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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 5th  
day of August, 1998.

In the Matter of the Application of )  
NOW Communications, Inc. for a Certificate of )  
Service Authority to Provide Resold Basic ) Case No. TA-98-390  
Local Telecommunications Service in Portions )  
of the State of Missouri and for Competitive )  
Classification. )

**ORDER GRANTING CERTIFICATE TO PROVIDE**  
**BASIC LOCAL TELECOMMUNICATIONS SERVICES AND APPROVING TARIFF**

**Procedural History**

NOW Communications, Inc. (NOW) applied to the Commission on March 12, 1998, for a certificate of service authority to provide basic local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994<sup>1</sup>, and Sections 392.410 and .450, RSMo Supp. 1997. NOW 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. NOW included with its application a proposed tariff with a 90-day effective date. NOW is a Mississippi corporation with principal offices located at 713 Country Place Drive, Jackson, Mississippi 39208.

The Commission issued a notice and schedule of applicants on March 17, directing interested parties wishing to intervene to do so by

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

April 16. The Commission granted permission to intervene to Southwestern Bell Telephone Company (SWBT) on May 1.

The parties filed a Stipulation and Agreement (Agreement) which is included with this order as Attachment 1 on June 3. The Staff of the Commission (Staff) filed a Memorandum with its recommendation regarding the tariff on July 30. On August 3 Staff filed Suggestions in Support of the Stipulation and Agreement. 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**

NOW 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. d/b/a Sprint (Sprint). NOW is not asking for certification in any area that is served by a small incumbent local exchange provider. NOW proposes to operate in all of the exchanges described in Appendix B to its application. NOW is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

## **A. Basic Local Service Certification**

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. NOW has provided all the required documentation and a tariff with a 90-day effective date.

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.

NOW submitted as Exhibit D to its application certain financial documentation including its pro forma balance sheet showing projected assets and liabilities for the remainder of 1998 through 2002. Exhibit C to the application lists the names and qualifications of NOW's management

team. In addition to academic credentials, the team members have experience in various areas of the telecommunications industry including marketing, sales, legal issues, and financial management. The parties agreed that NOW possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

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

NOW 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 Appendix B to the application). NOW has agreed that its service area must follow exchange boundaries and be no smaller than an exchange. The parties agreed that NOW has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows incumbent local exchange carrier (ILEC) boundaries and is no smaller than an exchange.

NOW 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.

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

competitive classification to NOW 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.

### **C. Tariff**

In its application, NOW requested a waiver of 4 CSR 240-2.060(4)(H) which requires that the proposed tariff have a 45-day effective date. The proposed tariff filed with NOW's application included a 90-day effective date. NOW proposed the 90-day effective date in order to allow the Commission to rule on its application for approval of resale agreement with SWBT in Case No. TO-98-387 prior to the proposed effective date of the tariff. In the Stipulation and Agreement the parties agreed that the waiver should be granted. On May 22 the Commission suspended the proposed tariff until July 27 and on July 9 NOW filed a letter extending the effective date until August 10. On June 3 the Commission approved an interconnection agreement between NOW and SWBT in Case No. TO-98-387.

NOW served a copy of the tariff on SWBT, Staff, and the Office of the Public Counsel. As part of the Stipulation and Agreement, NOW

agreed to give notice of any subsequent modifications or substitution of the proposed tariff to all the parties at the time they were filed with the Commission. NOW also agreed that when filing any changes or modifications to its initial basic local tariff in this case, that it would provide a written disclosure of all resale or interconnection agreements it had entered into which affect its Missouri service areas, all portions of its Missouri service areas for which it did not have a resale or interconnection agreement with the incumbent local exchange carrier, and its explanation of why such a resale or interconnection agreement was unnecessary for any such areas.

NOW filed substitute sheets on June 21 in order to make clarifications and bring its tariff into compliance with Commission rules and regulations. The Commission's Staff reviewed the tariff sheets and filed a memorandum on July 30 recommending that the Commission approve them as amended by the substitute sheets. Staff stated that NOW proposes to offer prepaid basic local exchange service to customers on a resale basis, and to offer Call Forwarding, Call Waiting, Caller I.D., Call Trace, Speed Dial, and Call Return. Staff stated that NOW's proposed rates are comparable to the rates of other companies offering similar services. Since NOW does not offer Operator Services, it will block all 0- and 0+ operator-assisted calls in the same manner as would the underlying LEC for the LEC's customers who are subject to toll blocking or toll restriction. The company does not block 1-800 calls or access to 911 (where 911 is available). Staff stated that the tariff language regarding 911/E911 service and Caller I.D. is appropriate. Staff recommended that the tariff be approved, as amended by the substitute sheets, to become effective on August 10.

## **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 NOW has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services.
- C. The Commission finds that NOW has demonstrated good cause to support a waiver of the 45-day effective date for the tariff filing and the waiver shall be granted.
- D. The Commission finds that NOW 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 NOW a certificate of service authority to provide basic local exchange telecommunications services is in the public interest.
- E. The Commission finds that NOW 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 NOW's certification and competitive status should be 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.

G. The Commission has reviewed the tariff sheets and the Staff's recommendations and finds that the tariff sheets, as amended, should be approved to become effective on August 10.

### **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. NOW 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.

Under Section 392.240.2 the Commission has the authority to determine whether the rules, regulations, or practices of any telecommunications company are unjust or unreasonable, and to determine the just, reasonable, adequate, efficient, and proper regulations, practices, and service to be observed and used by a telecommunications company.

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 June 3, 1998, is approved.

2. That the parties shall comply with each and every provision of the Stipulation and Agreement approved by this order.

3. That NOW Communications, Inc. 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.

4. That NOW Communications, Inc. 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

5. That the request for waiver of the 45-day requirement for the tariff filing is granted.

6. That NOW Communications, Inc.'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.

7. That the tariff filed by NOW Communications, Inc. on March 12, 1998, is approved as amended to become effective on August 10, 1998. The tariff approved is:

MO. P.S.C. No. 1  
Original Sheets No.1 through 36

8. That the certificates of service authority granted to NOW Communications, Inc. on August 10, 1998, to provide basic local exchange telecommunications services shall take effect on August 10, 1998.

9. That this order shall become effective on August 10, 1998.

10. That this case shall close on August 17, 1998.

BY THE COMMISSION

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

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

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

Dippell, Regulatory Law Judge

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

**FILED**  
JUN 3 1998  
MISSOURI  
PUBLIC SERVICE COMMISSION

In the Matter of the Application of )  
NOW Communications, Inc. for a )  
Certificate of Service Authority to Provide ) Case No. TA-98-390  
Resold Basic Local Exchange Service in )  
Portions of the State of Missouri and for )  
Competitive Classification. )

**STIPULATION AND AGREEMENT**

1. NOW COMMUNICATIONS, INC. ("NOW" or "Applicant") initiated this proceeding on March 12, 1998 by filing an Application requesting certificate of service authority to provide basic local telecommunications service, including exchange access service, in exchanges currently served by Southwestern Bell Telephone Company ("SWBT"), GTE Midwest Incorporated ("GTE") and Sprint Missouri, Inc. d/b/a Sprint ("Sprint"). Initially NOW intends to offer prepaid basic local service through a resale arrangement with SWBT and only in SWBT exchanges. In the future Applicant may expand its service areas pursuant to resale arrangements with GTE and Sprint.

2. The Commission granted SWBT's timely application to intervene on May 1, 1998. No other party has sought or has been granted intervention.

3. For purposes of this Stipulation and Agreement, the parties agree that applications for local exchange authority in exchanges served by "large" local exchange companies (LEC's)<sup>1</sup> should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

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<sup>1</sup> Large LEC's are defined as LEC's who serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1997. In Missouri, the current large LEC's are SWB, GTE and Sprint.

4. In determining whether Applicant's application for certificate of service authority should be granted, the Commission should consider Applicant's technical, financial and managerial resources and abilities to provide basic local telecommunications service. Applicant 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 the applicant seeks to compete. Further, Applicant 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 1994, as a condition of certification and competitive classification, Applicant agrees that, unless otherwise ordered by the Commission, the Applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect at the date of certification for the large incumbent LEC(s) within those service area(s) applicant seeks authority to provide service. Further, Applicant 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 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 service,

regardless of residence or their income. See Section 392.455 RSMo Supp. 1997.

5. Applicant seeks a temporary waiver of 4 CSR 240-2.060(4)(H)<sup>2</sup> to the extent the rule requires submission of a tariff bearing a forty-five day effective date. Concurrent with filing its Application on March 12, 1998, Applicant submitted its proposed tariff bearing a ninety day effective date, identified as Appendix E. The ninety day effective date was needed to permit the Commission to rule on Applicant's request, in Case No. TO-98-387, for approval of Applicant's resale agreement with SWBT *prior to* Applicant's proposed tariff effective date in this proceeding. At the time of filing its proposed tariffs, Applicant served a copy of same on SWBT, the Staff and the Office of the Public Counsel. Applicant by letter filed on May 15, 1998 voluntarily extended the effective date of its proposed tariffs to June 30, 1998.

On May 22, 1998 the Commission, by Order, suspended Applicant's proposed tariffs for a period of forty-five days from June 10, 1998 (the initially requested effective date) to July 27, 1998 and granted the parties' request for an extension of time to file a Stipulation and Agreement, or a procedural schedule, to June 3, 1998. In that Order, the Commission also asked the parties to "address the appropriateness of the tariff submitted by NOW with its application" in any Stipulation filed. Given the June 3, 1998 Stipulation deadline, the need for all parties to thoroughly review Applicant's proposed tariffs, and that the proposed tariffs have been suspended until July 27, 1998, the parties have agreed that the most efficient method of addressing the appropriateness of the proposed tariffs is to file this Stipulation by June 3, 1998 and utilize the Staff's usual tariff review procedure to conclude the tariff portion of this case.

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

Specifically, the Staff and other parties will begin their review of the proposed tariffs, discuss any necessary changes with Applicant, have Applicant file any required substitute tariff sheets, and then have Staff file its written recommendation in this docket; all consistent with the tariff review procedures used in all prior CLEC application cases and also in keeping with the Commission's forty-five day tariff suspension to July 27, 1998 as previously ordered. Copies of any subsequent modifications or substitution of the proposed tariff for purposes of this docket, if any, will be automatically provided to all parties by Applicant at the time of filing.

Any service authority granted pursuant to this Application shall be regarded as conditional and shall not be exercised until such time as the tariff for services shall have become effective. In addition, prior to its tariff becoming effective, Applicant also agrees to file and serve a written disclosure of all resale or 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.

6. Applicant has requested, pursuant to Section 392.420 RSMo 1994 that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo Supp. 1997 should continue to apply to all of Applicant's services:

STATUTORY PROVISIONS

Section 392.210.2  
Section 392.270  
Section 392.280  
Section 392.290.1

COMMISSION RULES

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



Section 392.300.2  
Section 392.310  
Section 392.320  
Section 392.330  
Section 392.340

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 existing law and Sections 392.450 and 392.455 RSMo Supp. 1997 regarding applications for certificates of local exchange authority to provide basic local telecommunications services.

#### **B. NOW's CERTIFICATION**

8. Applicant has submitted, as Appendix B to its Application, a listing of the specific exchanges in which it seeks authority to provide service. Applicant hereby agrees that its Application should be deemed further amended as required to include by reference the terms and provisions described in paragraphs 4-6 hereinabove and paragraph 11 below to the extent that its Application might be inconsistent therewith.

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

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 will satisfy the minimum standards established by the Commission;

C. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;

D. will offer basic local telecommunications services as a separate and distinct service;

E. has agreed to provide equitable access, 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; and

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

10. Applicant asserts, and no party opposes, that Applicant's application and request for authority to provide basic local telecommunications service, 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 RSMo Supp. 1997 continue to apply, and Applicant shall be classified as a competitive telecommunications company. Applicant 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 of Applicant's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's Order should state the

foregoing conditions substantially as follows:

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

The parties also 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 Supp. 1997. 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 shall be made pursuant to 392.220 and 392.230 and not 392.500 and 392.510 RSMo Supp. 1997. The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for switched access service granted herein is expressly conditioned on the continued applicability of Section 392.200 RSMo Supp. 1997 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 RSMo Supp. 1997.

11. Applicant's request for a temporary waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties to the extent same might be required to permit the filing of Applicant's initially filed tariff bearing a ninety-day effective date. To the extent modifications or substitutions involving said tariff shall be required, Applicant will submit said modifications to its tariff in

this docket to the Commission for its approval and to the parties herein, together with the written disclosure as stipulated above. Applicant has served all parties with a copy of its initially proposed tariff at the time Applicant filed its Application. The Commission's order should state these obligations to the temporary 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 for good cause in that applicant submitted its proposed tariff bearing a ninety day effective date in order to permit the Commission to rule on Applicant's resale agreement with SWBT prior to the time of Applicant's proposed tariff becoming effective. When filing any changes or modifications to its initial basic local tariff in this docket, the Applicant shall also file and serve upon the parties hereto a written disclosure of: all resale or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale or interconnection agreement with the incumbent local exchange carrier; and its explanation of why such a resale or interconnection agreement is unnecessary for any such areas."

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

STATUTORY PROVISIONS

Section 392.210.2  
Section 392.270  
Section 392.280  
Section 392.290.1

COMMISSION RULES

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

Section 392.300.2  
Section 392.310  
Section 392.320  
Section 392.330  
Section 392.340

Applicant agrees to comply with all applicable rules, regulations and statutory obligations except for those which are specifically waived by the Commission.

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

14. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to Sections 536.070(2) and 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 Section 536.080.2 RSMo 1994; and their respective rights to seek rehearing pursuant to Section 386.500 RSMo 1994 and to seek judicial review pursuant to Section 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 Applicant's application made herein.

15. The Staff may submit a Staff Recommendation concerning matters not addressed

in this Stipulation. In addition, if requested by the Commission, the Staff will 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 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 the meeting in which the Staff will respond to the Commission's request if such explanation once such explanation is requested from the Staff. Staff's oral explanation shall be subject to public disclosure.

16. The Office of the Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing, and to the signatory parties' best

information and belief, has offered no objection.

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 NOW Communications, Inc. subject to the conditions described above, as expeditiously as possible.

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Respectfully submitted,

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(573) 751-8431

FOR: Staff of the Public Service  
Commission

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Stipulation and Agreement was served upon counsel for all parties of record in Case No. TA-98-390 by depositing a true copy thereof in the United States Mail, postage prepaid, or by hand delivery, this 3<sup>rd</sup> day of June, 1998.

Charles Brent Stewart

RECEIVED

AUG 05 1993

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION