



Commissioners

SHEILA LUMPE
Chair

M. DIANNE DRAINER
Vice Chair

CONNIE MURRAY

ROBERT G. SCHEMENAUER

KELVIN L. SIMMONS

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.state.mo.us>

April 6, 2001

BRIAN D. KINKADE
Executive Director

GORDON L. PERSINGER
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLLIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

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

FILED³

APR 06 2001

Missouri Public
Service Commission

RE: Case No. TA-2001-251

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **REPLY BRIEF OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION**.

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,

Marc D. Poston
Senior Counsel
(573) 751-8701
(573) 751-9285 (Fax)

MP/lb
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³
APR 06 2001
Missouri Public
Service Commission

In the Matter of the Application of ExOp)
of Missouri, Inc., for Designation as a)
Telecommunications Carrier Eligible for)
Federal Universal Service Support)
Pursuant to Section 254 of the)
Telecommunications Act of 1996.)

Case No. TA-2001-251

REPLY BRIEF OF THE STAFF OF THE
MISSOURI PUBLIC SERVICE COMMISSION

The Staff of the Missouri Public Service Commission (Staff) submits this Reply Brief in response to the initial briefs filed by the Small Telephone Company Group (STCG) and ExOp of Missouri, Inc. (ExOp). The Staff urges the Commission to designate ExOp an eligible telecommunications carrier (ETC). Since the legal support for this designation is clearly established in both the initial brief of the Staff and the initial brief of ExOp, the Staff's reply brief is indeed brief. The policy arguments in the Staff's and ExOp's initial briefs also provide the Commission with the support needed for a Commission finding that the ETC designation requested by ExOp will promote competition throughout ExOp's certificated service area. If the Commission adopts the position advanced by STCG, competition could be limited throughout Missouri since this case will likely stand as precedent for all future ETC applications.

I. ExOp Sufficiently Identified the Service Area for Which it Seeks ETC Designation.

STCG's first attack on ExOp's application argues that ExOp has not sufficiently identified and defined the geographic area for which it seeks ETC status. STCG argues that the Federal Communications Commission (FCC) stated "that state commissions should not designate

service areas that are unreasonably large, because an unreasonably large service area could greatly increase the scale of operations required of new entrants.”¹ The STCG argues that this statement *implies* that an applicant must first provide the supported services throughout the entire designated service area. This weak implication is unnecessary to determine the FCC’s position on this issue. The FCC addressed the issue directly in its Declaratory Ruling when it decided that carriers are not required to serve an area before receiving ETC designation for that area.² The FCC’s opinion clearly denounces the contrary implication argued by STCG. The statement relied upon by the STCG is merely the FCC informing the States of the potentially anti-competitive result of requiring a carrier to serve an area larger than that carriers’ current capabilities. The same anti-competitive results would be realized if the Commission required ExOp to reapply for ETC designation for each exchange.

The STCG cites to the FCC’s Cellco Partnership *Order* to support STCG’s contention that ExOp cannot be designated an ETC for its certificated area because it does not provide and advertise the required services throughout its certificated area.³ This argument is misleading. Unlike ExOp, Cellco provided the required services throughout the State of Delaware before it applied to the FCC for ETC designation throughout the state. The FCC’s acknowledgement of this should not be construed to imply that the FCC would have denied the application had Cellco only been serving one exchange. The FCC did not address that situation in the Cellco *Order*. The FCC did, however, address that situation in its Declaratory Ruling and made findings contrary to STCG’s assertion. Again, the Commission has statements from the FCC that directly

¹ Initial Brief of STCG, pages 4-5.

² *In the Matter of Federal-State Joint Board on Universal Service*, Declaratory Ruling, CC Docket No. 96-45, August 10, 2000, at paragraph 14.

³ *In the Matter of Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*, Memorandum Opinion and Order, CC Docket No. 96-45, December 22, 2000.

address this issue and the Commission does not need to rely upon implications to render its decision.

II. ExOp is not required to serve its entire certificated area before receiving ETC designation for the entire certificated area.

The Staff refers the Commission back to the arguments made in its Initial Brief on this issue and will not repeat those arguments here. There is one argument that was raised by STCG that the Staff will briefly address. In its Initial Brief, the STCG claims that ExOp is required to show that the ETC designation is in the public interest for Spectra's exchanges since Spectra self-certificated itself (after ExOp filed this ETC application) with the FCC as a rural telephone company. The Staff agrees with ExOp for the reasons argued on pages 16-18 of ExOp's Initial Brief that the public interest would be served by designating ExOp an ETC in the Spectra exchanges and in all of the exchanges in its certificated area.

III. Conclusion

The Staff asks the Commission to consider the STCG's stake in the outcome of this case to help explain the arguments advocated by STCG. If ExOp is designated an ETC throughout its certificated area, new competition will likely penetrate the exchanges served by STCG. If the Commission follows STCG's position and concludes that ExOp must reapply for ETC designation each time ExOp expands into a new exchange, competition may be delayed or thwarted in STCG's exchanges. The regulatory process should not be a telecommunications carriers' device used to prevent competition. The Staff respectfully requests that the Commission not allow the outcome of this case to set a standard which forces carriers to second-guess whether to offer telecommunication services in Missouri.

Respectfully submitted,

DANA K. JOYCE
General Counsel



Marc Poston
Senior Counsel
Missouri Bar No. 45722

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8701 (Telephone)
(573) 751-9285 (Fax)
E-mail: mposton@mail.state.mo.us

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 6th day of April 2001.



Service List for
Case No. TA-2001-251
Verified: April 6, 2001 (lb)

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

Kristine Becker
Spencer Fane Britt & Browne LLP
1000 Walnut Street, Suite 1400
Kansas City, MO 64106-2140

W. R. England, III/Sondra B. Morgan
Brydon, Swearngen & England P.C.
P. O. Box 456
Jefferson City, MO 65102