

25

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 4th
day of March, 1999.

In the Matter of the Application of)
Gabriel Communications of Missouri, Inc.)
for a Certificate of Service Authority to)
Provide Basic Local Telecommunications)
Services, Local Exchange Telecommunications)
Services, Exchange Access Services and)
Interexchange Telecommunications Services)
within the State of Missouri and to)
Classify said Company and Services as)
Competitive.)

Case No. TA-99-173

ORDER GRANTING CERTIFICATES TO PROVIDE
TELECOMMUNICATIONS SERVICES

Procedural History

Gabriel Communications of Missouri, Inc. (Gabriel) applied to the Commission on October 20, 1998, for certificate of service authority to provide basic local exchange telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services in Missouri under Sections 392.361, 392.420 - .440, RSMo 1994¹, and Sections 392.410, 392.450 and 392.455 RSMo Supp. 1998. Gabriel asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. Gabriel is a Delaware corporation, duly

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

authorized to do business in Missouri. Gabriel's principal offices are located at 16650 Chesterfield Grove Road, Suite 110, P.O. Box 4489, Chesterfield, Missouri 63006.

The Commission issued a notice and schedule of applicants on October 27, 1998 directing interested parties wishing to intervene to do so by November 26, regarding the basic local and local exchange application. The Commission issued a notice and schedule of applicants on November 10, directing interested parties wishing to intervene to do so by November 25, regarding the interexchange application. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on January 22, 1999.

The parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment A, on February 4. The Agreement provides that it applies only to Gabriel's application for authority to provide Basic Local and Local Exchange Telecommunications Services. The parties agreed that Gabriel's application for authority to provide interexchange telecommunications services and non-basic local telecommunications services should proceed separately through the Staff's recommendation process. The Staff of the Commission (Staff) filed Suggestions in Support of the Agreement on February 9. On February 11, Staff filed a memorandum recommending that the Commission grant Gabriel a certificate to provide interexchange telecommunications services and a certificate to provide local exchange telecommunications services, restricted to dedicated, private line services.

In the Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, their rights to the reading of the transcript by the Commission 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

Gabriel seeks certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE) and Sprint/United Telephone Company (United). Gabriel is not asking for certification in any area that is served by a small incumbent local exchange provider. Gabriel proposes to offer services in all of the exchanges of SWBT, United and GTE as listed in their respective local exchange tariffs. Gabriel is requesting that its 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 that it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. Gabriel has provided all the required documentation except for the proposed tariff. Gabriel requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carriers and that agreement has been approved by the Commission. Gabriel 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 agreements. Gabriel will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing Gabriel has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

B. Telecommunications Services 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.

Gabriel submitted as Exhibit D to its application its historical and pro forma financial statements. Exhibit C to the application lists the names and qualifications of Gabriel's management team. The parties agreed that Gabriel possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service. Gabriel 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 Gabriel proposes to offer basic local services that satisfy the minimum standards established by the Commission.

Gabriel wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE, and Sprint as described in their basic local tariffs. The parties agreed that Gabriel has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows Incumbent Local Exchange Company (ILEC) exchange boundaries and is no smaller than an exchange.

Gabriel 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). In addition, all the services a competitive company provides must be classified as competitive. Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

The parties have agreed that Gabriel should be classified as a competitive telecommunications company. The parties have also agreed that Gabriel's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Gabriel's ability to charge for its access services. Gabriel 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 Gabriel seeks authority to provide service. The parties have agreed that the grant of service authority and competitive classification to Gabriel 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.

Staff recommended that the following statutes and regulations be waived regarding Gabriel's interexchange and nonswitched local exchange services: Sections 392.240.1; 392.270; 392.280; 392.290; 392.310; 392.320; 392.330; and 392.340 RSMo; 4 CSR 240-10.020; 4 CSR 240-30.040; 4 CSR 240-30.010(2)(c); 4 CSR 240-32.030(1)(B)&(C); 4 CSR 240-32.030(2); 4 CSR 240-32.050(3)-(6); 4 CSR 240-32.070(4); 4 CSR 240-33.030; and 4 CSR 240-33.040(5).

Findings of Fact

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

- A. The Commission finds that competition in the basic local exchange and interexchange telecommunications markets is in the public interest.
- B. The Commission finds that Gabriel 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 Gabriel 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 Gabriel meets the statutory requirements for provision of basic local telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting Gabriel a certificate of service authority to provide basic local telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services, is

in the public interest. Gabriel's certificates shall become effective when its tariffs become effective.

