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November 16, 1999

VIA FEDERAL EXPRESS

Mr. Cecil Wright
Executive Secretary
Missouri Public Service Commission
PO Box 360
Jefferson City, Missouri 65102

FILED³

NOV 17 1999

Missouri Public
Service Commission

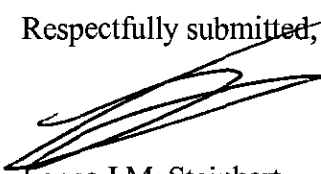
Re: MVX.COM Communications, Inc. – Case No. TA-2000-218

Dear Mr. Wright:

Enclosed please find one original and fourteen (14) copies of MVX.COM Communications, Inc.'s Stipulation and Agreement with Southwestern Bell Telephone Company. MVX.COM Communications, Inc., respectfully requests the Commission to issue an Order approving the terms of this Stipulation and Agreement, granting authority, and waiving certain statutes and rules as requested by MVX.COM Communications, Inc.

Please note that this Stipulation and Agreement is being submitted by myself and Judith A. Rau, Esq., Missouri Counsel, Bar # 24856.

Respectfully submitted,



Lance J.M. Steinhart
GA Bar No. 678222
Attorney for MVX.COM Communications, Inc.

Enclosures

cc: Mr. Edward Brinskele
Mr. Marc Poston, Senior General Counsel

FILED³

BEFORE THE PUBLIC SERVICE COMMISSION
STATE OF MISSOURI

NOV 17 1999

In the Matter of the Application of)
MVX.COM Communications, Inc. for a Certificate)
of Service Authority to Provide Basic Local)
Telecommunications Service in Portions)
of the State of Missouri and to Classify)
said Service as Competitive)

Missouri Public
Service Commission

Case No. TA-2000-218

STIPULATION AND AGREEMENT

1. MVX.COM Communications, Inc. ("MVX.COM" or "Applicant") initiated this proceeding on September 7, 1999, by filing an Application requesting a certificate of service authority to provide basic local exchange telecommunications service and exchange access service in exchanges currently served by Southwestern Bell Telephone Company ("SWB"), GTE Midwest Incorporated ("GTE"), and Sprint Missouri, Inc. d/b/a Sprint ("Sprint").

2. The Commission has granted the timely application to intervene of SWB. GTE and Sprint did not seek and have not been granted intervention in this proceeding.

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)¹ should be processed in a manner similar to that in which applications for interexchange and local exchange authority are currently handled.

4. In determining whether MVX.COM's application for a certificate of service authority should be granted, the Commission should consider MVX.COM's technical, financial and managerial resources and abilities to provide basic local telecommunications service. MVX.COM must demonstrate that the basic local services

¹ Large LEC's are defined as LEC's who serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1998. In Missouri, the current large LEC's are SWB, GTE and Sprint.

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, MVX.COM 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, MVX.COM 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 for the large incumbent LEC(s) within whose service area(s) Applicant seeks authority to provide service. Further, MVX.COM 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, MVX.COM 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. (1998 Supp.)

5. MVX.COM has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H). MVX.COM has not obtained approved Resale Agreements with SWB, Sprint, or GTE. MVX.COM agrees to file its initial

tariffs in this certification docket and serve all parties thereto with written notice at the time the initial tariffs are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by Applicant to such parties immediately upon request. Any service authority shall be regarded as conditional and shall not be exercised until such time as tariffs for services have become effective. When filing its initial basic local tariff, MVX.COM shall also file and serve a written disclosure of all resale and/or interconnection agreements which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local exchange carrier, and its explanation of why such a resale and/or interconnection agreement is unnecessary for such areas.

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

STATUTORY PROVISIONS

COMMISSION RULES

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

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

MVX.COM'S CERTIFICATION

8. MVX.COM has submitted as Appendix B to its Application a listing of the specific exchanges in which it seeks authority to provide service. The exchanges identified are those currently served by SWB, GTE and Sprint. MVX.COM 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, MVX.COM asserts and no other party makes a contrary assertion, that there is sufficient evidence from which the Commission should find and conclude that MVX.COM:

A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local 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 to affordable communications services as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services; and

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

10. MVX.COM asserts, and no party opposes, that MVX.COM'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 continue to apply, and MVX.COM shall remain classified as a competitive telecommunications company. MVX.COM asserts, and no party opposes, that such services will be subject to sufficient competition by the services of the incumbent LEC's to justify a lesser degree of regulation of MVX.COM'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 RSMo., 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. The parties recognize the pendency of Case No. TO-99-596, regarding access rates to be charged by competitive local exchange telecommunications companies. Unless otherwise determined by the Commission in Case No. TO-99-596, any increases in intrastate-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 Sections 392.220 and 392.230 RSMo., and not Sections 392.500 and 392.510 RSMo. The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of Section 392.200 RSMo., 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 shall be made pursuant to Sections 392.220 and 392.230 RSMo., and not Sections 392.500 and 392.510 RSMo."

11. MVX.COM'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 and should be granted because, at the time of the filing of the application, MVX.COM does not yet have approved resale or interconnection agreements

with SWB, Sprint and GTE. MVX.COM 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. MVX.COM shall serve notice to all parties and participants in this docket of the filing of its tariffs at the time they are filed with the Commission and serve them with the aforesaid written disclosure and shall upon request immediately provide any party with a copy of those tariffs. The Commission's order should state 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 does not yet have approved resale or interconnection agreements with the incumbent local exchange carriers within whose service areas it seeks authority to provide service; provided, when applicant submits its tariffs in this docket to the Commission, such tariffs shall have a minimum of a 45-day effective date and the applicant shall serve written notice upon the parties hereto of such submittal, and shall provide copies of such tariffs to such parties immediately upon request. When filing its initial basic local tariff in this docket, the applicant shall also file and serve upon the parties hereto a written disclosure of: all resale and/or interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have a resale and/or interconnection agreement with the incumbent local exchange carrier; and its explanation of why such a resale and/or interconnection agreement is unnecessary for any such areas.”

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

STATUTORY PROVISIONS

COMMISSION RULES

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

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

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

14. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1, RSMo. 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 the MVX.COM 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 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 when the Staff shall respond to the Commission's request for such explanation once such

explanation is requested from the Staff. Staff's oral explanation shall be subject to public disclosure.

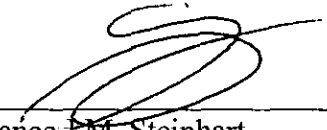
16. MVX.COM will comply with all applicable Commission rules and regulations except those which are specifically waived by the Commission.

17. Finally, the Office of the Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted with regard to its filing and has offered no objection.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Stipulation and Agreement was served upon the following persons by depositing a true copy thereof in the United States Mail, postage prepaid, or by hand delivery, this 16th day of

AN, 1999.


Lance J.M. Steinhart

Marc Poston
Senior General Counsel
Missouri Public Service Commission
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Jefferson City, Missouri 65102

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