

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
May 15, 2001**

CASE NO: TA-2001-251

Office of the Public Counsel
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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 15th
day of May, 2001.

In the Matter of the Application of ExOp of)
Missouri, Inc., for Designation as a Tele-)
communications Company Carrier Eligible for) Case No. TA-2001-251
Federal Universal Service Support Pursuant)
to Section 254 of the Telecommunications Act)
of 1996.)

**ORDER GRANTING DESIGNATION AS AN ELIGIBLE
CARRIER PURSUANT TO SECTION 254 OF
THE TELECOMMUNICATIONS ACT OF 1996**

Procedural History:

On October 17, 2000, ExOp of Missouri, Inc. (ExOp), filed its application for designation as an eligible telecommunications carrier with respect to federal universal service support pursuant to Section 254 of the Telecommunications Act of 1996 (the Act), codified at 47 U.S.C. Section 254, and the implementing regulations of the Federal Communications Commission (F.C.C.). On October 23, the Commission issued its Order Directing Notice, requiring that applications to intervene be filed herein on or before November 13, 2000.

On November 13, 2000, an Application to Intervene was filed by the Small Telephone Company Group (STCG), consisting of BPS Telephone Company, Cass County Telephone Company, Citizens Telephone Company of Higginsville, Missouri, Ellington Telephone Company, Fidelity Telephone Company, Goodman Telephone Company, Inc., Granby Telephone Company,

Grand River Mutual Telephone Corporation, Green Hills Telephone Corporation, Holway Telephone Company, Iamo Telephone Company, KLM Telephone Company, Kingdom Telephone Company, Le-Ru Telephone Company, McDonald County Telephone Company, Miller Telephone Company, New London Telephone Company, Orchard Farm Telephone Company, Peace Valley Telephone Company, Rock Port Telephone Company, Seneca Telephone Company, Spectra Communications Group, LLC, Steelville Telephone Exchange, Inc., and Stoutland Telephone Company. Also on November 13, the Office of the Public Counsel filed its request for a hearing in this case.

On November 22, 2000, ExOp filed its response to STCG's application and Public Counsel's request. ExOp specifically opposed the latter and evidently opposed the former, as well.¹ On November 27, the Staff of the Missouri Public Service Commission filed its response opposing both STCG's application and Public Counsel's request. On November 30, STCG replied in support of its application to intervene. On December 6, the Commission granted intervention to the STCG, set a prehearing conference for December 27, and directed that a joint proposed procedural schedule be filed by January 3, 2001.

¹Although denominated a response to STCG's application to intervene, ExOp failed to ask for any relief with respect to STCG's application.

The prehearing conference was held in this matter on December 27 as scheduled. Thereafter, on January 2, the parties unanimously requested that the requirement that a proposed procedural schedule be filed be suspended until February 7. That request was granted on February 2. The parties renewed their request on February 6 and, on February 8, the Commission reset the due date to March 7. On March 2, the parties filed their proposed procedural schedule.

The parties agreed to submit the case on stipulated facts and the proposed procedural schedule included only dates for the filing of a list of issues, stipulated facts, and briefs. The Commission adopted the parties' proposed procedural schedule on March 6. The Stipulation of Facts was filed on March 7. Initial briefs were filed on March 23 and Reply Briefs on April 6.

Discussion:

As required by the Procedural Schedule, the parties filed a list of issues on March 7, 2001:

1. Has ExOp sufficiently identified and defined the geographic area for which it seeks eligible telecommunications carrier (ETC) status in its Application? What is the company's service area for the purposes of this designation?

2. Must ExOp provide all of the services required by Section 254(c) of the Telecommunications Act of 1996 ("the Act") throughout each exchange in its service area and advertise the availability of those services using media of general distribution throughout each exchange in its service area before the Commission can determine that ExOp is an ETC for purposes of receiving Federal Universal Service

support for all of its certificated area, or can the Commission grant ETC designation to ExOp for all of its certificated area prior to its actual provisioning and advertising of services throughout each exchange in its certificated area?

Findings of Fact:

Also on March 7, 2001, the parties filed a Stipulation of Facts:

1. ExOp of Missouri, Inc. (ExOp), is a "telecommunications company" as that term is defined by Section 386.020(51), RSMo 2000.
2. Pursuant to the Commission's Report and Order and the Order Regarding Motion to Restrict Certificate of Service Authority in Case No. TA-97-193, the Commission granted ExOp a certificate to provide basic local telecommunications service as a competitive local exchange carrier in the exchanges served by incumbent local exchange carriers United Telephone Company of Missouri (Sprint) and GTE Midwest, Inc.²
3. Effective August 1, 2000, Spectra Communications Group (Spectra) purchased 107 of the GTE exchanges, several of which are in ExOp's certificated area.
4. Pursuant to tariffs approved by the Commission, ExOp provides basic local telecommunications service exclusively through the use of its own facilities throughout the Kearney, Missouri, exchange.
5. ExOp has been providing telecommunications services in the Kearney, Missouri, exchange since 1998.
6. ExOp is presently providing telecommunications services only in the Kearney, Missouri, exchange.

²The service area approved for ExOp included 184 exchanges.

7. ExOp advertises the availability of and charges for its telecommunications services in media of general distribution throughout the Kearney, Missouri, exchange.

8. ExOp, through its own facilities, offers the following services throughout the Kearney, Missouri, exchange:

- a. Voice grade access to the public switched network;
- b. Local usage;
- c. Dual tone multi-frequency signaling or its functional equivalent;
- d. Single-party service or its functional equivalent;
- e. Access to emergency services;
- f. Access to operator services;
- g. Access to interexchange service; and
- h. Access to directory assistance.

9. On December 13, 2000, ExOp filed with the Commission a Verification, signed by an officer at ExOp and notarized, which supports the facts in paragraph 8.

10. None of the exchanges for which ExOp is certificated have been designated as areas served by rural telephone companies. However, Spectra has self-certified to the Federal Communications Commission (FCC) that its exchanges should be designated as areas served by a rural telephone company.

11. In this case, ExOp is seeking eligible telecommunications carrier (ETC) status for all of its certificated exchanges in Missouri.

12. ExOp has asserted that, upon designation as an ETC it will, to the extent that it does not already do so, provide toll limitation,

Lifeline, and LinkUp service, and that it will advertise the availability of such services and the charges therefor using media of general distribution. The parties agree that ExOp's assertions are sufficient to show that ExOp should be granted ETC status in the Kearney, Missouri, exchange.

13. ExOp has asserted that it will provide all of the services supported by universal service support mechanisms throughout its service area before seeking universal service support from the universal service fund administrator.

Conclusions of Law:

Section 254 of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified as various sections of Title 47, United States Code (the Act), provides for Universal Service. Universal Service is a principal component of federal telecommunications policy and seeks to ensure access to telecommunications services for all Americans. One aspect of Universal Service is the availability of subsidies from the Universal Service Fund created by the Act. Only carriers designated as eligible carriers pursuant to Section 214(e) of the Act may receive such subsidies.³

Section 214(e) provides that the Commission

Upon request and consistent with the public interest, convenience, and necessity . . . may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State Commission, so long as each

³47 U.S.C. Section 254(e).

additional requesting carrier meets the requirements of paragraph (1).⁴

Section 214(e) (1), in turn, provides:

A common carrier designated as an eligible telecommunications carrier . . . shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefore using media of general distribution.⁵

The stipulated facts show that none of ExOp's certificated exchanges have been designated as areas served by a rural telephone company, although Spectra evidently seeks that designation for some of these exchanges. Therefore, the Commission must grant the requested designation to ExOp to the extent that (1) ExOp meets the requirements set out in 47 U.S.C. Section 214(e) (1) and (2) the requested designation is consistent with the public interest, convenience and necessity.⁶

As a preliminary matter, STCG appears to assert that ExOp's application is fatally defective because the service area for which designation is sought is not sufficiently specified. This argument is without merit. ExOp has requested designation for its entire

⁴47 U.S.C. Section 214(e) (2).

⁵The FCC's implementing regulation at 47 CFR Section 54.201 repeats the language of the Act.

⁶47 U.S.C. Section 214(e) (2).

certificated service area, a well-defined area. Further, STCG does not cite any pleading requirement contained in the Act or its implementing regulations that supports its argument.

ExOp contends that its entire certificated service area is eligible for designation based on its showing of capability in the Kearney exchange and its assertion of willingness. Staff supports ExOp's position. ExOp and Staff rely on a decision of the Federal Communications Commission (FCC), *In the Matter of Federal-State Joint Board on Universal Service, Declaratory Ruling*, Docket No. 96-45, FCC 00-248 (released August 10, 2000) (hereafter the "Declaratory Ruling"), for the proposition that "requiring a prospective new entrant to provide service throughout a service area before receiving ETC status has the effect of prohibiting competitive entry in those areas where universal service support is essential to the provision of affordable telecommunications service and is available to the incumbent LEC." *Declaratory Ruling* at Para. 12. Thus, ExOp and Staff urge that the language of the Act "does not require the actual provision of service prior to designation." *Id.* at Para. 14.

The Public Counsel, on the other hand, argues that designation should be granted only in the Kearney exchange. Public Counsel recognizes the language of the *Declaratory Ruling*, but insists that the statutory requirements cannot be reduced to "a meaningless formality." Public Counsel suggests that designation for all of ExOp's 184 certificated exchanges is inappropriate without a showing of a present intent and ability to serve the entire designated area.

Section 214(e)(1) of the Act requires that a designated carrier both offer and advertise the eligible services throughout the designated service area. The FCC has interpreted this language as not requiring offer and advertisement as a condition of designation. The Commission, like the Public Counsel, concludes that the statutory language is not a meaningless formality. The facts show that ExOp offers and advertises these services only in the Kearney exchange; ExOp has made no showing as to its plans to provide service in additional exchanges. The Act clearly requires that a carrier both offer and advertise the services in question throughout its designated service area *upon designation*. Therefore, ExOp may be designated only for the Kearney exchange, for ExOp has not shown that it will both offer and advertise the services in question in a larger area upon designation.

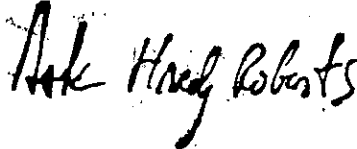
IT IS THEREFORE ORDERED:

1. That ExOp of Missouri, Inc., is designated as an eligible carrier under the provisions of 47 U.S.C. Section 254 and 47 CFR 54.201(d) to receive federal universal service fund support with respect to the Kearney, Missouri, exchange.

2. That this order shall become effective on May 25, 2001.

3. That this case shall be closed on May 26, 2001.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Murray, Simmons,
and Gaw, CC., concur.

Thompson, Deputy Chief Regulatory Law Judge

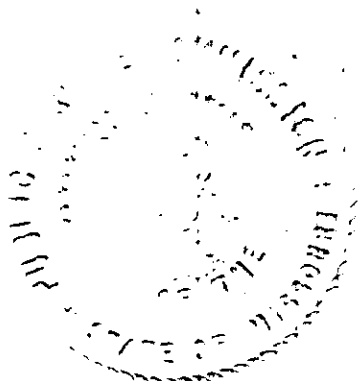
ALJ/Secretary: Thompson, Joyce
Date Circulated 5-11 TA-2001-251
CASE NO.
Lumpke, Chair 82 p 7
Draimer, Vice Chair CM
Murray, Commissioner KS
Simmons, Commissioner 7/1/01 p. 8
Gaw, Commissioner 7/1/01
Agenda Date 5-15
Action taken: 4-045
Must Vote Not Later Than _____

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 15th day of May 2001.



Dale Hardy Roberts
Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge