

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

In the Matter of the Joint Application of )	
Talk America Holdings, Inc., Talk )	
America, Inc., LDMI )	
Telecommunications, Inc. and Cavalier )	Case TM-2007-0140
Telephone Corp. for Approval of an )	
Indirect Transfer of Control and Related )	
Financing Transactions )	

**STAFF RECOMMENDATION**

COMES NOW the Staff of the Public Service Commission, and for its recommendation in this matter, states:

1. On October 2, 2006, Cavalier Telephone Corporation and Talk America Holdings, Inc. jointly filed an application (“Joint Application”) seeking approval of a transaction whereby a wholly-owned subsidiary of Cavalier Telephone Corporation would acquire indirect control of two Commission-regulated, wholly-owned subsidiaries of Talk America Holdings, Inc. (LDMI Telecommunications, Inc. and Talk America, Inc.).

2. According to the Joint Application, the transaction will be achieved through the acquisition of the outstanding shares of stock of Talk America Holdings, Inc. by an acquisition subsidiary of Cavalier Telephone Corporation. *Joint Application* at 5-6. Ultimately, Talk America Holdings, Inc. will merge into and be the survivor of that acquisition subsidiary of Cavalier Telephone Corporation. *Joint Application* at 6. The Joint Application also indicates that no transfer of certificates, assets or customers will result from the transaction. *Joint Application* at 2.

3. Section 392.300.1 RSMo (2000) generally provides that no telecommunications company may sell, assign, lease or transfer “the whole or any part of its franchise, facilities or

system” or merge its “line or system or franchises” with any other corporation, person or public utility without first obtaining permission from the Commission.

4. However, as noted above, the Joint Application indicates that no transfer of certificates, assets or customers will result from the transaction. *Joint Application* at 2. Thus, this statutory subsection does not apply to the transaction because the ownership of assets of a Missouri-regulated telecommunications company does not change under the terms of the transaction according to the applicants.

5. Section 392.300.2 RSMo (2000) generally provides that no stock corporation shall purchase or acquire more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by the virtue of the laws of this state, without the consent of the Commission.

6. However, Cavalier Telephone Corporation is incorporated in the state of Delaware. Its headquarters is in Virginia. Likewise, Talk America Holdings, Inc. is incorporated in the state of Delaware. Its headquarters are in Pennsylvania. As a result, no “telecommunications company organized or existing under or by the virtue of the laws of this state” is involved in the transaction. *Id.*

7. In the past, the Commission has dismissed for lack of jurisdiction under Section 392.300.2 RSMo (2000) any applications seeking approval for the transfer of the stock of corporations not organized or existing by virtue of the laws of the state of Missouri.<sup>1</sup> “The Commission has consistently found that the Commission does not have jurisdiction over

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<sup>1</sup> See, e.g., Case No. TM-2000-524, *In the Matter of NEXTLINK Missouri, Inc., and NEXTLINK Long Distance Services, Inc* (the acquired company was organized under the laws of the state of Washington); Case No. XM-2005-0219, *In the Matter of SBC Long Distance, Inc., and SBC Telecom, Inc.* (the acquired company was organized under the laws of the state of Delaware).

transactions at the holding company level... .”<sup>2</sup> Also, the Commission in its *Order Approving Interexchange and Nonswitched Local Exchange Certificates of Service Authority and Order Approving Tariff* of May 17, 2001 in Case No. TA-2001-545 waived the application of this statutory subsection with respect to Long Distance of Michigan, Inc., d/b/a FoneTel (Long Distance of Michigan, Inc. is the prior name of LDMI Telecommunications, Inc. and this case is the source of the company’s current interexchange and non-switched local certification).

WHEREFORE, the Staff recommends that the Commission issue an order that concludes that the Commission does not have jurisdiction over the transaction presented in the *Joint Application* and dismiss it.

Respectfully submitted,

/s/ David A. Meyer

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 12<sup>th</sup> day of October 2006.

/s/ David A. Meyer

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<sup>2</sup> Order Closing Case, *In the Matter of the Proposed Merger of Verizon Communications, Inc. and MCI, Inc.*, Case No. TM-2005-0370 (May 3, 2005) at 1.