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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held at its office
in Jefferson City on the 25th
day of June, 1998.

In the Matter of the Application of Navigator)
Telecommunications, LLC, for a Certificate of)
Service Authority to Provide Basic Local Tele-) Case No. TA-98-383
communications Service in Portions of the State)
of Missouri and to Classify Said Services and)
the Company as Competitive.)

ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Procedural History

Navigator Telecommunications, LLC (Navigator) applied to the Commission on March 10, 1998, 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. 1997. Navigator 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. Navigator is a limited liability company organized under the laws of the state of Arkansas. Navigator's offices are at 11810 Pleasant Ridge Road, Little Rock, Arkansas 72212.

The Commission issued a notice and schedule of applicants on March 17, directing interested parties wishing to intervene to do so by April 16. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on April 30.

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

The parties filed a Stipulation and Agreement (Agreement) which is included with this order as Attachment 1 on May 18. The Staff of the Commission (Staff) filed Suggestions in Support of the Agreement on June 1. 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

Navigator wishes certification to provide basic local exchange telecommunications services in portions of Missouri that are currently served by SWBT. Navigator is not asking for certification in any area that is served by a small incumbent local exchange provider. Navigator proposes to operate in all of SWBT's exchanges as described in its tariff. Navigator is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

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

Commission rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing it is authorized to do business in Missouri, a description of the

types of 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. Navigator 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) because, when it applied for certification, it was not party to an approved interconnection agreement with SWBT. The Commission has since approved an interconnection agreement between Navigator and SWBT in Case No. TO-98-375 (Order Approving Interconnection Agreement issued on May 27). Therefore, there is no longer an obstacle to the filing of a tariff for basic local exchange services. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date. Navigator will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing Navigator 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. 1997, 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.

Navigator submitted its balance sheet as of February 2, 1998 as Exhibit D. Navigator also submitted a copy of a Conditional Guaranty as Exhibit E which provides for a guaranteed payment of Navigator's obligations. Exhibit C to the application lists the names and qualifications of Navigator's management team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including engineering, operations, sales, customer service, marketing, and product development. The parties agreed that Navigator possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

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

Navigator wishes to be certificated to offer services in all the exchanges presently served by SWBT as described in SWBT's basic local tariff. The company has agreed that its service area must follow SWBT's exchange boundaries and be no smaller than an exchange. The parties agreed that Navigator 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.

Navigator 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. 1997.

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 Navigator should be classified as a competitive telecommunications company. The parties have also agreed that Navigator's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on Navigator's ability to charge for its access services. Navigator 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 Navigator seeks to operate. The parties have agreed that the grant of service authority and competitive classification to Navigator should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1997, 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. 1997, 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. 1997, 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 markets is in the public interest.
- B. The Commission finds that Navigator 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 Navigator has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted. The Commission also finds that Navigator is party to an approved interconnection agreement and is now capable of filing a tariff setting out the terms and conditions under which it will offer basic local exchange telecommunications services.
- D. The Commission finds that Navigator 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 Navigator a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. Navigator's certificate shall become effective when its tariff becomes effective.
- E. The Commission finds that Navigator 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 Navigator's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997, 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. 1997, 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. Navigator has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1997 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. 1997, 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. 1997.

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. 1997. 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 May 18, 1998, is approved.

2. That Navigator Telecommunications, 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 Navigator Telecommunications, 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. 1997 - 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 Navigator Telecommunications, 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 this order. The tariff shall be filed in Case

No. TA-98-383 and shall include a listing of the statutes and Commission rules waived above.

6. That Navigator Telecommunications, LLC shall give notice of the filing of the tariffs described above to all parties or participants. In addition, Navigator Telecommunications, 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 Navigator Telecommunications, LLC's certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1997, 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. 1997, and 392.230, rather than Sections 392.500 and 392.510.

8. That this order shall become effective on July 7, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Wickliffe, Deputy Chief Regulatory Law Judge

**BEFORE THE
MISSOURI PUBLIC SERVICE COMMISSION**

FILED
MAY 18 1998
MISSOURI
PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF NAVIGATOR TELECOMMUNICATIONS,)
LLC FOR A CERTIFICATE OF SERVICE)
AUTHORITY TO PROVIDE BASIC LOCAL)
TELECOMMUNICATIONS SERVICE IN)
PORTIONS OF THE STATE OF MISSOURI)
AND TO CLASSIFY SAID SERVICES AND)
THE COMPANY AS COMPETITIVE)

CASE NO. TA-98-383

STIPULATION AND AGREEMENT

1. Navigator Telecommunications, LLC (hereinafter "Navigator") initiated this proceeding by filing an Application requesting a certificate of service authority to provide basic local telecommunications service in all exchanges currently served by Southwestern Bell Telephone Company (hereinafter "SWBT") and classification of Navigator and its services as competitive.

2. The Commission has granted the timely application to intervene of SWBT.

3. For purposes of this Stipulation and Agreement, the parties agree that Navigator's application for basic local telecommunications service authority should be processed in a manner similar to that in which applications for local exchange authority are currently handled.

