

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

| | | |
|---|---|---------------------------|
| In the Matter of the Application of |) | |
| Concert Communications Sales LLC for a |) | |
| Certificate of Authority to Provide Basic |) | <u>Case No. TA-99-532</u> |
| Exchange and Local Exchange Intrastate |) | |
| Telecommunications Service within the |) | |
| State of Missouri |) | |

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES

Procedural History

Concert Communications Sales LLC (Concert) applied to the Commission on April 23, 1999, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994¹, and Sections 392.410 and .450, RSMo Supp. 1998. Concert 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. Concert is a Delaware corporation with principal offices located at Reston Town Center, 11921 Freedom Drive, Reston, Virginia 20190.

The Commission issued a notice and schedule of applicants on May 4, directing interested parties wishing to intervene to do so by

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

June 3. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on July 26.

The parties filed a Stipulation and Agreement (Agreement) on October 4, 1999. The Staff of the Commission (Staff) filed Suggestions in Support of the Agreement on October 29. 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

Concert wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE), and Sprint Missouri, Inc. (Sprint). Concert proposes to operate in all of the exchanges described in Exhibit D to its application. Concert is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

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

Commission rule 4 CSR 240-2.060(4) requires a corporation applying for certification to provide telecommunications services to include in

its application a certificate from the Secretary of State showing it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. Concert has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into interconnection agreements with the underlying local exchange carriers and those agreements have been approved by the Commission. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreements. Concert will file the tariff in a new case file and give notice of the tariff filing to all the parties. Along with that filing Concert has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas.

B. Basic Local Service Certification

Section 392.455, RSMo Supp. 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.

Concert referred the Commission to the financial information and management biographies that were submitted to the Commission in Case No. TA-99-415, wherein Concert applied for authority to provide interexchange telecommunications services. The parties agreed that Concert possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

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

Concert 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 (see Exhibit D to the application). The parties agreed that Concert has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

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

a competitive service, conditioned upon certain limitations on Concert Concert's ability to charge for its access services. Concert 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 LEC(s) within those service area(s) in which Concert seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Concert 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.

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 Concert 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 Concert 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 Concert 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 Concert a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Concert's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that Concert 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 Concert'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. Concert 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 October 4, 1999, which is included with this order as Attachment A, is approved.

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

5. That Concert Communications Sales LLC shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within 30 days after the effective date of a Commission order approving an interconnection agreement which will allow Concert Communications Sales LLC to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

6. That Concert Communications Sales LLC shall give notice of the filing of the tariffs described above to all parties or participants. In addition, Concert Communications Sales LLC 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 Concert Communications Sales LLC'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 January 10, 2000.

9. That this case may be closed on January 11, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Shelly A. Register, 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 30th day of December, 1999.

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

FILED

OCT 4 1999

Missouri Public
Service Commission

In the matter of the Application of)
CONCERT COMMUNICATIONS SALES LLC)
for a Certificate of Authority)
to Provide Basic Exchange and Local Exchange) Case No. TA-99-532
Intrastate Telecommunications Services within)
the State of Missouri.)

STIPULATION AND AGREEMENT

CONCERT COMMUNICATIONS SALES LLC (hereinafter "CCS,") initiated this proceeding on April 23, 1999 by filing an Application requesting certificate of service authority to provide basic local exchange and local exchange services in exchanges currently served by Southwestern Bell Telephone Company, GTE of the Midwest, Inc. (GTE) and Sprint Missouri (Sprint).

Southwestern Bell Telephone Company (SWB) applied to intervene in this matter and its application was granted.

A. STANDARDS AND CRITERIA

1. The parties employed the following standards and criteria, which are intended to meet the requirements of existing law, particularly Sections 392.450 and 392.455, RSMo. Cum Supp. 1998 regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service, in negotiating the provisions of this Stipulation and Agreement.

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

¹Large 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 SWBT, GTE and Sprint.

for interexchange authority are currently handled.

3. In determining whether CCS's application for certificate of service authority should be granted, the Commission should consider CCS's technical, financial and managerial resources and abilities to provide basic local telecommunications service. CCS must demonstrate that the basic local services it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to the applicant agreeing to file and maintain basic local service tariff(s) with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which applicant seeks to compete. Further, CCS must agree 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, CCS 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 for the large incumbent LEC(s) within those service area(s) applicant seeks authority to provide service. Further, CCS agrees to offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic service area in which it proposes to offer basic local service. Such area must follow exchange boundaries of the incumbent local exchange telecommunications companies in the same area and must be no smaller than an exchange. Finally, CCS agrees to provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services. See Section 392.455 RSMo Cum. Supp. 1998.

