

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

In the matter of the Application of)	
The Oregon Farmers Mutual Telephone)	
Company for Authority to Execute)	Case No. TF-2005-0503
a Secured Guaranty in favor of the)	
Rural Telephone Finance Cooperative)	
in connection with a loan to Northwest)	
Missouri Holdings, Inc.)	

LEGAL MEMORANDUM

At the on-the-record proceeding in this case held on September 20, 2005, the Commissioners requested that counsel for the Staff and Applicant, The Oregon Farmers Mutual Telephone Company ("Oregon Farmers"), prepare a legal memorandum explaining the legal significance of, and the distinction between, the Deed of Trust, Security Agreement and Financing Statement placing a lien on the assets of Oregon Farmers already authorized by the Missouri Public Service Commission ("Commission") in Case No. IM-2004-0461 and the Secured Guaranty that the company is requesting that the Commission authorize in this case. Following is Oregon Farmers' Legal Memorandum addressing these issues.

Background

The pending Application case wherein Oregon Farmers requests authorization to execute a Secured Guaranty to the Rural Telephone Financing Cooperative ("RTFC") is really a continuation of Case No. IM-2004-0461. On March 9, 2004, Oregon Farmers and Northwest Missouri Holdings, Inc. ("Northwest") filed a Joint Application with the Commission requesting authority for Northwest to acquire all of the outstanding shares of Oregon Farmers. On April 12, 2004, the parties filed a Supplemental Joint Application in which they requested authority from

the Commission pursuant to § 392.300, RSMo 2000, to execute a Deed of Trust, Security Agreement and Financing Statement placing a lien on the assets of Oregon Farmers as security for a loan from RTFC to Northwest. The Joint Applicants attached a copy of the "Conditional Loan Commitment for Permanent Financing" from RTFC to Northwest setting out the terms of the financing to this Supplemental Joint Application. This commitment letter states, "As collateral for the Loan, RTFC shall receive a first mortgage lien on the Borrower's assets as well as a first mortgage lien on the assets of Oregon Farmers and SH Cable." On August 24, 2004, the Commission issued its Order Approving Sale of Stock in which it also authorized Oregon Farmers to "deliver a Deed of Trust, Security Agreement and Financing Statement, as well as to perform such other lawful actions as may be necessary to complete the transaction herein approved."

After the Commission had issued its Order approving the transfer of the stock and the execution of the lien, counsel for Oregon Farmers was first made aware that in addition to the first mortgage lien, RTFC also expected Oregon Farmers to execute and deliver a Secured Guaranty. At that time, counsel for Oregon Farmers explained that under the Missouri statutes the Secured Guaranty would require separate Commission authorization that had not been requested in the Supplemental Joint Application. After discussion with RTFC, the parties elected to close the transaction without execution of the Secured Guaranty with the understanding that Oregon Farmers would seek authority to execute the Secured Guaranty within the next year. On June 24, 2005, Oregon Farmers filed an Application requesting authority pursuant to § 392.310, RSMo 2000, to execute the Secured Guaranty. On August 31, 2005, the Staff filed its Recommendation recommending that the Commission grant the application. On September 20,

2005, the Commission held an on-the-record hearing at which time it requested a Legal Memorandum explaining the legal distinction between the collateral pledged by Oregon Farmers as a result of the first mortgage lien already authorized and the collateral that will be pledged as a result of the execution of the Secured Guaranty.

Legal Memorandum

Section 392.300.1, RSMo 2000, states that, "No telecommunications company shall . . . mortgage or . . . encumber the whole or any part of its franchise, facilities or system . . . without having first secured from the commission an order authorizing it to do so." Oregon Farmers sought and was granted authority to place a first mortgage lien on its assets in Case No. IM-2004-0461 in order to secure the loan from RTFC to Northwest. "Lien" is defined in Black's Law Dictionary as, "A legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied."¹ Thus, the assets of Oregon Farmers serve as collateral for the loan. "Collateral" is defined in Black's Law Dictionary as, "Property that is pledged as security against a debt; the property subject to the security interest."²

Section 392.310.1, RSMo 2000, states that, "A telecommunications company may, when authorized by order of the commission . . . issue . . . other evidence of indebtedness . . ." A secured guaranty is considered other evidence of indebtedness under Missouri law.³ A

¹BLACK'S LAW DICTIONARY 933 (7th ed. 1999).

²BLACK'S LAW DICTIONARY 255 (7th ed. 1999).

³*In the matter of the application of Union Electric Company for authority to "guaranty" certain financial obligations of Electric Energy, Inc., an affiliate*, 21 Mo. P.S.C. (N.S.) 425 (June 1977).

“guaranty” is “[t]he assurance that a contract or legal act will be duly carried out.”⁴ It is sometimes referred to as a “promise to pay.” Under Missouri law, a guaranty is “a collateral agreement for another’s undertaking and is an independent contract that imposes responsibilities different from those imposed in the agreement to which it is collateral.”⁵ The liability of the guarantor is strictly construed according to the terms of the guaranty agreement and may not be extended beyond the strict letter of the obligation.⁶ A guaranty agreement may be construed together with any contemporaneously executed agreements dealing with the same subject matter as an aid in ascertaining the intention of the parties.⁷ Those agreements, however, do not constitute a single contract, and the liability of the guarantor remains primarily dependent on the guaranty agreement itself.⁸

The guaranty in question is a “secured guaranty” which means that it is “supported or backed by security or collateral.”⁹ The security for the guaranty is the same first mortgage lien on the assets of Oregon Farmers as secures the borrowing by Northwest. Paragraph 12 of the draft Secured Guaranty attached to the Joint Application states:

The obligation under this Guaranty is secured by a Guarantor’s Mortgage and Security Agreement dated as of even date hereof by and between The Oregon Farmers Mutual

⁴BLACK’S LAW DICTIONARY 711 (7th ed. 1999).

⁵*Dunn Industrial Group, Inc. V. City of Sugar Creek et al.*, 112 S.W.3d 421, 434 (Mo. banc 2003).

⁶*Id.*

⁷*Jamieson-Chippewa Inv. Co. v. McClintock*, 996 S.W.2d 84, 87 (Mo. App. 1999).

⁸*Id.*

⁹BLACK’S LAW DICTIONARY 1357 (7TH ed. 1999).

Telephone Company as Mortgagor and Rural Telephone Finance Cooperative as Mortgagee, as it may be supplemented, amended, or consolidated from time to time.¹⁰

As is explained by Corporate Counsel for RTFC, the lender considers the lien on the Oregon Farmers' assets as security for the Secured Guaranty, and Mr. Parrett does not perceive a distinction between the lien already authorized and the collateral for the Secured Guaranty. Mr. Parrett's memo to Matthew Barnes is marked Appendix A and attached. No additional collateral is required for the Secured Guaranty beyond that already approved in Case No. IM-2004-0461.

As was explained at the on-the-record proceeding, the failure to request authorization for the Secured Guaranty in Case No. IM-2004-0461 was the result of mis-communication between Northwest's financial counsel and Missouri regulatory counsel regarding the structure of the transaction and Missouri statutory requirements. RTFC was willing to advance the funds so that the transaction could be closed, but since the Secured Guaranty was part of the original loan documentation, RTFC requested that Northwest and Oregon Farmers seek authority from the Commission to complete the Secured Guaranty. That is the purpose of the current application.

Other Issues

At the on-the-record proceeding, Commissioner Murray expressed concern that RTFC intended to raise the interest rate by 200 basis points if the Commission did not authorize the Secured Guaranty. Commissioner Murray also questioned Mr. Eudy regarding RTFC's legal basis for requiring the guaranty and if there was any written documentation to support this increase. During the proceeding, Mr. Eudy read language from the loan documents stating that the interest rate would increase if the Commission did not authorize the Secured Guaranty.

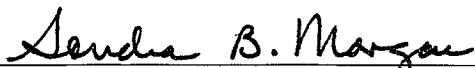
¹⁰This draft of the Secured Guaranty contemplates that the Secured Guaranty will be executed as of "even date."

After review of the loan documents, Mr. Eudy discovered that he had mis-read the requirement regarding the interest rate, and that the written language actually states that the interest rate will increase by 50 basis points if the Commission does not authorize the Guaranty within one year. The language is confusing because it also lists an "Interest Rate Adder" that is 200 basis points, but a careful review of the section shows that the increase in interest rate for failure to obtain the Commission authorization is 50 basis points (not 200 basis points as previously stated). Schedule 1 to the Loan Agreement between Northwest and RTFC that contains the applicable language at 12 (c) is marked Appendix B and attached. Oregon Farmers has revised its data request responses to Staff to reflect this change. While Oregon Farmers regrets this error, the fact that the increase in the interest rate is only half a point should alleviate some of the Commission's concern regarding the potential effect of the Secured Guaranty on the ratepayers of Oregon Farmers. Oregon Farmers is also providing a copy of the Deed of Trust, Security Agreement and Financing Statement executed and filed by Oregon Farmers as requested by the Commission at the on-the-record proceeding. It is marked as Appendix C and attached.

Conclusion

No additional security will be required for the Secured Guaranty. The assets of Oregon Farmers already subject to the first mortgage lien of the Deed of Trust, Security Agreement and Financing Statement will serve as the collateral to secure the Guaranty. The Secured Guaranty is a promise to pay if Northwest, the primary borrower, is unable to pay. This promise to pay is secured by the same Oregon Farmer assets as secure the loan from RTFC to Northwest so no additional collateral is involved.

Respectfully submitted,



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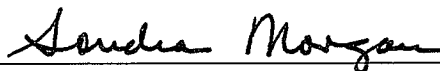
Attorneys for The Oregon Farmers Mutual Telephone
Company

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by electronic transmission, hand-delivered or mailed, United States Mail, postage prepaid, this 4th day of October, 2005, to:

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