4. In determining whether Navigator's application for a certificate of service authority should be granted, the Commission should consider Navigator's technical, financial and managerial resources and abilities to provide basic local telecommunications services. Navigator must demonstrate that the basic local services that it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to the Applicant agreeing to file and

maintain a basic local telecommunications service tariff with the Commission in the same manner and form as the Commission requires of telecommunications companies with which the Applicant seeks to compete. Further, Navigator agrees to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange telecommunications companies with which the Applicant seeks to compete. Notwithstanding the provisions of Section 392.500, RSMo., as a condition of certification and competitive classification, Navigator 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 for SWBT for each service area within which the Applicant seeks authority to provide service. Further, Navigator 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 telecommunications service. Such area must follow SWBT's exchange boundaries in the same area and must be no smaller than an exchange. Finally, Applicant agrees to provide equitable access to affordable telecommunications services, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local telecommunications service, regardless of residence or income.¹

5. Navigator has entered into an interconnection agreement with SWBT. Navigator and SWBT have submitted their interconnection agreement for approval in Case No. TO-98-375. The Commission has not yet approved their interconnection agreement. Navigator filed its application in this case without a tariff because it did not have an approved interconnection agreement with

¹See Section 392.455, RSMo.

SWBT. It has requested a temporary waiver of 4 CSR 240.2.060(4)(H) because it does not yet have an approved interconnection agreement with SWBT.² Navigator agrees to file its initial tariff in the certification docket and to serve all parties thereto with written notice and a copy thereof at the time the initial tariff is submitted to afford them an opportunity to participate in the tariff approval process. Any service authority shall be regarded as conditional and shall not be exercised until such time as a tariff for local services have become effective. When filing its initial basic local tariff, Navigator shall also file and serve a written disclosure of all resale or interconnection agreements which affect its Missouri service areas.

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

STATUTORY PROVISIONS

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

COMMISSION RULES

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

7. In negotiating the remaining provisions of this Stipulation and Agreement, the parties have employed the foregoing standards and criteria, which are intended to meet the requirements of

²Good cause for failure to file proposed tariffs with the Application must be shown. The lack of an approved interconnection agreement constituted good cause under 47 U.S.C. §252 for not filing a tariff with the application.

existing law and Sections 392.450 and 392.455, RSMo., regarding applications for certificates of service authority to provide basic local telecommunications service.

Navigator's Certification

8. Navigator has requested service authority to provide basic local telecommunications service in all exchanges currently served by SWBT. The specific exchanges which Navigator seeks to serve are listed in SWBT's local exchange tariff.

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

- A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service;
- B. proposes and agrees to offer basic local telecommunications service that will satisfy the minimum standards established by the Commission;
- C. has sufficiently identified the geographic area in which it proposes to offer basic local telecommunications service and such area follows the exchange boundaries of SWBT in the same area, and such area is no smaller than an exchange;
- D. will offer basic local telecommunications services as a separate and distinct service;
- E. has agreed to provide equitable access to affordable telecommunication services, as determined by the Commission, for all Missourians within the geographic area in which it proposes to offer basic local telecommunications service, regardless of where they live or their income; and
- F. has sought authority which will serve the public interest.

10. Navigator asserts, and no party opposes, that Navigator's application and request for authority to provide basic local telecommunications service (including exchange access services)

should be granted. All services authorized herein should be classified as competitive telecommunications services (provided that the requirements of Section 392.200, RSMo., continue to apply) and Navigator shall be classified as a competitive telecommunications company. Navigator asserts, and no party opposes, that such services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation for Navigator's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for their services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's Order should state the foregoing conditions substantially as follows:

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

The parties agree that the Applicant's 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 4 herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230, and not Sections 392.500 and 392.510. The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for 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 392.510."

11. Navigator's request for a temporary waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties. It should be granted because Navigator does not have an approved interconnection agreement with SWBT. Navigator 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. Navigator 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 a copy of its tariff. 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 did not have an approved interconnection agreement with SWBT within whose service area it seeks authority to provide service at the time it filed its application; provided, when Applicant submits its tariffs in this docket to the Commission such tariffs shall have a minimum 45-day effective date and the Applicant shall serve copies of such tariffs upon the parties hereto. When filing its initial basic local telecommunications service tariff in this docket, the Applicant shall also file and serve upon the parties hereto a written disclosure of all resale and interconnection agreements which affect its Missouri service area."

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

STATUTORY PROVISIONS

Section 392.210.2

Section 392.270

Section 392.280

Section 392.290.1

Section 392.300.2

Section 392.310

Section 392.320

Section 392.330

Section 392.340

COMMISSION RULES

4 CSR 240-10.020

4 CSR 240-30.040

4 CSR 240-35

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

14. In the event that the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein, their respective rights pursuant to Section 536.080.1, RSMo., to present testimony, to cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo.; and their respective rights to seek rehearing pursuant to Section 386.300, RSMo.; and to seek judicial review pursuant to Section 386.510, RSMo. The parties agree to cooperate with the Applicant and with each other in presenting

this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of Navigator's application made herein.

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.

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

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

Respectfully submitted,

Marc Poston by pgb

Marc Poston
Missouri Bar No. 45722
Assistant General Counsel

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
573-751-8701
573-751-9285 (Fax)

Gregory F. Hoffman by pgb

Gregory F. Hoffman
Missouri Bar No. 22101
Millar, Schaefer, Hoffmann &
Robertson

Attorneys for Navigator
Telecommunications, LLC
230 S. Bemiston, Suite 1110
St. Louis, MO 63105
314-862-0983
314-862-3490 (Fax)

Diana J. Harter by pgb

Diana J. Harter
Missouri Bar No. 31424
Southwestern Bell Telephone Company

Attorney for Southwestern Bell
Telephone Company
One Bell Center, Room 3516
St. Louis, MO 63101
314-235-4094
314-247-0014 (Fax)

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**COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION**