

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the matter of the application of )  
Metropolitan Fiber Systems of Kansas City, )  
Missouri, Inc. for a certificate of service )  
authority to provide dedicated tele- )  
communications service and petition for ) CASE NO. TA-92-125  
classification as a competitive tele- )  
communications company providing )  
competitive telecommunications services. )  
(consolidated with) )

In the matter of the application of )  
Metropolitan Fiber Systems of St. Louis, )  
Inc. for a certificate of service authority )  
to provide dedicated telecommunications )  
service and petition for classification as ) CASE NO. TA-92-126  
a competitive telecommunications company )  
providing competitive telecommunications )  
services. )

APPEARANCES: Jean L. Kiddo and Shelley L. Spencer, Swidler & Berlin, Chtd.,  
3000 K Street, N.W., Suite 300, Washington, DC 2007-3851, for  
Metropolitan Fiber Systems of Kansas City, Missouri, Inc. and  
Metropolitan Fiber Systems of St. Louis, Inc.  
Willard C. Reine, Attorney at Law, 324 E. High Street,  
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Systems of Kansas City, Missouri, Inc. and Metropolitan Fiber  
Systems of St. Louis, Inc.  
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the Office of Public Counsel and the public.  
Linda Gardner, Deputy General Counsel, Missouri Public Service  
Commission, P.O. Box 360, Jefferson City, Missouri 65102, for  
the staff of the Missouri Public Service Commission.

HEARING  
EXAMINER: Michael F. Pfaff

REPORT AND ORDER

Procedural History and Introduction:

On December 12, 1991, Metropolitan Fiber Systems of Kansas City,  
Missouri, Inc. and Metropolitan Fiber Systems of St. Louis, Inc., (Applicants)  
applied for certificates of service authority to provide intrastate competitive  
interexchange telecommunications services. Following notice of these

consolidated applications, Southwestern Bell Telephone Company (SWBT) was granted intervention and, on March 13, 1992,<sup>1</sup> all parties met in prehearing conference, pursuant to Commission order. Prior thereto, on March 6, Applicants filed amended applications requesting authority to, inter alia, provide not only interexchange private line service but "intraexchange" service as well. Following notice of said amended applications, United Telephone Company of Missouri (United) also sought and was granted intervention.

By its order of June 19, the Commission scheduled a second prehearing conference to commence June 30. On August 31, all parties submitted for Commission approval a Stipulation and Agreement virtually identical to the stipulation given approval in the recent Digital Teleport case,<sup>2</sup> decided by the Commission on June 10. On September 24, pursuant to Commission order, the parties presented their stipulation to the Commission and responded to the Commission's inquiries regarding the nature of Applicants' business and the likely effects of same on existing providers of local exchange telecommunication services.

The matters now pending in this docket are substantially the same as in Digital, viz, whether the Commission should approve the attached Stipulation and Agreement and whether, and under what circumstances, Metro's applications to provide competitive private line local exchange and interexchange services should be granted.

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<sup>1</sup>All dates hereafter, unless otherwise indicated, occur in 1992.

<sup>2</sup>In the Matter of the Application of Digital Teleport, Inc. for Permission, Approval and a Certificate of Authority to Provide Intrastate Private Line Telecommunications Services in the State of Missouri, Case No. TA-92-145, Report and Order (June 23, 1992).

### Findings of Fact

Having considered all the competent and substantial evidence on the whole record, the Missouri Public Service Commission makes the following findings of fact.

Applicants are Missouri Corporations and maintain their principal offices at One Tower Lane, Suite 1600, Oakbrook Terrace, Illinois. Applicants' verified applications, as amended, request the following authorities and classifications:

(1) certificates of service authority to provide intrastate, interexchange, dedicated telecommunications services identified in the Applications and to provide intrastate, interexchange, switched telecommunications services;

(2) certificates of service authority to provide dedicated, non-switched local exchange telecommunications services only to the extent the Commission determines to modify the classification under which it has certified similar carriers seeking authority to provide the dedicated point-to-point services identified in the Applications that are physically intraexchange; and

(3) classification of services and MFS-KC as competitive.<sup>3</sup>

Applicants herein request the same authority which the Commission recently issued to Digital Teleport, a certificate of service authority to provide competitive, switched interexchange, non-switched private line local exchange, and interexchange intrastate private line telecommunications service. Applicants have requested the issuance of said authorities pursuant to Sections 392.410 and 392.361, RSMo Supp. 1991. Applicants request the waiver of the following statutes and Commission regulations pursuant to Section 392.361(5), RSMo Supp 1991:

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<sup>3</sup>P. 2 and 3, Amendment to Applications filed on June 6.

### Statutes

- 392.240(1) - ratemaking
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debt and notes
- 392.340 - reorganization(s)

### Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - rate schedules
- 4 CSR 240-30.060(5)(B) through (O) - records re: ratemaking
- 4 CSR 240-32.030(1)(B) - exchange boundary maps
- 4 CSR 240-32.030(1)(C) - record keeping
- 4 CSR 240-32.030(2) - in-state record keeping
- 4 CSR 240-32.050(3) - local office record keeping
- 4 CSR 240-32.050(4) - telephone directories
- 4 CSR 240-32.050(5) - call intercept
- 4 CSR 240-32.050(6) - telephone number changes
- 4 CSR 240-32.070(4) - public coin telephone
- 4 CSR 240-33.030 - minimum charges rule

In Case No. TO-88-142<sup>4</sup>, the Commission found that private line service was "subject to more competition than MTS" (message telecommunications service) and concluded that private line services, whether offered by AT&T or any of the "alternative IXCs," were competitive<sup>5</sup>. In the same case, the Commission also approved certain statutory and rule waivers for interexchange carriers offering competitive services. The Commission has also granted competitive status to various other purveyors of private line services, albeit on an interexchange or intrastate basis. In Case No. TA-88-232<sup>6</sup>, Applicant's dedicated private line service was deemed competitive on the same basis, and-

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<sup>4</sup>In re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri (1989).

<sup>5</sup>IBID, p. 14.

<sup>6</sup>In the matter of the application of Kansas City Cable Partners for a certificate of service authority to provide intrastate private line, high-speed telecommunications service.

ultimately-in the same docket as other IXC services, (TO-88-142) cited above. In TA-92-68<sup>7</sup>, Applicant's proposal to provide competitive WATS, private line, and other services was deemed competitive and the Commission granted both statutory and rule waivers.

The Commission finds that the private line services herein proposed are virtually identical to the services proposed and found competitive in the cases referenced above. The Commission finds that Applicants proposed services are competitive.

The Commission hereby incorporates its prior findings and conclusions regarding the competitive aspect(s) of private line dedicated services in cases TO-88-142, TA-88-232, TA-92-68, and TA-92-145, noted above. The Commission finds that private line dedicated services offered by alternative carriers are competitive services, whether offered on a statewide basis, as in TO-88-142, or within a local exchange, as granted to Digital and by this order, to Applicants. The Commission also approves the attached Stipulation and Agreement, appended hereto "as Attachment A." This stipulation confirms the nature and extent of private line competition in Intervenor's exchanges. The Commission therefore makes Attachment A part of this order by reference. Having considered Applicants' verified applications, the favorable recommendation by the signatory parties in Attachment A, and the facts cited above, the Commission finds that Applicants are qualified to provide the services proposed.

The requirement of a hearing in connection with Company's request has been fulfilled when all those having a desire to be heard are offered such an opportunity. In this case, notice was sent by the Executive Secretary of the Commission to any persons or entities known to the Telecommunications Department

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<sup>7</sup>In the matter of the application of WilTel, Inc. for a certificate of service authority to provide intrastate interexchange telecommunications services within the State of Missouri as a competitive telecommunications company, and for cancellation of the certificate of WTG Network, Inc.

of the Public Service Commission to be rendering identical or similar services within the service area proposed by this application, as well as to each telephone company rendering local exchange service in Missouri. Interested persons or entities were directed to intervene on or before January 17. Since there are no outstanding requests for a hearing, and all parties have agreed that a hearing is not required, the Commission determines that an evidentiary hearing is not necessary and that Applicants may submit evidence in support of their applications by verified statement. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission further finds that Applicants have filed current financial information and a sufficient description of the services they propose to provide, and have agreed to comply with all applicable rules and regulations of the Commission and any terms and conditions which the Commission may impose.

Having found that Applicants are qualified to perform the service proposed, the Commission will assume, pursuant to Sections 392.440 and 392.530, RSMo, that additional competition in the intraLATA and interLATA toll markets is in the public interest. The Commission also finds that additional competition in private lines, within local exchanges, is in the public interest. The Commission does not deem it necessary to determine a public need for each provider's services as the market would eliminate any provider for which there is no public need. Consequently, pursuant to Section 392.440, RSMo, the Commission finds that it is in the public interest to grant Applicants certificates of service authority to provide intrastate interexchange telecommunications services.

The Commission also finds that it is in the public interest to grant Applicants certificates of local exchange service authority to provide competitive private line telecommunication services which both originate and terminate within the same local exchange.

The Commission also finds that Applicants' proposed interexchange and, to the extent stated above, local exchange services are the same as those classified as competitive in Case No. TO-88-142, *In re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri* (September 15, 1989). Based upon the verified statements of Applicants, the statements in Attachment A, and the Commission's orders and findings in similar dockets, the Commission finds that all of the local exchange and interexchange private line services Applicants propose to offer are competitive and that Applicants should, therefore, be classified as competitive companies. The Commission further finds that the waiver of the above-mentioned statutory and regulatory requirements is, pursuant to Section 392.361(5), reasonable and not detrimental to the public interest.

Pursuant to Section 392.470, RSMo Supp. 1991, the Commission determines that certain regulatory requirements should be imposed upon providers authorized to provide interexchange telecommunications services in Missouri. Since the Applicants propose to operate as facilities based providers of telecommunications services in this state, the Commission finds that the following regulatory requirements should be imposed upon Applicants as reasonable and necessary conditions of certification:

- (1) Applicants are required to comply with reasonable requests by the Staff for financial and operating data to allow the Staff to monitor the intraLATA toll market pursuant to Section 386.320.3, RSMo.
- (2) Applicants are required to file tariffs containing rules and regulations applicable to customers, a description of the services provided and a list of rates associated with the services pursuant to Section 392.220, RSMo, and 4 CSR 240-30.010.
- (3) Applicants' tariff filings must also contain a preliminary section which states that Company is a competitive carrier and identifies the statutory and rule waivers herein granted.

- (4) Applicants are precluded from unjustly discriminating between and among their customers pursuant to Section 392.200, RSMo and Section 392.400, RSMo.
- (5) Applicants are required by Sections 386.570, RSMo 1986, and 392.360, RSMo, to comply with all applicable rules of the Commission except those which have specifically been waived by this Report and Order.
- (6) Applicants are required to file a Missouri-specific annual report pursuant to Section 392.210, RSMo, and Section 392.390.1, RSMo.
- (7) Applicants are required, if they offers services other than private line, to submit to the Staff on a confidential basis, quarterly reports showing their percentage of interstate use and intrastate interLATA and intralATA use pursuant to Section 392.390.3, RSMo.
- (8) Pursuant to Section 392.390.3, RSMo, Applicants are required to comply with the jurisdictional reporting requirements as set out in each local exchange company's access services tariff.

Finally, the Commission finds that Applicants should file appropriate tariffs for their interexchange private line service, local exchange private line service, and interexchange switched services within thirty (30) days of the effective date of this Report and Order. Said tariffs shall identify said services as competitive and list, by index, the statutory and rule waivers herein granted. The certificates granted herein will become effective only upon approval by the Commission of these tariffs.

#### Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Applicants propose to provide service to the public as intrastate providers of competitive private line interexchange telecommunications services and to provide switched interexchange telecommunications services pursuant to Chapters 386 and 392, RSMo. Applicants also propose to provide competitive dedicated, non-switched local exchange private line services to the public under

a certificate of local exchange service authority, pursuant to Sections 392.410 and 392.420, RSMo.

Based on the verified applications filed by Applicants, Attachment A, and the Findings of Fact herein, the Commission has found that Applicants comply with the Commission's standards pertaining to applications requesting authority to provide the services above stated, and that Applicants are qualified to perform said services.

The Commission also concludes that Applicants are qualified to receive a certificate of local exchange authority pursuant to Sections 392.410 and 392.420, RSMo Supp. 1991, and further concludes that additional competition in the interexchange and local exchange private lines market is in the public interest and that certificates of service authority should be granted. The Commission has also determined that all services which Applicants propose to offer are competitive and that waiving the statutes and Commission rules set out below is reasonable and not detrimental to the public interest. The Commission therefore concludes that Applicants should be classified as competitive companies pursuant to Section 392.361, RSMo.

**IT IS THEREFORE ORDERED:**

1. That Metropolitan Fiber Systems of Kansas City, Missouri, Inc. and Metropolitan Fiber Systems of St. Louis, Inc. are granted hereby certificates of service authority to provide competitive private line intrastate interexchange telecommunications services in Missouri. These certificates of service authority are subject to the conditions of certification set out herein and shall not become effective until the Commission approves Applicants' tariffs.

2. That Metropolitan Fiber Systems of Kansas City, Missouri, Inc. and Metropolitan Fiber Systems of St. Louis, Inc. are granted hereby certificates of local exchange service authority to provide competitive dedicated, non-switched local exchange private line telecommunications services as specified by

this order. Applicants are specifically excluded from providing basic local telecommunications services.

3. That Metropolitan Fiber Systems of Kansas City, Missouri, Inc. and Metropolitan Fiber Systems of St. Louis, Inc. are granted hereby certificates of authority to provide competitive switched interexchange telecommunications services.

4. That Metropolitan Fiber Systems of Kansas City, Missouri, Inc. and Metropolitan Fiber Systems of St. Louis, Inc. are classified hereby as competitive telecommunications companies for which the effect of the following statutory and regulatory requirements shall be waived:

Statutes

- 392.240(1) - ratemaking
- 392.27C - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debt and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - rate schedules
- 4 CSR 240-30.060(5)(B) through (O) - records re: ratemaking
- 4 CSR 240-32.030(1)(B) - exchange boundary maps
- 4 CSR 240-32.030(1)(C) - record keeping
- 4 CSR 240-32.030(2) - in-state record keeping
- 4 CSR 240-32.050(3) - local office record keeping
- 4 CSR 240-32.050(4) - telephone directories
- 4 CSR 240-32.050(5) - call intercept
- 4 CSR 240-32.050(6) - telephone number changes
- 4 CSR 240-32.070(4) - public coin telephone
- 4 CSR 240-33.030 - minimum charges rule

5. That the Stipulation and Agreement appended hereto as Attachment A is hereby approved.

6. That Metropolitan Fiber Systems of Kansas City, Missouri, Inc. and Metropolitan Fiber Systems of St. Louis, Inc. shall file PIU reports as

discussed herein within thirty (30) days of the effective date of this Report and Order.

7. That Metropolitan Fiber Systems of Kansas City, Missouri, Inc. and Metropolitan Fiber Systems of St. Louis, Inc. shall file with the Commission Staff reports showing each company's percentage of intrastate intraLATA use. Said reports shall be filed within thirty (30) days of the effective date of Companies' filed tariffs; said tariffs shall be filed within 30 days of the effective date of this Report and Order.

8. That this order shall become effective on the 14th day of October, 1992.

BY THE COMMISSION

*Brent Stewart*

Brent Stewart  
Executive Secretary

(S E A L)

Dated at Jefferson City, Missouri,  
on this 2nd day of October, 1992.

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

In the Matter of the Application of	)	
Metropolitan Fiber Systems of Kansas	)	
City, Missouri, Inc. for a Certificate	)	Case No. TA-92-125
of Service Authority to Provide	)	
Dedicated Telecommunications Service	)	
and Petition for Classification	)	
as a Competitive Telecommunications	)	
Company Providing Competitive	)	
Telecommunications Services	)	

**FILED**  
AUG 31 1992  
PUBLIC SERVICE COMMISSION

STIPULATION AND AGREEMENT

Metropolitan Fiber Systems of Kansas City, Missouri, Inc. ("MFS-KC"), the Staff of the Missouri Public Service Commission (the "Staff"), the Office of Public Counsel ("Public Counsel"), United Telephone Company of Missouri ("United"), and Southwestern Bell Telephone Company ("Southwestern Bell") as the parties to this proceeding hereby agree and stipulate to the matters set forth in this Stipulation and Agreement. (The signatures to this Stipulation and Agreement are referred to collectively as the "parties.")

1. MFS-KC has requested certification so that it can provide the following services:

a. dedicated, non-switched interexchange and local exchange direct access services between customer premises and telecommunications' carriers points-of-presence;

b. dedicated, non-switched, interexchange and local exchange private line services between customer premises;

c. dedicated, non-switched interexchange and local exchange private line services connecting telecommunications carriers' points-of-presence to one another; and

d. switched interexchange telecommunications services.

2. MFS-KC has applied for certification to provide interexchange and local exchange services as required by Section 392.410, RSMo. Cum. Supp. 1991.

3. None of the parties is requesting a hearing on the issue of certification of MFS-KC to provide interexchange switched and interexchange dedicated, non-switched private line services.

4. None of the parties is requesting a hearing on the determination that MFS-KC's interexchange services are the same or substantially similar to those interexchange services determined to be "competitive" in Case No. TO-88-142.

5. None of the parties is requesting a hearing on the issue of certification of MFS-KC to provide dedicated, non-switched local exchange private line services.

6. As to the issue of whether dedicated, non-switched local exchange private line services are competitive, the parties state as follows:

a. Southwestern Bell stipulates that it provides the same or substantially similar dedicated, non-switched local exchange private line services in those areas in which Southwestern Bell provides basic local telecommunications service.

b. United stipulates that it provides the same or substantially similar dedicated, non-switched local exchange private line services in those areas in which United provides basic local telecommunications service.

c. The Commission recently granted Digital Teleport, Inc.'s ("DTI's") application to provide, based on information and belief, the same or substantially similar, interexchange and non-switched local exchange private line services. Specifically, the Commission granted DTI a certificate of service authority to provide competitive private line intrastate interexchange telecommunications services in Missouri and a certificate of local exchange service authority to provide competitive dedicated, non-switched local exchange private line telecommunications services. The Commission further classified DTI as a competitive telecommunications company and its proposed services as competitive. The Commission's order was based, in part, on the execution by all the parties of a stipulation and agreement identical in substance to this Stipulation and Agreement. In the Matter of the Application of Digital Teleport, Inc. for Permission, Approval and a Certificate of Authority to Provide Intrastate Private Line Telecommunications Services in the State of Missouri, Case No. TA-92-145, Report and Order (June 23, 1992).

d. Based upon best information and belief, providers of "basic local telecommunications service" other than United or Southwestern Bell offer the same or substantially similar dedicated, non-switched local exchange private line services in the State of Missouri in the areas in which each such provider operates.

e. The parties believe that the presence of at least one competitor for MFS-KC's proposed dedicated, non-switched local exchange private line services is a significant relevant factor that the Commission should consider in determining that MFS-KC's services are "competitive" under Section 392.361 RSMo. Cumm. Supp. 1991.

f. The parties would note that the Commission issued orders in this proceeding that gave potentially interested parties two notices of MFS-KC request for "competitive" status for its dedicated, non-switched local exchange private line services. Except for the parties, no person has sought intervention to contest or otherwise address that request.

g. None of the parties would contest a determination by the Commission that the dedicated, non-switched local exchange private line services to be offered by MFS-KC are "competitive" as that term is used in Section 392.361 RSMo. Cumm. Supp. 1991.

7. If the Commission decides to grant MFS-KC's request to provide the services specified in Paragraph 1 hereof, the parties recommend that the Commission grant both the requisite interexchange service authority and the requisite local exchange service authority on a certificate. MFS-KC's local exchange service authority shall be specifically limited to dedicated, non-switched private line services as listed in Paragraph 1.a-c. and should specifically exclude the provision of "basic local telecommunications services." The phrase "dedicated, non-

switched private line services" includes the transmission by a separate dedicated line between each pair of subscribers, but does not include service that is switched between different subscribers.

8. Except as specified in Paragraph 9, none of the parties would object to the waivers of those statutes and Commission regulations specified in MFS-KC's Application, as amended, including application of the waivers to the proposed dedicated, non-switched local exchange private line services planned to be offered by MFS-KC.

9. Parties agree that the requested waivers of 4 CSR 240-30.060(5) should only be granted for 4 CSR 240-30.060(5)(B) through (O).

10. By entering into this Stipulation and Agreement, the Staff and Public Counsel are not acquiescing to the principles that in every case where there are a number of companies providing the same or similar services sufficient competition exists to justify a lesser degree of regulation, or that the number of competitors is always the single relevant factor in determining the competitiveness of such services.

11. The following general provisions are an integral part of this Stipulation and Agreement.

a. The matters set forth in this Stipulation and Agreement shall be received into evidence without the necessity of any witness taking the stand. The parties agree that an on-the-record presentation of the stipulation before the Commission may not be necessary because this Stipulation and Agreement is

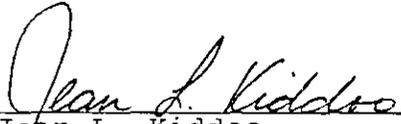
identical in substance to the Stipulation and Agreement accepted by the Commission in Case No. TA-92-145.

