

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

In the Matter of the Application of )  
Ironhorse, LLC for a Certificate of )  
Service Authority to Provide Basic Local, )  
Local and Interexchange Voice Service in )  
Portions of the State of Missouri and to )  
Classify said Services and the Company )  
as Competitive )

Case No. LA-2006-0067

**STAFF RECOMMENDATION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its recommendation states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant Ironhorse, LLC (Applicant), a certificate of service authority to provide basic local telecommunications service in the service areas of Southwestern Bell Telephone L.P. d/b/a SBC Missouri; conditioned upon certain access rate provisions. The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. (See §§ 392.430 and 392.440 RSMo. (2000).)

2. Staff also recommends that the Commission classify the Applicant and its services as competitive. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. (See §392.361.2.) All the services a competitive company provides must be classified as competitive. (See §392.361.3.)

3. The Commission's rule at 4 CSR 240-3.510(1)(C) states that the applicant cannot lawfully provide service until tariffs are effective. Although the Applicant requests a temporary

waiver of a rule it identifies as 4 CSR 240-2.060(6)(C) (which was relocated as 4 CSR 240-3.510(1)(C) in 2002 and has been subsequently modified) because the Applicant did not file a proposed tariff with its application (see *Application* at para. 4), Staff sees no need for this waiver to be granted on this basis. The rule states that “filing the tariff and any applicable interconnection agreements simultaneously with the certificate application is optional.” As the rule already explicitly states that filing a proposed tariff with the certificate is optional, the Commission need not waive the rule merely because the Applicant has not yet filed a proposed tariff. Moreover, if the Commission were to waive this rule, it is possible that a waiver could be construed as a waiver of another clause in the rule that states “before service can be provided, a tariff and any applicable interconnection agreements must be filed with the commission and approved.” Accordingly, Staff recommends the Commission *not* grant a waiver of this rule.

4. The Commission rescinded its rule at 4 CSR 240-3.545(2)(C) to “rewrite it in its entirety.” 29 Mo.Reg. 369 (March 1, 2004). The former rule set forth the requirements for rate schedule publication in exchange areas where a telephone corporation does not maintain a business branch office. The new rule, now at 4 CSR 240-3.545, does not contain such a requirement.

5. The Commission rescinded its rule at 4 CSR 240-33.030 because, “with the many services and bundles of services that are offered in the telecommunications industry, it is no longer feasible for a telecommunications company to inform prospective customers of the lowest cost service and equipment available.” 29 Mo.Reg. 376 (March 1, 2004). Thus, the Commission’s currently effective regulations do not contain an equivalent requirement.

6. In sum, as the Commission no longer has regulations governing the practices that were the subject of the two preceding waiver requests, Staff recommends that the Commission not grant waivers of 4 CSR 240-3.545(2)(C) and 4 CSR 240-33.030.

7. Instead, Staff recommends the Commission note these regulations have been rescinded and grant a certificate of service authority to the Applicant, with a waiver of the remaining statutes and regulations listed in the Applicant's application, except the rescinded regulations. The Commission ordinarily waives the application of these statutes and Commission rules for competitive companies. Staff also notes that the application contains an apparent typographical error in its request for "4 CSR 240-3.500(5)(C)," but in light of the context, the correct citation is 4 CSR 240-3.550(5)(C) and that waiver should be granted as part a grant of the customary waivers.

WHEREFORE, Staff recommends that the Commission grant Ironhorse, LLC a conditional certificate to provide basic resold and facilities-based local exchange telecommunications services pending the submission of a tariff, and further conditioned upon the access rate provisions described in the Staff memorandum; grant Applicant competitive classification; waiving the statutes and regulations customarily granted to competitive companies as listed in the Application as modified above; and denying a waiver of 4 CSR 240-3.510(1)(C).

Respectfully submitted,

DANA K. JOYCE  
General Counsel

**/s/ David A. Meyer**

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#### **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 29<sup>th</sup> day of September 2005.

**/s/ David A. Meyer**

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