

In the Matter of the Cancellation of the)
Certificate of Service Authority of NexUSStel, LLC) Case No.

COMES NOW the Staff of the Missouri Public Service Commission (Staff), through the undersigned counsel, and moves for the Missouri Public Service Commission (Commission) to cancel NexUStel, LLC's (NexUStel or Company) certificate of service authority to provide competitive resold interexchange telecommunications services and the associated tariff. For this Motion, Staff respectfully states the following:

- NexUSStel, LLC has not provided intrastate telecommunication services pursuant to the authorization issued by the Commission in the above-referenced proceeding and has determined that it will not provide intrastate telecommunication services in the foreseeable future. As a result, NexUSStel, LLC hereby requests that the Commission discontinue or cancel its certification/registration, effective immediately.

5. While NexUStel has not provided its 2008 operating revenue statement to the Commission, the company owes no past assessments to the Commission.
6. Section 392.390 (1) RSMo (2000) requires a telecommunications company to “[f]ile annual reports with the commission as required by the commission and in a form and at times prescribed by the commission.” NexUStel’s statement provides “for purpose of any annual reporting requirements, [NexUStel] hereby advises the Commission that there were no services provided in 2008 and accordingly, no intrastate revenues received by NexUStel.”
7. As NexUStel has requested cancellation of its certificate and is not providing telecommunications services in Missouri to the best of Staff’s knowledge, information, and belief, Staff recommends the Commission issue an order canceling the Company’s certificate.
8. The Commission has the authority to cancel a telecommunications certificate pursuant to Section 392.410.5 RSMo (Supp. 2008), which provides “[a]ny certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected.”
9. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

WHEREFORE, the Staff respectfully recommends the Missouri Public Service Commission issue an order canceling NexUStel, LLC’s certificate of service authority to provide competitive resold interexchange telecommunications services and the associated tariff.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez
Legal Counsel
Missouri Bar No. 59814

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
jennifer.hernandez@psc.mo.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on Jorge Asecio, President, NexUStel LLC, 9700 South Dixie Hwy., Suite 550, Miami, Florida 33156, jasecio@nexustel.net ; Capitol Corporate Services, Inc., 222 E. Dunklin Street, Suite 102, Jefferson City, MO 65101; and The Office of Public Counsel, 200 Madison Street, P.O. Box 2230, Jefferson City, MO 65102, opcservice@ded.mo.gov this 14th day of April, 2009, either by hand delivery, electronic mail or First Class United States Mail, postage prepaid.

/s/ Jennifer Hernandez

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of NexUSTel, LLC for Certificate of Service Authority to Provide Resold Interexchange Telecommunications Services in the State of Missouri, and to Classify those Services and The Company as Competitive)	
)	
)	<u>Case No. TA-2008-0391</u>
)	Tariff No. YX-2008-0732
)	

ORDER GRANTING CERTIFICATE TO PROVIDE RESOLD INTEREXCHANGE TELECOMMUNICATIONS SERVICES RECOGNIZING TARIFFS

Issue Date: August 6, 2008

Effective Date: August 16, 2008

This order grants a certificate of service authority to provide resold interexchange telecommunications services in the state of Missouri, classifies those services and the company as competitive, waives certain statutes and regulations, and recognizes the tariffs that went into effect by operation of law.

On May 9, 2008, NexUSTel, LLC applied for a certificate of service authority to provide resold interexchange telecommunications services within the state of Missouri, and for competitive classification. The company seeks statewide certification to provide resold interexchange service throughout Missouri. NexUSTel is a Missouri limited liability company.

On June 11, 2008, the Commission issued its Notice of Applications, establishing a 15-day deadline for intervention. No applications to intervene were received.

NexUSTel filed a proposed tariff in conjunction with its application. The tariff's effective date was July 25, 2008. NexUSTel's tariff describes the rates, rules and regulations it intends to use, identifies NexUSTel as a competitive company, and lists the waivers requested. NexUSTel intends to provide resold interexchange telecommunications services.

On July 16, 2008, the Staff of the Commission recommended that the requested certificate, classification, and waivers be granted. Staff recommended that the Commission approve the proposed tariff to become effective on July 25, 2008.

The Commission may grant an application for a certificate of service authority to provide telecommunications service upon a showing that the applicant has met the statutory requirements, including relevant service standards,¹ and that the grant of authority is in the public interest.² Based on the verified application, including NexUSTel's stated commitment to comply with all applicable rules, as well as Staff's uncontested recommendation, the Commission finds that NexUSTel satisfies the requirements for certification and that granting such certificate is in the public interest.

NexUSTel also requests that it and its services be classified as competitive and that the application of certain statutes and regulatory rules be waived. The Commission may classify a telecommunications service as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.³ The Commission may only classify a telecommunications carrier as

¹ See Sections 392.450, 392.451 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

² Sections 392.430 and 392.440.

