

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
October 15, 1999**

CASE NO: TM-2000-48

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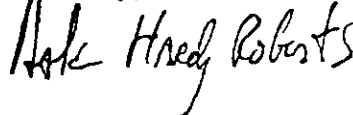
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copy:

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In Re.: Application of Comm South)	
Companies, Inc. and Topp Telecom, Inc.)	<u>Case No. TM-2000-48</u>
Approval of Transfer of Control.)	

ORDER APPROVING TRANSFER OF CONTROL

On July 14, 1999, Comm South Companies, Inc. (Comm South) and Topp Telecom, Inc. (Topp) filed an application requesting authority from the Commission pursuant to Section 392.300.1 for the purchase by Topp of all of the outstanding common stock of Comm South. Comm South is a Texas corporation and is authorized to provide resold local telecommunications services in Missouri. Topp is a Florida corporation and is authorized to transact business in Missouri. After the acquisition, Comm South will become a wholly owned subsidiary of Topp. Comm South will continue to operate in Missouri with its current name, providing service under its existing tariffs.

The Staff of the Public Service Commission (Staff) reviewed the application of Comm South and Topp. On October 7, Staff filed a memorandum regarding the application. Staff's memorandum indicated that it has no objection to the transactions for which the applicants seek approval and recommended that the Commission approve the transaction. However, Staff also indicated that, based upon the Commission's decision in a recent case, TM-99-336, Staff is of the opinion that the Commission does not have jurisdiction to either approve or disapprove this application.

Staff's interpretation of the Commission's jurisdiction in this matter is based on its reading of Section 392.300.2, RSMo 1994. Staff believes that this statute would apply only if the corporation whose stock is being acquired is a Missouri corporation. Neither Comm South nor Topp is a Missouri corporation and thus, Staff asserts, the Commission has no jurisdiction over this transaction. The Commission is not persuaded by Staff's argument.

Section 392.300.2 is a statute apparently designed to prevent a non-telecommunications company from acquiring more than 10 percent of the stock of a Missouri telecommunications company without the approval of the Commission. It is clear that this subsection has no applicability to the application filed by Comm South and Topp for two reasons. First, Comm South and Topp are both telecommunications companies. Second, neither company is a Missouri corporation. However, the fact that Section 392.300.2 does not apply to this transaction is irrelevant. The application specifically states that the applicants are seeking approval pursuant to Section 392.300.1, RSMo 1994. That subsection does not have any language that would limit its applicability to Missouri corporations.

Whatever the merits of Staff's arguments, it is not necessary to delay the approval of the application of Comm South and Topp in order to address that issue. Staff's recommendation indicates that it does not object to the approval of the application. Following a review of the application and consideration of Staff's recommendation, the Commission finds that the application of Comm South and Topp will

not harm the Missouri customers of Comm South and is not against the public interest.

IT IS THEREFORE ORDERED:

1. That the application filed by Comm South Companies, Inc. and Topp Telecom, Inc. is approved.
2. That this order shall become effective on October 26, 1999.
3. That this case may be closed on October 27, 1999.

BY THE COMMISSION



**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

(S E A L)

Morris L. Woodruff, Regulatory
Law Judge, by delegation of
authority pursuant to 4 CSR
240-2.120(1), (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 15th day of October, 1999.

FYI: To Be Issued By Delegation
ALJ/Sec'y: Woodruff/Bayer
10-13 10-18
Date Circulated Return by 3 p.m. 10 am

TM-2000-48
CASE NO.

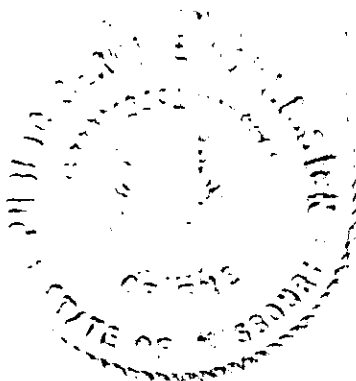
[Signature]
Lupke, Chair
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Crumpton, Commissioner
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Murray, Commissioner
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Schemenauer, Commissioner
[Signature]
Drainer, Vice-Chair

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 15th day of October, 1999.



Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge