

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

In the Matter of the Application of Tri-M Communications,)
Inc. d/b/a TMC Communications and 5LINX Enterprises,) **Case No. XM-2011-0027**
Inc. for Approval of a Stock Purchase Agreement)

MOTION TO DISMISS

COMES NOW the Staff of the Missouri Public Service Commission and moves the Missouri Public Service Commission (Commission) to dismiss the Application for Approval of a Stock Purchase Agreement and states as follows:

1. On July 29, 2010, Tri-M Communications, Inc. d/b/a TMC Communications (“TMC”) and 5LINX Enterprises, Inc. (“5LINX”) asked the Commission to approve a transaction in which the shareholders in TMC will transfer their stock to 5LINX. The Applicants state that they make their application pursuant to §392.300 RSMo 2000.

2. Section 392.300 RSMo 2000 does not apply to this transaction and no Commission approval is required for the proposed transaction to be consummated. Section 392.300 has two subsections. Subsection 392.300.1 applies whenever a certificated telecommunications company divests itself of any portion of the “franchise, facilities or system” it uses to provide service. This matter does not involve the divestiture from the certificated company of anything, much less any portion of its franchise, facilities or system. Those who privately hold the stock of the company wish to sell the stock to another party, without any effect on the telecommunications company. As noted in the application,

TMC will continue to provide competitive telecommunications services to its customers in the State of Missouri using substantially the same technical and managerial personnel following consummation of the proposed transaction.

Subsection 392.300.2 applies only to the transfer of ownership of a certificated telecommunications company organized and operating under the laws of Missouri. TMC is a California corporation.

3. Finally, effective August 28, 2008, §392.420 RSMo Supp. 2009 provides that:

The commission is authorized, in connection with ... a certificate of interexchange or ... service ..., to entertain a petition to suspend or modify the application of its rules or the application of any statutory provision contained in sections 392.200 to 392.340 [...].

...[F]or all existing alternative local exchange telecommunications companies, the commission shall waive...the application and enforcement of ...section ...392.300...”

4. Although the waiver mandate applies only to local exchange companies, it can be used as guidance to the Commission in this situation involving interexchange carriers, which have been traditionally regulated less extensively than local exchange carriers have been regulated. Logically, if these provisions are to be uniformly waived for local exchange carriers, then they also should be waived for interexchange carriers, who generally do not own or control any essential facilities and are subject to vigorous competition.

WHEREFORE, the Staff respectfully moves the Commission dismiss the Application for Approval of a Stock Purchase Agreement.

Respectfully submitted,



Colleen M. Dale
Senior Counsel
Missouri Bar No. 31624
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4255 (Telephone)
cully.dale@psc.mo.gov

Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 5th day of August, 2010.

