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April 6, 2001

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: ExOp of Missouri, Inc.,
Case No. TA-2001-251**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case, please find the original and 8 copies of the **Reply Brief of the Office of the Public Counsel**. I have on this date mailed, faxed, and/or hand-delivered the appropriate number of copies to all counsel of record. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Very truly yours,

Michael F. Dandino
Senior Public Counsel

MFD:kh

cc: Counsel of Record

Enclosure

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

FILED³
APR 06 2001

In the matter of the Application of Exop of)
Missouri, Inc. for designation as a)
telecommunications company carrier)
eligible for Federal Universal Service)
support pursuant to Section 254 of the)
Telecommunications Act of 1996.)

Case No. TA-2001-251

Missouri Public
Service Commission

**REPLY BRIEF OF THE
OFFICE OF THE PUBLIC COUNSEL**

COMES NOW the Office of the Public Counsel (Public Counsel) and respectfully suggests the following as its reply to the briefs of ExOp of Missouri, Inc. (ExOp), the Staff of the Missouri Public Service Commission (Staff), and the Small Telephone Company Group (STCG) in this case.

Public Counsel suggests that ExOp's scope of its request for a designation of an Eligible Telecommunications Carrier (ETC) under Section 214(e) of the Federal Telecommunications Act of 1996 be limited to the Kearney exchange, the only local exchange in which ExOp offers and advertises the availability of local service. ExOp is certified to provide local exchange service in 184 exchanges (Stipulation of Facts, Ex. A) that are sprinkled throughout an area from the Arkansas border to the Iowa border. ExOp operates as a facilities based provider using its own facilities to provide local service in the Kearney exchange. (Stp., para. 4). ExOp provides telecommunications services only in the Kearney exchange. (Stp., para. 5). It offers telecommunications services only in the Kearney exchange and advertises the availability of telecommunications services through the media of general distribution only in that exchange.

Section 214(e) does not demand the actual provision of the eligible service prior to the ETC designation. In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, cc Docket No. 96-45 (August 10, 2000). However, the statutory language must be given effect to create some requirement to offer and provide services as part of the process to obtain universal service funds. ExOp's and the Staff's reliance on the requirement that the ETC must actually be providing services prior to receiving universal service funds cannot water down the ETC designation requirements to a meaningless formality. A legislature is presumed not to engage in meaningless legislation or require meaningless actions.

The facts of this case seem to demand a common sense and a reasonable approach to the ETC designation rather than a dogmatic rule to be strictly applied in all cases. Here, ExOp is certified to operate in 184 exchanges, but has limited all of its telecommunications operations to only one exchange – the Kearney exchange. Unless ExOp makes a dramatic change in the method of its operations as a Kearney exchange only facilities-based carrier, potential telephone customers in the other 183 exchanges will not be served nor be in a position to be served within a reasonable amount of time. The designation of its certificated service area without the present intent and ability to serve shows only a future intent to serve at some undisclosed future date and in some undisclosed future manner. While Section 214(e) may not require a present provision of service, it seems inconsistent with the Act to designate a 183 exchange service area that effectively spans the state without evidence of present intent and ability to serve that area. If there was sufficient evidence of an immediate plan and ability of ExOp to provide the eligible service in the other exchanges and solicit customers for that service, the outcome may be different. ExOp should not be able to obtain the ETC designation for its “warehoused” or

"mothballed" local exchanges, when there is no indication that service will be activated in the exchanges at any reasonably foreseeable time.

CONCLUSION

Public Counsel does not believe it is consistent with the intent and purpose of Section 214(e) of the Federal Telecommunications Act of 1996 or with the public intent to designate ExOp as the ETC for entire certificated area of 184 exchanges when its capabilities and operations today and in the reasonable future are limited to only one exchange. Therefore, ExOp's application should be limited to the Kearney exchange and ExOp should be granted ETC status for that exchange.

Respectfully submitted,

Office of the Public Counsel

By:



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was mailed, faxed or hand-delivered, this 6th day of April, 2001 to the following:

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