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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Navigator)
Telecommunications, LCC, to amend its)
Certificate of Service Authority to Provide) Case No. TA-2000-243
Basic Local and Local Exchange Telecommuni-)
cations Service in Portions of the State)
of Missouri.)

ORDER AMENDING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

On September 28, 1999, Navigator Telecommunications, LCC (Applicant), filed an application with the Commission seeking to amend its certificate of authority to provide basic local exchange telecommunications services in portions of the State of Missouri. Applicant stated that it is currently certified to provide basic local services in the portions of Missouri served by Southwestern Bell Telephone Company. Applicant desires to amend its certificate of authority to services throughout all exchanges served by Southwestern Bell Telephone Company (SWBT), GTE Midwest Incorporated (GTE), and Sprint/United Telephone Company (Sprint).

Applicant was granted a certificate of service authority to provide basic local exchange telecommunications services in Missouri by the Commission in Case No. TA-98-383 in an Order dated June 25, 1998. The Applicant requested the Commission to take official notice of that case and the information presented in that case pursuant to the Commission's rules

of practice and procedure. 4 CSR 240-2.060(4)(E), and 4 CSR 240-2.130. The Commission does so.

The Applicant has approved or pending interconnection agreements with the incumbent local exchange telecommunications companies serving the exchanges where it desires to provide services. Specifically, the Applicant has approved interconnection agreements with SWBT (Case No. TO-98-375); GTE (Case No. TO-99-185); and Sprint (Case No. TO-99-311). And, Applicant has another pending interconnection agreement with SWBT in Case No. TO-2000-291.

The Applicant seeks a waiver of 4 CSR 240-2.060(4)(H) which requires the filing of a proposed tariff with a 45-day effective date. The Applicant states that it is already providing service in Missouri under an effective tariff previously approved by the Commission, which Applicant will amend upon approval of the Application pending in this case. Applicant has indicated that if its amended certificate is approved in this case, that the approval should be conditional upon the filing and approval of an amended tariff or tariff sheets in this case and that the Applicant will notify all parties to this case of the filing of its tariff amendments.

The Commission issued a notice and schedule of applicants on September 28, 1999, directing interested parties wishing to intervene to do so by October 28, 1999. On October 25, 1999, SWBT timely filed an application to intervene, which the Commission granted on November 9, 1999.

Applicant, SWBT and the Staff of the Missouri Public Service Commission (Staff) entered into and filed a Stipulation and Agreement

(Agreement), which is included with this order as Attachment 1, on November 29, 1999. 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 Staff filed *Suggestions in Support of the Stipulation and Agreement* on December 3, 1999.

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

(Applicant seeks an amended certification to provide basic local exchange telecommunications services on a facilities and resold basis in portions of Missouri that are currently served by SWBT, GTE and Sprint. 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, GTE and Sprint as listed in those companies' Missouri local exchange tariffs. Applicant is requesting that its basic local services remain classified as competitive and that the application of certain statutes and regulatory rules continue to 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 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. The Applicant has requested waiver of the tariff filing. The Applicant has provided all the required documentation in this case or by reference to other cases pursuant to the Commission's rules of practice and procedure.

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.

The Applicant has previously been granted a certificate in Case No. TA-98-383 that addressed the matters set forth above. The present application merely seeks to expand the geographic area in which the Applicant desires to provide services. The parties did not controvert that Applicant presented evidence of sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service in its Application or by reference to other cases before the Commission.

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 Applicant asserted without contradiction by any party 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, GTE and Sprint as described in the basic local exchange tariffs of those companies. The parties did not dispute 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. 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, RSMo. 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, RSMo.

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.¹ 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 at the date of certification for the large incumbent LECs 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. 1998, 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. 1998, and 392.230, rather than Sections 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1998, and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-35.

D. Waiver of Tariff Filing

The Applicant seeks a waiver of 4 CSR 240-2.060(4)(H) which requires the filing of a proposed tariff with a 45-day effective date. The Applicant states that it is already providing service in Missouri under an effective tariff previously approved by the Commission, which Applicant

¹ In fact, although the parties' Stipulation and Agreement refers extensively to switched access rates, Applicant's tariff does not provide for switched access services.

will amend upon approval of the Application pending in this case. Applicant has indicated, and the parties have agreed, that if an amended certificate is approved in this case, that the Applicant will notify all parties to this case of the filing of its tariff amendments to afford them an opportunity to be heard in the tariff amendment/approval process. The parties agreed that any service authority granted in this proceeding shall conditional upon an effective tariff for services.

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 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's request to amend its certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Applicant's amended certificate shall become effective when its corresponding tariff revisions become 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. 1998, 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. 1998, and 392.230, rather than Sections 392.500 and 392.510.
- F. The Commission finds that Applicant's amended certificate of service authority shall not be effective until corresponding tariff revisions are filed in this case and are approved and become effective.

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. 1998, 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. 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. 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. 1998. 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 November 29, 1999, is approved.

2. That Navigator Telecommunications, LCC, is granted an amended 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 at the time the company's revised tariff or tariff amendments are approved and become effective as filed in this proceeding.

3. That Navigator Telecommunications, LCC, 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
- 392.340 - reorganization(s)
- 392.330, RSMo Supp. 1998 - issuance of securities,
debts and notes

Commission Rules

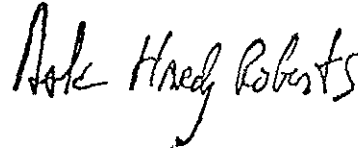
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts
- 4 CSR 240-35 - reporting of bypass and
customer-specific arrangements

4. That Navigator Telecommunications, LCC'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 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. 1998, and 392.230, rather than Sections 392.500 and 392.510.

