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May 16, 2002

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

Re: **In the matter of the investigation of the status of prepaid local service providers as alternative local exchange competitors under Section 392.245, RSMo.**
Case No. TO-2002-_____

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Office of the Public Counsel's Motion to Establish Case and to Conduct an Investigation**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to parties of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael F. Dandino".

Michael F. Dandino
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

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

In the Matter of the Investigation of the)
Status of Prepaid Local Service Providers)
as Alternative Local Exchange Competitors)
Under Section 392.245, RSMo)

Case No. TO-2002-_____

**OFFICE OF THE PUBLIC COUNSEL'S MOTION TO
ESTABLISH CASE AND TO CONDUCT AN INVESTIGATION**

COMES NOW the Office of the Public Counsel (Public Counsel) and moves the Public Service Commission of Missouri to establish a case and to conduct an investigation into the status of prepaid local service providers as it relates to the existence of an alternative local exchange competitor that offers basic local service in any exchange of an incumbent local exchange company's service area under Section 392.245, RSMo 2000, the price cap statute. Public Counsel suggests that the PSC has jurisdiction to conduct such an investigation under Section 386.320.1, RSMo. 2000 that gives the Commission general supervision over telecommunications companies, including compliance with "all provisions of law." The PSC also has a duty to carry out the purposes of Chapter 392, RSMo. by ensuring customers pay reasonable rates, by permitting flexible regulation and by allowing full and fair competition to function as a substitute for regulation "when consistent with the protection of the ratepayers and as otherwise consistent with the public interest." Section 392.185(4), (5), and (6). The PSC should conduct the investigation to carryout these legislative purposes and ensure compliance with Section 392.245 RSMo.

1. On May 15, 2002, the Staff filed a motion for authority to file a complaint against PBS Telephone Company for excessive earnings. (Staff of the Missouri Public Service Commission v. BPS Telephone Company, Case No. TC-2002-1076). That motion set out a number of legal and factual issues on the eligibility of PBS to be afforded treatment under price cap regulation pursuant to Section 392.245, RSMo. Public Counsel is concerned that while prepaid providers operate under a certificate of authority for local basic service as do other competitive local exchange companies that the nature of the prepaid business and the method of operation may not provide the incumbent with a competitor as envisioned by the price cap statute. Traditionally, prepaid providers offer services to customers who are unable to obtain service from the incumbent company due to credit problems (often with the ILEC), the lack of credit history, or because they are transients who only need service for a short time period. Until recently, qualification for price cap regulation has been sought with a traditional full service alternative local exchange provider as the designated competitor certified and doing business in the ILEC's service territory. (See, the price cap grant for the large incumbent local exchange companies: SWBT (TO 97-397); Verizon (GTE) (TO-99-294) and Sprint (TO-99-359)).

2. On March 13, 2002, BPS, a small incumbent local exchange company, gave notice to the PSC that it has a local competitor certified and doing business in its exchanges and under Section 392.245, RSMo. 2000, it is now a price cap regulated company. The company that BPS designated as the statutory alternative local exchange company was Missouri State Discount Telephone. This company provides resold telecommunications services on a prepaid basis. (See, TA-2001-344, for approval of its

certificate of authority on March 16, 2001). Its tariffs were approved on June 26, 2001, effective July 2, 2001. (TA-2001-334)

3. Since BPS's notice of its election to be regulated under price cap provisions, BPS has not filed tariffs under its price cap election to significantly alter its rates. In particular, it has not sought to rebalance rates by reducing intrastate switched access rates and increasing local basic service rates.

4. As part of the requirement to actually provide service, the alternative local exchange provider must have an interconnection or resale agreement with the incumbent so that the provider can offer services by reselling the incumbent's services or by using the incumbent's network to provide its own services. See, TO-2002-62, for the Commission order approving the interconnection agreement.

5. It has come to Public Counsel's attention that the interconnection agreement between the incumbent local exchange company BPS and the prepaid provider Missouri State Discount restrict the prepaid provider from competing for the same customers as the ILEC. Section 6.1.1 of that resale agreement provides:

Missouri State Discount shall not target Telephone Company's current customers or new customers to Telephone Company's service area, for services to be resold by Missouri State Discount. Missouri State Discount's target market shall be individuals and entities which are not current customers of Telephone Company and have been disconnected for nonpayment of Telephone Company's telecommunications charges.

6. Public Counsel expects to see other small incumbent local exchange companies seek price cap status with prepaid providers serving as the deregulated alternative local exchange company that is certified and doing business in the incumbent's service area. The resale or interconnection agreements may also contain the same or similar restrictions on the prepaid provider's customer base.

7. Public Counsel respectfully suggests that it is in the public interest for the Commission to establish a case to investigate the implications of providing competition by prepaid providers and through restrictive resale and interconnection agreements. Such a case and investigation would allow interested parties (small incumbent local exchange companies, prepaid service providers, interexchange companies, traditional competitive local exchange companies, the Staff and Public Counsel) to provide the Commission with comments and information regarding the legal and practical issues suggested by this method of providing competition in the small incumbent and rural service areas. This is a significant issue for telephone consumers in that it has an effect on the ability of the PSC to review rates and rate designs and on the ability of the PSC to protect the customer from excessive or unreasonable rate increases.

8. Section 392.245. 1. Provides that “[t]he commission shall have the authority to ensure that rates, charges, tolls and rentals for telecommunications services are just, reasonable and lawful by employing price cap regulation.” Price cap regulation is believed to benefit consumers when viable competitors offer sufficiently good substitutes for the incumbent’s services that it induces the incumbent to lower prices. Those prices should move to a level that insures only a “normal profit” for the industry, improve service offerings or improve service quality.

9. Public Counsel believes that prepaid providers as “alternative local exchange companies” do not promote the goals of price cap regulation. In fact, experience has shown that prepaid services are not sufficiently good substitutes. This was suggested in the testimony of the Staff witness William Voight in TO-2001-467, In the Matter of the investigation into the status of competition in Southwestern Bell Telephone

Exchanges. Public Counsel witness Meisenheimer also made that observation in the same case. The prepaid providers target their services not to the broad customer base of the incumbent, but instead to a niche market characterized by customers with unpaid balances with the incumbent telephone company or with past credit problems. In short, prepaid providers are willing to provide service to those customers the incumbent has refused service or will not provide service. The prepaid provider may be the customer's only means to obtain wireline local exchange service.

10. Prepaid service also comes at a price, not only in terms of monthly charges, but also in terms of the limitations applied to the available service. Typically, the incumbent's customer pays an installation charge and is billed for that charge and the prior month's service. The prepaid customer is not afforded credit, even on a monthly basis, but must pay "up front" for the installation and for a month's service prior to the initial connection and for each month in advance thereafter to continue receiving service. Service is usually obtained through agents that operate other businesses that also target the same customer base for prepaid telephone providers, such as check cashing businesses, payday loan companies, rent-to-own furniture and appliance centers, and convenience markets.

11. While prepaid service providers hold certificates of authority to provide basic local service, this alone is not sufficient to satisfy the requirements of the price cap statute. Section 392.245. 2. RSMo. requires not only that an alternative local exchange company is certified to provide but is also **providing basic local service.**

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, and the incumbent company shall remain subject to regulation under this section after such election.

Public Counsel suggests that prepaid service providers do not offer the full scope of basic local service at a price and under similar terms and conditions that are often offered by incumbent or other CLECs. Prepaid service providers do not offer its services in the same manner or with comparable and substitutable quality as does the incumbent local exchange company. The prepaid offers an "inferior" service in that it has limitations and restrictions on the customer that are not placed on the typical (or standard) local customer of the incumbent. This includes restrictions on the ability to dial 1+ and 0+ calls, restrictions on the ability to reach a presubscribed toll carrier via 1+ dialing parity, toll blocking, and limitations on the ability to make toll calls to prepaid calling cards that are obtained from third party providers. Often the services offered are priced at nearly twice the level of the incumbent's local basic rate; sometimes the price is even greater. The prepaid provider also markets vertical features such as Caller ID, call waiting, and voice mail at prices that are often above that of the incumbent company.

12. Prepaid service providers do not provide service in the exact manner as the traditional competitive local exchange company. Because of the billing differences and other variations in service offerings, the prepaid providers have sought and received waivers of some of the requirements associated with providing basic local service. These waivers relate to billing and notice of suspension.

13. This higher priced service and the limits on the scope of service available by the prepaid provider does not afford the consumer the protection that price cap regulation is designed to provide. Price cap regulation offers the incumbent the ability to

respond to competition; if the competition only offers an inferior product at a higher price and only to those customers the incumbent will not service, the so called "competition" offers very little real choice for the incumbent's customer. Rather it only offers the transient customer or the financially risky customer an option to the total deprivation of local wireline service. "Competition" from prepaid CLECs serve a niche market that the incumbent is unwilling to continue to serve. It does not offer any price discipline for the incumbent's rates.

WHEREFORE, Public Counsel requests that the Commission to open a case to investigate and determine if the presence of an alternative local exchange telecommunications company providing prepaid local service is sufficient to satisfy the requirements of the price cap statute.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

BY: 

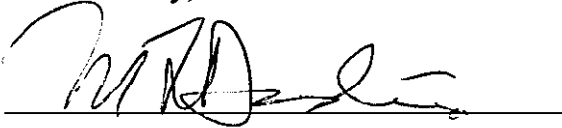
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed or hand delivered this 16th day of May, 2002 to the following counsel:

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

W.R. England, III
Brydon, Swearengen & England
P. O. Box 456
Jefferson City, MO 65102

A handwritten signature in black ink, appearing to read "W.R. England, III", is written over a horizontal line.