

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

In the Matter of the Application of)
Momentum Telecom, Inc. for Certificates of)
Service Authority to Provide Basic Local)
Exchange Telecommunications Services and)
Resold Interexchange Telecommunications)
Services in The State of Missouri and to)
Classify Those Services and the Company as)
Competitive)

Case No. LA-2008-0282

STAFF RECOMMENDATION

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

1. On February 26, 2008, Momentum Telecom, Inc. (Applicant) filed an application with the Commission seeking authority to provide basic local exchange and resold interexchange telecommunication services in Missouri. The Applicant also requested competitive classification.

2. In the attached Memorandum, labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant Applicant a certificate to provide basic local telecommunications services in the service areas of Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri; Embarq Missouri, Inc. d/b/a Embarq; CenturyTel of Missouri, LLC d/b/a CenturyTel; and Spectra Communications Group, LLC d/b/a CenturyTel; conditioned upon certain standard provisions as set out in the Staff Memorandum.

The Applicant only proposes to provide wholesale services. Consequently, company officials state that the company is unable to adhere to the “separate and distinct” requirement of Subsection 392.455(4) and Commission rule 4 CSR 240-3.510. The separate and distinct requirement requires any application for basic local telecommunications service to contain a statement that the applicant will offer basic local telecommunications service as a separate and

distinct service. The application does not contain such a statement. Company officials state the requirement should only apply to retail telecommunications service rather than wholesale telecommunications service.

The Staff recommends the Commission address this deficiency in the Application by placing an additional condition on the certificate: that the Applicant not provide basic local exchange telecommunication service directly to end users unless it applies to the Commission to have this restriction removed. The Staff Memorandum proposes text for the Commission's consideration.

3. The Staff also recommends that the Commission grant Applicant a certificate to provide intrastate, interexchange telecommunications services.

4. 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. §§ 392.430 and 392.440 RSMo. (2000).

5. The Staff also recommends that the Commission classify the Applicant and the services it proposes to offer in its Application 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. §392.361.4. All the services a competitive company provides must be classified as competitive. §392.361.3.

6. The Staff further recommends that the Commission grant the waivers listed in the Notice of Applications. The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392. §§ 392.185, 392.361.5 and 392.420.

7. The Applicant did not submit a tariff with the Application. The Staff notes that the Commission's rule at 4 CSR 240-3.510(1)(c) states that the Applicant cannot lawfully provide service until tariffs are effective.

WHEREFORE, Staff recommends that the Commission grant Momentum Telecom Inc., a certificate to provide basic local exchange telecommunications services, conditioned upon the provisions described in the Staff Memorandum; grant it a certificate of service authority to provide intrastate, interexchange telecommunications services; grant it the requested competitive classification; and grant the standard waivers listed in the Commission's Notice of Application.

Respectfully submitted,

/s/ William K. Haas
William K. Haas
Deputy General Counsel
Missouri Bar No. 28701

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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 11th day of April 2008.

/s/ William K. Haas

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: LA-2008-0282 File No: N/A
Applicant: Momentum Telecom, Inc.

From: William Voight
Telecommunications Department
John Van Eschen 4/10/08 William K. Haas 4/10/08
Utility Operations Division/Date General Counsel's Office/Date

Subject: Staff Recommendation for Approval of Certificate and/or Initial Tariff

Date: 4/10/08
Filing Deadline: 4/11/08 (by 4:00 pm 7 working days prior to proposed effective date)

The Telecommunications Department Staff (Staff) recommends the applicant be granted the following certificate(s), as indicated below, to be effective on the same date the tariff becomes effective:

☒ certificate to provide basic local exchange telecommunications services in the following service areas.

- ☒ All of AT&T Missouri
- ☒ All of Embarras
- ☒ All of CenturyTel
- ☒ All of Spectra
- ☐ Other _____ (please describe)

☒ certificate to provide interexchange telecommunications services.

☐ certificate to provide local exchange telecommunications services.*

*local exchange authority should be restricted to dedicated, private line services.

Staff recommends the applicant and its services receive competitive classification. Staff further recommends a Commission order granting certification state that pursuant to Section 392.410 RSMo, unless exercised within a period of one year from the issuance thereof, authority conferred by a certificate of service authority shall be null and void. In addition, Staff recommends approval of the waivers listed in the Notice.

Granting a certificate to provide basic local exchange telecommunications services should be based on the following conditions:

1. The applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each ILEC within whose service area the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230 RSMo.
2. The certificate and service classification for switched access service is conditioned on the continued applicability of Section 392.200 RSMo, and the requirement that any increases in switched access services rates above the

maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.

3. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

☐ No objection to tariff taking effect (indicate PSC MO numbers) Effective Date: The Staff states that the tariff meets the requirements of all applicable statutes, specifically, one or more of the following: Sections 392.200(8), (12); 392.455(3), (4); 392.515(1) and 392.500(2) RSMo. In addition, the tariff filing does not conflict with the following Commission rules: 4 CSR 240-3.545 (4), (6), (7), (8 C,G,H), (9), (15), (16), (19); 4 CSR 240-31.065(1), (2), (3); 4 CSR 240-32.150(5), 32.160(1), (2), 32.190; 4 CSR 240-33.040(4), 33.045(2), 33.050(4) and 33.070(2).

