

**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)	Case No. TA-2008-0391
Telecommunications Services in the State of)	Tariff File No. YX-2008-0732
Missouri, and to Classify Those Services and)	
the Company as Competitive)	

STAFF RECOMMENDATION

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

1. On June 10, 2008, NexUSTel, LLC filed its Application requesting certificate of service authority to provide resold interexchange telecommunications service and requesting competitive classification. NexUSTel also submitted a proposed tariff, Mo. P.S.C. Tariff No. 1 (Tariff File Nos. YX-2008-0732). The tariff bears a proposed effective date of July 25, 2008.

2. In the attached Memorandum, labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant Applicant a certificate 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).

3. 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.

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. Staff has no objection to the Applicant's proposed tariff taking effect on July 25, 2008.

WHEREFORE, Staff recommends that the Commission grant NexUSTel, LLC a certificate of service authority to provide intrastate, interexchange telecommunications services; grant it the requested competitive classification; grant the standard waivers listed in the Commission's Notice of Application; and approve Applicant's tariff effective July 25, 2008.

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 a copy of the foregoing has been mailed, hand-delivered, or transmitted by facsimile or electronically mailed to all counsel of record this 16th day of July 2008.

/s/ William K. Haas_____

MEMORANDUM

To: Missouri Public Service Commission Official Case File

Case No.: **TA-2008-0391**

File No.: **YX-2008-0732**

Applicant: **NexUSTel, LLC (NexUSTel)**

From: William Voight
Telecommunications Department

William Voight 7-16-08
Utility Operations Division/Date

William Haas 7-16-08
General Counsel's Office/Date

Subject: Staff Recommendation for Approval of Certificate to Provide Service

Date: July 16, 2008

Filing Deadline: N/A

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 Embarq Missouri Inc. d/b/a Embarq (Embarq)
 - ☐ All of CenturyTel of Missouri, LLC (CenturyTel Mo)
 - ☐ All of Spectra Communications Group, LLC d/b/a CenturyTel (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 the 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 (see below):

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

Effective Date: July 25, 2008

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); 392.245; 392.455(3), (4); 392.500(2); and 392.515(1) 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 (see below).

Additional Comments:

In preparation for this recommendation the Telecommunications Department Staff (Staff) sent data requests to NexUSTel and the Office of Public Counsel. The purpose of the Staff's discovery was to seek information pertaining to allegations appearing in the June 26, 2008 issue of TR's State News Wire in which the California Public Utilities Commission's Consumer Protection and Safety Division protested NexUSTel's Application in that State. According to reports, certain officers and directors of NexUSTel are associated with Americatel Corporation, which was allegedly sanctioned by the Federal Communications Commission (FCC) for engaging in slamming and cramming.

A Staff check with the Commission's Consumer Services Department and the Office of Public Counsel revealed no complaints and no instances of slamming reported in Missouri.

Public Counsel's data request response did indicate that certain officers of NexUSTel are believed to be the same officers of Americatel. Moreover, the Office of Public Counsel's responses indicated two instances where the FCC's Consumer Policy Division sanctioned Americatel. According to the data supplied by the OPC, one instance occurred in 2002 and involved one informal complaint by one unidentified consumer. Another instance occurred in 2005, again involving one informal complaint by one unidentified consumer.

Given that there have not been any complaints or reports of slamming involving Americatel in Missouri, and given that only two consumers were found by the FCC's Consumer Bureau to have been harmed by Americatel in past years, the Staff does not believe that these instances rise to the level of delaying NexUSTel's Missouri application for further investigation. Therefore,

Staff recommends the Commission approve NexUSTel's application and tariff with an effective date of July 25, 2008.

- ☒ 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: _____

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.
- ☒ The Applicant is 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: N/A

(As required by RSMo 392.455 and/or 4 CSR 240-3.510):

- ☐ 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):

- ☒ The tariff meets Staff's review for compliance with rules for competitive company tariff filings.

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Case No. TA-2008-0391

AFFIDAVIT OF WILLIAM L. VOIGHT

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

William L. Voight, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in preparing the accompanying Staff Recommendation and that the facts therein are true and correct to the best of his knowledge and belief.

Bill Voight

WILLIAM L. VOIGHT

Subscribed and affirmed before me this 16th day of July 2008.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

Susan L. Sundermeyer

NOTARY PUBLIC