E. The Commission finds that Gabriel 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 Gabriel'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.

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. Gabriel 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.

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 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 February 4, 1999, is approved.

2. That Gabriel Communications of Missouri, Inc. is granted certificate of service authority to provide basic local exchange telecommunications services, local exchange telecommunications services, exchange access services and interexchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above and 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.

3. That Gabriel Communications of Missouri, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

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, RSMo, Supp. 1998
Section 392.340

Commission Rules

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

In addition, the following statutes and regulations shall be waived regarding all services other than basic local telecommunications services:

Statutes

Section 392.210.1
Section 392.240.1
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

Commission Rules

4 CSR 240-10.020
4 CSR 240-30.010(2) (c)
4 CSR 240-32.030(1) (B) & (C)
4 CSR 240-32.030(2)
4 CSR 240-30.040
4 CSR 240-32.050(3) - (6)
4 CSR 240-32.070(4)
4 CSR 240-33.030
4 CSR 240-33.040(5)
4 CSR 240-35.

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 Gabriel Communications of Missouri, 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 to provide services. The tariff shall be filed in Case No. TA-99-173 and shall include a listing of the statutes and Commission rules waived above.

6. That Gabriel Communications of Missouri, Inc. shall give notice of the filing of the tariffs described above to all parties or participants. In addition, Gabriel Communications of Missouri, 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.

7. That Gabriel Communications, 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 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.

8. That this order shall become effective on March 16, 1999.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "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)

Lumpe, Ch., Crumpton, Murray,
Schemenauer, and Drainer, CC., concur

Woodruff, Regulatory Law Judge

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

In the Matter of Gabriel Communications,)
Inc. for a Certificate of Service Authority to)
Provide Basic Local Telecommunications)
Services, Local Exchange Telecommuni-)
cations Services, Exchange Access)
Services, and Interexchange Telecommuni-)
cations Service and to Classify Such)
Services as Competitive)

Case No. TA-99-173

FILED

FEB 4 1999

Missouri Public
Service Commission

STIPULATION AND AGREEMENT

1. Gabriel Communications of Missouri, Inc. ("Applicant" or "Gabriel") initiated this proceeding on October 20, 1998, by filing an Application requesting certificate of service authority to provide basic local, local, exchange access, and interexchange telecommunications services in exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), Sprint/United Telephone Company ("United"), and GTE Midwest, Inc. ("GTE").

2. On November 2, 1998, SWBT filed an Application to Intervene in this matter. The Commission granted SWBT's intervention on January 22, 1999 and also ordered the parties to file a procedural schedule no later than February 11, 1999.

3. The parties agree that Gabriel's request for non-basic local and interexchange authority can proceed separately through the Staff recommendation process.

4. 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) should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

5. In determining whether Gabriel's application for certificate of service authority should be granted, the Commission should consider its technical, financial and managerial resources and abilities to provide basic local telecommunications services. The Applicant must also demonstrate that the basic local services it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to the Applicant agreeing to file and maintain basic local service tariff(s) with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies ("ILECs") with which the Applicant seeks to compete. Further, the Applicant 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 the Applicant seeks to compete. Notwithstanding the provisions of 392.500 RSMo., as a condition of certification and competitive classification, the Applicant agrees that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the large ILEC(s) within those service area(s) the Applicant seeks authority to provide service.¹ The Applicant agrees to offer basic local telecommunications services as a separate and distinct service and has identified the geographic service area in which it proposes to offer basic local service. Such area must follow the exchange boundaries of the ILECs in the same area and must be no smaller than an exchange. Finally, the 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

¹ In this case, SWBT's current access rates.

proposes to offer basic local service, regardless of residence or income.²

6. Gabriel seeks a temporary waiver of 4 CSR 240-2.060(4)(H)³ and agrees to file its initial tariff(s) in the certification docket and to serve all parties with written notice at the time the initial tariff(s) are submitted to afford those parties an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by the Applicant to the other 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), Gabriel shall also file and serve a written disclosure of all resale or interconnection agreements which affect its Missouri service areas and all portions of its Missouri service areas for which it does not have an interconnection agreement with the ILEC with its explanation of why such an interconnection agreement is unnecessary for such areas.

² See Section 392.455 RSMo.

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

7. Although Gabriel's Application included an expanded list of requested waivers for basic local service that would normally apply to interexchange and local services, the parties agree that, for basic local service only, Gabriel's Application should be deemed amended to request the following waivers:

STATUTORY PROVISIONS

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

COMMISSION RULES

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

The parties agree that the Commission should grant such request provided that Section 392.200, RSMo., continues to apply to all of the Applicant's services.

8. 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.

The Applicant's Certification

9. The Applicant hereby agrees that its original Application should be deemed amended as required to include by reference the terms and provisions described in paragraphs 5 through 7 hereinabove and paragraphs 11 and 12, below, to the extent that its original Application might be inconsistent therewith.

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

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange 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 ILECs 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.

11. The Applicant asserts, and no party opposes, that the Applicant's application and request for authority to provide basic local telecommunications service should be granted. All services authorized herein should be classified as competitive telecommunications services, provided that the requirements of Section 392.200, RSMo., continue to apply, and the Applicant shall be classified as a competitive telecommunications company. The Applicant 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 for the Applicant's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The

Commission's Order should state the foregoing conditions substantially as follows:

The service authority and service classification herein granted are subject to the requirements of Section 392.200 and are conditional and shall not be exercised until such time as tariffs for services have become effective.

The parties agree that Applicant's switched exchange access services may be classified as competitive services. The parties further agree that the Applicant's switched exchange access services are subject to Section 392.200, RSMo. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 5 herein shall be cost-justified and be made pursuant to 392.220 and 392.230, and not 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 exchange access 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 510.

12. The 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 30-day effective date, is not opposed by the parties and should be granted because the Applicant does not yet have approved resale or interconnection agreements with the large ILECs. The 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. The 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 written disclosure described in paragraph 6 of this Stipulation 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 an approved resale or interconnection agreement with the incumbent local exchange carriers within whose service areas it seeks authority to provide service; provided, when the 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 of that submittal, and shall provide copies of the tariffs to the parties immediately upon request. When filing its initial basic local tariff in this docket, the Applicant shall also file and serve upon the parties 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.

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 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, cross-examine

witnesses, and 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 386.500, 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 the Applicant's application made herein.

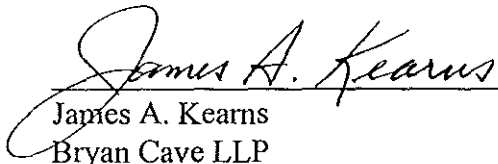
15. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party 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

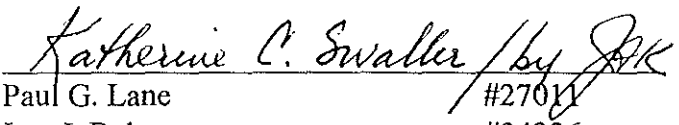
Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. The Staff's oral explanation shall be subject to public disclosure.

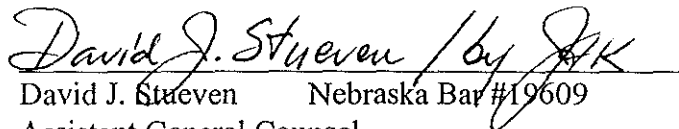
16. Although not a signatory to this Stipulation and Agreement, Office of Public Counsel has reviewed it and is not opposed.

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

Respectfully submitted,


James A. Kearns #44536
Bryan Cave LLP
Attorney For Applicant, Gabriel Communications
of Missouri, Inc.
211 North Broadway, Suite 3600
St. Louis, Missouri 63102
(314) 259-2680
(314) 259-2020 (Fax)


Paul G. Lane #27011
Leo J. Bub #34326
Anthony Conroy #35199
Katherine C. Swaller #34271
Attorneys for Southwestern Bell Telephone Company
One Bell Center, Room 3536
St. Louis, MO 63101
(314) 235-4314
(314) 331-2193 (Fax)


David J. Stueven Nebraska Bar #19609
Assistant General Counsel
Attorney for the Staff of the Missouri Public
Service Commission
P.O. Box 360
Jefferson City, MO 65102
(573) 751-6726
(573) 751-9285 (Fax)

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record this 2nd day of February, 1999.

James A. Kearns

RECEIVED

MAR 04 1999

COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION