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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office in
Jefferson City on the 25th day of
March, 1999.

In the Matter of the Petition of Sprint)
Missouri, Inc. Regarding Price Cap)
Regulation Under RSMO. Section 392.245) CASE NO. TO-99-359
(1996).)

ORDER DIRECTING STAFF REPORT AND
ORDER REGARDING EVIDENTIARY HEARING REQUEST

On February 23, 1999, Sprint Missouri, Inc. (Sprint) filed its petition for price cap regulation pursuant to Section 392.245 RSMo.¹ The statutory section which provides for price cap status requires only two elements to be satisfied. These elements are: (1) that an alternative local exchange telecommunications company has been certified to provide basic local telecommunications service, and (2) that it is providing such service in any part of the large incumbent company service area. Upon satisfying these two elements, the Commission shall grant the requested price cap status. To that end, Sprint has filed a verified application attached to which is the Commission's order which authorized ExOp of Missouri, Inc. (ExOp) to provide basic local exchange services within the exchanges of Sprint.

Attached to Sprint's pleading are numerous documents for purpose of demonstrating that ExOp is, in fact, providing service within Sprint's territory. It has been more than thirty days since Sprint filed its petition and no party, but for Public Counsel, has filed a response to that application.

¹ All statutory references herein are to RSMo. 1998 Cum. Supp., unless otherwise indicated.

Pursuant to Section 536.070 and 4 CSR 240-2.130(2), the Commission may take official notice of the orders cited by Sprint on page 2 of their application in footnotes 1, 2, and 3. Ordinarily, the traditional ten-day effective date of a Commission's order provides an opportunity for any party to respond to any such information. However, the Commission will make clear at this time that it is taking official notice of these orders and any party who wishes to do so shall have ten days from the date of this order to rebut the information contained in the orders cited by Sprint having to do with ExOp's certification and authorization to provide service within Sprint's territory.

The only possible question might be whether or not ExOp is, in fact, serving one or more customers within Sprint's area. Although it has not been asserted, it might be argued that even though ExOp is advertising its service, as demonstrated by the attachments to Sprint's petition, ExOp somehow does not serve one single customer.

Therefore, the Commission will direct its Telecommunications Department Staff (Staff) to investigate the facts alleged by Sprint regarding ExOp and file a verified pleading with the results of Staff's investigation. The only issues upon which Staff needs to report would be to confirm: (1) whether or not ExOp continues to have an approved certificate, interconnection agreement, and the appropriate tariffs in place; and (2) whether or not Ex Op has one or more customers.

On March 5 the Office of the Public Counsel (Public Counsel) filed a motion requesting an evidentiary hearing. Although Public Counsel has requested an opportunity to cross-examine the witness(es), it has not made any showing of the matters to be investigated at such a hearing. It would not be in the interest of judicial economy, nor in the public interest, to schedule a hearing without first identifying the issues in dispute, if any.

The Commission will not rule upon Public Counsel's motion until and unless Public Counsel files a pleading in which it contests one or both of the

only two issues which are pertinent to Sprint's application. Public Counsel should file a verified pleading on the dispositive issues if it has an affiant who will contest Sprint's assertions.

On March 12 Sprint filed its Response To The Office Of The Public Counsel's Motion For Hearing. Within that pleading Sprint has identified the proper elements to be considered in a price cap application. Sprint has made several references to the Commission's order in TO-99-294² in which the Commission held, *inter alia*, that "[T]here is no citation within [Public Counsel's] ten-page motion to the only two issues which are pertinent to a price cap determination."

That same order went on to note that:

The only evidence which could possibly prevent GTE from being granted price cap status would be either that there is no competitive telecommunications company certificated to offer service in GTE's service area or that such company, although certificated, was not actually offering the requisite service. Although Staff, Public Counsel, and AT&T have each offered lengthy motions within which they argue for rehearing, none of them has been able to submit any evidence to dispute the fact that GTE has met the statutory requirement by which it shall be granted price cap status. In fact, it is noteworthy that Staff, Public Counsel, and AT&T were each completely silent on this issue in spite of the fact that this is the only issue which is of legal significance in the determination required by Section 392.245.2.

This same standard applies to Sprint's application and to Public Counsel's pending motion. If Public Counsel, or any other party, were to make a showing, by verified pleading, that ExOp is not serving one single customer within Sprint's service area, or that ExOp is not certificated to do so, then the Commission would consider the request for an evidentiary hearing.

Public Counsel, on March 22, filed a pleading entitled Office of the Public Counsel's Reply. This was Public Counsel's reply to Sprint's response to Public Counsel's request for a hearing. In its reply Public

2 In the Matter of the Petition of GTE Midwest Incorporated Regarding Price Cap Regulation Under RSMo Section 392.245. (1996).

Counsel argues that this procedure is bound by the same procedure(s) as ratemaking.

The Commission will await the Staff's report ordered herein to confirm or deny Sprint's assertions regarding their having met the two-prong test set out in section 392.245. While this report is pending, Public Counsel may plead any facts it has to suggest that ExOp is not certificated to provide service or, that although certificated, ExOp does not serve one single customer.

IT IS THEREFORE ORDERED:

1. That the Telecommunications Department Staff shall investigate ExOp of Missouri, Inc. to determine if: (1) ExOp of Missouri, Inc is certificated to provide basic local exchange service within the exchanges of Sprint Missouri, Inc. with the appropriate interconnection agreement and tariffs; and (2) ExOp of Missouri, Inc. has one or more customers currently subscribing to basic local exchange service within the exchanges of Sprint.

2. That the Office of the Public Counsel, and any other party, which desires the Commission to convene an evidentiary hearing on this matter shall file verified pleadings which call into question one or both of the dispositive elements as set out in ordered paragraph 1 herein and in Section 392.245.2.

3. That the verified report to be filed by the Commission's Telecommunications Department Staff and any verified petitions for evidentiary hearing in this matter shall be filed not later than April 9, 1999.

4. That any party which wishes to rebut those matters of which the Commission has taken official notice shall do so not later than April 9, 1999.

5. That this order shall be effective on March 25, 1999.

BY THE COMMISSION

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

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

(S E A L)

Lumpe, Ch., Crumpton,
Schemenauer, and
Drainer, CC., Concur.
Murray, C., Absent.

Roberts, Chief Regulatory Law Judge