

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

In the matter of the Application of New Path)	
Networks, LLC For a Certificate of Service)	Case No. LA-2008-0148
Authority To Provide Interexchange and Non-)	Tariff File No. YL-2008-0309
Switched Local Telecommunications Services)	

STAFF RECOMMENDATION

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

1. In the attached Memorandum, labeled Appendix A, Staff recommends the Commission grant New Path Networks, LLC (Applicant) a certificate of service authority to provide interexchange and non-switched local telecommunications 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. §§ 392.430 and 392.440 RSMo. (2000).

2. 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.

3. 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.

4. Finally, Staff recommends that the Commission grant approval of the Applicant's proposed tariff, P.S.C. MO. Tariff No. 1, with a proposed effective date of December 24, 2007.

WHEREFORE, for reasons stated in Staff's Memorandum, Staff recommends that the Commission grant New Path Networks, LLC a certificate to provide interexchange and non-switched local telecommunications services; grant it the requested competitive classification; grant the waivers listed in the Commission's Notice of Application; and approve its tariff, P.S.C. MO. Tariff No. 1.

Respectfully submitted,

/s/ **Robert S. Berlin**

Robert S. Berlin
Senior Counsel
Missouri Bar No. 51709

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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 3rd day of December 2007.

/s/ **Robert S. Berlin**

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: LA-2008-0148 File No: YL-2008-0309
Applicant: NewPath Networks, LLC

From: Sara Buyak
Telecommunications Department
William Voight 11-29-07 Bob Berlin 11-29-07
Utility Operations Division/Date General Counsel's Office/Date

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

Date: 11-28-07
Filing Deadline: December 13, 2007 (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 Embark
- ☐ 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 PSC Mo. Tariff No. 1 (indicate PSC MO numbers) December 24, 2007 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:

Specifically, NewPath Networks, LLC is offering dedicated point-to-point circuits on a Distributed Antenna System Network. Private line service does not provide end user retail customer service.

☒ 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.

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NewPath Networks, LLC for a Certificate)
of Service Authority to Provide)
Interexchange and Non-Switched Local)
Telecommunications Services)
)
)

Case No. LA-2008-0148

AFFIDAVIT OF Sara Buyak

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Sara Buyak, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying staff recommendation and that the facts therein are true and correct to the best of her knowledge and belief.



Sara Buyak

Subscribed and affirmed before me this 29th day of November 2007
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