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<sup>1</sup> The Mid-Missouri Group of local exchange companies consists of Alma Telephone Company, Chariton Valley Telephone Corporation, Choctaw Telephone Company, Mid-Missouri Telephone Company, Modern Telecommunications Company, MoKan Dial, Inc., Northeast Missouri Rural Telephone Company, and Peace Valley Telephone Company.

Court had intended to impose this kind of restriction on the Commission, it could have explicitly done so but chose not to. SWBT states that the Court found fault with the Commission for receiving communications outside the record, and found the Report and Order issued on March 12, 1998 to be unlawful because of those communications. SWBT believes the Court reversed the Commission not because of what was in the record, but because of what was not in the record. SWBT argues that, because each piece of evidence was submitted under oath and either publicly filed or presented in open hearing, there is no reason to exclude it. SWBT, like Sprint, speculates that MMG's motion may have been filed in order to allow MMG to shield its witnesses from prior inconsistent testimony.

On March 22, the Staff of the Commission filed a response in opposition to MMG's motion. Staff states that the relief sought by MMG is not mandated by the Court's decision, and is not necessary to provide due process in this case.

MMG has misinterpreted the Court's ruling. The Court found fault with the Commission for receiving communications outside the record, and found the Report and Order issued on March 12, 1998 to be unlawful because of those communications. As SWBT notes, the Court reversed the Commission not because of what was in the record, but because of what was not in the record. The Court stated that "the Commission's solicitation and consideration of ex parte, extra-record communications herein above described is unlawful and improper and has contaminated the record and tainted the Commission's decision in this case." This does not mean that each piece of prefiled testimony or

each question and answer exchange in cross-examination is intrinsically contaminated as MMG believes; it simply means that the record as a whole in cases TO-97-217 and TO-97-220 was not lawfully sufficient to support the Report and Order issued on March 12, 1998.

The Commission created the instant case to avoid any possible "taint" associated with cases TO-97-217 and TO-97-220. The Commission will not take official notice of any part of the record in that consolidated case, nor will it allow parties to incorporate by reference testimony from that case. Any evidence submitted in this case will be filed pursuant to Commission rules, will be given by witnesses under oath who will stand cross-examination, will be subject to the scrutiny of all the parties, and will be subject to objections by any party. The Commission will reach its decision in this case on the evidence of record, and only on the evidence of record in this case.

MMG's motion is over broad. All the testimony admitted in TO-97-217 and TO-97-220 was adopted by witnesses under oath and subject to cross-examination (unless adoption and cross-examination was expressly waived by all parties). Simply because some testimony proffered in this case refers to the record in a case that was remanded does not make that testimony inadmissible. Nor is it proper to prevent a party from using prior sworn testimony to impeach an opposing party's witness because the case in which the prior testimony was offered was remanded.

Nonetheless, since the Court found the Report and Order in Case Nos. TO-97-217 and TO-97-220 to be unlawful because it may have been

based in part on extra-record communications, the Commission will grant MMG's motion only as it applies to references to the Report and Order itself.

**IT IS THEREFORE ORDERED:**

1. That the Motion to Preclude Evidentiary References to Testimony and Decisions in TO-97-217/TO-97-220 filed by the Mid-Missouri Group of local exchange companies on March 5, 1999, is denied in part and granted in part as discussed herein.

2. That this order shall become effective on April 2, 1999.

**BY THE COMMISSION**



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

(S E A L)

Lumpe, Ch., Crumpton, Murray,  
Schemenauer, and Drainer, CC., concur

Mills, Deputy Chief Regulatory Law Judge

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COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION