) states in part: "If no party requests a hearing, the commission will treat the stipulation and agreement as a unanimous stipulation and agreement."

The Staff of the Commission (Staff) filed suggestions in support of the Agreement on January 6, 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 verified application.

Discussion

Delta proposes to provide resold basic local exchange services as a separate and distinct service, throughout all Missouri exchanges currently served by SWBT, Sprint/United Telephone Company (Sprint), and GTE Midwest, Inc. (GTE). The specific exchanges in which Delta proposes to operate are listed in the companies' local exchange tariffs. Delta is not asking for certification in any area that is served by a small incumbent local exchange provider. Delta 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 foreign 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 services it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. Delta has provided all the required documentation except for the proposed tariff. In the application, the company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with one of the underlying local exchange carriers and that agreement has been approved by the Commission. Since the application was filed, Delta has negotiated a Resale Agreement with SWBT, which was approved by the Commission on November 30, 1999, in Case No. TO-2000-273. An Interconnection Agreement with GTE Midwest Incorporated and GTE Arkansas Incorporated has been submitted to the Commission for approval in Case No. TO-2000-334. The company 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 Stipulation and Agreement provides that Delta will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing, Delta has agreed to provide a written disclosure of all interconnection

agreements it has entered into which affect its Missouri service areas. However, the Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without any activity for an extended period. Therefore, this case will be closed and when Delta files the required tariff, it will be assigned a new case number. Delta will be directed to provide the notice and disclosures required by the Stipulation and Agreement when it files its proposed tariff.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 1998, 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.

Delta submitted as Appendix D to its application the financial documents including a balance sheet (unaudited) dated May 31, 1999. Since Delta is a new company formed for the purpose of providing

telecommunications services, a copy of the unaudited financial stats for an affiliated company, Easy Way, Inc., were also included in Appendix D. Appendix C to the application lists the names and qualifications of the applicant's management team. The parties agreed that Delta possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

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

Delta wishes to be certificated to offer services in all the exchanges presently served by SWBT, Sprint, and GTE as described in the basic local exchange tariffs of those companies. The parties agreed that Delta 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.

Delta 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. 1998.

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. 3d at 487. In addition, all the services a competitive company provides must be classified as competitive. Section 392.361.3, RSMo.

The parties have agreed that Delta should be classified as a competitive telecommunications company. The parties have also agreed that the applicant's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on the applicant's ability to charge for its access services. Delta has agreed that, unless otherwise ordered by the Commission, its originating and terminating intrastate access rates will be no greater than the lowest Commission-approved corresponding access rates in

effect for the large incumbent LEC(s) for each service area within which Delta seeks authority to provide service. However, the parties also note that notwithstanding the preceding sentence, if the Commission determines in Case No. TO-99-596 that a different method of capping CLECs' originating and terminating intrastate access rates is in the public interest, Delta agrees to instead cap its intrastate access rates in the manner determined by the Commission in Case No. TO-99-596. The parties have agreed that the grant of service authority and competitive classification to Delta should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access services rates above the minimum switched access service rates set forth herein shall be made pursuant to Sections 392.220, RSMo Supp. 1998, and 392.230, and not Sections 392.500 and 392.510.

The parties have agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, and 392.340, RSMo. Delta also requests waiver of the following Commission rules: 4 CSR 240-10.020, 4 CSR 240-30.040, 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 markets is in the public interest.

- B. The Commission finds that Delta 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 Delta 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 Delta meets the statutory requirements for provision of basic local telecommunications services and indicates it will abide by those requirements in the future. The Commission determines that granting Delta a certificate of service authority to provide basic local telecommunications services is in the public interest. The certificate of Delta shall become effective when its tariff becomes effective.
- E. The Commission finds that Delta 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 certification and competitive status of Delta should be expressly conditioned on the requirement that, unless otherwise ordered by the Commission, if Delta provides access services, its originating and terminating intrastate access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for the large incumbent local exchange

company for each service area within which Delta seeks authority to provide service. Notwithstanding the preceding sentence, if the Commission determines in Case No. TO-99-596 that a different method of capping CLECs' originating and terminating access rates is in public interest, Delta has agreed to instead cap its intrastate access rates in the same manner determined by the Commission in Case No. TO-99-596.

- G. G. The Commission finds that the certification and competitive status of Delta should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access rates above the minimum switched access service rates set forth herein shall be made pursuant to Sections 392.200, RSMo Supp. 1998, and 392.230, RSMo 1994, rather than Sections 392.500 and 392.510, RSMo 1994.

