BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation into a Pending Sale of Assets of Aquila, Inc.	))	Case No. EO-2004-0224

RESPONSE AND OBJECTION TO MOTION TO OPEN CASE

COMES NOW Aquila Inc., ("Aquila") d/b/a Aquila Networks-MPS, by and through counsel, pursuant to 4 CSR 240-2.080(15), and for its Response and Objection to Staff's Motion to Open Case states as follows to the Missouri Public Service Commission ("Commission"):

1. On November 14, 2003, the Commission's Staff ("Staff") filed a Motion to Open Case ("Motion"). The Motion was docketed and given the captioned case number. The Motion should be denied.

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12. Ultimately, there is no other basis for assertion of the Commission's jurisdiction over the Transaction. It is instructive that no arguable statutory authority for Commission jurisdiction is cited in the Motion. In this regard, it is well established that the Commission does not have plenary jurisdiction over utilities. The Commission is an administrative body of limited powers, created by statute. As such, it has only those powers as are expressly conferred upon it by the statutes and reasonably incidental thereto. *State ex rel. and to Use of Kansas City Power & Light Co. v. Buzard*, 350 Mo. 763, 168 S.W. 2d 1044, 1046 (1943); *State ex rel. City of West Plains v. Public Service Commission*, 310 S.W. 2d 925, 928 (Mo. banc 1958). Although the Public Service Commission Law is remedial in nature, and should be construed liberally, neither convenience, expediency or necessity are proper matters for consideration in the determination of whether an act of the Commission is authorized by law, *State ex rel. Utility Consumers Council of Missouri v. Public Service Commission*, 585 S.W. 2d 41, 49 (Mo. banc 1979).

13. The relevant facts in this case are either well known or undisputed. *** _____

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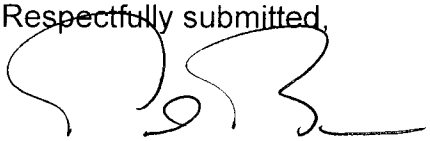
_____*** There is no need to embark in an investigation to determine the facts or the law. Because the facts are either well known or undisputed and the basis for the Commission's jurisdiction can be

found in the laws of this State, there is no reason to open a case to examine the subject matter of the Transaction. There is simply nothing to investigate.

WHEREFORE, for the reasons aforesaid, and given the anticipated timeframe from closing of the Transaction, Aquila respectfully requests that the Commission deny Staff's Motion to Open Case for lack of subject-matter jurisdiction over the contemplated Transaction at its earliest opportunity and for such other orders and relief as may be appropriate in the circumstances.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was delivered by first class mail or by hand delivery, on this 19th day of November 2003 to the following:

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