

SPENCER FANE

BRITT & BROWNE LLP

KRISTINE BECKER
DIRECT DIAL (816) 292-8874
kbecker@spencerfane.com

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November 21, 2000

Via FedEx

The Honorable Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
Governor's Office Building
200 Madison Street
Jefferson City, MO 65102

FILED

NOV 22 2000

Missouri Public
Service Commission

Re: Case No. TA-2001-251.

Dear Judge Roberts:

I have enclosed for filing an original and eight copies of ExOp of Missouri, Inc.'s Response to Small Telephone Company Group's Application to Intervene and the Office of Public Counsel's Request for an Evidentiary Hearing. A copy of this pleading has been served on the Office of the Public Counsel. Thank you for bringing this filing to the Commission's attention.

Yours truly,

Kristine Becker

Kristine Becker

cc: Mr. Ben Smith

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

NOV 22 2000

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 § 254 of the)
Telecommunications Act of 1996)

Missouri Public
Service Commission

Case No. TA-2001-251

RESPONSE TO SMALL TELEPHONE COMPANY GROUP'S
APPLICATION TO INTERVENE AND THE OFFICE OF PUBLIC COUNSEL'S
REQUEST FOR AN EVIDENTIARY HEARING

Comes now ExOp of Missouri, Inc. ("ExOp") and in response to the Small Telephone Company Group's Application to Intervene and the Office of Public Counsel's Request for an Evidentiary Hearing in the above-captioned matter states as follows:

1. ExOp is a fully facilities-based competitive local exchange company ("CLEC") certificated by the Missouri Public Service Commission (the "Commission") to provide basic local telecommunications service in the Sprint and GTE exchanges (some of which have been acquired by Spectra Communications Group, LLC ("Spectra")) in the areas surrounding Kansas City, Missouri. ExOp currently provides basic local telecommunications service in the Kearney, Missouri exchange. During the upcoming year, ExOp anticipates expanding into a handful of other exchanges in the northwest Missouri area.

2. As a fully facilities-based CLEC, ExOp embodies the main goals of the universal service provisions of the Telecommunications Act of 1996 (the "Act") by providing advanced telecommunications services to underserved customers through the exclusive use of its own lines and equipment. The Act encourages telecommunications companies to engage in competition with

existing telecommunications carriers. Under the Act, before a Bell operating company ("BOC") can apply to provide long-distance services under 47 U.S.C. § 271, it must enter into a binding interconnection agreement with a "facilities-based" competing provider of telephone exchange service. The "facilities-based" requirement ensures that true (if not substantial) competition exists before a BOC may apply to offer service in the long-distance market.

3. The Act's goal of promoting competition in the telecommunications arena with incumbent local exchange carriers ("ILECs") can only be preserved by making universal service funding available to all carriers that provide the supported services outlined in 47 C.F.R. § 54.201(d). Designating ExOp as an eligible telecommunications carrier ("ETC") would further maintain the underlying purposes of the Act by allowing ExOp to be eligible for the same reimbursements from the Universal Service Fund as the ILECs and other CLECs¹ that have been granted ETC status. If the Commission does not grant ExOp ETC status, the Commission will be placing ExOp at a competitive disadvantage and undercutting the competitive goals of the Act.

4. The Commission recently granted ETC status to another CLEC in Missouri, Mark Twain Communications Company ("Mark Twain"). *See* Case No. TA-2000-591. Mark Twain is only a partially facilities-based carrier. Clearly, if sufficient reasons existed for granting Mark Twain ETC status, it would be logical to extend ETC status to a fully facilities-based carrier such as ExOp, which offers the supported services outlined in 47 C.F.R. § 54.201(d).

5. The Small Telephone Company Group (the "STCG") raises concerns about the specificity of ExOp's request for ETC status. The Act allows the Commission to designate a

¹ As discussed below, ETC status was granted to Mark Twain Communications Company on June 15, 2000, in Case No. TA-2000-591.

telecommunications carrier as an ETC for a service area determined by the Commission. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(b). In its Application, ExOp intended to leave the determination of the geographic scope of its ETC status to the discretion of the Commission. ExOp believes that it should be designated as an ETC throughout the exchanges in Missouri for which it has been certificated. Such a designation would avoid the unduly repetitious result of ExOp having to file an application for ETC status with the Commission each time it expands service into one of its certificated exchanges.

6. It is difficult to tell from the Commission's Order in Case No. TA-2000-591 the exact geographic scope for which the Commission designated Mark Twain as an ETC. Finding a lack of guidance on the appropriate geographic scope for ETC status for a CLEC, and recognizing the Commission's discretion in designating ExOp as an ETC, ExOp requests the Commission to grant ExOp ETC status in all the exchanges for which ExOp is certificated, with such grant conditioned upon ExOp's willingness and ability to provide the required ETC services in each exchange into which it expands its service area. ExOp would be willing to file an application for ETC designation each time it expands its service into a new exchange, but such a fragmentation of this process seems unnecessary.

7. The STCG's Application to Intervene also expresses concern that ExOp's ETC status might "affect the [STCG] companies and their ability to provide telecommunications service in their certificated exchanges." This assertion is unfounded in all cases but one and patently anti-competitive in the last. ExOp is only certificated to provide telecommunications service in exchanges served by

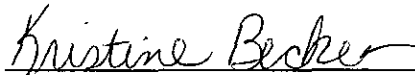
one of the STCG companies, Spectra. ExOp's ETC status will not affect any of the other STCG companies in any way.

8. If ExOp expands its service area to include exchanges served by Spectra, ExOp's ETC status may well have an effect on Spectra – it may bring competition on the level playing field envisioned by the Act. Spectra acquired the business previously carried out by GTE in a number of exchanges for which ExOp was already certificated. It should, therefore, not be surprising for Spectra to face the possibility that ExOp would actually bring competition to those exchanges supported by the universal service funds available to all facilities-based providers that meet the ETC requirements.

9. It does not appear that either the STCG or the Office of Public Counsel are actually contesting that ExOp provides or has the capacity to provide the services that are supported by federal universal service support as outlined in 47 C.F.R. § 54.201(d). Without a specific challenge to ExOp's assertions that it provides or has the capacity to provide each of the services required for universal service support, ExOp does not believe that an evidentiary hearing regarding ExOp's capabilities to provide these services is necessary.

WHEREFORE, on the basis of the foregoing, ExOp respectfully requests that the Commission deny the Office of the Public Counsel's Request for an Evidentiary Hearing, designate ExOp as a telecommunications carrier eligible under the provisions of 47 C.F.R. 54.201(d) to receive federal universal service support and for such other orders as are deemed necessary or convenient in this matter.

Respectfully submitted,

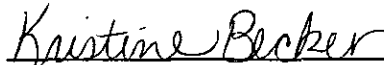


Kristine Becker, Mo. Bar # 51702
Peter Mirakian, III, Mo. Bar # 47841
SPENCER FANE BRITT & BROWNE LLP
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106-2140
Tel: (816) 474-8100
Fax: (816) 474-3216
kbecker@spencerfane.com
pmirakian@spencerfane.com

Attorneys for ExOp of Missouri, Inc.

Certificate of Service

On this 21st day of November, 2000, a true and correct copy of the above document was served upon each of the parties set forth below via United States Mail, postage prepaid.


Kristine Becker

Dan Joyce
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

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

W.R. England, III
Sondra B. Morgan
Brydon, Swearngen & England P.C.
P.O. Box 456
Jefferson City, Missouri 65102