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January 7, 2005

FILED⁴

JAN 11 2005

Mr. Dale Hardy Roberts
Missouri Public Service Commission
200 Maditon Street
Jefferson City, MO 65102

Missouri Public
Service Commission

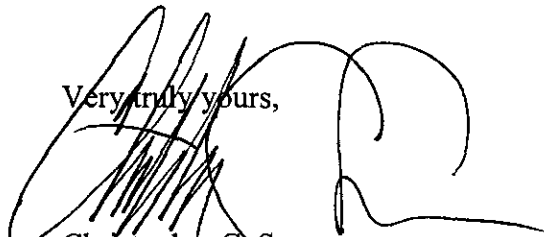
**Re: In the Matter of the Investigation into the Services Provided by Universal
Telecom, Inc. and Missouri State Discount Telephone
Case No. TO-2005-0128**

Dear Mr. Roberts:

Enclosed please find for filing an original and eight (8) photocopies of Universal Telecom, Inc.'s Response to the Recommendation Filed by the Staff of the Commission Dated November 10, 2004. I have also included two (2) additional photocopies. Please file stamp these two additional copies and return them to me in the self-addressed, postage-prepaid envelope enclosed.

If you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,



Christopher C. Swenson

CCS:egs
Enclosures

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JAN 11 2005

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Investigation into the)
Services Provided by Universal Telecom,)
Inc., and Missouri State Discount)
Telephone)

Missouri Public
Service Commission

Case No.: TO-2005-0128

**UNIVERSAL TELECOM INC.'S RESPONSE TO THE RECOMMENDATION
FILED BY THE STAFF OF THE COMMISSION DATED NOVEMBER 10, 2004**

COMES NOW Universal Telecom, Incorporated ("*Universal*"), by and through its undersigned counsel, and respectfully submits its Response to the Staff Report and Recommendation dated November 10, 2004 ("*Recommendation*")¹ prepared by the Staff of the Missouri Public Service Commission ("*Staff*"), as required to do by the Order of the Missouri Public Service Commission ("*Commission*") dated December 8, 2004.

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 24, 2000, Universal applied to the Commission for a certificate of service authority to provide prepaid basic local telecommunications services in Missouri under §§ 392.420 - .440 and §§ 392.410 and .450. Universal was granted a certificate of service authority to provide basic local exchange telecommunication services in Missouri on October 11, 2000. See Order Approving Tariff Case No. TA-2000-598, Tariff No. 200100410. Effective March 21, 2002, the Commission granted Universal a certificate of service authority to provide basic local exchange telecommunications service in certain exchanges.² As part of

¹ The Recommendation also included the Memorandum from William Voight dated November 9, 2004 that was attached to the Recommendation as Appendix A.

² Universal's initial certificate, effective October 21, 2000, did not include serving small exchanges.

its Order, the Commission found that Universal will provide "basic local exchange service," and "basic local telecommunications services" as it had so indicated in its submissions to the Staff and Commission outlining the specific services that it would be providing.

In Case No. IO-2002-1083, the Commission considered and ultimately denied Alltel Missouri, Inc.'s ("*Alltel*") election to become price cap regulated. This decision was based, in part, on the Commission's determination that Universal (and Missouri State Discount Telephone) failed to provide all of the services which constitute the Commission's standards for providing basic local exchange telecommunications service. As a result of this finding, the Recommendation was submitted and the Order Directing Response filed.

In its Recommendation, the Staff stated unequivocally that it recommends that Universal be permitted to continue offering prepaid service throughout its service area in Missouri. Towards that end, the Staff proposed that the Commission initiate proceedings to alter the current certificate held by Universal, among other resellers, to change the designation of those carriers from providers of basic local exchange telecommunications service to providers of local exchange telecommunications service. The Staff bases its Recommendation on its position that Universal is not compliant with statutory and administrative requirements, specifically Commission Rule 4 CSR 240-32.100 (the "Modernization Rule"), establishing the elements for providing basic local telecommunications service. Notwithstanding, the Staff's alternative recommendation was to allow Universal to continue to operate under its current Certificate of Authority and Tariff and provide basic local telecommunications service.

While Universal agrees with the Staff that Universal should be permitted to continue providing prepaid service throughout its service area in Missouri, Universal submits that the Commission should not adopt the Staff's interpretation of the requirements for providing basic local telecommunications service because it does not comport with the statutory definition. Under the only permissible reading of the statute, Universal is providing the services required and, therefore, should be allowed to continue to offer services under its current certificate. Universal therefore requests that these proceedings be dismissed and that it be permitted to continue to offer the services it has always offered under its current certificate. Alternatively, Universal requests that its certificate be altered in order to provide local exchange telecommunications service or to solely provide basic local telecommunications service in large exchanges.

I. THE PLAIN READING OF THE STATUTE DEMONSTRATES THAT UNIVERSAL IS IN COMPLIANCE WITH THE STATUTORY REQUIREMENTS AND THEREFORE THE CERTIFICATE OF AUTHORITY SHOULD NOT BE AMENDED

Universal firmly believes that it has been, and currently is providing "Basic Local Telecommunication Service," as defined by Missouri statute. *See* R.S.Mo. § 386.020(4) (2004). For this reason, Universal does not believe that its certificate should be modified to amend the services it provides.

The statute is very clear as to what it requires:

"Basic local telecommunications service", two-way switched voice service within a local calling scope as determined by the commission comprised of any of the following services and their recurring and nonrecurring charges:

- (a) Multiparty, single line, including installation, touchtone dialing, and any applicable mileage or zone charges;
- (b) Assistance programs for installation of, or access to, basic local telecommunications services for qualifying economically

disadvantaged or disabled customers or both, including, but not limited to, lifeline services and link-up Missouri services for low-income customers or dual-party relay service for the hearing impaired and speech impaired;

(c) Access to local emergency services including, but not limited to, 911 service established by local authorities;

(d) Access to basic local operator services;

(e) Access to basic local directory assistance;

(f) Standard intercept service;

(g) Equal access to interexchange carriers consistent with rules and regulations of the Federal Communications Commission;

(h) One standard white pages directory listing.

Basic local telecommunications service does not include optional toll free calling outside a local calling scope but within a community of interest, available for an additional monthly fee or the offering or provision of basic local telecommunications service at private shared-tenant service locations;

R.S.Mo. § 386.020 (4) (2004) (emphasis added). As the statute provides, in order for a carrier to qualify as a “Basic Local Telecommunication Service” provider, it must provide “*any of the following services.*” *Id.* (emphasis added). Therefore, if a carrier provides one or all of the services listed in the statute, it qualifies as a basic local telecommunication service provider. The statute is not a comprehensive and exhaustive list of what services must be provided and nowhere requires that a provider offer *all* of the services listed in the statute to its customers in order to qualify as a basic local telecommunications service provider.

Despite this clearly unambiguous statute, the Staff has interpreted that all of the enumerated services be provided and required. The Staff has done this by reading two unrelated regulations promulgated by the Commission, the Modernization Rule, and 4 CSR 240-31.010 (the “*Essential Services Rule*”) into the definition of Basic Local Telecommunication Service; however, these regulations do not provide any basis for the Commission or Staff to alter the statutory definition prescribed by the legislature. Because

Universal does not provide all of the services listed in the Modernization and Essential Services Rules, the Staff equates this to not being a basic local telecommunication service provider, as that term is defined in the statute.³ This is despite the fact that Universal does comply with the terms of the statute, by providing *any* of the services listed in the statute. In fact, Universal provides *most* of the services listed in the statute, thus easily qualifying it as a basic local telecommunication service provider. This is a fact that the Staff and the Commission have recognized. In fact, the Staff concedes that Universal passed the statutory criteria for obtaining a certificate to provide *basic local exchange telecommunications service*. Nonetheless, because Universal does not provide *all* of the services listed in the statute, the Staff states that Universal cannot qualify for basic local telecommunications service status. This requirement is not derived from the statute. Further, nothing within the statute requires Universal to comply with the Modernization and Essential Services Rules in order to qualify as a basic local telecommunications service provider under R.S. Mo. § 386.020.

The Commission (with the concurrence of the Staff) addressed this issue once before when it processed Universal's application, certificate, and tariff, and determined that Universal was in compliance with the requirements of the basic local telecommunication service statute.⁴ In accordance with the Staff's recommendation, the Commission approved

³ Universal acknowledges that the Staff recommended, in the alternative, that Universal be permitted to maintain its certificate of operating authority to provide basic local exchange telephone service "without providing all of the services necessary to comply with minimum standards established for providing basic local telephone service."

⁴ Universal further notes and refers to the Memorandum indicating that it filed two (2) separate certificates, one for normal exchanges and one for small exchanges. Universal submits that the argument asserted by the Staff in its Recommendation and Memorandum applies, if at all, only to the small exchanges. Accordingly, if the Commission ultimately agrees with the Staff's interpretation,

the tariff of Universal as a basic local telecommunication service provider, with full knowledge that Universal did not provide all of the services listed in the statute. Universal specifically identified the services that it would be providing and has consistently been providing those services since being granted authority in Missouri. Neither the Staff nor the Commission took issue with Universal not providing certain services, as it is a prepaid reseller. This decision was consistent with the statute, and there is no reason to re-visit it now.

Despite the clear language of the statute, and the prior precedent of the Staff and Commission, the Staff is now recommending that two unrelated regulations that serve important, yet different purposes from the basic local telecommunication service statute be engrafted onto that statute to contradict its plain words. The statute is unambiguous and not subject to interpretation in that all that is required to be a "Basic Local Telecommunication Service" provider, is that the provider offer *any* of the services listed in the statute. Nowhere in the statute, the Rules promulgated by this Commission, or the precedent of the Staff or Commission, is there authority to now require Universal to provide *all* of these services in order to retain its classification. In fact, the alternate Staff Recommendation was to permit "Universal to continue operating with a certificate to provide basic local telecommunications services." For this reason, the Commission should allow Universal to continue to serve Missouri residents in accordance with its current certificate.

and recommends that Universal's certificate be amended to provide "local exchange service," the amendment should only apply to small exchanges and Universal should be permitted to maintain its certificate to provide basic local service in the large exchanges as there has been no suggestion that Universal has failed to comply with the statutes governing larger exchanges, for which the Essential Services Rule does not apply.

II. ALTERNATIVELY, UNIVERSAL REQUESTS THAT ITS CERTIFICATE OF AUTHORITY BE ALTERED PURSUANT TO § 392.410 R.S.Mo.

If the Commission is to decide that the Staff's reading of the statute is inclusive, such that the new requirements of the Staff are going to be imposed proactively on Universal, Universal respectfully requests that its certificate be amended pursuant to § 392.410 R.S.Mo. and that it be permitted to continue offering prepaid service throughout its service areas in Missouri. Universal states that it has believed and currently believes that it is in compliance with the statute, as it believed the list of features listed in the statute were not all required, but that it was in compliance if it provided *any* of the features, which it clearly does.

Despite the clear language of the statute, if the Commission determines that the statute is to be interpreted such that *all* of the features listed in the statute are required in order to be in compliance, Universal requests that its certificate of authority be altered to conform with the Staff's Recommendation and that Universal continue to provide the services that it currently provides and that it has provided throughout its presence in Missouri but now as a local exchange telecommunications service provider.⁵

As a second alternative, should the Commission find the prior two unacceptable, Universal requests that rather than cancel its certificate, the Commission amend Universal's certificate to reflect that Universal is approved to serve only large exchanges.

⁵ Universal submits this alternative resolution with the understanding that being a local exchange telecommunications service provider will allow it to continue to provide the services it currently provides. If this interpretation is erroneous, Universal requests the Staff's and/or Commission's understanding of the term prior to alteration of Universal's certificate.

CONCLUSION

For all of the above-listed reasons, Universal believes that it is currently in compliance with the requirements of the statute by which it is governed. Because of this, Universal requests that the Commission enter an order allowing Universal to continue to operate as a basic local telecommunications service provider as it has since the Commission granted it authority to operate. Alternatively, if the Commission determines that the plain reading of the statute should change such that *all* of the features listed in the statute are required to be provided, as opposed to *any* of the features, as the statute provides, Universal requests that its certificate of authority be altered to permit Universal to operate as a local exchange telecommunications service provider and to continue to provide prepaid resold services throughout its service area or to solely provide basic local telecommunications service in large exchanges.

Respectfully submitted,

POLSINELLI SHALTON WELTE SUELTHAUS PC

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**ATTORNEYS FOR
UNIVERSAL TELECOM, INC.**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing was mailed, first class mail, postage prepaid, this 7th day of January 2005, to:

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