



Missouri Public Service Commission

Commissioners
SHEILA LUMPE
Chair
CONNIE MURRAY
KELVIN L. SIMMONS
STEVE GAW

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

July 3, 2001

WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. KOLILIS
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³

JUL 03 2001

Missouri Public
Service Commission

RE: Case No. TM-2001-669

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S MOTION TO DISMISS APPLICATION**.

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
(573) 751-9285 (Fax)

MP/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
JUL 03 2001

Missouri Public
Service Commission

In the Matter of the Joint Application of)
Claricom Networks, Inc., Claricom)
Holdings, Inc., Staples, Inc., Stacom)
Holdings, LLC, and Platinum Equity, LLC)
for Approval of the Transfer of Stock in)
Claricom Holdings, Inc. to Stacom)
Holdings, Inc.)

Case No. TM-2001-669

STAFF'S MOTION TO DISMISS APPLICATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for Staff's Motion to Dismiss the Application for Approval of Transfer of Control, in lieu of a Staff Recommendation, states the following:

1. On June 7, 2001, Claricom Networks, Inc., Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, LLC, and Platinum Equity, LLC filed an Application with the Missouri Public Service Commission ("Commission") to transfer the control of stock. The Application states that Claricom Networks, Inc., which is certified to provide interexchange telecommunications services, was organized and exists under the laws of Delaware, but is authorized to do business in the State of Missouri. The Application states that Claricom Holdings, Inc., which is the holder of 100% of the outstanding shares of capital stock of Claricom Networks, Inc., was organized and exists under the laws of Delaware. The Application states that Staples, Inc., which is the holder of 100% of the outstanding capital stock of Claricom Holdings, Inc., was organized and exists under the laws of Delaware. The Application states that Stacom Holdings, Inc., which was organized for the purpose of holding the ownership interests of Claricom Networks, Inc. upon consummation of the stock transfer, was organized and exists under the laws of Delaware. The Application states that Platinum Equity, LLC, was formed as a vehicle for the acquisition of

6

companies and is the ultimate parent of Stacom Holdings, Inc. Platinum Equity, LLC was organized and exists under the laws of Delaware.

2. The Application states that Claricom Holdings, Inc., Stacom Holdings, LLC and Platinum Equity, LLC entered into a Purchase and Sale Agreement for the transfer of stock. Pursuant to the Agreement, all of the outstanding stock in Claricom Networks, Inc. will be transferred from Claricom Holdings, Inc. to Stacom Holdings, Inc. Claricom Networks, Inc. will become a wholly owned subsidiary of Stacom Holdings, Inc.

3. The Application states that approval of the stock transfer is sought under the provisions of Mo. Rev. Stat. Section 392.300. Section 392.300 RSMo 2000 contains two subsections as follows:

Subsection 1 of 392.300 RSMo 2000, states, in relevant part, that:

No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.
(Emphasis added).

Subsection 2 of 392.300 RSMo 2000, states, in relevant part, that:

Except where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic or foreign, other than a telecommunications company, shall, without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any telecommunications company may, without the consent of the commission, acquire and hold the remainder of the capital stock of such telecommunications company, or any portion thereof.
(Emphasis added).

4. Subsection 392.300.1 RSMo 2000 does not apply to this transaction because Stacom Holdings, Inc. is buying the stock of Claricom Networks, Inc. Stacom Holdings, Inc. is not acquiring "...the franchise, facilities or system" of Claricom Networks, Inc. as is required under the statute to create commission jurisdiction. All that is occurring is a change in ownership of Claricom Networks, Inc. from Claricom Holdings, Inc. to Stacom Holdings, Inc. In essence, the transaction is merely a change in the parent companies. In addition, Stacom Holdings, Inc. is not "merging or consolidating" the regulated companies' "franchise, line or system with any other corporation, person or public utility" as required by the jurisdictional language of the statute. No merger or consolidation is taking place. The regulated entity will continue to perform under its original corporate identity and through their "franchise, facilities or system."

5. With respect to Subsection 392.300.2 RSMo 2000, in *Public Service Commission v. Union Pacific Railroad Company*, 197 S.W. 39 (Mo. banc 1917), the Commission sought to enjoin Union Pacific from issuing bonds without first applying to it for authority. Union Pacific was incorporated under the laws of the State of Utah. In ruling against the Commission, the Court explained that the words "organized and existing or hereafter incorporated, under or by virtue of the laws of the state of Missouri" in Section 57 of the Public Service Commission Act of 1913, applied to domestic corporations and not to foreign corporations.

6. Subsection 392.300.2 RSMO 2000 does not apply to this transaction because Claricom Networks, Inc., Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, Inc. and Platinum Equity, LLC are not "organized or existing under or by virtue of the laws of this state." All five companies are organized and existing under the laws of Delaware. Accordingly, this

sale of stock does not involve the acquisition of ownership of companies organized and existing under the laws of Missouri.

7. The Commission issued an order dismissing a stock transfer application for lack of jurisdiction under similar facts on October 19, 1999 in Case No. TM-2000-146.

WHEREFORE, the Staff requests that the Commission enter an order that Section 392.300 RSMo 2000 does not grant the Commission jurisdiction over this transaction, and therefore the Application should be dismissed.

Respectfully submitted,

DANA K. JOYCE
General Counsel



Marc Poston
Senior Counsel
Mo. Bar No. 45722

Attorney for the Staff of the Missouri Public
Service Commission
PO Box 360
Jefferson City, MO. 65102
573-751-8701
573-751-9285 (Fax)

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 3rd day of July 2001.



**Service List for
Case No. TM-2001-669
July 3, 2001 (lb)**

**Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65012**

**Trina R. LeRiche, Esq.
Sonnenschein Nath & Rosenthal
4520 Main Street, Suite 1100
Kansas City, MO 64111**