

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 2nd day of
May, 2006.

In the Matter of the Joint Application of Integra)	
Telecom Holdings, Inc., and Electric Lightwave,)	
LLC, for Approval of a Transfer of Control of)	<u>Case No. TM-2006-0362</u>
Electric Lightwave, LLC.)	

ORDER DISMISSING JOINT APPLICATION

Issue Date: May 2, 2006

Effective Date: May 12, 2006

Syllabus: This order dismisses the Joint Application filed by Integra Telecom Holdings, Inc., and Electric Lightwave, LLC, due to a lack of jurisdiction.

On March 17, 2006, Integra Telecom Holdings, Inc., and Electric Lightwave, LLC, filed an application for approval of the transfer of control of Electric Lightwave from CU Capital, LLC, to Integra. Integra is an Oregon corporation and a wholly owned subsidiary of Integra Telecom, Inc. Through its state-specific operating subsidiaries, Integra provides telecommunications services in several states. However, Integra is not certificated in Missouri. Electric Lightwave is a Delaware limited liability company. Electric Lightwave holds a certificate of service authority from the Commission to provide interexchange telecommunications services in Missouri.¹ Electric Lightwave was a

¹ *In the Matter of the Application of Electric Lightwave, Inc., for a Certificate of Service to Provide Competitive Intrastate Interexchange Telecommunications Services in Missouri*, Case No. TA-97-246, Order Approving Interexchange Certificate of Service Authority and Order Approving Tariff (Jan. 29, 1997).

corporation at the time of its certification, but has since converted to a limited liability company.

Applicants state that although the proposed transaction will result in a change in the direct ownership of Electric Lightwave, it does not involve a transfer of certificates, assets, or customers, and Electric Lightwave will retain its authorization to provide intra-state telecommunications services in Missouri. Electric Lightwave will operate as a separate subsidiary of Integra, and following the consummation of the transaction, its customers will continue to receive service under the same rates, terms and conditions of service. Applicants expect that the transaction will be virtually transparent to Electric Lightwave's customers.

On March 30, 2006, the Staff of the Commission filed a Motion to Dismiss Application for Lack of Jurisdiction. Staff states that Section 392.300.2, RSMo, does not apply to this transaction because Electric Lightwave is not organized or existing under the laws of this state. Staff states that Section 392.300.1, RSMo, does not apply because Electric Lightwave is neither disposing of nor merging its franchise, facilities, or system.

Section 393.300.2 states that no stock corporation, other than a telecommunications company, may buy more than ten percent of the stock of a telecommunications company organized or existing under the laws of this state without first obtaining the Commission's consent. Electric Lightwave, the telecommunications company to be purchased, is not a Missouri corporation, but is organized under the laws of the state of Delaware as a limited liability company. Thus, Electric Lightwave is not subject to the requirements of Section 392.300.2, RSMo 2000. As a result, the Commission does not have jurisdiction to approve or disapprove of the transfer under this section.

Section 392.300.1 states that no telecommunications company shall sell or otherwise dispose of its franchise, facilities or system, or merge or consolidate its system or franchise without first having Commission authority to do so. If the Commission approves this transaction, Electric Lightwave will retain all of its assets. The ownership interest of the company, however, will transfer to Integra.

If Electric Lightwave were a stock corporation, this transfer would clearly be identical to that of previous Commission cases.² Electric Lightwave is not a corporation. It is a limited liability company. The transfer is similar to a sale of stock, however, in that the business operations of Electric Lightwave are not changing, only the ownership of the membership interest of the company will change. While the Commission is not bound by the precedent set out in its previous orders, the Commission has consistently interpreted the *Union Pacific* case³ as stating that the Commission lacks jurisdiction where the transfer of control does not affect the operations of the certificated entity.

Consistent with the recommendations of its Staff and its previous decisions, the Commission concludes that it has no jurisdiction over the proposed transaction.

IT IS ORDERED THAT:

1. The Joint Application filed by Integra Telecom Holdings, Inc., and Electric Lightwave, LLC, on March 17, 2006, is dismissed for lack of jurisdiction.

² See e.g., Case Nos. TM-2000-146 (the Commission specifically limited its declaration of no jurisdiction to stock transfers) and TM-2000-247 (sale of the stock from one parent to another parent).

³ *Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917).

2. This order shall become effective on May 12, 2006.
3. This case may be closed on May 13, 2006.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, and Appling,
CC., concur.
Gaw and Clayton, CC., dissent.

Dippell, Deputy Chief Regulatory Law Judge