5. That Navigator Telecommunications, LCC, shall file an amended tariff or tariff sheets in this case consistent with its amended certificate of authority and provide notice of the filing to each party in this case.

6. That this order shall become effective on December 21, 1999.

BY THE COMMISSION

A handwritten signature in black ink, reading "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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 8th day of December, 1999.

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED
NOV 29 1999
Missouri Public
Service Commission

In the matter of the Application of
Navigator Telecommunications, LLC.,
to Amend its Certificate of Service Authority to
provide Basic Local and Local Exchange
Telecommunications Service
in portions of the State of Missouri

Case No. TA-2000-243

STIPULATION AND AGREEMENT

1. Navigator Telecommunications, LLC. ("Navigator" or "Applicant") initiated this proceeding on September 28, 1999, by filing an Amended Application seeking to amend its certificate of service authority to provide basic local telecommunications services in the State of Missouri. Navigator was granted a certificate of service authority in Case No. TA-98-383 and is certified to provide basic local exchange services in the portions of Missouri served by Southwestern Bell Telephone Company (SWBT). Navigator seeks to amend this certificate to allow the provision of basic local exchange and local exchange telecommunications services on a facilities and resold basis throughout all exchanges currently served by the incumbent local exchange telecommunications companies of SWBT, Sprint/United Telephone Company (Sprint), and GTE Midwest, Inc. (GTE).

2. The Commission has granted SWBT's timely application to intervene. For the purposes of this Stipulation and Agreement, the parties agree that application to amend Navigator's certificate of service authority should be processed in a manner similar to that in which applications for local exchange authority are currently handled.

3. In determining whether Navigator's application to amend its certificate of service authority should be granted, the Commission should consider Navigator's technical, financial, and managerial resources and abilities to provide local telecommunications services. Navigator asserts that the basic local services it has offered and proposes to offer will 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 with which Navigator will compete. Further, Navigator agrees to continue to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange companies with which Navigator seeks to compete. Notwithstanding the provisions of Section 392.500 R.S.Mo.(1994), as a condition of certification and competitive classification, Navigator agrees that, unless otherwise ordered by the Commission, Navigator's 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 those service areas in which Navigator seeks authority to provide service. Further, Navigator 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 and is no smaller than an exchange. Finally, Navigator 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.(1996 Supp.)

4. Navigator has submitted its application to amend without a tariff and seeks a temporary waiver of 4 CSR 240-2.060(4)(H) because Navigator is currently providing service in Missouri under an effective tariff previously approved by the Commission, which Navigator will amend upon approval of its amended certificate. When seeking to amend its tariff, Navigator shall serve all parties to this case with written notice at the time such tariff amendment(s) are filed to afford them an opportunity to participate in the tariff amendment/approval process. The Commission has already approved interconnection agreement between Navigator and SWBT (Case No. TO-98-375, approved 5/31/98), and approval of another interconnection agreement between Navigator and SWBT is currently pending before the Commission (Case No. TO-2000-291). The Commission has approved Navigator's interconnection agreements with GTE (Case No. TO-99-185, approved 1/14/99), and Sprint (Case No. TO-99-311, approved 4/11/99). Any service authority granted in this proceeding shall be regarded as conditional and shall not be exercised until such time as a tariff for services has become effective. Navigator shall also file any additional required written disclosures of all resale or interconnection agreements which affect its Missouri service areas.

5. Navigator, in seeking amendment to its certificate of service authority, requests that the waivers already granted in Case No. TA-98-383 remain in effect, specifically:

Statutes
Section 392.210.2
Section 392.270
Section 392.280

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

Section 392.290.1
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

6. 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., regarding applications for certificates of service authority to provide basic local telecommunications service.

7. Navigator has requested amendment to its certificate of service authority to allow the provision of basic local exchange and local exchange telecommunications service on a facilities and resold basis throughout all exchanges currently served by SWBT, Sprint and GTE. The specific SWBT, Sprint, and GTE exchanges which Navigator seeks to serve are listed in the incumbent providers' respective local exchange tariffs.

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

- A. possesses sufficient technical, financial, and managerial resources and abilities to provide basic local and local exchange telecommunications services, including exchange access 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 telecommunications services and such area follows the 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 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.

9. Navigator asserts, and no party opposes, that Navigator's application and request to amend its authority to provide basic local telecommunications and local exchange telecommunications (including exchange access service) should be granted. All services authorized herein should be classified as competitive telecommunications services, provided that the requirements of Section 392.200 continue to apply, and Navigator shall continue to be classified as a competitive telecommunications company. Navigator asserts, and no party opposes, that its services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of Navigator'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 the applicant's switched exchange access services are subject to Section 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 switched access granted herein is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

10. Navigator'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. It should be granted because Navigator is currently providing service in Missouri under an effective tariff previously approved by the Commission, which Navigator will amend upon approval of its amended certificate.

11. Navigator's request that waiver of the application of the following rules and statutory provisions already granted in Case No. TA-98-383 remain in effect as they relate to the regulation of Navigator's new services should be granted:

<u>Statutory Provisions</u>	<u>Commission 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	

12. 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.

13. 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., 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.; and their respective rights to seek rehearing pursuant to Section 386.300 RSMo.; and to seek judicial review pursuant to Section 386.510, RSMo. 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 Navigator's application made herein.

14. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation and Agreement. 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, 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 is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure.

The Office of the Public Counsel (OPC) has been advised of Navigator's application and, though it is not a signatory to this stipulation, OPC has no objection to it.

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 Navigator subject to the conditions described above, as expeditiously as possible.

Respectfully submitted,

Man Rosta # 45722

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