

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

In the Matter of the Application of Pac-)
West Telecomm, Inc. for Certificates of)
Authority to Provide Resold and)
Facilities-Based Local Exchange and)
Interexchange Telecommunications)
Services in the State of Missouri and to)
Classify Those Services and the Company)
as Competitive)

Case LA-2006-0155

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 Pac-West Telecomm, Inc. (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; Sprint Missouri, Inc. d/b/a Sprint; CenturyTel of Missouri, LLC; and Spectra Communications Group, LLC d/b/a CenturyTel; conditioned upon certain access rate provisions. Staff also recommends that the company receive a certificate of service authority to provide interexchange telecommunications services and local exchange services restricted to dedicated, private line services. 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 4 CSR 240-3.510(1)(C) because the Applicant did not file a proposed tariff with its application (see *Application* at para. 19), 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 proposed tariffs. 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. In its Application, the Applicant notes that in the course of business it has been party to regulatory proceedings (see para. 10). As part of its Application, the Applicant submitted selections from its most recent Form 10-K submitted to the Securities and Exchange Commission in order to comply with the Commission's rule at 4 CSR 240-2.060(1)(K), which requires "a statement indicating whether the applicant has any pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates... ." A review of the descriptions of the proceedings indicates that they do not pertain to customer service or rates; rather, they pertain to the company's initial public stock offering and intercarrier compensation.

WHEREFORE, Staff recommends that the Commission grant Pac-West Telecomm, Inc. certificate to provide basic local exchange telecommunications services, conditioned upon the access rate provisions described in the Staff memorandum; a certificate of service authority to provide interexchange telecommunications services and local exchange services restricted to dedicated, private line services; competitive classification; and a waiver of the statutes and regulations listed in the Applicant's application, but deny waiver of 4 CSR 240-3.510(1)(C).

Respectfully submitted,

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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 22nd day of December 2005.

/s/ David A. Meyer