

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

In the Matter of the Application of Affinity)	
Network, Inc. d/b/a ANI Networks for Expansion)	
of its Authority to Include Facilities-Based)	Case No. TA-2007-0195
Interexchange Telecommunications Services in)	Tariff No. YX-2007-0363
the State of Missouri, for Classification of the)	
Company and its Services as Competitive and for)	
Waiver of Certain Statutes and Rules)	

STAFF RECOMMENDATION

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

1. In the attached Memorandum, labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant Affinity Network Incorporated d/b/a ANI Networks (Applicant) a certificate of service authority to provide intrastate, interexchange 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 notes that the Applicant has previously been granted a certificate of service authority solely to provide intrastate, interexchange telecommunications services solely under the name "Affinity Network Incorporated" in Case No. TA-92-27. In its *Application* in this case, the Applicant has indicated its prior certificate only authorized it to provide resold interexchange telecommunications services, and the present case is an application to provide facilities-based interexchange telecommunications services.¹ Staff notes that in its 1993 *Report and Order*, the Commission did not explicitly limit the grant of authority to resold interexchange telecommunications services. However, Staff recommends that Commission grant a second

¹ The Commission's *Report and Order* from Case No. TA-92-27 is appended to this pleading as Appendix B for the Commission's reference, as it is not otherwise readily available electronically.

certificate to the Applicant to provide interexchange telecommunications services, as past Commission practice has been to grant separate certificates when companies use fictitious names. As the previous grant of authority did not include the use of the fictitious name "ANI Networks," the certificate of service authority the Commission is granting in this case will be treated separately and the Applicant will be expected to fulfill all regulatory requirements pertaining to each certificate under both its corporate and its fictitious names.

3. Staff also recommends that the Commission renew the Applicant's competitive classification and classify 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.

4. 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.

5. Finally, Staff recommends that the Commission grant approval of the Applicant's proposed tariff, PSC MO Tariff No. 4, with a proposed effective date of January 11, 2007.

WHEREFORE, Staff recommends that the Commission grant Affinity Network Incorporated d/b/a ANI Networks a certificate of service authority to provide intrastate, interexchange telecommunications services; grant it the requested competitive classification; grant the waivers listed in the Commission's Notice of Application; and approve its proposed tariff PSC MO Tariff No. 4, with a proposed effective date of January 11, 2007.

Respectfully submitted,

/s/ David A. Meyer

David A. Meyer

Senior Counsel

Missouri Bar No. 46620

Attorney for the Staff of the

Missouri Public Service Commission

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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 2006.

/s/ David A. Meyer

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: TA-2007-0195 File No: YX-2007-0363
Applicant: Affinity Network Incorporated, d/b/a ANI Networks

From: Sara Buyak
Telecommunications Department
William Voight 12-20-06 William Haas 12-20-06
Utility Operations Division/Date General Counsel's Office/Date

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

Date: 12-5-06
Filing Deadline: 1/2/07 (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. 4, Effective Date: January 11, 2007.

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:

☒ 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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OF THE STATE OF MISSOURI**

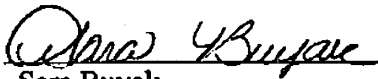
Affinity Network, Inc. d/b/a ANI Networks)
for Expansion of Its Authority to Include)
Facilities-Based Interexchange)
Telecommunications Services in the State)
of Missouri, for Classification of the)
Company and its Services as Competitive)
and for Waiver of Certain Statutes and)
Rules)

Case No. TA-2007-0195

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 20th day of December 2006
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 #06942088


NOTARY PUBLIC

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of)
Affinity Network Incorporated for)
authority to operate as a resale) Case No. TA-92-27
interexchange carrier within the state)
of Missouri.)

APPEARANCES: James A. Burt, Strong and Associates, 901 East Battlefield Road,
Springfield, MO 65801,
and
Kathleen Villacorta, Wiggins & Villacorta, P.A., P.O. Drawer
1657, Tallahassee, FL 32302, for Affinity Network Incorporated.