4. CCS submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H).² CCS has agreed to file its initial tariff(s) in the certification docket and 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 CCS 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, CCS shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for such areas.

5. CCS has, pursuant to §392.420 RSMo. requested that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services, and the parties agree that the Commission should grant such request provided that Section 392.200 RSMo should continue to apply to all of CCS's services:

STATUTORY PROVISIONS

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

²Good cause for failure to file proposed tariffs with the Application must be shown. The lack of an approved interconnection agreement (47 USC §252) constitutes good cause.

COMMISSION RULES

4 CSR 240-10.020

4 CSR 240-30.040

4 CSR 240-35

B. CCS CERTIFICATION

6. CCS hereby agrees that its application should be deemed amended to include by reference the terms and provisions described in paragraphs 2-4 hereinabove.

7. Based upon its verified application, as amended, CCS asserts, and no party makes a contrary assertion, that there is sufficient evidence from which the Commission can find and conclude that CCS:

- a. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service and local exchange telecommunications service, including exchange access service;
- b. proposes and agrees to offer basic local services that satisfy the minimum standards established by the Commission;
- c. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;³
- d. will offer basic local telecommunications service as a separate and distinct service;
- e. has agreed to provide equitable access for all Missourians as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services;⁴

³ The identification of specific geographic areas within which CCS proposes to offer service as referred to in this paragraph shall not be construed to foreclose CCS from petitioning the Commission pursuant to Section 392.200.4 and .8, RSMo.

⁴ The agreement in Paragraph 7. e. of this Stipulation and Agreement is without prejudice to CCS's right to appear, after proper application and in accord with Commission rules and regulations, in any rulemaking proceeding or other proceeding regarding the Commission's considerations of equitable access under Section 392.455.(5),

f. has sought authority which will serve the public interest.

8. CCS asserts, and no party opposes, that CCS's application and request for authority to provide basic local telecommunications services and local exchange telecommunications services (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 CCS shall remain classified as a competitive telecommunications company. CCS asserts, and no party opposes, such services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of CCS'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 392.200. Any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 3 herein shall be cost-justified and

RSMo. Furthermore, such agreement should not be construed as an admission or conclusion by CCS that Section 392.455.(5), RSMo. creates new or specific duties or obligations on telecommunications companies to provide equitable access.

be made pursuant to Sections 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 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 pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

9. CCS's request for a waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties and should be granted because at the time of its application, it did not yet have approved interconnection agreements with any underlying carriers. CCS agrees that within thirty (30) days of an order approving an interconnection agreement with an underlying carrier, CCS 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. CCS 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 waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

"Applicant's request for temporary waiver of 4 CSR 240-2.060(4)(H) is hereby granted. Within thirty (30) days of the effective date of an order approving its interconnection agreement with and underlying carrier, Applicant shall submit its tariffs for Commission approval. Such tariffs shall have a minimum of a 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 areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for any such areas."

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

STATUTORY PROVISIONS

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

COMMISSION RULES

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

11. 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 all stipulations are made without prejudice to the rights of the signatories to take other positions in other proceedings.

12. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to §536.080.1, RSMo 1994, to present testimony, to cross examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to §536.080.2, RSMo 1994; and their respective rights to seek rehearing pursuant to §386.500 RSMo 1994 and to seek judicial review pursuant to §386.510,

RSMo 1994. The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the CCS application made herein.

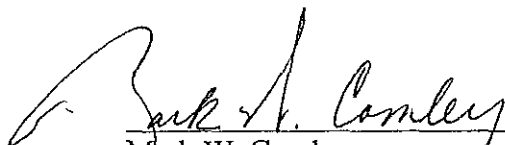
13. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding or in this proceeding whether or not the Commission approves this Stipulation and Agreement. The contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

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


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

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

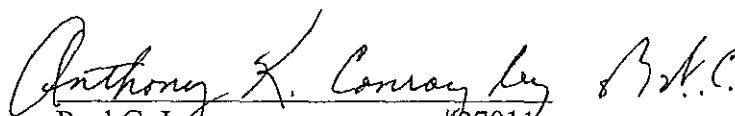
Respectfully submitted,


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