☒ Tariff was not submitted with application. Pursuant to 4 CSR 240-3.510(1)(C), the applicant cannot lawfully provide service until tariffs are effective.

Additional Comments:

See attachment.

☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.

☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.

(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:)

Review Items for IXC, Non-switched Local and CLEC Certificate Applications (as required by 4 CSR 240-2.060):

- ☒ Proper Secretary of State authorization
- ☒ Statement of character of business performed.
- ☒ Statement declaring no pending action or final unsatisfied judgments
- ☒ Statement declaring no overdue annual reports/assessment fees
- ☒ Application includes an affidavit.

- ☒ The applicant is requesting waivers of rules or statutes previously granted to a competitively classified company

(as required by 392.430/.440):

- ☒ Application shows that grant of authority is in the public interest.

Additional Review Items for CLEC Applications (as required by 392.455 and/or 4 CSR 240-3.510):

- ☒ Possesses sufficient technical, financial and managerial resources and abilities.
- ☒ Statement that the applicant will satisfy the minimum standards established by the commission.
- ☒ Identifies geographic area (no smaller than an exchange).
- ☐ Statement that applicant will offer basic local service as a separate and distinct service.
- ☒ Statement that applicant will give equitable access to all Missourians.

Tariff Review Items (applicable for all competitively classified companies):

- ☐ The tariff meets Staff's review for compliance with rules for competitive company tariff filings.

Staff Recommendation to Place an Additional and Previously Unapproved Condition on a Certificate of Service Authority to Provide Basic Local Exchange Telecommunications Service

Momentum Telecom's application states that it seeks to offer and provide "wholesale switching and interconnection services to cable providers and other such similarly situated wholesale customers." Momentum Telecom's application further indicates that it will utilize its own switching facilities in conjunction with the outside plant facilities of various cable TV companies to provide such "wholesale" telephone services. This business model might be considered similar to the wholesale provisioning of Sprint and Big River. Staff also notes a certain degree of similarity to Level 3, which provides certain connectivity to nomadic Internet phone companies such as Vonage.

Momentum Telecom only proposes to provide wholesale services. Consequently, Momentum Telecom officials state that the company is unable to adhere to the "separate and distinct" requirement of Subsection 392.455(4) and Commission rule 4 CSR 240-3.510. The separate and distinct requirement requires any application for basic local telecommunications service to contain a statement that the applicant will offer basic local telecommunications service as a separate and distinct service (a "separate and distinct" requirement). Momentum Telecom's application does not contain such a statement. Company officials state the requirement should only apply to retail telecommunications service rather than wholesale telecommunications service.

The Staff recommends the Commission address this deficiency by placing an additional condition on Momentum Telecom's certificate which reads substantially as follows:

The Commission grants Momentum Telecom a certificate to provide interexchange and basic local exchange telecommunications service on the condition that it not provide basic local exchange telecommunications service directly to end users. Rather, Momentum Telecom shall only be permitted to provide basic local exchange telecommunications service on a wholesale basis. If at any time in the future Momentum telecom desires to provide basic local telecommunications service on a retail basis, it shall inform the Commission and apply to the Commission to have this restriction removed prior to providing such service on a retail basis. Momentum Telecom shall be required to offer its services in a Commission-approved tariff; however, Momentum Telecom shall be permitted to offer its wholesale services pursuant to customer-specific pricing. In addition, Momentum Telecom shall be expected to comply with certain obligations of basic local telecommunications carriers. Such obligations include the submission of an annual report to the Missouri Commission, submission of a statement of revenue to the Missouri Commission, submission of a Missouri statement of revenue to the Missouri universal service fund administrator, and the

payment of any assessments administered by the Missouri Commission and Missouri universal service fund administrator.

With the addition of the above condition placed on Momentum Telecom's certificate of operating authority, the Staff recommends the Commission approve Momentum Telecom's application to provide interexchange telecommunications service and basic local exchange telecommunications service, with such basic local exchange service restricted to provision on a wholesale basis only.

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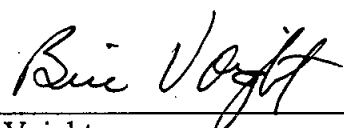
In the Matter of the Application of)
Momentum Telecom, Inc. for Certificates)
of Service to Provide Basic Local)
Exchange Telecommunications Services)
and Resold Interexchange)
Telecommunications Services in the State)
of Missouri and to Classify those Services)
and the Company as Competitive)

Case No. LA-2008-0282

AFFIDAVIT OF WILLIAM VOIGHT

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

William Voight, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying memorandum, and that the facts therein are true and correct to the best of his knowledge and belief.



William Voight

Subscribed and affirmed before me this 10th day of April 2008.
I am commissioned as a notary public within the County of Callaway,
State of Missouri and my commission expires on 9-21-10



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



NOTARY PUBLIC