

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

In the Matter of the)
Joint Application of NEXTLINK Missouri, Inc.)
and NEXTLINK Long Distance Services, Inc.)
for Approval of the Pro Forma Transfers of) Case No. TM-2000-524
Control of NEXTLINK Missouri, Inc. and)
NEXTLINK Long Distance Services, Inc. from)
NEXTLINK Communications, Inc. to)
NM Acquisition Corp.)

**ORDER GRANTING STAFF'S MOTION TO
DISMISS FOR LACK OF JURISDICTION**

On February 24, 2000, NEXTLINK Missouri, Inc. (NEXTLINK MO), a Washington corporation certificated in Missouri as a facilities-based common carrier and reseller of local and long-distance service, and NEXTLINK Long Distance Services, Inc. (NEXTLINK LD), a Washington corporation certificated in Missouri as a facilities-based common carrier and reseller of long-distance service, (collectively, Applicants), pursuant to Section 392.300, RSMo 1994¹, applied to the Missouri Public Service Commission (Commission) for approval of pro forma transfers of control of Applicants from NEXTLINK Communications, Inc. (NEXTLINK Communications) to NM Acquisition Corp. (NM Acquisition). (All of the corporations mentioned herein, except for Applicants, are referred to as merging corporations.)

¹ All references herein to Sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

Applicants are currently wholly owned by NEXTLINK Communications which in turn is controlled by Eagle River Investments, L.L.C., a Washington limited liability company (Eagle River). On January 9, 2000, NEXTLINK Communications, NM Acquisition, and Eagle River entered into a merger agreement with Concentric Network Corporation (Concentric), a Delaware corporation. Pursuant to the agreement, NEXTLINK Communications and Concentric will each merge into NM Acquisition. By virtue of the mergers, NEXTLINK Communications and Concentric will then each cease to exist and NM Acquisition will be the sole surviving corporation. Ownership and control of Applicants will pass to NM Acquisition, but these transfers of control and ownership will be purely pro forma because Eagle River will control NM Acquisition after the mergers.

Applicants are regulated by the Commission but none of the merging corporations are regulated by the Commission.

On March 10, 2000, the Staff of the Commission (Staff) filed its motion to dismiss the application for lack of jurisdiction. Staff noted that the merging corporations are not regulated by the Commission. Staff stated that only one of the merging corporations, i.e., NEXTLINK Communications, owns two regulated companies, i.e., Applicants. Thus, according to Staff, all that will happen after the merger is a change of ownership of the Applicants from one nonregulated entity, i.e., NEXTLINK Communications, to another nonregulated entity, i.e., NM Acquisition.

The first subsection of the statute under which the Applicants filed, i.e., Section 392.300.1, RSMo, states, in part:

No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.

Staff contended that Section 392.300.1, RSMo, does not apply because Applicants are not selling, assigning, leasing, transferring, consolidating, transferring, merging, encumbering, or otherwise disposing of any part of their duties to the public as is required by the statute. In other words, concluded the Staff, there is no disposition as described in the statute which is occurring which, in turn, is required by the statute before Commission jurisdiction attaches.

Staff argued that the second and last subsection of the statute cited by Applicants, i.e., Section 392.300.2, RSMo, deals only with a situation where a corporation must obtain Commission approval to purchase, acquire, take or hold stock issued by a telecommunications company. This subsection of the statute, Staff stated, does not apply because the Applicants are not incorporated under Missouri law. Staff cited the order dismissing the case entered on March 16, 1999, in Contingent Application of CFL, LLC, case number TM-99-36; and, also, Public Service Commission v. Union Pacific R. Co., 197 S.W. 39, 41 (Mo. Banc 1917).

Section 392.300.2, RSMo, states, in part, that:

...no stock corporation, domestic or foreign, other than a telecommunications company, shall, without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any

telecommunications company organized or existing under or by virtue of the laws of this state....

The Commission also points out that it appears that this subsection does not apply since there is no stock corporation in this case which is acquiring any stock of a telecommunications company. The transfer, as stated above, is only pro forma.

Furthermore, Staff added, the Commission has previously ruled that there is nothing in the statutes that confers jurisdiction to examine a merger of nonregulated parent corporations, even though they may own Missouri-regulated telecommunications carriers, citing the report and order issued on October 8, 1999, In the Matter of the Merger of SBC Communications, Inc. and Ameritech Corporation, case number TM-99-76.

The Staff requested that the Commission enter an order dismissing Applicants' application for lack of jurisdiction over the transaction whereby NM Acquisition acquires the Applicants.

No other party responded to Staff's motion.

Staff did not make a distinction between jurisdiction of the subject matter as opposed to jurisdiction over the parties. However, the Commission finds that it has jurisdiction neither over the parties nor over the subject matter and will grant Staff's motion.

IT IS THEREFORE ORDERED:

1. That this case is dismissed for lack of jurisdiction over the parties and over the subject matter.

2. That this order shall become effective on April 10, 2000.

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)

Bill Hopkins, Senior Regulatory Law Judge,
by delegation of authority pursuant to
4 CSR 240-2.120(1) (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 31st day of March, 2000.

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COMMISSION COUNSEL
PUBLIC SERVICE COMMISSION