Randy Bakewell, Assistant Public Counsel, Office of the Public
Counsel, P.O. Box 7800, Jefferson City, MO 65102, for the Office
of Public Counsel and the public.

HEARING

EXAMINER: Dale H. Roberts

REPORT AND ORDER

On August 30, 1991, Affinity Network Incorporated (Applicant or Company) applied for a certificate of service authority under Chapter 392, RSMo (Supp. 1992) to provide competitive intrastate interexchange telecommunication services in the state of Missouri. On November 7, 1991, Applicant filed an Amended Application. Company also applied for the waiver of certain statutes and Commission rules, listed infra. The Commission issued its Order and Notice on November 19, 1991, however, after Applicant submitted its Amended Application and the Commission issued a second Order and Notice on May 19, 1992, setting an intervention deadline of June 18, 1992. On November 20, 1991, the Office of Public Counsel requested a hearing. Public Counsel subsequently withdrew its request for hearing. There were no other motions for hearing and no one requested intervention. On February 8, 1993, the Staff of the Missouri Public Service Commission filed its memorandum recommending approval of Company's application.

Findings Of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Pursuant to Section 392.440, Applicant requests authority to provide intrastate interexchange telecommunication services in the state of Missouri. Pursuant to Section 392.361, Applicant also requests that the Commission classify it as a competitive telecommunications company and waive compliance with the statutes and Commission regulations referenced below.

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered such an opportunity. In this case, notice was sent by the Commission. Interested persons or entities were directed to intervene on or before June 18, 1992. Since no proper party or governmental entity filed an application to intervene and there are no outstanding requests for a hearing, the Commission determines that an oral hearing is not necessary and the Applicant may submit evidence in support of its application by verified statement. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission finds that Applicant is a foreign corporation authorized to do business in the state of Missouri, with its principal office or place of business located at Suite 1500, 3550 Wilshire Boulevard, Los Angeles, CA 90010. The Commission further finds that Applicant has filed current financial information and a brief description of the type of service it proposes to provide, and has agreed to comply with all applicable rules and regulations of the Commission and any terms and conditions which the Commission may impose.

Based upon the verified statements of Applicant and the recommendations of Staff, the Commission finds that Applicant is qualified to perform the service proposed. Pursuant to Sections 392.440 and 392.530, the Commission will assume

that additional competition in the intraLATA and interLATA toll markets is in the public interest. The Commission does not deem it necessary to determine a public need for each reseller's services as the market would eliminate any reseller for which there is no public need. Consequently, pursuant to Section 392.440, the Commission finds that it is in the public interest to grant Applicant a certificate of service authority to provide intrastate interexchange telecommunication services.

By its recommendation filed herein, Staff states that Applicant's proposed services are the same as those classified as competitive in Case No. TO-88-142, *In re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri*, Mo. P.S.C. (N.S.) 16 (September 1989). Staff therefore recommends that the Commission grant Applicant competitive status.

Based upon the verified statement of Applicant and Staff's recommendation, the Commission finds that all of the services Applicant proposes to offer are competitive and that Applicant should, therefore, be classified as a competitive company. The Commission further finds that the waiver of the following statutory and regulatory requirements is, pursuant to Section 392.361(5), reasonable and not detrimental to the public interest.

Pursuant to Section 392.470, the Commission determines that certain regulatory requirements should be imposed upon resellers authorized to provide telecommunication services in Missouri. Since the Applicant proposes to operate as a reseller of telecommunication services in this state, the Commission finds that the following regulatory requirements should be imposed upon Applicant as reasonable and necessary conditions of certification:

- (1) Applicant is required to comply with reasonable requests by the Staff for financial and operating data to allow the Staff to monitor the intraLATA toll market pursuant to Section 386.320.3.
- (2) Applicant is required to file tariffs containing rules and regulations applicable to customers, a description of the services provided and a list of rates associated with the services pursuant to Section 392.220 and 4 CSR 240-30.010.
- (3) Applicant's tariff filing must also contain a preliminary section which states that Company is a competitive carrier and identifies the statutory and rule waivers herein granted.
- (4) Applicant is precluded from unjustly discriminating between and among its customers pursuant to Section 392.200 and Section 392.400.
- (5) Applicant is required by Sections 386.570, RSMo 1986, and 392.360, to comply with all applicable rules of the Commission except those which have specifically been waived by this Report and Order.
- (6) Applicant is required to file a Missouri-specific annual report pursuant to Section 392.210 and Section 392.390.1.
- (7) Applicant is required, until the Commission orders otherwise, to submit to the Staff on a confidential basis, quarterly reports showing its percentage of interstate use and intrastate interLATA and intraLATA use pursuant to Section 392.390.3.
- (8) Pursuant to Section 392.390.3, Applicant is required to comply with the jurisdictional reporting requirements as set out in each local exchange company's access services tariff.

Finally, the Commission finds that Applicant should file appropriate tariffs within thirty (30) days of the effective date of this Report and Order.

The certificate to be granted herein will become effective only upon approval by the Commission of these tariffs.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Applicant proposes to provide service to the public as a competitive intrastate interexchange telecommunications company subject to the Commission's jurisdiction pursuant to Chapters 386 and 392.

Based upon the verified application of Applicant and the recommendation of its Staff, the Commission has found that Applicant has complied with the Commission's standards pertaining to applications requesting authority to provide intrastate interexchange telecommunication services and is qualified to perform said services. The Commission concludes that additional competition in the intrastate interexchange market is in the public interest and a certificate of service authority should be granted. The Commission also has found that all the services Applicant proposes to offer are competitive and that waiving the statutes and Commission rules set out below is reasonable and not detrimental to the public interest. Therefore, the Commission concludes that Applicant should be classified as a competitive company pursuant to Section 392.361.

IT IS THEREFORE ORDERED:

1. That Affinity Network Incorporated be granted hereby a certificate of service authority to provide intrastate interexchange telecommunication services in Missouri. This certificate of service authority is subject to the conditions of certification set out herein and shall not become effective until the Commission approves Applicant's tariffs.

2. That Affinity Network Incorporated be classified hereby as a competitive telecommunications company for which the effect of the following statutory and regulatory requirements shall be waived:

Statutes

- 392.240(1) - ratemaking
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debt and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - rate schedules
- 4 CSR 240-30.060(5)(B) through (O) - records re: ratemaking
- 4 CSR 240-32.030(1)(B) - exchange boundary maps
- 4 CSR 240-32.030(1)(C) - record keeping
- 4 CSR 240-32.030(2) - in-state record keeping
- 4 CSR 240-32.050(3) - local office record keeping
- 4 CSR 240-32.050(4) - telephone directories
- 4 CSR 240-32.050(5) - call intercept
- 4 CSR 240-32.050(6) - telephone number changes
- 4 CSR 240-32.070(4) - public coin telephone
- 4 CSR 240-33.030 - minimum charges rule

3. That Affinity Network Incorporated shall file tariffs, as described by this order, within thirty (30) days of the effective date of this Report and Order; that said tariffs shall, by index or preface, identify Company as a competitive company and identify each statute or regulation waived by this order.

4. That Affinity Network Incorporated shall file its PIU reports as discussed herein within thirty (30) days of the effective date of this Report and Order.

5. That Affinity Network Incorporated shall file with the Commission Staff a report showing its percentage of intrastate intraLATA use. Said report shall be filed within thirty (30) days of the effective date of this Report and Order and on a confidential basis, unless the Commission orders otherwise.

6. That this Report and Order shall become effective on March 5,
1993.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Perkins and Kincheloe, CC., Concur.

Dated at Jefferson City, Missouri,
on this 23rd day of February, 1993.