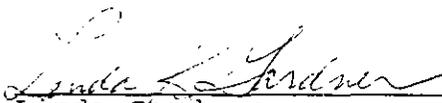
b. In the event that the Commission accepts this Stipulation and Agreement, the parties hereto waive their right to cross-examine any witnesses only with respect to the specific factual matters set forth herein and only with respect to this proceeding. The Stipulation and Agreement shall not otherwise bar or restrict any cross-examination of any witness on any other factual matters relevant to this proceeding, or in any other proceeding.

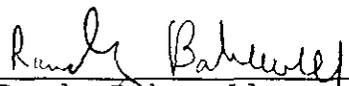
c. The matters set forth in this Stipulation and Agreement are interdependent. In the event the Commission does not adopt the matters set forth in this Stipulation and Agreement in their entirety, or adopt the agreed upon resolutions recommended by the parties in paragraph 7, this Stipulation and Agreement shall be void and no party shall be bound by any of the matters set forth herein.

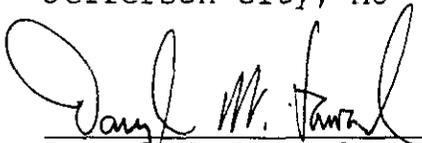
d. Except as specifically provided herein, none of the parties to this Stipulation and Agreement shall be prejudiced or bound by the stipulations contained herein in any future proceeding, or in any proceeding currently pending under a separate docket in this or any other jurisdiction.

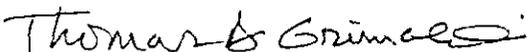
WHEREFORE, the undersigned parties respectfully request that the Commission accept this Stipulation and Agreement in its entirety.

  
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BEFORE THE PUBLIC SERVICE COMMISSION  
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of Service Authority to Provide )  
Dedicated Telecommunications Service )  
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as a Competitive Telecommunications )  
Company Providing Competitive )  
Telecommunications Services )

Case No. TA-92-126

FILED  
AUG 31 1992  
PUBLIC SERVICE COMMISSION

STIPULATION AND AGREEMENT

Metropolitan Fiber Systems of Saint Louis, Inc. ("MFS-St. Louis"), the Staff of the Missouri Public Service Commission (the "Staff"), the Office of Public Counsel ("Public Counsel"), United Telephone Company of Missouri ("United"), and Southwestern Bell Telephone Company ("Southwestern Bell") as the parties to this proceeding hereby agree and stipulate to the matters set forth in this Stipulation and Agreement. (The signatures to this Stipulation and Agreement are referred to collectively as the "parties.")

1. MFS-St. Louis has requested certification so that it can provide the following services:

a. dedicated, non-switched interexchange and local exchange direct access services between customer premises and telecommunications' carriers' points-of-presence;

b. dedicated, non-switched, interexchange and local exchange private line services between customer premises;

c. dedicated, non-switched interexchange and local exchange private line services connecting telecommunications carriers' points-of-presence to one another; and

d. switched interexchange telecommunications services.

2. MFS-St. Louis has applied for certification to provide interexchange and local exchange services as required by Section 392.410, RSMo. Cummm. Supp. 1991.

3. None of the parties is requesting a hearing on the issue of certification of MFS-St. Louis to provide interexchange switched and interexchange dedicated, non-switched private line services.

4. None of the parties is requesting a hearing on the determination that MFS-St. Louis' interexchange services are the same or substantially similar to those interexchange services determined to be "competitive" in Case No. TO-88-142.

5. None of the parties is requesting a hearing on the issue of certification of MFS-St. Louis to provide dedicated, non-switched local exchange private line services.

6. As to the issue of whether dedicated, non-switched local exchange private line services are competitive, the parties state as follows:

a. Southwestern Bell stipulates that it provides the same or substantially similar dedicated, non-switched local exchange private line services in those areas in which Southwestern Bell provides basic local telecommunications service.

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c. The Commission recently granted Digital Teleport, Inc.'s ("DTI's") application to provide, based on information and belief, the same or substantially similar, interexchange and non-switched local exchange private line services. Specifically, the Commission granted DTI a certificate of service authority to provide competitive private line intrastate interexchange telecommunications services in Missouri and a certificate of local exchange service authority to provide competitive dedicated, non-switched local exchange private line telecommunications services. The Commission further classified DTI as a competitive telecommunications company and its proposed services as competitive. The Commission's order was based, in part, on the execution by all the parties of a stipulation and agreement identical in substance to this Stipulation and Agreement. In the Matter of the Application of Digital Teleport, Inc. for Permission, Approval and a Certificate of Authority to Provide Intrastate Private Line Telecommunications Services in the State of Missouri, Case No. TA-92-145, Report and Order (June 23, 1992).

d. Based upon best information and belief, providers of "basic local telecommunications service" other than United or Southwestern Bell offer the same or substantially similar dedicated, non-switched local exchange private line services in the State of Missouri in the areas in which each such provider operates.

e. The parties believe that the presence of at least one competitor for MFS-St. Louis' proposed dedicated, non-switched local exchange private line services is a significant relevant factor that the Commission should consider in determining that MFS-St. Louis' services are "competitive" under Section 392.361 RSMo. Cummm. Supp. 1991.

f. The parties would note that the Commission issued orders in this proceeding that gave potentially interested parties two notices of MFS-St. Louis' request for "competitive" status for its dedicated, non-switched local exchange private line services. Except for the parties, no person has sought intervention to contest or otherwise address that request.

g. None of the parties would contest a determination by the Commission that the dedicated, non-switched local exchange private line services to be offered by MFS-St. Louis are "competitive" as that term is used in Section 392.361 RSMo. Cummm. Supp. 1991.

7. If the Commission decides to grant MFS-St. Louis' request to provide the services specified in Paragraph 1 hereof, the parties recommend that the Commission grant both the requisite interexchange service authority and the requisite local exchange service authority on a certificate. MFS-St. Louis' local exchange service authority shall be specifically limited to dedicated, non-switched private line services as listed in Paragraph 1.a-c. and should specifically exclude the provision of "basic local telecommunications services." The phrase

"dedicated, non-switched private line services" includes the transmission by a separate dedicated line between each pair of subscribers, but does not include service that is switched between different subscribers.

8. Except as specified in Paragraph 9, none of the parties would object to the waivers of those statutes and Commission regulations specified in MFS-St. Louis' Application, as amended, including application of the waivers to the proposed dedicated, non-switched local exchange private line services planned to be offered by MFS-St. Louis.

9. Parties agree that the requested waivers of 4 CSR 240-30.060(5) should only be granted for 4 CSR 240-30.060(5)(B) through (O).

10. By entering into this Stipulation and Agreement, the Staff and Public Counsel are not acquiescing to the principles that in every case where there are a number of companies providing the same or similar services sufficient competition exists to justify a lesser degree of regulation, or that the number of competitors is always the single relevant factor in determining the competitiveness of such services.

11. The following general provisions are an integral part of this Stipulation and Agreement.

a. The matters set forth in this Stipulation and Agreement shall be received into evidence without the necessity of any witness taking the stand. The parties agree that an on-the-record presentation of the stipulation before the Commission may

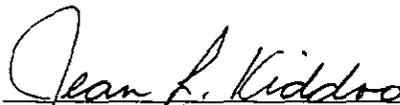
not be necessary because this Stipulation and Agreement is identical in substance to the Stipulation and Agreement accepted by the Commission in Case No. TA-92-145.

b. In the event that the Commission accepts this Stipulation and Agreement, the parties hereto waive their right to cross-examine any witnesses only with respect to the specific factual matters set forth herein and only with respect to this proceeding. The Stipulation and Agreement shall not otherwise bar or restrict any cross-examination of any witness on any other factual matters relevant to this proceeding, or in any other proceeding.

c. The matters set forth in this Stipulation and Agreement are interdependent. In the event the Commission does not adopt the matters set forth in this Stipulation and Agreement in their entirety, or adopt the agreed upon resolutions recommended by the parties in paragraph 7, this Stipulation and Agreement shall be void and no party shall be bound by any of the matters set forth herein.

d. Except as specifically provided herein, none of the parties to this Stipulation and Agreement shall be prejudiced or bound by the stipulations contained herein in any future proceeding, or in any proceeding currently pending under a separate docket in this or any other jurisdiction.

WHEREFORE, the undersigned parties respectfully request that the Commission accept this Stipulation and Agreement in its entirety.



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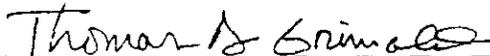
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