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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 18th
day of November, 1998.

In the Matter of the Application of ExOp of)
Missouri, Inc. for a Certificate of Service) Case No. TA-97-193
Authority to Provide Local Exchange) Tariff File No. 9900273
Telecommunications Services.)

ORDER REGARDING MOTION TO SUSPEND TARIFF AND
SETTING PREHEARING CONFERENCE

The Commission granted to ExOp of Missouri, Inc. (ExOp) a certificate of service authority to provide basic local telecommunications services in Missouri by Report and Order issued on November 25, 1997. The Order waived the filing of a 45-day tariff as required by 4 CSR 240-2.060(4)(H) until 30 days after ExOp entered into a Commission-approved interconnection agreement that will enable it to provide basic local exchange services. The Order provided that ExOp's certificate of service authority would become effective upon the effective date of its approved tariffs.

The Commission approved an interconnection agreement between ExOp and Sprint-Missouri (Sprint) on June 3, 1998. ExOp filed tariff sheets on October 5, with an effective date of November 19, reflecting the rates, rules, and regulations it will use and the services it will offer. ExOp filed substitute tariff sheets on November 3 and 6 in order to make clarifications and bring its tariff into compliance with Commission rules and regulations.

The Commission's Staff reviewed the tariff sheets and filed a memorandum on November 9, recommending that the Commission approve them as amended by the substitute sheets, effective on November 19.

On October 30, Southwestern Bell Telephone Company (SWBT) filed a motion to suspend ExOp's proposed tariff. SWBT argued that ExOp's proposed tariff violated the Commission's order granting ExOp certification because the tariff's access rate exceeds the access rate of SWBT, which is the largest Incumbent Local Exchange Carrier (ILEC) in an area in which ExOp is certificated to provide service. On November 6, ExOp filed a response to SWBT's motion to suspend in which ExOp argued that, in this tariff, ExOp was not seeking authority to provide service in any area served by SWBT. Instead, ExOp is seeking to compete in two exchanges in which Sprint is the ILEC. ExOp said that its access rates are lower than those of Sprint and that therefore, ExOp is in compliance with the terms of the order granting it certification. On November 9, Staff of the Missouri Public Service Commission (Staff) filed a response to SWBT's motion to suspend in which Staff agreed with the position espoused by ExOp. On November 17, SWBT filed a reply to ExOp's response in which it clarified that the Stipulation requires access rates no greater than the lowest approved corresponding access rates in effect at the date of certification for the large incumbent LEC(s), rather than for the largest incumbent LEC(s), as SWBT's original motion to suspend had stated. SWBT stated that its objection to ExOp's Access Tariff is based upon the fact that SWBT is a large LEC within whose service area ExOp is certificated to provide service. SWBT further stated that ExOp's tariff would result in rate deaveraging as prohibited by 392.200.4 RSMo.

The Commission has reviewed the Report and Order by which ExOp was granted a certificate of authority to provide basic local telecommunications services. The Commission has also reviewed the Stipulation and Agreement that was adopted as part of that order. That Stipulation and Agreement provides that:

ExOp's originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect at the date of certification for the large incumbent LEC(s) within whose service area(s) Applicant seeks authority to provide service.

SWBT would interpret that provision as requiring ExOp's access rates to not exceed those of SWBT, which is a large LEC within whose service area ExOp is certificated to provide service. ExOp and Staff interpret the provision as requiring only that ExOp's access rates not exceed the access rates charged by the large LEC in the exchange within which it is proposing to offer services. In this case, ExOp's tariff proposes to offer services only in two exchanges served by Sprint. ExOp's access rates are lower than those charged by Sprint in those exchanges.

The Commission has reviewed the tariff sheets, Staff's recommendation, SWBT's motion to suspend, ExOp's and Staff's responses to that motion and SWBT's reply to ExOp's response and finds that significant questions have been raised regarding that tariff such that the tariff should be suspended for further consideration. Therefore, the tariff will be suspended for a period of 120 days.

The Commission has determined that proper parties should be given notice and an opportunity to intervene in this matter. The Records

Department of the Commission shall send a copy of this order to all Incumbent Local Exchange Companies and all Competitive Local Exchange Companies in the State of Missouri.

Anyone wishing to intervene must submit an application to intervene to the Secretary of the Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102. Copies of the application to intervene should be sent to:

Peter Mirakian III
Spencer, Fane, Britt & Browne
Attorney for ExOp of Missouri, Inc.
1400 Commerce Bank Building
1000 Walnut Street, Suite 1400
Kansas City, Missouri 64106-2140

and to all other attorneys listed on the attached exhibit "A".

In order to expedite the consideration of these issues, a prehearing conference will be held on December 9, 1998 at the office of the Public Service Commission.

IT IS THEREFORE ORDERED:

1. That Southwestern Bell Telephone Company's Motion to Suspend Access Tariff is granted.

2. That the tariff filed by ExOp Communications, Inc. on October 5, 1998 (tariff file number 9900273) is suspended for a period of 120 days beyond November 19, 1998 to March 19, 1999.

3. That the Records Department and Information Office of the Commission shall provide notice as described by the Commission.

4. That any proper person or entity desiring to intervene in Case No. TA-97-193 shall file its application to intervene on or before December 2, 1998.

5. That a copy of any request to intervene shall be served upon the attorneys listed previously.

6. That an early prehearing conference shall be held on December 9, 1998, beginning at 10:00 a.m. The prehearing conference shall be held in the Commission's hearing room on the fifth floor of the Harry S Truman State Office Building, 301 West High Street, Jefferson City, Missouri. Anyone wishing to attend who has special needs as addressed by the Americans with Disabilities Act should contact the Missouri Public Service Commission at least ten (10) days before the prehearing conference at: Consumer Services Hotline - 1-800-392-4211 or TDD Hotline - 1-800-829-7541.

7. That this order shall become effective on November 18, 1998.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Crumpton, Murray and Drainer, CC., concur.
Lumpe, Ch. and Schemenauer, C., absent.

Woodruff, Regulatory Law Judge

CASE NO: TA-97-193

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Attachment A