

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of iNetworks Group, Inc. for a )  
Certificate of Service Authority to Provide Basic Local Exchange )  
Services in Portions of the State of Missouri and Interexchange ) **File No. LO-2011-0021**  
Telecommunications Service Throughout the State of Missouri )Tariff No. YL-2011-0046  
and to Classify Said Services and the Company as Competitive )

## ORDER GRANTING UNOPPOSED REQUEST FOR A CERTIFICATE OF SERVICE AUTHORITY TO PROVIDE TELECOMMUNICATIONS SERVICES, GRANTING COMPETITIVE CLASSIFICATION, WAIVING RULES AND STATUTORY PROVISIONS AND APPROVING TARIFF

Issue Date: September 15, 2010

Effective Date: September 17, 2010

**SYLLABUS:** This order grants iNetworks Group, Inc. (“iNetworks”) service authority to provide competitive intrastate interexchange telecommunications services between and among locations within Missouri; basic local exchange telecommunications service in the service territories of AT&T Missouri and the CenturyLink companies; and switched exchanged access services in these same local exchange service territories.<sup>1</sup> The order further grants iNetworks competitive status and waives certain statutes and regulations. This order also approves the tariffs submitted by iNetworks with its application.

### **Findings of Fact**

The Missouri Public Service Commission has considered all relevant factors and makes the following findings of fact.<sup>2</sup>

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<sup>1</sup> Switched exchanged access services are a component of basic local exchange service as defined in Section 386.020(4) RSMo Supp. 2009. All statutory references not designated as referring to RSMo Supp. 2009 are to RSMo 2000.

<sup>2</sup> By statutory definition, this matter is a contested case. See Section 536.010(4), RSMo Supp. 2009. When interpreting Section 386.420, the statute delineating the Commission’s procedural requirements for

1. On July 27,<sup>3</sup> iNetworks, applied for a certificate of service authority to provide competitive intrastate interexchange telecommunications services between and among locations within Missouri; basic local exchange telecommunications service in the service territories of AT&T Missouri and the CenturyLink companies; and switched exchanged access services in these same local exchange service territories. iNetworks also sought competitive classification and waivers of certain statutes and regulations.<sup>4</sup>

2. iNetworks is a corporation organized and existing under the laws of the State of Illinois.<sup>5</sup>

3. iNetworks is authorized to do business in Missouri as evidenced by its Certificate of Authority from the Missouri Secretary of State.<sup>6</sup>

4. iNetworks' agent for Service of Process in Missouri is: CT Systems Company, 120 South Central Avenue, Suite 400, Clayton, Missouri 63105. Its principal place of business is located at 401 North Michigan Avenue, Suite 1200, Chicago, Illinois 60611.<sup>7</sup>

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conducting hearings and making its reports, Missouri Courts have held that in contested cases the Commission ***must*** include findings of fact in its written report. Section 386.420, RSMo 2000; *State ex rel. Monsanto Co. v. Public Serv. Comm'n of Missouri*, 716 S.W.2d 791, 794-795 (Mo. banc 1986); *State ex rel. Rice v. Public Serv. Comm'n*, 359 Mo. 109, 220 S.W.2d 61, 65 (Mo. banc 1949); *State ex rel. Fischer v. Public Serv. Comm'n*, 645 S.W.2d 39, 42-43 (Mo. App. 1982). The Commission cannot merely adopt agreements or positions of the parties on the ultimate legal issues presented because such action fails to satisfy the competent and substantial evidence standard embodied in the Missouri Constitution, Article V, Section 18. *Id.* Litigants cannot stipulate as to questions of law. *State v. Biddle*, 599 S.W.2d 182, 186 and n. 4 (Mo banc 1980). The Commission must independently and impartially review the facts and make a separate and independent determination. *Kennedy v. Missouri Real Estate Comm'n*, 762 S.W.2d 454, 457 (Mo. App. 1988).

<sup>3</sup> All dates throughout this order refer to the year 2010 unless otherwise noted.

<sup>4</sup> EFIS Docket Entry No. 1, *Application for Certificate of Service Authority and Tariff* ("Application"). "EFIS" is the Commission's Electronic Filing and Information System.

<sup>5</sup> *Application*, paragraph 1 and Exhibit A, Articles of Incorporation; EFIS Docket Entry No. 7, *Staff Recommendation and Memorandum* ("Staff Recommendation"), filed September 13, 2010.

