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November 29, 1999

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FILED

NOV 29 1999

**Missouri Public
Service Commission**

RE: Case No. TA-2000-243

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STIPULATION AND AGREEMENT**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Marc Poston
Assistant General Counsel
(573) 751-8701
(573) 751-9285 (Fax)

MP/mm
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

NOV 29 1999

In the matter of the Application of
Navigator Telecommunications, LLC.,
to Amend its Certificate of Service Authority to
provide Basic Local and Local Exchange
Telecommunications Service
in portions of the State of Missouri

Missouri Public
Service Commission

Case No. TA-2000-243

STIPULATION AND AGREEMENT

1. Navigator Telecommunications, LLC. ("Navigator" or "Applicant") initiated this proceeding on September 28, 1999, by filing an Amended Application seeking to amend its certificate of service authority to provide basic local telecommunications services in the State of Missouri. Navigator was granted a certificate of service authority in Case No. TA-98-383 and is certified to provide basic local exchange services in the portions of Missouri served by Southwestern Bell Telephone Company (SWBT). Navigator seeks to amend this certificate to allow the provision of basic local exchange and local exchange telecommunications services on a facilities and resold basis throughout all exchanges currently served by the incumbent local exchange telecommunications companies of SWBT, Sprint/United Telephone Company (Sprint), and GTE Midwest, Inc. (GTE).

2. The Commission has granted SWBT's timely application to intervene. For the purposes of this Stipulation and Agreement, the parties agree that application to amend Navigator's certificate of service authority should be processed in a manner similar to that in which applications for local exchange authority are currently handled.

3. In determining whether Navigator's application to amend its certificate of service authority should be granted, the Commission should consider Navigator's technical, financial, and managerial resources and abilities to provide local telecommunications services. Navigator asserts that the basic local services it has offered and proposes to offer will satisfy the minimum standards established by the Commission, including but not limited to the filing and maintenance of basic local service tariffs with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which Navigator will compete. Further, Navigator agrees to continue to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange companies with which Navigator seeks to compete. Notwithstanding the provisions of Section 392.500 R.S.Mo.(1994), as a condition of certification and competitive classification, Navigator agrees that, unless otherwise ordered by the Commission, Navigator'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 LECs within those service areas in which Navigator seeks authority to provide service. Further, Navigator agrees to offer basic local telecommunications service as a separate and distinct service and has identified the geographic service area in which it proposes to offer basic local service. Such area follows exchange boundaries of the incumbent local exchange telecommunications companies and is no smaller than an exchange. Finally, Navigator 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 income. See Section 392.455 R.S.Mo.(1996 Supp.)

4. Navigator has submitted its application to amend without a tariff and seeks a temporary waiver of 4 CSR 240-2.060(4)(H) because Navigator is currently providing service in Missouri under an effective tariff previously approved by the Commission, which Navigator will amend upon approval of its amended certificate. When seeking to amend its tariff, Navigator shall serve all parties to this case with written notice at the time such tariff amendment(s) are filed to afford them an opportunity to participate in the tariff amendment/approval process. The Commission has already approved interconnection agreement between Navigator and SWBT (Case No. TO-98-375, approved 5/31/98), and approval of another interconnection agreement between Navigator and SWBT is currently pending before the Commission (Case No. TO-2000-291). The Commission has approved Navigator's interconnection agreements with GTE (Case No. TO-99-185, approved 1/14/99), and Sprint (Case No. TO-99-311, approved 4/11/99). Any service authority granted in this proceeding shall be regarded as conditional and shall not be exercised until such time as a tariff for services has become effective. Navigator shall also file any additional required written disclosures of all resale or interconnection agreements which affect its Missouri service areas.

5. Navigator, in seeking amendment to its certificate of service authority, requests that the waivers already granted in Case No. TA-98-383 remain in effect, specifically:

Statutes
Section 392.210.2
Section 392.270
Section 392.280

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

Section 392.290.1
Section 392.300.2
Section 392.310
Section 392.320
Section 392.330
Section 392.340

6. 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 service authority to provide basic local telecommunications service.

7. Navigator has requested amendment to its certificate of service authority to allow the provision of basic local exchange and local exchange telecommunications service on a facilities and resold basis throughout all exchanges currently served by SWBT, Sprint and GTE. The specific SWBT, Sprint, and GTE exchanges which Navigator seeks to serve are listed in the incumbent providers' respective local exchange tariffs.

8. 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 and local exchange telecommunications services, 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 telecommunications services and such area follows the 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 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 where they live or their income; and
- F. has sought authority which will serve the public interest.

9. Navigator asserts, and no party opposes, that Navigator's application and request to amend its authority to provide basic local telecommunications and local exchange telecommunications (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 Navigator shall continue to be classified as a competitive telecommunications company. Navigator asserts, and no party opposes, that its services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of 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 the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The Commission's Order should state the foregoing conditions substantially as follows:

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

The parties agree that the Applicant's switched exchange access services may be classified as competitive services. The parties further agree that the applicant's switched exchange access services are subject to Section 392.220 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 access granted herein is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

10. 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 is currently providing service in Missouri under an effective tariff previously approved by the Commission, which Navigator will amend upon approval of its amended certificate.

11. Navigator's request that waiver of the application of the following rules and statutory provisions already granted in Case No. TA-98-383 remain in effect as they relate to the regulation of Navigator's new services should be granted:

<u>Statutory Provisions</u>	<u>Commission Rules</u>
Section 392.210.2	4 CSR 240-10.020
Section 392.270	4 CSR 240-30.040
Section 392.280	4 CSR 240-35
Section 392.290.1	
Section 392.300.2	
Section 392.310	
Section 392.320	
Section 392.330	
Section 392.340	

12. 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.

13. 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.

14. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation and Agreement. 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

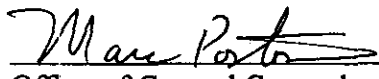
memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and 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, 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.

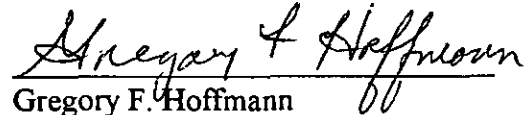
The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties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

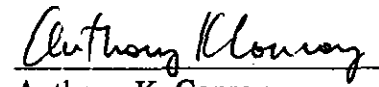
WHEREFORE, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification as requested by Navigator subject to the conditions described above, as expeditiously as possible.

Respectfully submitted,

 #45722
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**Service List for
Case No. TA-2000-243
November 29, 1999**

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