

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Application of Talk America Inc., to Purchase the)	
Stock of LDMI Telecommunications, Inc. d/b/a)	
LDMI Telecommunications, and Long Distance)	<u>Case no. XM-2005-0492</u>
of Michigan, Inc. d/b/a FoneTel.)	

CONCURRING OPINION OF COMMISSIONER CONNIE MURRAY

In its August 2, 2005 Order, the Commission voted to approve the merger and stock purchase proposed in Talk America Inc.'s ("Talk America") Application. I voted in favor of the Order because I believe the Commission has the jurisdiction to approve the merger. However, I am writing this concurrence because I do not believe that the Commission has jurisdiction to review the stock transfer at issue in this case and should have declined to review that portion of the application.¹

Section 392.300.1, RSMo,² requires Missouri telecommunications companies to seek the Commission's approval before selling, assigning, leasing, transferring, mortgaging, merging or otherwise disposing of its "franchise, facilities or system" that is used to provide telecommunications services to Missouri customers. It is under this provision that Talk America and LDMI Telecommunications, Inc. ("LDMI") appropriately filed its application for approval of the merger. Subsection 2 of § 392.300 prohibits domestic or foreign stock corporations that are not telecommunications companies from acquiring more than ten percent of the total capital stock issued by a telecommunications company organized or existing under the laws of this state. No part

¹ LDMI Telecommunications, Inc., ("LDMI") is going to merge with Lion Acquisition Corp., a wholly-owned subsidiary of Talk America. After the merger, Talk America is going to purchase LDMI's stock. It is this latter transaction that I do not think this Commission has jurisdiction to consider.

² All citations to the Missouri Revised Statutes shall be the 2000 issue, unless otherwise noted.

of § 392.300 requires that telecommunications companies, like Talk America and LDML, seek the Commission's approval for the sale of stock from one company to another. Section 392.300, the statute relied upon in the Commission's Order, does not confer jurisdiction to examine stock transactions between telecommunications companies even if they hold a certificate in Missouri to provide services.

"The Public Service Commission is a body of limited jurisdiction and has only such powers as are expressly conferred upon it by the Statutes and powers reasonably incidental thereto."³ Because the Commission is an administrative agency with limited jurisdiction, the lawfulness of its actions relies upon whether it has the statutory authority to act.⁴ The Commission "cannot, under the theory of 'construction' of a statute, proceed in a manner contrary to the plain terms of the statute".⁵ The Commission cannot expand its jurisdiction to review stock sales between telecommunications companies simply by virtue of its desire to do so. The law does not authorize the action taken by the Commission in approving the stock transfer contemplated in this application.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri
on this 4th day of August, 2005.

³ *State ex rel. Kansas City Power & Light Co. v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. banc 1943).

⁴ *State ex rel. Gulf Transportation Co. v. Public Service Commission*, 658 S.W.2d 448, 452 (Mo. App. W.D. 1983).

⁵ *State ex rel. Springfield Warehouse & Transfer Co. v. Public Service Commission*, 225 S.W.2d 792, 794 (Mo. App. W.D. 1949).