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March 10, 2000

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DALE HARDY ROBERTS  
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE  
General Counsel

FILED<sup>3</sup>

MAR 10 2000

Missouri Public  
Service Commission

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**RE: Case No. TM-2000-524**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF MOTION TO DISMISS FOR LACK OF JURISDICTION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Robert V. Franson  
Assistant General Counsel  
(573) 751-6651  
(573) 751-9285 (Fax)

RF/dkf  
Enclosure  
cc: Counsel of Record

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

**FILED<sup>3</sup>**  
MAR 10 2000

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 of )  
Control of NEXTLINK Missouri, Inc. and NEXTLINK )  
Long Distance Services, Inc. from NEXTLINK )  
Communications, Inc. to NM Acquisition Corp. )

Missouri Public  
Service Commission

**Case No. TM-2000-524**

**STAFF MOTION TO DISMISS FOR LACK OF JURISDICTION**

**COMES NOW** the Staff of the Missouri Public Service Commission (Staff) and for its recommendation states:

1. On February 24, 2000, NEXTLINK Missouri, (NEXTLINK, MO) and NEXTLINK Long Distance Services ("NEXTLINK LD") (collectively "Applicants") filed their Joint Application and Petition for approval of transfer of control of NEXTLINK MO and NEXTLINK LD from NEXTLINK Communications, Inc. to NM Acquisition Corp.

2. Applicants first state that NEXTLINK MO is a Washington corporation duly organized and existing under the law of Washington and qualified to transact business in the State of Missouri. NEXTLINK MO operates in Missouri as a facilities-based common carrier and reseller of local and long-distance service pursuant to its January 22, 1999 and January 29, 1999 Certificates of Service Authority issued by the Missouri Public Service Commission (Commission). NEXTLINK MO is a nondominant provider in Missouri.

3. NEXTLINK LD is a Washington corporation duly organized and existing under the laws of Washington and qualified to transact business in the State of Missouri. NEXTLINK LD

operates in Missouri as a facilities-based common carrier and reseller of long-distance service pursuant to its December 17, 1999 Certificate of Service Authority issued by the Commission. NEXTLINK LD is also a nondominant provider in Missouri.

4. NEXTLINK Communications is a Delaware corporation.
5. NM Acquisition Corporation is a newly-formed Delaware corporation.
6. The ownership of these corporations can briefly be described as follows:

NEXTLINK MO and NEXTLINK LD are currently 100 percent owned by NEXTLINK Communications, Inc. NEXTLINK Communications, Inc. is controlled by Eagle River Investments, L.L.C., Eagle River Investments, L.L.C. holds 28 percent of the stock of NETLINK Communications, Inc. and 57 percent of the voting power of NEXTLINK Communications, Inc.

7. According to the Application, NEXTLink Communications, Inc., NM Acquisition Corp., and Eagle River Investments, L.L.C. entered into an Agreement and Plan of Merger and Share Exchange Agreement (the "Agreements") with Concentric Network Corporation (Concentric"), an Internet service provider incorporated in Delaware. The agreement calls for NEXTLINK Communications, Inc. and Concentric to both merge into a newly created Delaware corporation, NW Acquisition Corp. By these agreements, NEXTLINK Communications and Concentric will both cease to exist and NM Acquisition Corp. will be the sole surviving corporation. Control of NETLINK MO and NEXTLINK LD will pass to NM Acquisition Corp. These transfers of control and ownership will be purely pro forma in nature because Eagle River Investments, L.L.C. will control NM Acquisition Corp after all mergers are completed.

8. The Application spells out in considerable detail all of the preconditions, which must be met, and sets out specific provisions about what will happen if the proposed merger is not consummated.

9. NEXTLINK Communications, Concentric and NM Acquisitions Communications are not regulated in Missouri.

10. The key point of analysis in this matter involves the merger between NEXTLINK Communications, Inc., and Concentric with NM Acquisition Corp. By virtue of these mergers NM Acquisition Corp will be the sole surviving corporation. Ownership of NEXTLINK Mo and NEXTLINK LD will pass to NM Acquisition Corp. When the proposed merger is completed, NM Acquisition Corp. survives, and emerges but is still effectively under the control of Eagle River Investments, L.L.C. (After all of the mergers, NM Acquisition Corp. will change its name to NEXTLINK Communications, Inc. and becomes the "ultimate" corporate parent of NEXTLINK MO and NEXTLINK LD.) All of this aside, the essence of the transaction is that NM Acquisition Corp. acquires NEXTLINK MO and NEXTLINK LD through a merger that merely changes the corporate parent of NEXTLINK MO and NEXTLINK LD from NEXTLINK Communications, Inc. to NM Acquisition, which will ultimately change its name to NEXTLINK Communications, Inc. with no change in NEXTLINK MO and NEXTLINK LD, the regulated Missouri companies.

11. Here, there is a merger that involves three non-regulated corporations, one of which owns two regulated utility companies. All that really happens after the merger is a change in "parental" ownership of the regulated entity from one non-regulated entity to another non-regulated corporate entity.

12. Since the Application in this case was brought under the theory that Section 392.300 RSMo. 1994 might apply, it would be appropriate to briefly review the language of this statute. Staff would respectfully contend that Section 392.300(1) RSMo.1994 does not apply to this case because NEXTLINK MO and NEXTLINK LD, the two regulated telecommunications

companies, are not selling, assigning, leasing, transferring, consolidating, transferring, merging, encumbering or otherwise disposing of any part of their "franchise, works or system, necessary or useful in the performance of its duties to the public" as is required by the statute before Commission jurisdiction attaches. No transfer or disposition as described in this statute is occurring.

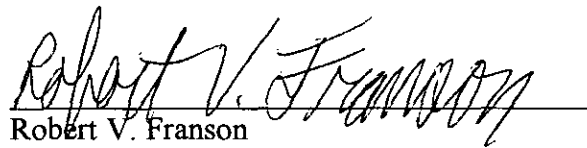
13. Section 392.300.2 RSMo deals with corporations must get Commission approval to purchase, acquire, take or hold stock issued by a telecommunications company. Section 392.300.2 RSMO does not apply because the two regulated companies are not regulated incorporated under Missouri law. Contingent Application of CFL, L.L.C., TM-99-336, Order Dismissing Case, issued 3-16-99. See also Public Service Commission v. Union Pacific R. Co., 197 S.W. 39, 41 (Mo. Banc 1917).

14. The Commission has previously ruled that there is nothing in the statutes that confers jurisdiction to examine a merger of two non-regulated parent corporations even though they may own Missouri-regulated telecommunications companies. In the Matter of the Merger of SBC Communications, Inc. and Ameritech Corporation, No. TM-99-76, Report and Order issued 10-8-99, at p.6.

**WHEREFORE**, for all the above reasons, the Staff respectfully requests that the Commission enter an Order dismissing the Application in this case for lack of jurisdiction over the transaction whereby NM Acquisition Corp. acquires NEXTLINK MO and NEXTLINK LD.

Respectfully submitted,

DANA K. JOYCE  
General Counsel

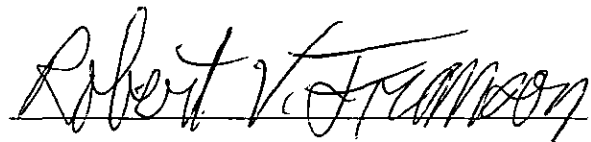


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**Certificate of Service**

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 10th day of March, 2000.



**Service List for  
Case No. TM-2000-524  
March 10, 2000**

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