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April 24, 2003

Mr. Dale Hardy Roberts  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**FILED**<sup>2</sup>

APR 24 2003

Missouri Public  
Service Commission

**Re: Case No. IO-2003-0012**

Dear Mr. Roberts:

Enclosed for filing, please find an original and eight (8) copies of a Reply Brief of BPS Telephone Company and an original and eight (8) copies of Proposed Findings of Fact and Conclusions of Law.

Would you please see that this filing is brought to the attention of the appropriate Commission personnel.

Copies of this filing have been provided to all parties of record.

I thank you in advance for your cooperation in this matter.

Sincerely yours,

BRYDON, SWEARENGEN & ENGLAND P.C.

By:



Sondra B. Morgan

SBM/lar  
Enclosure

cc: Cliff Snodgrass  
Michael Dandino  
Larry Dority

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>2</sup>

APR 24 2003

Missouri Public  
Service Commission

In the Matter of BPS Telephone )  
Company's Election to be Regulated )  
under Price Cap Regulation as Provided ) Case No. IO-2003-0012  
in Section 392.245, RSMo 2000. )

**BPS TELEPHONE COMPANY'S PROPOSED  
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Comes now BPS Telephone Company ("BPS") and offers the following Proposed  
Findings of Fact and Conclusions of Law to the Missouri Public Service Commission  
("Commission"):

**Findings of Fact**

1. BPS is a small incumbent local exchange company serving approximately 3900 access lines in Missouri. (Exh. 1, pp. 3-4; Exh. 2, p. 4; Exh. 3, p.2; Tr. 118; 241)
2. BPS first provided written notice to the Commission of its intent to be regulated under § 392.245, the price cap statute on March 13, 2002. (Exh. 1, p. 4; Sched. DC 1; Tr. 118; 242)
3. BPS provided a second written notice of its intent to be regulated under the price cap statute on July 17, 2002. (Exh. 1, p.4; Sched. DC 2)
4. Missouri State Discount Telephone ("MSDT") is an alternative local exchange telecommunications company as that term is used in § 392.245 and defined in § 386.020 (1), RSMo. (Exh. 3, p. 7; Tr. 118; 242)
5. MSDT was certified to provide basic local telecommunications service by the Commission in Case No. TA-2001-334, effective March 26, 2001. (Exh. 1, p. 4; Exh. 2, p. 12;

Exh. 3, p. 7; Tr. 118; 241)

6. MSDT's tariff for the provision of basic local telecommunications service was approved by the Commission on June 26, 2001. (Exh. 1, p. 4)

7. BPS and MSDT entered into a Resale Agreement which agreement was approved by the Commission in Case No. TO-2002-62, effective October 26, 2001. (Exh. 1, p. 4-5; Exh. 6)

8. MSDT is providing telecommunications service to customers within the BPS service area. (Exh. 1, p. 6; Exh. 3, p. 3)

9. MSDT provides "two-way switched voice service within a local calling scope as defined by the Commission" comprised of the following services:

(a) Multiparty, single line, including installation, touchtone dialing and any applicable mileage or zone charges.

(b) Access to local emergency services, including but not limited to, 911 service established by local authorities.

(c) Standard intercept service.

(d) Standard white pages directory listing.

(Exh. 5, pp. 12-13; Tr. pp. 119-21)

### **Conclusions of Law**

1. BPS is a telecommunications company and public utility as defined in Sections 386.020(51) and 386.020(42), RSMo, and as such is subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392 of the Missouri Revised Statutes. BPS is also an incumbent local exchange telecommunications company as defined in Section 386.020(22), and

a small local exchange telecommunications company as defined in Section 386.020(30).

2. MSDT is an alternative local exchange telecommunications company as defined in Section 386.020(1).

3. Section 392.245, RSMo 2000, authorizes the Commission to "ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation."

4. Section 392.245.2, RSMo, sets out the procedure for small incumbent local exchange companies to elect to be regulated pursuant to the price cap statute and states, in pertinent part, that:

A small incumbent local exchange telecommunications company may elect to be regulated under this section upon providing written notice to the commission if an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service and is providing such service in any part of the small incumbent company's service area . . . .

5. The language of this statutory provision is clear and unambiguous. There is no need for statutory construction in order to determine the intent of the legislature.<sup>1</sup>

6. Under the plain meaning of this statutory provision BPS has shown that it is qualified to elect to be regulated as a price cap company in that:

- a) BPS is a small incumbent local exchange telecommunications company serving approximately 3900 access lines;
- b) BPS provided written notice of its election to be regulated pursuant to the price cap statute on March 13, 2002, and again on July 17, 2002;

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<sup>1</sup>*State ex rel. Springfield Warehouse & Transfer Co. v. Public Service Commission*, 225 S.W.2d 792, 794 (Mo. App. 1949).

c) MSDT was certificated to provide basic local telecommunications by the Commission in Case No. TA-2001-334;

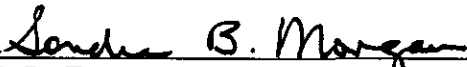
d) MSDT is an alternative local exchange telecommunications company as that term is defined in § 386.020(1), RSMo; and

e) MSDT is providing basic local telecommunications service to customers within the service area of BPS.

7. The service provided by MSDT in the BPS service area is "basic local telecommunications service" as that term is defined in Section 386.020(4), RSMo, since MSDT provides two-way switched voice service within a local calling scope and provides four of the services listed in the definition. The definition of "basic local telecommunications service" found in this section is the controlling definition. It is not necessary for MSDT to comply with Commission rules 4 CSR 240-32.100 or 4 CSR 240-31.010 in order to provide basic local telecommunications service as referenced in the price cap statute, Section 392.245, RSMo.

8. It is not necessary to show that the service provided by MSDT provides any level of competition to BPS, as competition is not a prerequisite for price cap regulation. Section 392.245 contains no reference to competition.

Respectfully submitted,

  
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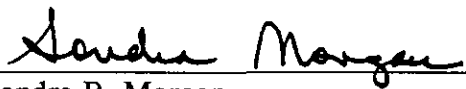
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. Mail, postage prepaid, or hand-delivered on this 24<sup>th</sup> day of April, 2003, to the following parties:

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