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July 24, 2003

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FILED<sup>3</sup>

JUL 24 2003

Missouri Public  
Service Commission

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

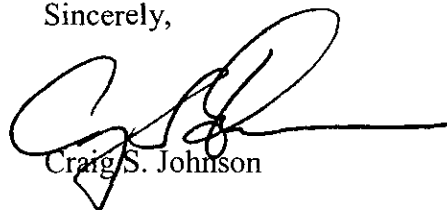
Dear Mr. Roberts:

Enclosed please find the original and eight copies each of the following for filing with the Commission:

- a. Applicant D2R2 Inc.'s verified application to acquire all of the outstanding stock of ExOp of Missouri Inc., with an alternative request for an order finding that the applicability of the statute requiring such authority has been waived.
- b. Request for Protective Order.
- c. Request for Expedited Treatment.

If any questions or concerns arise, please have them directed to me. Thank you for your attention to this matter.

Sincerely,



Craig S. Johnson

CSJ:sw  
Enc.

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9<sup>th</sup> And Washington  
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Cc: Tom Fleener  
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Daniel Joyce, Staff General Counsel  
Michael Dandino, Office of Public Counsel

**FILED<sup>3</sup>**

JUL 24 2003

Missouri Public  
Service Commission

**BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI**

In the Matter of the Application of D2R2,) Case No. \_\_\_\_\_  
Inc. for Authority to Acquire all of the )  
Outstanding Stock of ExOp of Missouri )  
Inc., or in the Alternative a Request for )  
Finding that the Requirement of )  
Approval has been waived. )

**APPLICATION OF D2R2 INC. FOR AUTHORITY TO ACQUIRE ALL OF THE  
OUTSTANDING STOCK OF EXOP OF MISSOURI, INC., ALTERNATIVE  
REQUEST FOR FINDING THAT THE REQUIREMENT OF APPROVAL HAS  
BEEN WAIVED, NOTICE OF REQUEST FOR EXPEDITED TREATMENT,  
AND NOTICE OF REQUEST FOR ISSUANCE OF PROTECTIVE ORDER**

Comes now Applicant D2R2 Inc., and for its Application for authority to acquire all of the outstanding stock of ExOp of Missouri, Inc., alternative request for determination that the applicability of any statute requiring approval has been waived, and for its notices of Request for Expedited Treatment and Request for Protective Order, filed separately simultaneously herewith, all pursuant to Section 392.300 RSMo, 4 CSR 240-3.125, 4 CSR 4 CSR 240-2.080(16), and 4 CSR 240-2.085, Applicant states as follows:

1. Applicant D2R2 is a Missouri corporation in good standing. D2R2's Certificate of Good Standing issued by the Missouri Secretary of State is attached to this Application as Attachment 1. D2R2 has been incorporated for the purpose of acquiring and owning the stock of ExOp of Missouri Inc. from its current sole shareholder, Utilicorp Communications Services, Inc..

2. The street and mailing address of D2R2's principal office and place of business is:

Ron Reckrodt  
President  
D2R2 Inc.,  
16412 N. E. 138<sup>th</sup> St.  
Kearney, Mo 64060  
(816) 903-3936  
(816) 903-3900 fax

3. Correspondence, communications, pleadings, and orders and decisions in this proceeding should be sent to D2R2 at the above address, and also to D2R2's counsel of record in this proceeding:

Craig S. Johnson MO Bar No. 28179  
ANDERECK, EVANS, MILNE,  
PEACE & JOHNSON, L.L.C.  
700 East Capitol Ave  
Post Office Box 1438  
Jefferson City, Missouri 65102  
Telephone: (573) 634-3422  
Facsimile: (573) 634-7822  
email: CJohnson@AEMPB.com

4. Ex Op of Missouri Inc. is a Missouri Corporation has been incorporated for the purpose of, and in fact is engaged in the business of, operating a competitive local exchange telecommunications company, as well as other business operations. ExOp of Missouri Inc. provides basic local telecommunications services, and exchange access services, to customers within the state of Missouri, pursuant to prior Orders of the Commission granting ExOp certificates of authority, approving tariffs, and granting certain waivers of statutes and Commission rules as routinely provided to a competitively

classified competitive local exchange company. Ex Op does business under the name of “Unite”.

5. Neither D2R2 Inc. nor ExOp have any pending action or final unsatisfied judgments or decisions against them from any state or federal agency or court which involve customer service or rates, which action, judgment or decision has occurred within three years of the date of this Application.

6.. On or about July 10, 2003, D2R2 Inc. and Utilicorp Communications Services Inc. entered into a Purchase and Sale Agreement (Stock Purchase Agreement) whereby, subject to This Commission’s approval of This Application, Utilicorp would sell, and D2R2 would purchase, all of the outstanding shares of capital stock of ExOp of Missouri, Inc. Said Stock Purchase Agreement contains confidential and proprietary information, and will be filed with the Commission upon entry of the Commission’s standard Protective Order, which has been requested simultaneously with the filing of this Application. A copy of said Stock Purchase Agreement has been separately provided to the Staff of the Commission subject to the independent obligation of Staff to keep same confidential. It is anticipated this Agreement will be filed designated Attachment 2 Highly Confidential.

7. The transaction contemplated by the Stock Purchase Agreement is for the purchase of all of the outstanding stock in ExOp of Missouri, Inc.. Other than the change of ownership of ExOp, there will be no change in the certificated service authority of ExOp, no change in the tariffs of ExOp, and no transfer of any franchises, permits, or operating rights that are used in the performance of Ex Op’s duties to the public.

8. The sale and transfer of stock contemplated by the Stock Purchase Agreement will have no impact on the tax revenues of any political subdivisions in which ExOp owns properties or engages in business.

9. A certified copy of resolution of the director of D2R2 Inc. authorizing the acquisition of the stock of Ex Op by execution and closing of the Stock Purchase Agreement, is attached hereto as Attachment 3.

10. The proposed acquisition of stock of ExOp is not detrimental to the public interest in that such acquisition will only change the identity of the ownership of ExOp, and will not change the assets, liabilities, operations, or service quality ExOp provides to its customers who have chosen to take service from ExOp instead of the incumbent provider.

11. The foregoing application for affirmative approval is premised upon the assumption that approval is required by virtue of the following provisions of Section 392.300.1 RSMo:

**“Transfer of property and ownership of stock without consent of commission prohibited—impact on transfer on local tax revenues, information to be furnished, to whom, procedure.--**1. 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.....Any person seeking any order under this subsection authorizing the sale, assignment, lease, transfer, merger, consolidation, or other disposition, direct or indirect, of any telecommunications company shall, at the time of application for any such order, filed with the commission a statement, in such form, manner and detail as the commission require, as to what, if any, impact such sale assignment, lease, transfer, merger, consolidation, or other disposition will have on the tax revenues of the political subdivisions in which any structures, facilities or equipment of the companies involved in such disposition are located.....”

12. Applicant is uncertain if the above described language applies to the transaction contemplated by the Stock Purchase Agreement. Although the heading seems to apply to transfers of stock, the language of subsection 1 appears to apply to sales of the assets of ExOp, or to sales, mergers or consolidations of ExOp. The instant transaction does not clearly fit the applicability of 392.300.1 RSMo.

13. Applicant believes that the following language of subsection 2 of 392.300 RSMo does apply to this proposed transaction (except that its applicability has been waived):

“2. 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...”

14. The Commission’s November 25, 1997 Order in TA-97-193 granted ExOp a waiver of applicability of 392.300.2 RSMo, but did not waive applicability of 392.300.1 RSMo.

15. If the Commission determines that Section 392.300.1 RSMo does apply to this proposed transaction, Applicant requests that the Commission grant this Application for Authority to Acquire the stock of ExOp.

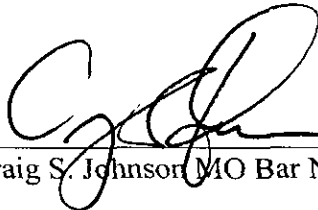
16. If this Commission instead determines that Section 392.300.1 RSMo does not apply to this proposed transaction, that Section 392.300.2 RSMo would apply, but its applicability has been waived, Applicant requests a Commission Order determining that no approval of the Missouri Public Service Commission is required in order for Applicant to acquire the stock of Ex Op.

