

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
December 6, 2000**

CASE NO: TA-2001-251

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

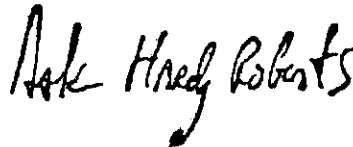
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P. O. Box 456
Jefferson City, MO 65102

Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copies:

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of ExOp of Missouri, Inc., for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section 254 of the Telecommunications Act of 1996.)
)
) Case No. TA-2001-251
)
)
)

**ORDER GRANTING INTERVENTION,
GRANTING REQUEST FOR A HEARING,
SETTING A PREHEARING CONFERENCE,
REQUIRING A PROPOSED PROCEDURAL SCHEDULE,
AND DIRECTING FILING**

Procedural History:

On October 17, 2000, ExOp of Missouri, Inc. (ExOp), filed its application for designation as an eligible telecommunications carrier with respect to federal universal service support pursuant to Section 254 of the Telecommunications Act of 1996 (the Act), codified at 47 U.S.C. Section 254, and the implementing regulations of the Federal Communications Commission (F.C.C.).

On October 23, the Commission issued its Order Directing Notice, requiring that applications to intervene be filed herein on or before November 13, 2000. On November 13, 2000, an Application to Intervene was filed by the Small Telephone Company Group (STCG), consisting of BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Ellington Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company, Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company,

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KLM Telephone Company, Kingdom Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Peace Valley Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Spectra Communications Group, LLC, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company. Also on November 13, 2000, the Office of the Public Counsel filed its Request for a Hearing herein.

On November 22, 2000, ExOp filed its response to STCG's application and Public Counsel's request. ExOp specifically opposed the latter and evidently opposed the former, as well.¹ On November 27, 2000, the Staff of the Missouri Public Service Commission (Staff) filed its response opposing both STCG's application and Public Counsel's request. On November 30, 2000, STCG replied in support of its application to intervene.

Intervention:

STCG states that it is an association of 26 incumbent local exchange carriers (ILECs) and rural telephone companies which provide basic local telecommunications services in various Missouri exchanges.² STCG states that it seeks to intervene to protect the interests of its members because ExOp's application may somehow affect its members and their operations within their certificated exchanges. STCG further states that its interests are different from those of the general public, that its participation herein will serve the public interest, that its members may

¹Although denominated a response to STCG's application to intervene, ExOp failed to ask for any relief with respect to STCG's application.

²For clarity, STCG will be referred to herein as a singular entity.

be adversely affected by a final order herein, and that it opposes ExOp's application.

ExOp and the Staff oppose STCG's intervention on the grounds that contested case procedures are not necessary to grant ExOp's application. They point to a previous case, Case No. TA-2000-591, and note that contested case procedures were not used in that case prior to granting an application for the designation sought herein by ExOp. In the Matter of Mark Twain Communications Company, Case No. TA-2000-591 (Mo. P.S.C., June 15, 2000) (*Order Designating Mark Twain Communications Company an Eligible Carrier*).

First, the objection raised by ExOp and Staff does not respond in any respect to the factors which are determinative of a request to intervene. Commission Rule 4 CSR 240-2.075(4) provides:

The commission may on application permit any person to intervene on a showing that:

(A) The proposed intervenor has an interest which is different from that of the general public and which may be adversely affected by a final order arising from the case; or

(B) Granting the proposed intervention would serve the public interest.

Nowhere does this rule consider whether contested case procedures are necessary.

Second, neither ExOp nor Staff evidently bothered to read the order upon which they rely, which states in pertinent part:

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 asked permission to intervene or requested a hearing, the Commission may grant the relief requested based on the application.

In the Matter of Mark Twain, *supra*, at page 1. Contrary to their assertion, Mark Twain was determined using normal contested case procedures. Under Deffenderfer, *supra*, a contested case may be determined without a hearing where no party requests one.

In contrast to Mark Twain, someone has requested a hearing in this case and someone else has asked permission to intervene. Therefore, the holding of Deffenderfer, relied upon in Mark Twain, simply does not apply.

STCG will be granted intervention herein as it has met the requirements of Rule 4 CSR 240-2.075 regarding intervention. Likewise, Public Counsel's request for an evidentiary hearing will necessarily be granted.

Prehearing Conference and Proposed Procedural Schedule:

An early prehearing conference should be scheduled to afford the parties the opportunity to discuss, define, and possibly resolve the issues presented in this case, and to discuss a procedural schedule. The Commission will also set a date for the filing of a proposed schedule in order to ensure that this case progresses in a timely manner to resolution.

Order Directing Filing:

Both Staff and the STCG point out that ExOp's application is not verified. Pursuant to Rule 4 CSR 240-2.060(1)(M), verification is required of all applications filed with the Commission. ExOp shall promptly correct this defect or its application shall be dismissed.

IT IS THEREFORE ORDERED:

1. That the Small Telephone Company Group is granted intervention in this case in accordance with 4 CSR 240-2.075(4). Their counsel, W.R. England, III, Esq., and Sondra B. Morgan, Esq., Brydon, Swearngen &

England, P.C., Post Office Box 456, Jefferson City, Missouri 65102, shall be added to the service list in this case.

2. That the Request for Hearing filed by the Office of the Public Counsel is granted. The date and time of the hearing shall be set in a subsequent order.


3. That a prehearing conference shall be held on Wednesday, December 27, 2000, beginning at 10:00 a.m. The prehearing conference shall be held in Room 305 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri. The Governor Office Building meets accessibility standards required by the Americans With Disabilities Act. If any person needs additional accommodations to participate in the prehearing, please call the Public Service Commission's Hotline at 1-800-392-4211 (voice) or 1-800-829-7541 (TDD) prior to the conference.

4. That the parties shall jointly prepare and file a proposed procedural schedule no later than January 3, 2001. The procedural schedule shall include dates for the filing of testimony and for a hearing.

5. That ExOp of Missouri, Inc., shall verify its application pursuant to Commission Rule within ten days of the date of this order, or the same shall be dismissed.

6. That this order shall become effective on December 16, 2000.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Kevin A. Thompson, Deputy Chief
Regulatory Law Judge, by delegation
of authority pursuant to Section 386.240,
RSMo 1994.

Dated at Jefferson City, Missouri,
on this 6th day of December, 2000.

FYI: To Be Issued By Del () ion

AL/Sec'y: Thompson/Boyle

12-4 Date Circulated 12-7 Return by 3:pm

10am

IA-2000-251
CASE NO.

LA 12
Lump, Chair

no
Drainer, Vice Chair

CM
Murray, Commissioner

SL
Schemenauer, Commissioner

KS
Simmons, Commissioner

OK

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 6th day of December 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

