

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application by Reduced Rate)
Long Distance, LLC and Horizon Telecom, Inc. for) **Case No. TM-2008-0288**
Approval of an Asset Purchase Agreement)

NOTICE OF DEFICIENCY

Issue Date: March 20, 2008

According to the verified pleadings in this case, Reduced Rate Long Distance, LLC (“RRLD”) is a Nevada limited liability corporation headquartered in Florida which has been certificated to provide resold long distance telecommunications services in Missouri since September 2001.¹ Horizon Telecom, Inc. (“Horizon”) is a Nevada corporation headquartered in Nevada which has been certificated to provide resold long distance telecommunications services in Missouri since December 2002.²

On March 3, 2008, RRLD and Horizon (“Applicants”) filed a verified joint application with the Commission seeking its approval of a transaction whereby, pursuant to an Asset Purchase Agreement they executed on December 1, 2007, Horizon would sell to RRLD substantially all of its assets, including, but not limited to, Horizon’s Missouri customer accounts. The Applicants further request that the Commission cancel Horizon’s existing tariffs and certificate of service authority and permit Horizon to discontinue providing telecommunications service to its former customers upon the Commission’s approval of the transaction.

¹ See Case No. TA-2002-55 (order effective Sept. 26, 2001).

² See Case No. XA-2003-0180 (order effective Dec. 27, 2002).

The joint application, as presently filed, lacks the information required by Commission Rules 4 CSR 240-2.060(1)(K) & (L), which apply to all applications submitted to the Commission. Likewise, it does not comply with Commission Rules 4 CSR 240-3.520(2)(E) & (F), which specify various mandatory filing requirements for applications in which a telecommunications company seeks authority to sell, assign, lease, or transfer its assets³ and are referred to in Commission Rule 4 CSR 240-2.060(6).

Moreover, the Applicants have not complied with the Commission's rules governing who may file pleadings before the Commission. This is because pleadings filed with the Commission must be signed by at least one attorney of record authorized to practice law in Missouri⁴ unless the entity signing the pleading is a natural person acting solely on his or her own behalf and representing only him or herself.⁵ Here, however, the joint application is signed by Leon L. Nowalsky, Esquire, of the Louisiana law firm Nowalsky, Bronston & Gothard, who is never expressly identified as an attorney licensed to practice law in Missouri and is obviously acting on behalf of RRLD and Horizon, not on his own behalf as a natural person or as the individual owner of those companies. Therefore, at present, the

³ Although the joint application partially complies with 4 CSR 240-2.060(1) and 4 CSR 240-3.520(2), the Applicants do not aver that any of the missing information was unavailable at the time of the submission. Nor do they state that such information will be filed once it becomes available. Cf. 4 CSR 240-2.060(2) (which states that if any of the items required under 4 CSR 240-2.060 "are unavailable at the time the application is filed, they shall be furnished prior to the granting of the authority sought"); 4 CSR 240-3.520(4) (same rule as to the omission of any of the items required under 4 CSR 240-3.520).

⁴ Commission Rule 4 CSR 240-2.040(3)(C) sets forth the proper procedure for attorneys licensed in other states to seek leave to be permitted to appear and participate in a particular case before the Commission, which involves the engagement of associate counsel licensed and having an office in Missouri.

⁵ See Commission Rules 4 CSR 240-2.080(1), (2), & (6); 4 CSR 240-2.040(3) & (5). The underlying basis for these rules can be found in Sections 484.010 and 484.020, RSMo 2000. Section 484.010 defines the practice of law as "the appearance as an advocate in a representative capacity or the drawing of papers, pleadings or documents or the performance of any act in such capacity in connection with proceedings pending or prospective before any court of record, commissioner, referee or any body, board, committee or commission constituted by law or having authority to settle controversies." Section 484.020 restricts the practice of law and engagement in law business to licensed attorneys.

joint application is effectively unsigned, and under the Commission's rules, unsigned pleadings are generally rejected.⁶

Likewise, the Applicants have failed to meet the requirements of Commission Rule 4 CSR 240-2.080, which prescribes the content and procedure for filing pleadings before the Commission and for service thereof. Commission Rule 4 CSR 240-2.080(18) states that "the party filing a pleading . . . shall serve [on] every other party, including the general counsel and the public counsel,⁷ a copy of the pleading[.]" Commission Rule 4 CSR 240-2.080(19) further states that "[e]very pleading . . . shall include a certificate of service," which "shall be adequate proof of service." The Applicants have not complied with either of these rules, because the joint application does not include a certificate of service and does not otherwise affirmatively indicate that it was served on the General Counsel of the Commission and the Office of the Public Counsel.

Finally, the joint application is deficient in that it does not meet the pleading requirements of Commission Rule 4 CSR 240-2.080(16), which specifies the procedure for "seeking expedited treatment in any case" before the Commission.

⁶ See 4 CSR 240-2.080(5).

⁷ The roles of the general counsel and the public counsel are set forth in 4 CSR 240-2.040(1) & (2), respectively. Staff and OPC are parties to every case before the Commission.

These deficiencies must all be corrected before the Commission will take any further action on or give any further consideration to the Applicants' request for authority to consummate the Asset Purchase Agreement and permanently discontinue Horizon's operations in Missouri.

(S E A L)

BY THE COMMISSION

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

Colleen M. Dale
Secretary

Dated at Jefferson City, Missouri,
on this 20th day of March, 2008.

Lane, Regulatory Law Judge