17. As contained in separate Motion, Applicant requests that the Commission provide expedited treatment of the requests contained in this Application, and enter its decision by September 19, 2003.

WHEREFORE, on the basis of the foregoing, Applicant D2R2 Inc. requests a Commission Order granting D2R2 authority to purchase all of the stock of ExOp of Missouri Inc., or alternatively an Order providing that no such Commission Order granting such authority is necessary due to prior statutory waivers, that a protective Order be entered, and that this matter be granted expedited treatment.

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and accurate copy of the foregoing was mailed, via U.S. Mail, postage prepaid, this 24 day of July, 2003, to Staff General Counsel Dan Joyce, and to Office of Public Counsel Michael Dandino.

  
\_\_\_\_\_  
Craig S. Johnson MO Bar No. 28179

VERIFICATION

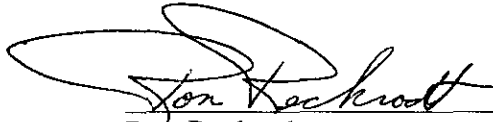
State of Missouri )  
County of Cole ) ss.

Comes now Ron Reckrodt, being of lawful age and duly sworn, swears and affirms that:

1. My name is Ron Reckrodt. I am the President of D2R2, Inc. In that capacity I am authorized by D2R2, Inc. to apply for Missouri Commission approval and authority for the requests contained in this Application.

2. The information contained in this Application is true and accurate to the best of my knowledge, information, and belief.

3. D2R2, Inc. has authorized Craig S. Johnson and the firm of Andereck, Evans, Milne, Peace, and Johnson, LLC to file and prosecute this application before the Missouri Public Service Commission.

  
Ron Reckrodt

Subscribed and sworn to before me this 23<sup>rd</sup> day of July, 2003.

  
Notary Public

My Commission expires June 2, 2007

STEPHANIE R. WILLIAMS  
Notary Public - Notary Seal  
STATE OF MISSOURI  
County of Callaway  
My Commission Expires June 2, 2007

# STATE OF MISSOURI



Matt Blunt  
Secretary of State


CORPORATION DIVISION  
CERTIFICATE OF GOOD STANDING

I, MATT BLUNT, Secretary of the State of Missouri, do hereby certify that the records in my office and in my care and custody reveal that

D2R2 INC.  
00528368

was created under the laws of this State on the 26th day of June, 2003, and is in good standing, having fully complied with all requirements of this office.

IN TESTIMONY WHEREOF, I have set my hand and an imprinted the GREAT SEAL of the State of Missouri, on this, the 23rd day of July, 2003

  
Secretary of State



Certification Number: 5967756-1 Page 1 of 1 Reference:  
Verify this certificate online at <http://www.sos.state.mo.us/businessentity/verification>

D2R2 Inc.  
Minutes, Special Meeting, Board of Directors  
July 8, 2003  
Kearney, Missouri

A special meeting of the Board of Directors was called to Order by Ron Reckrodt, President, Secretary, and sole board member. Waiver of notice was consented to by Mr. Reckrodt.

Mr. Reckrodt presented the negotiated Stock Purchase Agreement between Utilicorp Communications Services Inc and D2R2 for the acquisition of all of the stock of ExOp of Missouri Inc.


On Motion, which unanimously carried by consent, it was:

RESOLVED, that Mr. Reckrodt was authorized to execute said agreement on behalf of D2R2, and to do all things necessary to complete acquisition of the stock of Ex Op, including securing counsel to obtain required regulatory approvals, consents, and notices, and to do all things necessary to close the transaction set forth in said agreement.

There being no further business coming before the Board, by unanimous consent the meeting was adjourned.

  
Ron Reckrodt, Secretary

I hereby certify that the foregoing minutes, including the resolution authorizing D2R2 Inc. to acquire the stock of ExOp of Missouri Inc, is a true and correct copy of the resolution of the Board of Directors of D2R2 Inc. adopted July 8, 2003.

  
Ron Reckrodt  
Secretary