

ANDERECK, EVANS, MILNE, PEACE & JOHNSON, L.L.C.

ATTORNEYS AT LAW

700 EAST CAPITOL AVENUE
COL. DARWIN MARMADUKE HOUSE

P.O. BOX 1438

JEFFERSON CITY, MISSOURI 65102-1438

TELEPHONE 573-634-3422

FAX 573-634-7822

EUGENE E. ANDERECK

TERRY M. EVANS

ERWIN L. MILNE

JACK PEACE

CRAIG S. JOHNSON

RODRIC A. WIDGER

GEORGE M. JOHNSON

BEVERLY J. FIGG

WILLIAM S. LEWIS

VICTOR S. SCOTT

COREY K. HERRON

MATTHEW M. KROHN

LANETTE R. GOOCH

SHAWN BATTAGLER

ROB TROWBRIDGE

JOSEPH M. PAGE

LISA C. CHASE

JUDITH E. KOEHLER

ANDREW J. SPORLEDER

REBECCA L. SELLERS

August 21, 2003

OF COUNSEL:

MARTIN L. SHARP

PATRICK A. BAUMHOER

GREGORY C. STOCKARD (1904-1993)

PHIL HAUCK (1924-1991)

Secretary of the PSC
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

FILED³

AUG 21 2003

Missouri Public
Service Commission

Re: Case No. LM-2004-0063

Dear Secretary:

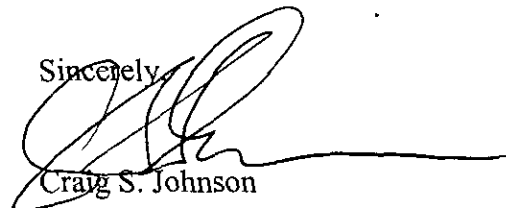
Under yesterday's August 20, 2003, cover letter, I filed a Concurrence with Staff's Motion to Dismiss and Request for a Ruling on behalf of the Applicant.

Chris Snodgrass has pointed out that this pleading I filed yesterday contained the incorrect caption. I enclose herewith an original and three copies of a corrected Concurrence on behalf of Applicant.

So there is no confusion, please be advised that the sole Applicant here is D2R2, Inc., and the sole authority requested is acquisition of stock, not creation of any liens. Due to my oversight, yesterdays pleading contained the caption from a prior draft of the Application, one that was not filed.

My apologies for the inconvenience.

Sincerely,



Craig S. Johnson

CSJ:sw

Encl.

Cc: Michael Dandino

Cliff Snodgrass

Trenton Office
9th And Washington
Trenton, Missouri 64683
660-359-2244
Fax 660-359-2116

Springfield Office
1111 S. Glenstone
P.O. Box 4929
Springfield, Missouri 65808
417-864-6401
Fax 417-864-4967

Princeton Office
207 North Washington
Princeton, Missouri 64673
660-748-2244
Fax 660-748-4405

Smithville Office
119 E. Main Street
P.O. Box. 654
Smithville, Missouri 64089
816-532-3895
Fax 816-532-3899

BEFORE THE PUBLIC SERVICE COMMISSION

STATE OF MISSOURI

FILED³

AUG 21 2003

Missouri Public Service Commission

In the Matter of the Application of D2R2,)
Inc. for Authority to Acquire all of the)
Outstanding Stock of ExOp of Missouri)
Inc., or in the Alternative a Request for) Case No. LM-2004-0063
Finding that the Requirement of)
Approval has been waived.)

APPLICANT'S CONCURRENCE WITH STAFF MOTION TO DISMISS
and
REQUEST FOR RULING

Comes now Applicant D2R2, and upon receipt and review of Staff's August 18, 2003 Motion to Dismiss Application, and concurs in same. Further, consistent with Applicant's Motion for Expedited Treatment, Applicant respectfully requests that the Commission enter its ruling or order regarding Staff's Motion to Dismiss as soon as possible. In Support of this Concurrence and Request, Applicant states as follows:

1. Applicant filed its July 24, 2003 Application in order to be assured it was in complete compliance with all laws requiring approval of its purchase of the stock of ExOp of Missouri, Inc. As stated in the Application, Applicant desired an order approving it as the new owner of ExOp, or alternatively an order finding that the Commission lacked jurisdiction to approve the application, or that the sole statute conferring such jurisdiction had previously been waived.

2. Applicant had engaged in substantially the same evaluation of applicable statutes, and the prior waiver of applicability of Section 392.300.2 RSMo, as is contained

in Staff's Motion to Dismiss. The statutes are not a model of clarity in these regards. Applicant believes the waiver of Section 392.300.2 RSMo, customary for CLECs, is appropriate for CLECs. CLECs are competitive companies. In the event they fail, their customers will "snap back" to the ILEC. The public interest in requiring Commission approval for change in ownership of ILECs does not exist regarding the change of ownership in CLECs.

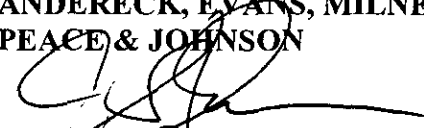
3. D2R2 is a newly formed Missouri corporation, formed for the purpose of acquiring all of the stock of ExOp from its current owner, and thereafter continuing to own all of the stock of ExOp. D2R2 hereby confirms, referencing paragraph 2 of Staff's Motion, that D2R2 is not now providing telecommunications service in the state of Missouri. If permitted to acquire the stock of ExOp, D2R2 will then not be providing telecommunications service. It will then own ExOp, and ExOp will continue to provide telecommunications service. D2R2 is and will not be a telecommunications company.

4. D2R2 respectfully requests that the Commission consider its Order granting Staff's Motion to Dismiss, or any alternative Order the Commission determines is proper, as soon as possible.

5. If the Commission rejects the basis of Staff's Motion to Dismiss, and continues to assert jurisdiction, Applicant then requests an Order approving the Application as soon as possible. In that event, Applicant requests an Order approving the Application in the time frame requested in Applicants' Motion for Expedited Treatment, as adopted by the Commission's August 4 Order. No party has intervened, opposed the Application, or requested a hearing, and an Order Approving the acquisition would be appropriate.

**ANDERECK, EVANS, MILNE
PEACE & JOHNSON**

By:


Craig S. Johnson, MO Bar #28179
Lisa Cole Chase, MO Bar #51502
Col. Darwin Marmaduke House
700 East Capitol
P.O. Box 1438
Jefferson City, MO 65102
Telephone: 573/634-3422
Facsimile: 573/634-7822
email: CJohnson@aempb.com
email: lisachase@aempb.com

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 21st day of August, 2003, to Staff Counsel Cliff Snodgrass, and to Office of Public Counsel Michael Dandino.


Craig S. Johnson, MO Bar #28179