<sup>6</sup> *Application*, Exhibit B; *Staff Recommendation*.

<sup>7</sup> *Application*, paragraph 2 and Exhibit B, Certificate of Authority to Transact Business.

5. iNetworks seeks certification to provide competitive basic local exchange service and exchange access telecommunications services on a facilities and resold basis throughout all exchanges currently served by the incumbent local exchange companies (“ILECs”) of Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri; and CenturyTel of Missouri, L.L.C. d/b/a CenturyTel and Spectra Communications Group, L.L.C. d/b/a CenturyTel (collectively the “CenturyLink Companies”).<sup>8</sup>

6. The specific ILEC exchanges in which iNetworks proposes to offer services are listed in the ILECs respective tariffs.<sup>9</sup>

7. iNetworks also seeks authority to provide interexchange telecommunications services on a resold basis throughout Missouri.<sup>10</sup>

8. iNetworks will provide a suite of competitive basic local exchange and interexchange telecommunications services to commercial retail subscribers and wholesale carriers.<sup>11</sup>

9. iNetworks’ facility-based services will be provided through leased underlying local exchange carrier network facilities, i.e. unbundled network elements.<sup>12</sup>

10. iNetworks will provide basic local exchange services and related custom calling features, intraLATA and interLATA toll services, operated assisted calling exclusively to subscribers of record, and directory assistance. iNetworks will also provide specialized

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<sup>8</sup> *Application*, paragraph. 4.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at para 5

<sup>12</sup> *Id.*

commercial services including: dedicated, non-switched private-line special access high-speed broadband facilities and data transmission service.<sup>13</sup>

11. iNetworks will also offer specialized non-regulated services specifically designed for commercial subscribers, including: network design, engineering, and facility deployment services.<sup>14</sup>

12. iNetworks' services will be available to subscribers twenty-four hours per day, seven days per week, at rates, terms and conditions reflected in iNetworks retail and exchange access tariffs.<sup>15</sup>

13. iNetworks filed its retail tariff contemporaneously with its application, bearing a forty-five day effective date, in compliance with the Commission's rules.<sup>16</sup> The effective date of the proposed tariff, assigned tariff tracking number YL-2011-0046, is September 10, 2010.<sup>17</sup> On August 27, 2010, iNetworks filed a substitute tariff sheet for Original Sheet No. 3, and new Original Sheets 82 and 83, each bearing an effective date of October 11, 2010.<sup>18</sup> On September 1, 2010, iNetworks again filed substitute sheets, and on September 8, 2010, iNetworks voluntarily extended the tariff effective date to September 17, 2010.<sup>19</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Application*, paragraphs 6, 12 and Exhibit E. See also Commission Rules 4 CSR 240-2.060 4 CSR 240-3.510.

<sup>17</sup> Tariff, Original Page 1 through Original Page 81.

<sup>18</sup> EFIS Docket Entry No. 3, *Substitute Tariff Sheets*.

<sup>19</sup> EFIS Docket Entry No. 4, *Second Amendment of Exhibit - Substitute Tariff Sheets*; EFIS Docket Entry No. 5, *Tariff Extension Letter*.

14. On July 28, the Commission directed notice of iNetworks' Application and established an intervention deadline of August 9.<sup>20</sup>

15. No applications to intervene were received.

16. No party contested iNetworks' application or requested an evidentiary hearing.<sup>21</sup>

17. iNetworks' proposed service areas will follow the respective exchange boundaries of the ILECs and shall be no smaller than any exchange as required by Section 392.455(3) RSMo 2000.<sup>22</sup>

18. iNetworks is managerially and technically qualified to provide telecommunications services in the state of Missouri.<sup>23</sup>

19. iNetworks possesses the necessary financial resources and abilities to provide the services it proposes as required by Section 392.455(1), and has the necessary capital to conduct its proposed operations in Missouri.<sup>24</sup>

20. iNetworks seeks classification as a competitive telecommunications company, including classification of its telecommunications services as competitive, pursuant to Section 392.361 and Section 392.420 and 4 CSR 240-3.510(1)(A), with the accompanying reduced regulation that accompanies such classification.<sup>25</sup>

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<sup>20</sup> EFIS Docket Entry No. 2, Order Directing Notice of Application To Provide Telecommunications Services and Opportunity To Intervene.

<sup>21</sup> Even though there were no intervenors, the Commission's Staff and the Office of the Public Counsel are automatically made parties.

<sup>22</sup> *Application*, paragraph 11; *Staff Recommendation*. All statutory references are to RSMo 2000 unless otherwise noted.

<sup>23</sup> *Id.* at paragraph 7; *Staff Recommendation*; Commission Rules 4 CSR 240-2.060 4 CSR 240-3.510.

<sup>24</sup> *Id.* at paragraph 8. *Staff Recommendation*. EFIS Docket Entry No. 6, Supplement to Application, filed September 8, 2010.

<sup>25</sup> *Id.* at paragraph 9; *Staff Recommendation*.

21. iNetworks will compete with all incumbent local exchange carriers in their respective service territories and complies with the rules for competitive company tariff filings<sup>26</sup>

22. iNetworks' proposed services will be subject to sufficient competition to justify a lesser degree of regulation and that granting this request will allow greater price and service options for telephone users.<sup>27</sup>

23. iNetworks will offer basic local telecommunications services as a separate and distinct service in accordance with Section 392.455(4) and all other applicable laws and regulations.<sup>28</sup>

24. iNetworks will give consideration to equitable access for all Missourians, regardless of where they might reside or their income, to affordable telecommunications services in iNetworks' proposed service areas in accordance with Section 392.455(5) and all other applicable laws and regulations.<sup>29</sup>

25. iNetworks is willing to comply with all applicable Commission rules, except those that are waived, will file and maintain tariffs, and meet applicable minimum standards established by the Commission.<sup>30</sup>

26. On September 13, after reviewing iNetworks' application, the Commission's Staff filed its recommendation and verified memorandum.<sup>31</sup>

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<sup>26</sup> *Id.* at paragraph 10; *Staff Recommendation*.

<sup>27</sup> *Application*, paragraph 9; *Staff Recommendation*.

<sup>28</sup> *Id.* at paragraph 10; *Staff Recommendation*.

<sup>29</sup> *Id.*

<sup>30</sup> *Application*, paragraphs 5 and 11; *Staff Recommendation*.

<sup>31</sup> EFIS Docket Entry No.7, *Staff Recommendation*.

27. Staff recommended that the Commission grant iNetworks' certificate, grant competitive classification, and grant the waivers requested.<sup>32</sup>

28. Staff recommended that the Commission grant iNetworks' application subject to the following conditions:

A. The applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370, RSMo Supp. 2009.

B. 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.<sup>33</sup>

29. iNetworks has agreed to Staff's recommended conditions.<sup>34</sup>

30. Staff also recommends that the tariff iNetworks submitted with its application be approved or permit to take effect by operation of law.<sup>35</sup>

31. iNetworks has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court involving customer service or rates.<sup>36</sup>

32. iNetworks is not delinquent in filing an annual report or in paying the PSC assessment, the Missouri Universal Service Fund, and Relay Missouri surcharges.<sup>37</sup>

33. Granting the expanded certificate will benefit the public by creating and enhancing competition, expanding customer service options, and increasing customer

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<sup>32</sup> *Id.*

<sup>33</sup> *Staff Recommendation.*

<sup>34</sup> *Application*, paragraph 14.

<sup>35</sup> *Staff Recommendation.*

<sup>36</sup> *Application*, paragraph 15; *Staff Recommendation.*

<sup>37</sup> *Id.* at paragraph 16; *Staff Recommendation.*

choice for telecommunications, consistent with the legislative goals set forth in the Telecommunications Act of 1996 and Chapter 392.<sup>38</sup>

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law.<sup>39</sup>

#### **Jurisdiction**

iNetworks is a “telecommunications company” and a “public utility,” as defined in Section 386.020, RSMo Supp. 2009, and is subject to the jurisdiction and supervision of the Commission.<sup>40</sup> The extent of the Commission’s jurisdiction over iNetworks is delineated in Chapter 392, and includes the Commission’s authority to rule upon iNetworks’s application to expand its basic local certificate and its request to be classified as a competitive telecommunications provider.<sup>41</sup>

#### **Requirement for a Hearing**

Sections 392.410 through 392.450 require any telecommunications company seeking to offer or provide local exchange telecommunications services to obtain a certificate of service authority from the Commission prior to offering or providing those services. The statutes require the Commission to issue notice and hold a hearing.<sup>42</sup>

Section 392.361 RSMo Supp. 2009, requires that any request by a telecommunications company to be classified as competitive be submitted to the Missouri

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<sup>38</sup> *Application*, paragraph 13; *Staff Recommendation*.

<sup>39</sup> Failure to specifically address a piece of evidence, position or argument of any party does not indicate that the Commission has failed to consider relevant evidence, but indicates rather that the omitted material was not dispositive of this decision.

<sup>40</sup> Section 386.020(52) and (43), RSMo Supp. 2009.

<sup>41</sup> Chapter 392. See in particular Sections 392.361, 392.410, 392.420 and 392.450 RSMo Supp. 2009; Sections 392.430, 392.440, and 392.455, RSMo 2000.



Public Service Commission for approval. This statute further requires the Commission to issue notice and provide an opportunity for a hearing to any interested person prior to making its determination.<sup>43</sup>

This matter is a contested case as defined in Section 536.010(4), RSMo Supp. 2009, because it involves a proceeding before this agency in which the legal rights, duties or privileges of iNetworks are required to be determined after hearing.<sup>44</sup> However, the requirement for a hearing was met when the opportunity for hearing was provided and no proper party requested the opportunity to present evidence.<sup>45</sup> No party requested an evidentiary hearing or trial-type contested proceeding when given the opportunity, and the Commission concludes that no evidentiary hearing is required.

### **Standards for Approval and Burden of Proof**

Section 392.430, provides that the Commission shall approve an application for a certificate of service authority to provide local exchange telecommunications services upon a showing by the applicant and finding by the Commission that the grant of such authority is in the public interest. Section 392.361.3, Supp. 2009, provides that the Commission may classify a telecommunications company as competitive only upon a finding that a majority of the telecommunications services offered by that company are competitive. Section 392.361.4, RSMo Supp. 2009, provides that grant of competitive classification is contingent

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<sup>42</sup> Sections 392.430 and 392.440 RSMo 2000; and Section 392.450.1, RSMo Supp. 2009.

<sup>43</sup> Section 392.361.2, RSMo Supp. 2009.

<sup>44</sup> The term "hearing" presupposes a proceeding before a competent tribunal for the *trial of issues* between *adversary parties*, the presentation and the consideration of proofs and arguments, and determinative action by the tribunal with respect to the issues ... 'Hearing' involves an *opposite party*; ... it contemplates a listening to facts and evidence for the sake of *adjudication* ... The term has been held synonymous with 'opportunity to be heard'. (Emphasis added.) *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Com'n of State of Mo.*, 776 S.W.2d 494, 495 -496 (Mo. App. 1989); See also 39A C.J.S. Hearing, p. 632, et seq.

<sup>45</sup> *Id.*

upon the Commission finding that sufficient competition exists to justify a lesser degree of regulation and that lesser degree of regulation must be consistent with the protection of ratepayers and promote the public interest.

As petitioners, iNetworks has the burden of proving that the requested expansion of its certificate of service authority and competitive classification is in the public interest. To carry their burden, iNetworks must meet the preponderance of the evidence standard.<sup>46</sup> And in order to meet this standard, iNetworks must convince the Commission it is “more likely than not” that approval of the requested addendum to their territorial agreement is in the public interest.<sup>47</sup>

### **Decision**

The Commission has thoroughly considered iNetworks’ application, iNetworks’ asserted commitment to comply with all applicable regulatory obligations and the verified pleadings. The Commission independently finds and concludes that iNetworks has met its burden of establishing that the requested expansion of iNetworks’ certificate of service authority is in the public interest.

Granting iNetworks’ certificate will benefit the public interest by promoting direct competition with multiple incumbent basic local providers. The Commission also independently finds and concludes that iNetworks will be subject to a sufficient level of competition to justify a lesser degree of regulation. iNetworks and its services shall be classified as competitive.

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<sup>46</sup> *Bonney v. Environmental Engineering, Inc.*, 224 S.W.3d 109, 120 (Mo. App. 2007). See *State ex rel. Amrine v. Roper*, 102 S.W.3d 541, 548 (Mo. banc 2003). See also *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 110 (Mo. banc 1996), citing to, *Addington v. Texas*, 441 U.S. 418, 423, 99 S.Ct. 1804, 1808, 60 L.Ed.2d 323, 329 (1979).

<sup>47</sup> *Holt v. Director of Revenue, State of Mo.*, 3 S.W.3d 427, 430 (Mo. App. 1999); *McNear v. Rhoades*, 992 S.W.2d 877, 885 (Mo. App. 1999); *Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104, 109 -111 (Mo. banc

The Commission may waive certain statutes and administrative rules for competitively classified carriers if such waiver or modification is otherwise consistent with the other provisions of Sections 392.361 to 392.520 and the purposes of Chapter 392.<sup>48</sup> The Commission concludes that waiver of those statutes and regulations is consistent with the purposes of Chapter 392, and will waive those provisions for iNetworks.

An applicant for a basic local certificate must meet the minimum service standards that the Commission requires of the competing incumbent local exchange carriers.<sup>49</sup> iNetworks has agreed to provide services that will meet those minimum basic local service standards. The Commission concludes that iNetworks has met the requirements of Section 392.450.2(2), RSMo Supp. 2009.

iNetworks has complied with each of the Commission's application requirements and all statutory and regulatory requirements.<sup>50</sup> The Commission shall approve iNetworks' application subject to certain conditions.

### **Conditions and Regulatory Obligations**

The Commission may "require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement."<sup>51</sup> Staff recommends that iNetworks' application be granted subject to the conditions set out in the Commission's findings of fact. iNetworks agreed to these conditions. The Commission has considered the conditions proposed by Staff and

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1996); *Wollen v. DePaul Health Center*, 828 S.W.2d 681, 685 (Mo. banc 1992).

<sup>48</sup> Sections 392.361.5 and 392.420, RSMo Supp. 2009.

<sup>49</sup> Section 392.450.2(2), RSMo Supp. 2009.

<sup>50</sup> *Application*, paragraph. 11; *Staff Recommendation*.

<sup>51</sup> Section 392.361.6, RSMo Supp. 2009.

concludes that they are reasonably necessary to protect the public interest and shall be adopted.

**THE COMMISSION ORDERS THAT:**

1. iNetworks Group, Inc. (“iNetworks”) application for service authority to provide competitive intrastate interexchange telecommunications services between and among locations within Missouri; basic local exchange telecommunications service in the service territories of AT&T Missouri and the CenturyLink companies; and switched exchanged access services in these same local exchange service territories is granted, subject to the conditions and recommendations contained in the Staff’s Memorandum.

2. iNetworks, and the services it offers, are classified as competitive.

3. iNetworks’ originating and terminating access rates shall not exceed the access rates of the Incumbent Local Exchange Carriers (“ILECs”) against whom iNetworks is competing pursuant to Sections 392.361.6 and 392.370, RSMo Supp. 2009.

4. If the directly competing ILEC, in whose service area iNetworks is operating, decreases its originating and/or terminating access service rates, iNetworks 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.

5. Application of the following statutes and Commission rules is waived:

**Statutes**

392.210.2	-	uniform system of accounts
392.240(1)	-	just and reasonable rates
392.270	-	valuation of property (ratemaking)

392.280	-	depreciation accounts
392.290	-	issuance of securities
392.300.2	-	acquisition of stock
392.310	-	stock and debt issuance
392.320	-	stock dividend payment
392.330	-	issuance of securities, debts and notes
392.340	-	reorganization(s)

### **Commission Rules**

4 CSR 240-3.550(5)(C)	-	exchange boundary maps
4 CSR 240-10.020	-	depreciation fund income
4 CSR 240-30.040	-	uniform system of accounts

6. The certification granted herein is conditioned upon the iNetworks' compliance with the regulatory obligations set out in this order.

7. The following tariff, filed by iNetworks on July 27, 2010, assigned file number YL-2011-0046 is approved, as amended and substituted, to become effective on September 17, 2010:

### **Missouri P.S.C. Tariff No. 1**

### **Original Sheet No. 1 to Original Sheet No. 83**

8. iNetworks shall file the interconnection agreements it is currently negotiating with AT&T Missouri and CenturyLink for final approval as soon as they are completed and executed.

9. This order, iNetworks' certificate and iNetworks' tariff sheets shall become effective on September 17, 2010.

10. Pursuant to Section 392.410.5, RSMo Supp. 2009, the authority conferred by the certificate of service authority approved in this order shall be null and void unless it is exercised within one year of the effective date of this order.

11. This case shall be closed on September 18, 2010.

**BY THE COMMISSION**

A handwritten signature in black ink, appearing to read 'S. C. Reed', written in a cursive style.

Steven C. Reed  
Secretary

( S E A L )

Harold Stearley, Senior Regulatory Law Judge,  
by delegation of authority pursuant  
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 15<sup>th</sup> day of September, 2010.