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November 27, 2000

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

FILED³

NOV 27 2000

RE: Case No. TA-2001-251

Missouri Public
Service Commission

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **RESPONSE OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION TO THE APPLICATION TO INTERVENE AND THE REQUEST FOR HEARING.**

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Marc D. Poston
Senior Counsel
(573) 751-8701
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MP/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

NOV 27 2000

Missouri Public
Service Commission

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

**RESPONSE OF THE STAFF OF THE MISSOURI PUBLIC SERVICE
COMMISSION TO THE APPLICATION TO INTERVENE
AND THE REQUEST FOR HEARING**

COMES NOW the Staff of the Missouri Public Service Commission ("Staff") and for its response to the Application to Intervene of the Small Telephone Company Group ("STCG") and the Request for Hearing filed by the Office of the Public Counsel ("OPC"), respectfully states as follows:

1. On October 17, 2000, ExOp of Missouri, Inc. ("ExOp" or "Applicant") filed an Application for Designation as Eligible Carrier Pursuant to Section 254 of the Telecommunication Act of 1996 ("Application"). In support of its Application, ExOp states that it is a competitive local exchange company ("CLEC") certificated to provide basic local exchange service in Case No. TA-97-193.¹ ExOp further states that it has an approved interconnection agreement with Sprint Missouri, Inc. in Case No. TO-98-382. ExOp also states that Title 47 of the Code of Federal Regulations Sections 54.201(b) and (c) state that the MoPSC shall, on its own motion or upon request, designate more than one carrier as an eligible

¹ Pursuant to the Commission's *Report and Order* and the *Order Regarding Motion to Restrict Certificate of Service Authority* in Case No. TA-97-193, the Commission granted ExOp a certificate to provide basic local telecommunications service in the exchanges served by incumbent local exchange companies United Telephone Company of Missouri (Sprint) and GTE Midwest, Inc.

telecommunications carrier for a service area designated by the state commission so long as the additional requesting carrier meets the requirements of Section 54.201(d).

2. In support of its Application, ExOp states that it will offer all services supported by federal universal support under Section 254 (c) of the Act and that it will do so "through its own facilities." ExOp lists the services it will make available and asserts that it will also provide Lifeline, Link Up, and toll limitation services available to qualifying low-income consumers pursuant to 47 C.F.R. § 54.405. Lastly, ExOp states that it will advertise the availability of and charges for such services using media of general distribution within its service area.

3. On November 13, 2000, STCG filed its Application to Intervene. In its Application to Intervene, STCG states that it filed on the grounds:

"that the grant of eligible telecommunications carrier designation to ExOp may affect the member companies and their ability to provide telecommunications services in their certificated exchanges. ExOp's application only states that it seeks the ETC designation under the provisions of 47 C.F.R. 54.201(d) without further explanation. It is not clear whether ExOp is only seeking the designation for the area where it is presently providing service."

4. In Case No. TA-2000-591, the Commission issued an order designating Mark Twain Communications Company (Mark Twain) an eligible telecommunications carrier pursuant to Section 254 of the Telecommunications Act.² In its application, Mark Twain did not state whether it was only seeking the designation for the area where it is presently providing service and the Commission granted Mark Twain its request for eligible carrier designation. The Staff believes the Commission should address the ExOp Application in a manner that is consistent with the Mark Twain application for eligible carrier designation.

5. Whether ExOp seeks eligible carrier designation in any particular service area

² In the Matter of the Application of Mark Twain Communications Company for Designation as a Telecommunications Company Carrier Eligible for Federal Universal Service Support Pursuant to Section

does not impact the STCG to an extent that warrants intervention into this matter. Even if ExOp seeks eligible carrier designation in areas served by the STCG companies, the Federal Communications Commission made it clear that ExOp does not need to make a showing at this time that it provides service in those areas.³ The FCC stated that eligible carrier designation only allows a carrier to become eligible for Federal USF support and that support will only be provided upon the provisioning of service to consumers. The FCC stated:

In addition, we note that ETC designation only allows the carrier to become *eligible* for federal universal service support. Support will be provided to the carrier only upon the provision of the supported services to consumers. We note that ETC designation prior to the provision of service does not mean that a carrier will receive support without providing service. We also note that the state commission may revoke a carrier's ETC designation if the carrier fails to comply with the ETC eligibility criteria.⁴

6. Pursuant to Section 214(e)(1), the Commission can only grant eligible telecommunications carrier status in areas where the applicant offers services that are supported by Federal universal service support mechanisms. The Applicant can only offer these services pursuant to its certification which sets forth ExOp's service area. It is the Staff's understanding of Section 214 (e)(2) that the designation would be limited to ExOp's currently certificated area. Therefore, the Staff requests that the Commission deny STCG's Application to Intervene since the Commission is capable of establishing the Applicant's service area without intervention. Furthermore, the FCC concluded in its *Declaratory Ruling* that "denials must be based on the application of competitively neutral criteria that are not so onerous as to effectively preclude a prospective entrant from providing service."⁵

254 of the Telecommunications Act of 1996, CC Docket No. TA-2000-591, *Report and Order*, June 15, 2000.

³ In the Matter of Federal-State Joint Board on Universal Service, *Declaratory Ruling*, CC Docket No. 96-45, August 8, 2000, at paragraph 15.

⁴ *Declaratory Ruling*, CC Docket No. 96-45, paragraph 15.

⁵ CC Docket No. 96-45, paragraph 18.

7. In its Request for Hearing, the OPC urges the Commission to hold an evidentiary hearing in this matter. However, the requirements that must be met before a carrier receives eligible carrier designation can be determined without a hearing as the Commission did in Case No. TA-2000-591.

8. The Staff is concerned with the Application to Intervene and the Request for Hearing because of the potential for establishing a routine whereby an applicant's eligible carrier designation application is delayed by interventions and requests for a hearing. This concern is greater in any case where the facts that need to be determined are such that the Commission is capable of ruling on the Application without an evidentiary hearing.

9. In this pleading, the Staff is solely addressing the merits of STG's Motion and the OPC's Request for Hearing. The Staff requests that the Commission direct ExOp to provide a verification for its Application. The Staff will address the merits of ExOp's Application in a separate pleading.

WHEREFORE, the Staff respectfully urges the Commission to reject MITG's motion to Intervene and that the Commission reject the OPC's request for a hearing.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 27th day of November 2000.



**Service List for
Case No. TA-2001-251
November 27, 2000 (lb)**

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