

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office
in Jefferson City on the 8th day
of September, 2010.

In The Matter of the Application of)
Tri-M Communications, Inc. d/b/a)
TMC Communications and 5LINX)
Enterprises, Inc. For Approval of a)
Stock Purchase Agreement)

Case No. XM-2011-0027

ORDER DISMISSING APPLICATION

Issue Date: September 8, 2010

Effective Date: September 18, 2010

The Missouri Public Service Commission ("Commission") is granting the *Motion to Dismiss* ("motion") filed by the Commission's Staff, and dismissing the application, because the Commission has no jurisdiction over the stock transfer ("transaction") that is the subject matter of the application.

Procedure

Tri-M Communications, Inc. d/b/a TMC Communications ("Tri-M") and 5LINX Enterprises, Inc. ("5LINX") filed the application, with verifications, on July 29, 2010. Tri-M and 5LINX ("applicants") seek any authorization necessary for a stock transaction ("transaction") described below. In the alternative, applicants seek dismissal of the application for lack of subject matter jurisdiction.

The Commission received no application for intervention by the September 1, 2010, deadline.¹ Staff filed the motion to dismiss on August 5, 2010. Staff supports dismissal for lack of jurisdiction.

Whether the Commission has jurisdiction over the subject matter depends on the preponderance of the evidence,² which consists entirely of the verified application's undisputed content.

Findings of Fact

Tri-M is a California corporation that holds a certificate of service authority to offer interexchange telecommunications service in Missouri. Tri-M has no franchise, facilities, system, or lines. The transaction consists of a transfer of 100 percent of all stock in Tri-M from its stockholders (which do not include Tri-M) to 5LINX.

Conclusions of Law

If the Commission lacks jurisdiction, any Commission action is void,³ except to exercise the inherent authority to dispose of such matters⁴ without reaching their merits.⁵ Also, the Commission may dismiss the application if the application does not state facts on which the Commission can grant relief.⁶ Further, the Commission may dismiss any action for good cause on ten days' notice.⁷

The parties cite Section 392.300.2,⁸ which requires the Commission's consent only to transfer stock in a Missouri entity:

¹ Order issued August 3, 2010.

² *Missouri Soybean Ass'n v. Missouri Clean Water Com'n*, 102 S.W.3d 10, 22 (Mo. banc, 2003).

³ *New Madrid County Health Center v. Poore*, 801 S.W.2d 739, 741 (Mo. App., S.D. 1990).

⁴ *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000) (citations omitted).

⁵ *Moore v. Missouri Highway & Transp. Com'n*, 169 S.W.3d 595, 599 (Mo. App. S.D., 2005).

⁶ 4 CSR 240-2.070(6).

⁷ 4 CSR 240-2.116(4).

⁸ RSMo 2000.

[N]o stock corporation, domestic or foreign, other than a telecommunications company, shall, without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any **telecommunications company** organized or existing under or by virtue of the laws **of this state**.^{9]}

No Missouri entity is involved in the transaction so that subsection does not apply.

The parties also cite subsection 1 of § 392.300:

No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its **franchise, facilities or system**, necessary or useful in the performance of its duties to the public, **nor** by any means, direct or indirect, merge or consolidate such **line** or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. [^{10]}

No franchise, facilities, system, or lines are involved so that subsection does not apply.

Staff also notes that, if that subsection did apply, the Commission could modify Tri-M's certificate of service authority to suspend that subsection.¹¹

The verified and undisputed application shows that no statute makes any Commission order necessary for the transaction. Such a transaction is not within this Commission's jurisdiction to grant or deny. Therefore, the application states no claim for relief, and good cause exists to dismiss the application.

THE COMMISSION ORDERS THAT:

1. The *Motion to Dismiss* is granted.
2. This order is effective on September 18, 2010.

⁹ Section 392.300.2 (emphasis added).

¹⁰ Emphasis added.

¹¹ Section 392.420, RSMo Supp. 2009.

3. This file shall close on September 19, 2010.

BY THE COMMISSION

(S E A L)

A handwritten signature in black ink, appearing to read 'S. Reed', is positioned above the printed name of the Secretary.

Steven C. Reed,
Secretary

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Jordan, Regulatory Law Judge