

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

CASE NO: TM-2001-669

Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

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

Trina R. LeRiche, Esq.
Sonnenschein Nath & Rosenthal
4520 Main Street, Suite 1100
Kansas City, MO 64111

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
November, 2001.

Joint Application of Claricom Networks,)
Inc., Claricom Holdings, Inc., Staples,)
Inc., Stacom Holdings, LLC, and)
Platinum Equity, LLC, for Approval of)
the Transfer of Stock in Claricom)
Holdings, Inc. to Stacom Holdings, Inc.)

Case No. TM-2001-669

ORDER GRANTING MOTION TO APPROVE TRANSFER OF STOCK

This order grants the application to approve a transfer of stock.

The Companies

Claricom Networks, Inc. is a Delaware-based telecommunications company regulated by the Commission. Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, LLC, and Platinum Equity, LLC, are all Delaware corporations, but are not telecommunications companies, are not regulated by the Commission, and do not do business in the state of Missouri. Claricom Holdings, Inc. owns 100% of the capital stock of Claricom Networks, Inc., and Staples, Inc. owns 100% of the capital stock of Claricom Holdings, Inc. Claricom Holdings, Inc. is selling all of its stock in Claricom Networks, Inc. to Stacom Holdings, LLC. Platinum Equity, LLC, is the parent company of Stacom Holdings, Inc.

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Staff's Pleadings

On July 3, 2001, the Staff of the Missouri Public Service Commission filed its motion to dismiss the applicants' motion to approve the transfer of stock.

On August 30, 2001, the Commission issued an order directing its Staff to identify the specific facts of this case that it relies upon and, in particular, how the status of the regulated telecommunications company is affected by the proposed transaction. The order required that Staff's arguments should show how Staff applies the jurisdictional statute(s) it relies upon and should not present mere recitals or bare conclusions. Because the applicants did not object to the Commission's jurisdiction, the order also required Staff to provide an explanation of the legal harm or the expense, burden, or other detriment if the Commission accepts jurisdiction over the matter presented. Finally, the Commission directed its Staff to file its recommendation regarding the merger in the event the Commission assumes jurisdiction.

On October 1, 2001, Staff filed its response to the Commission's order. Briefly restated, Staff's pleadings contained the following major points:

1. On June 7, 2001, Claricom Networks, Inc., Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, LLC, and Platinum Equity, LLC, filed an application with the Commission to transfer stock.
2. The application states that Claricom Holdings, Inc., Stacom Holdings, LLC, and Platinum Equity, LLC, entered into a purchase and sale agreement for the transfer of stock.

3. The application states that approval of the stock transfer is sought under the provisions of Section 392.300, RSMo 2000,¹ which contains two subsections:

Subsection 1 requires that any telecommunications company regulated by the Commission receive permission from the Commission for any merger or consolidation and says:

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.

Subsection 2 gives the following jurisdictional statement:

Except where stock shall be transferred or held for the purpose of collateral security, 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, except that a corporation now lawfully holding a majority of the capital stock of any telecommunications company may, without the consent of the commission, acquire and hold the remainder of the capital stock of such telecommunications company, or any portion thereof.

4. Section 392.300.1 does not apply to this transaction because Stacom Holdings, Inc. is buying the stock of Claricom Networks, Inc. Stacom Holdings, Inc. is not acquiring "the franchise, facilities or system" of Claricom Networks, Inc. as is required under the statute to create Commission jurisdiction. In addition, Stacom Holdings, Inc. is not "merging or

¹ References to Sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of the year 2000.

consolidating" Claricom Network, Inc.'s "franchise, line or system with any other corporation, person or public utility" as required by the jurisdictional language of the statute.

5. In the *Union Pacific* case,² with respect to Section 392.300.2, the Commission sought to enjoin Union Pacific, a Utah corporation, from issuing bonds without first applying to it for authority. In ruling against the Commission, the Court explained that the words "organized and existing or hereafter incorporated, under or by virtue of the laws of the state of Missouri" in the Public Service Commission Act, applied to domestic corporations and not to foreign corporations.

6. Section 392.300.2 does not apply to this transaction because Claricom Networks, Inc., Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, Inc., and Platinum Equity, LLC, are not "organized or existing under or by virtue of the laws of this state." All five companies are organized and existing under the laws of Delaware. Accordingly, this sale of stock does not involve the acquisition of ownership of companies organized and existing under the laws of Missouri.

7. The Commission issued an order dismissing a stock transfer application for lack of jurisdiction under similar facts on October 19, 1999, in case number TM-2000-146.

Thus, the Staff requested that the Commission order that Section 392.300 does not grant the Commission jurisdiction over this transaction, and dismiss the application.

² *Public Service Commission v. Union Pacific Railroad Company*, 197 S.W. 39 (Mo. banc 1917).

Public Counsel's Suggestions in Support of Commission Jurisdiction

On October 10, 2001, the Office of the Public Counsel filed its suggestions in support of the Commission taking jurisdiction in this case. Briefly restated, the pleading contained the following major points:

1. Section 386.250 gives the Commission jurisdiction over all telecommunications facilities, telecommunication services, and telecommunications companies.
2. Section 386.320.1 gives the Commission general supervision over all telephone corporations and telephone lines and the manner in which their lines and property are owned, leased, controlled, or operated.
3. Holding companies that acquire control of telecommunications companies that do business in Missouri under a certificate issued by the Commission should not be able to structure the corporate form of ownership in such a way as to defeat the Commission's jurisdiction.
4. Stock issuance is not the issue in this transaction. It is a transfer of stock ownership which assigns the control and operation of a telecommunications company operating in Missouri to another corporate entity. Commission oversight is designed to provide scrutiny over telecommunications companies for the purpose of providing reasonable rates, security of the availability, and the quality of services. The transfer of ownership and control of a telecommunications company operating in Missouri presents a potential for abuses that could be adverse to the public interest.

Findings of Fact

The Commission finds that Claricom Networks, Inc. is a Delaware-based telecommunications company doing business in the state of Missouri, regulated by the Commission, and the stock in this proposed transaction is 100% of the shares issued by that company.

The Commission finds that Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, LLC, and Platinum Equity, LLC, are all Delaware corporations, but are not telecommunications companies, are not regulated by the Commission, and do not do business in the state of Missouri.

Conclusions of Law

The *Deffenderfer* case held that the requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.³ Since no one has requested a hearing, the Commission may grant the relief requested based on the application.

The Commission concludes that because it is in the public interest to approve this transfer and because applicants requested the Commission's approval, it is not necessary to fully resolve the issue of jurisdiction raised by Staff.

The Commission's authority to review the sale of stock assesses whether the sale or transfer is in the best interest of the public in Missouri. The Commission's authority is granted so that the Commission may intercede when the public interest is in peril. Such peril can only exist if a corporation is actually doing business in Missouri. It is possible that

³ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

the statute could be interpreted as Staff argues if one ignores the public policy under which the Commission acts. As such, it may be appropriate for the Missouri General Assembly to examine a clarification of Section 392.300.

Regardless, the applicants initially requested the Commission to approve the transaction and the Commission concludes that it is not detrimental to the public interest to do so.

Decision

Therefore, the Commission will approve the proposed transaction, which renders Staff's motion to dismiss moot.

Additional Question

There is an additional question about Claricom Network, Inc.'s proposed change of its legal structure. Paragraph 5 of the joint application for approval of transfer of stock states, in part: "Pursuant to the [Purchase and Sale] Agreement, Claricom will be converted to a limited liability company and all of the outstanding stock in Claricom will be transferred from Seller to Buyer."

The Commission will require its Staff to file a report stating whether Claricom Networks, Inc.'s proposed conversion to a limited liability company triggers any required action by the Commission and, if so, what that action is.

IT IS THEREFORE ORDERED:

1. That the application to transfer stock filed on June 7, 2001, by Claricom Networks, Inc., Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, LLC, and Platinum Equity, LLC, is approved.

2. That the Staff of the Missouri Public Service Commission must file a report concerning Claricom Networks, Inc.'s proposed conversion to a limited liability company as set forth above, no later than November 26, 2001.

3. That Claricom Networks, Inc., Claricom Holdings, Inc., Staples, Inc., Stacom Holdings, LLC, and Platinum Equity, LLC, must report to the Missouri Public Service Commission that they have accomplished the transaction approved in this order no later than ten days after it has been accomplished.

4. That this order will become effective on November 25, 2001

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe and Gaw, CC., concur
Murray, C., dissents with Dissenting Opinion attached
Simmons, Ch., absent

Hopkins, Senior Regulatory Law Judge

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

Joint Application of Claricom Networks,)
Inc., Claricom Holdings, Inc., Staples,)
Inc., Stacom Holdings, LLC, and)
Platinum Equity, LLC, for Approval of)
The Transfer of Stock in Claricom)
Holdings, Inc. to Stacom Holdings, Inc.)

Case No. TM-2001-669

DISSENTING OPINION OF COMMISSIONER CONNIE MURRAY

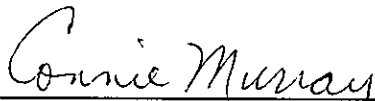
While I agree that the Missouri General Assembly may need to examine Section 392.300 RSMo for possible clarification, I cannot agree that Staff's interpretation of the Commission's jurisdiction is incorrect. The Staff has merely provided the Commission with the interpretation of the meaning of Section 392.300.2 RSMo that was found by the court in the Union Pacific Railroad Company case in 1917.¹ That interpretation has been consistently followed by this Commission in determining the issue of jurisdiction.

It is appropriate for the Commission to dismiss this matter for lack of jurisdiction and seek a statutory change that does not prevent Commission oversight of corporations doing business in the State, merely because they are incorporated elsewhere.

¹ Public Service Commission v Union Pacific Railroad Company, 197 S.W. 39 (Mo. banc 1917).

Therefore, I respectfully dissent from this Order.

Respectfully submitted,


Connie Murray, Commissioner

Dated at Jefferson City, Missouri,
on this 15th day of November, 2001.

FYI: To Be Issued By Delegation

ALJ/Secretary: Hopkins/Boyer

11-8 Date Circulated 11-13 Return by 3 PM
10 AM

TM-2001-669 ACENDA
CASE NO. 11-453-01

absent
Simmons, Chair

can not dissent to attach
Murray, Commissioner

88 p7
Lumpe, Commissioner

776
Gaw, Commissioner

2-1 AA
Commissioner

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 Nov. 2001.

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