³ Section 392.361.2.

competitive if all of its services are so classified.⁴ The Commission may waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁵

The Commission finds that NexUSTel will compete with incumbent local and long distance exchange carriers, as well as other competitive local and long distance exchange carriers, in the exchanges in which it provides resold interexchange telecommunications service. The Commission finds that NexUSTel will be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services NexUSTel will offer are qualified for classification as competitive services.

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 Section 392.361 to 392.520 and the purposes of this chapter.”⁶ The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange carriers. The Commission finds that the waiver of those statutes and regulation is consistent with the purposes of Chapter 392, and will waive those provisions for NexUSTel.

The Commission may also require a telecommunications company to comply with any conditions reasonably necessary to protect the public interest. Staff recommends that NexUSTel’s application be granted subject to certain restrictions regarding switched access rates. These conditions are routinely recommended by Staff and NexUSTel

⁴ Section 392.361.3.

⁵ See Sections 392.185, 392.361.3 and 392.420.

⁶ Sections 392.361.5 and 392.420.

accepted them in its application. The conditions proposed by Staff are necessary to protect the public interest and will be adopted.

The Commission places NexUSTel on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against the company. These obligations include, but are not limited to, the following:

- A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable for a penalty of \$100 per day for each day that the violation continues. Rule 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
- B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.
- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, under Section 386.570, RSMo 2000.
- D) The obligation to keep the Commission informed of its current address and telephone number.

The company is reminded that its officers may not represent it before the Commission. The company must be represented by an attorney licensed to practice law in Missouri.

In addition, Section 392.410.5, RSMo Cum. Supp. 2007, provides that the company's certificate of service authority becomes null and void one year from the date of this order unless the company has exercised its authority under that certificate.

IT IS ORDERED THAT:

1. NexUSTel, LLC is granted a certificate of service authority to provide resold interexchange telecommunications services throughout Missouri; subject to the conditions and recommendations contained in the Staff's Memorandum.

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

3. NexUSTel, LLC's originating and terminating access rates shall be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area NexUSTel, LLC seeks authority to provide service, unless authorized by the Commission pursuant to Section 392.220 and 392.230, RSMo.

4. The certificates and competitive service classification for switched exchange access are granted conditioned on the continued applicability of Section 392.200, RSMo, and the requirement that any increase in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to Section 392.200 and 392.230, RSMo, and not Section 392.500 and 392.510, RSMo.

5. If the directly competing incumbent local or long distance exchange carrier, in whose service area NexUSTel, LLC is operating, decreases its originating or terminating access service rates, NexUSTel, LLC shall file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing incumbent local or long distance exchange carrier's service area within 30 days of the directly competing incumbent

local or long distance exchange carrier's reduction of its originating or terminating access rates in order to maintain the cap.

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

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 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 map
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts

7. The tariff filed by NexUSTel, LLC on June 10, 2008, under tariff number YX-2008-0732, is recognized as effective by operation of law on July 25, 2008. The tariff approved is:

Mo. P.S.C. Tariff No. 1
Original Sheet No. 1

8. This order and NexUSTel Network of Missouri, LLC's certificate shall become effective on August 16, 2008.

9. This case shall be closed on August 17, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Colleen M. Dale, Chief Regulatory Law
Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 6th day of August, 2008.

March 20, 2009

FILED²

MAR 27 2009

**Missouri Public
Service Commission****VIA CERTIFIED MAIL, RETURN****RECEIPT NO: 0308 3390 0000 1480 2416**

*Missouri Public Service Commission (the "Commission")
200 Madison Street, Suite 100,
Jefferson City, MO 65101*

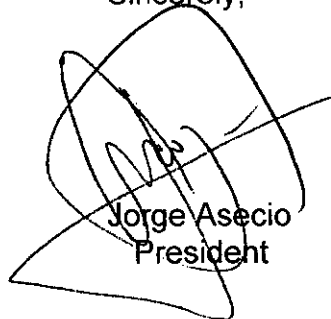
Re: NexUStel, LLC, Docket No. TA-2008-0391

Dear Commission Clerk:

Please be advised that NexUStel, LLC has not provided intrastate telecommunication services pursuant to the authorization issued by the Commission in the above-referenced proceeding and has determined that it will not provide intrastate telecommunication services in the foreseeable future. As a result, NexUStel, LLC hereby requests that the Commission discontinue or cancel its certification/registration, effective immediately. Because NexUStel has not provided any services pursuant to the certificate, there are no customers who will be affected by this cancellation and for purpose of any annual reporting requirements, hereby advises the Commission that there were no services provided in 2008 and accordingly, no intrastate revenues received by NexUStel.

Should you require any additional information, please contact me at 786.464.8808 or by email jasecio@nexustel.net.

Sincerely,



Jorge Asecio
President