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. Delta has requested certification under Sections 392.420 - .440, and Sections 392.410 and 392.450, RSMo Supp. 1998, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361

and 392.420 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. 1998, 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. 1998.

Based upon the Commission's review of the applicable law and upon its findings of fact, the Commission concludes that certificate and competitive classification requested by Delta should be granted.

IT IS THEREFORE ORDERED:

1. That the Stipulation and Agreement of the parties, filed on January 3, 2000, is approved.

2. That Delta Phones, Inc., is granted a certificate of service authority to provide basic 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 the company's tariff becomes effective.

3. That Delta Phones, 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
- 392.290.1 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

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

4. That the request for waiver of 4 CSR 240-2.060(4)(H), which requires the filing of a 45-day tariff, is granted.

5. That Delta Phones, 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 that will allow it provide services. The tariff shall include a listing of the statutes and Commission rules waived above. That Delta Phones, Inc., shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, Delta Phones, 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.

6. That unless otherwise ordered by the Commission, Delta Phones, Inc.'s certification and competitive status are conditioned upon its rates for originating and terminating access being no greater than the lowest Commission-approved corresponding access rates in effect for the large incumbent local exchange company for each service area within which Delta Phones, Inc., seeks authority to provides service.

7. That Delta Phones, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1998, and on the requirement that any increases in switched access rates set forth herein shall be made pursuant to Sections 392.200, RSMo Supp. 1998, and 392.230, RSMo 1994, rather than Sections 392.500 and 392.510, RSMo 1994.

8. That this order shall become effective on February 4, 2000.

9. That this case may be closed on February 7, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Vicky Ruth, 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 25th day of January, 2000.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED²

JAN 03 2000

Missouri Public
Service Commission

In the Matter of the Application of)
Delta Phones, Inc. for a Certificate)
of Service Authority to provide Basic)
Local Telecommunications Service)
in portions of the State of Missouri)
and to classify said services and)
the company as competitive.)

Case No. TA-2000-272

STIPULATION AND AGREEMENT

1. Delta Phones, Inc. (hereinafter "Delta" or "Applicant") initiated this proceeding on October 12, 1999, by filing an Application requesting a certificate of service authority to provide basic local telecommunications service in portions of the State of Missouri and to classify said service and the company as competitive.

2. The Commission issued an Order and Notice establishing an intervention deadline of November 18, 1999. On October 25, 1999, Southwestern Bell Telephone Company (SWBT") filed a timely application to intervene which was granted by the Commission on November 30, 1999. No other applications to intervene were filed.

3. For purposes of this Stipulation and Agreement, the parties agree that applications for basic local exchange authority in exchanges served by "large" local exchange companies (LECs)¹ should be processed in a manner similar to that in which applications for interexchange

¹ Large LECs are defined as LECs who serve 100,000 or more access lines. Section 386.020, RSMo Supp. 1998. In Missouri, the current large LECs are Southwestern Bell Telephone Company, GTE Midwest Incorporated and Sprint Missouri, Inc.

and local exchange authority are currently handled.

4. In determining whether Delta's application for a certificate of service authority should be granted, the Commission should consider Delta's technical, financial and managerial resources and abilities to provide basic local telecommunications services. Delta must demonstrate that the basic local services that it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to the Applicant agreeing to file and maintain basic local service tariff(s) with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which the Applicant seeks to compete. Further, Delta agrees to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange telecommunications companies with which the Applicant seeks to compete. Notwithstanding the provisions of Section 392.500, RSMo 1994, as a condition of certification and competitive classification, Delta agrees that, unless otherwise ordered by the Commission, its originating and terminating intrastate access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for the large incumbent LEC(s) for each service area within which the Applicant seeks authority to provide service. Notwithstanding the preceding sentence, if the Commission determines in Case No. TO-99-596 that a different method of capping CLEC's originating and terminating intrastate access rates is in the public interest, Delta agrees to instead cap its intrastate access rates in the manner determined by the Commission in Case No. TO-99-596. Further, Delta agrees to offer basic local telecommunications service as a separate and distinct service. Delta must sufficiently identify the geographic service area in which it proposes

to offer basic local service. Such area must follow the exchange boundaries of the incumbent local exchange telecommunications companies in the same area and must be no smaller than an exchange. Finally, Applicant agrees to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of residence or income.²

5. Delta has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(H).³ Applicant has negotiated a Resale Agreement with SWBT, and that Resale Agreement was approved by the Commission on November 30, 1999, in Case No. TO-2000-273. An Interconnection Agreement with GTE Midwest Incorporated and GTE Arkansas Incorporated has been submitted to the Commission for approval in Case No. TO-2000-334. Delta agrees to file its initial tariff(s) in this certification docket and to 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 Delta 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(s), Delta shall also file and serve a written disclosure of all resale and/or interconnection agreements which affect its Missouri service areas and 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 an interconnection agreement

² See Section 392.455, RSMo. Supp. 1998.

