

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

In the Matter of the Application of LMDS Holdings,)
Inc., for a Certificate of Service Authority to Provide)
Competitive Intrastate Basic and Non-switched)
Local Exchange and Interexchange)
Telecommunications Services)

Case No. TA-2006-0267
Tariff File No. YL-2006-0568

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission 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 LMDS Holdings, Inc., (Applicant) a certificate to provide interexchange telecommunications services and a certificate to provide local exchange telecommunications services restricted to dedicated, private line services. The Staff also recommends that the Commission grant Applicant a certificate to provide basic local exchange telecommunications services throughout all exchanges served by incumbent local exchange telecommunications company Southwestern Bell Telephone L.P. d/b/a AT&T Missouri. The recommendation to grant the basic local certificate is based upon a number of conditions. 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. Sections 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. Section 392.361.4. All the services a competitive company provides must be classified as competitive. Section 392.361.3.

3. Staff further recommends that the Commission approve 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. Sections 392.185, 392.361.5 and 392.420.

4. The Applicant submitted a proposed tariff for interexchange and non-switched local exchange services (Missouri Tariff No. 1, Tariff File No. YL-2006-0568), to which the Staff has no objection. The Applicant did not submit a basic local tariff. The Applicant cannot provide basic local service until it has a basic local tariff. 4 CSR 240-3.510 (1)(C).

WHEREFORE, Staff recommends that the Commission grant Applicant a certificate to provide interstate interexchange telecommunications services; grant applicant a certificate to provide local exchange telecommunications services restricted to dedicated, private line services; grant Applicant a certificate to provide basic local exchange telecommunications services throughout all exchanges served by AT&T Missouri, contingent upon the listed conditions; grant Applicant competitive classification; approve waivers listed in the Notice of Applications; and approve Applicant's Missouri Tariff No. 1, effective February 10, 2006.

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 1st day of February 2006.

/s/ William K. Haas

MEMORANDUM

To: Missouri Public Service Commission Official Case File

Case No.: **TA-2006-0267**

File No.: **YL-2006-0568**

Applicant: **LMDS Holdings, Inc.** (Holdings)

From: A.P. Kuss
Telecommunications Department

William L. Voight 01/31/06
Utility Operations Division/Date

/s/ William K. Haas 2/1/06
General Counsel's Office/Date

Subject: Staff Recommendation for approval of Certificate to Provide Service and Tariff

Date: January 31, 2006

Filing Deadline: February 03, 2006

The Telecommunications Department Staff (Staff) recommends the applicant be granted the 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 Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (AT&T Mo)
 - ☐ All of Sprint Missouri Inc. d/b/a Sprint (Sprint)
 - ☐ All of CenturyTel of Missouri, LLC (CenturyTel Mo)
 - ☐ All of Spectra Communications Group, LLC d/b/a CenturyTel (Spectra)
 - ☐ Other (please describe):

Granting the certificate 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.
4. The certificate will become null and void if unused after one year.

- ☒ Certificate to provide Interexchange telecommunications services.
- ☒ Certificate to provide local exchange telecommunications services.*
*Local exchange authority should be restricted to dedicated, private line services.
- ☒ The Company is not delinquent in filing an annual report or 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: _____
- ☒ Applicant has filed a proposed tariff per 4 CSR 240-3.545 for service with an effective date not fewer than 45 days from the issue date. The applicant cannot lawfully provide service until tariffs are effective. No objection to tariff taking effect:
PSC No. Missouri Tariff No. 1 Effective Date: February 10, 2006
- ☐ Tariff was not submitted with Application [4 CSR 240-3.510(1)(C)].

Staff recommends the applicant and its services receive competitive classification. In addition, Staff recommends approval of the waivers listed in the Notice.

- ☒ There is an Attachment to this recommendation (see below).

Attachment:

1. The applicant has submitted a proposed tariff for interexchange and non-switched local exchange services only.
2. A tariff for Basic Local exchange service was not submitted with the Application [4 CSR 240-3.510(1)(C)]. The applicant cannot lawfully provide switched local service until tariffs are effective.

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 or assessment fees.
- ☒ Application includes an affidavit.
- ☒ Requesting waivers of rules or statutes previously granted to a competitively classified company.

(As required by RSMo 392.430/.440):

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

Additional Review Items for CLEC Certificate Applications:

(As required by RSMo 392.455):

- ☒ Possesses sufficient technical, financial and managerial resources and abilities.
- ☒ Statement that applicant will satisfy the minimum standards of 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): N/A

- ☒ Properly formatted:
(Company name, PSC MO No., Page #, Page revision #, proposed effective date).
- ☒ Identifies competitive classification.
- ☒ Identifies waivers granted.
- ☒ ICB pricing, if proposed, limited for private line, special access or Centrex-like services, or in any exchange in which business services have been declared competitive [RSMo 392.200(8)].
- ☒ Proposed rates do not establish geographic deaveraged rates (if not checked, explain in Attachment) [RSMo 392.200(4)].
- ☐ If an Alternative Operator Service provider (receives more than 40% of revenues from traffic aggregators) operator service rates do not exceed: Person-to-Person (\$12.50), Station-to-Station/card (\$7.50) [RSMo 392.515(1)].

Tariff Review Items (applicable only for CLECs): N/A

- ☐ Tariff clearly identifies by exchange areas where it offers basic local telecommunications service [RSMo 392.455(3)].
- ☐ Tariff offers local service as a separate and distinct service [RSMo 392.455(4)].
- ☐ Switched access rates capped at ILEC's rates.

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Holdings, Inc., for a Certificate of Service)
Authority to Provide Competitive Intrastate)
Basic and Non-Switched Local Exchange)
and Interexchange Telecommunications)
Services.)

Case No. **TA-2006-0267**

AFFIDAVIT OF Arthur P. Kuss

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Arthur P. Kuss, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in the preparation of the accompanying Memorandum, and that the facts therein are true and correct to the best of his knowledge and belief.



Arthur P. Kuss

Subscribed and affirmed before me this 31st day of January, 2006.

I am commissioned as a Notary Public within the County of Cole, State of Missouri
and my commission expires on June 7, 2008.





NOTARY PUBLIC