³ Good cause for failure to file proposed tariffs with the Application must be shown. The lack of an approved interconnection agreement (47 U.S.C. 252) constitutes good cause.

is unnecessary for such areas.

6. Pursuant to Section 392.420 RSMo, Delta has requested that the Commission waive the application of any or all of the following statutory provisions and rules for basic local telecommunications services, and the parties agree that the Commission should grant such request provided that Section 392.200, RSMo Supp. 1998, should continue to apply to all of Delta's services:

STATUTORY PROVISIONS

COMMISSION RULES

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

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

7. In negotiating the remaining provisions of this Stipulation and Agreement, the parties have employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and Sections 392.450 and 392.455, RSMo Supp. 1998, regarding applications for certificates of service authority to provide basic local telecommunications services.

Delta's Certification

8. Delta has submitted as Appendix B to its Application a listing of the specific exchanges in which it seeks authority to provide basic local telecommunication services. The exchanges identified are those currently served by SWBT, GTE Midwest Incorporated and Sprint Missouri, Inc. Delta hereby agrees that its original Application should be deemed further amended

as required to include by reference the terms and provisions described in paragraphs 4 through 6 herein above and paragraph 11 below to the extent that its original Application might be inconsistent therewith.

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

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications services;
- 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 to affordable telecommunication 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.

10. Delta asserts and no party opposes, that Delta's application and request for authority to provide basic local services (including exchange access services) should be granted. All services authorized herein should be classified as competitive telecommunications services provided that the requirements of Section 392.200, RSMo 1998, continue to apply, and Delta shall be classified as a competitive telecommunications company. Delta 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 for Delta's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for their 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 intrastate switched exchange access services may be classified as competitive services. The parties further agree that the Applicant's intrastate switched exchange access services are subject to Section 392.200, RSMo. The parties recognize the pendency of MoPSC Case No. TO-99-596, regarding access rates to be charged by competitive local exchange telecommunications companies. Unless otherwise determined by the Commission in Case No. TO-99-596, any increases in intrastate switched access service rates above the

maximum intrastate switched access service rates as set forth in paragraph 4 herein shall be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510. The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for intrastate switched exchange access is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in intrastate switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

11. Delta'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 the Commission only recently approved its Resale Agreement with SWBT, and approval of its interconnection agreement with GTE Midwest Incorporated is still pending. Delta 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. Delta 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 those tariffs. The Commission's order should state these obligations as conditions to the temporary waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

"The 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 approved interconnection agreements with all 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 tariff in this docket, the Applicant shall also file and serve upon the parties hereto a written disclosure of all interconnection agreements which affect its Missouri service area and all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier with its explanation of why such interconnection agreement is unnecessary for any such areas."

12. Delta's request for waiver of the application of the following rules and statutory provisions as they relate to the regulation of Delta's new services should be granted:

STATUTORY PROVISIONS

COMMISSION RULES

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

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

13. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

14. In the event that 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, 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 Section 536.080.2, RSMo 1994; and their respective rights to seek rehearing pursuant to Section 386.500, RSMo 1994; and to seek judicial review pursuant to Section 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 Delta'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 such 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 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 this 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 as requested by Delta, subject to the conditions described above, as expeditiously as possible.

Respectfully submitted,

Sondra B. Morgan

Sondra B. Morgan Mo. Bar #35482

BRYDON, SWEARENGEN & ENGLAND P.C. MO. PUBLIC SERVICE COMMISSION

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Nathan Williams by SBM

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FOR: Southwestern Bell Telephone Company

Certificate of Mailing

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed, postage prepaid, or hand-delivered this 3d day of June, 2000, to:

Office of Public Counsel
Truman State Office Building
301 W. High Street
Jefferson City, MO 65102

Sondra B. Morgan

Sondra B. Morgan

FYI: To Be Issued By Deleg. on

Alt/Sec'y: Ruth Royce

1-20 1-25

Date Circulated 1-25 Return by 3 p.m.

1044

TA-2000-272
CASE NO.

84 07
Lumpe, Chair

absent
Crumpton, Commissioner

on
Murray, Commissioner

84 07
Schemenauer, Commissioner

84 07
Drainer, Vice-Chair

**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 25TH day of January 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

