

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

In the Matter of the Application of )  
Broadview Networks, Inc., ATX Licensing, )  
Inc. and A.R.C. Networks, Inc. d/b/a )  
InfoHighway Communications for Authority )  
to Migrate Customers Among Affiliated )  
Companies and for Waiver of Commission )  
Rule 4 CSR 240-33.150 )

Case No. TO-2008-0257  
Tariff File No. JX-2009-0087

**STAFF RECOMMENDATION**

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

1. On February 6, 2008, Broadview Networks, Inc. (“Broadview”), ATX Licensing, Inc. (“ATX”), and A.R.C. Networks, Inc. d/b/a InfoHighway Communications (“InfoHighway”) (collectively, “Applicants”) sought the Commission’s authorization to transfer a substantial portion of the Missouri long distance customer base of ATX and InfoHighway to Broadview.

2. On August 1, 2008, Broadview submitted tariff sheets (Tariff File No. JX-2009-0087) to amend its tariff to include the same rate plans as are in the existing ATX and InfoHighway tariffs for the customers being acquired by Broadview.<sup>1</sup> The tariff sheets bear a proposed effective date of August 31, 2008.

3. In the attached Memorandum, labeled Appendix A, the Staff recommends approval of the transfer. The transfer of assets is governed by Section 392.300 RSMo (2000). Applicable case law provides that the Commission may “not withhold its approval of the disposition of assets unless it can be shown that such disposition is detrimental to the public interest.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980), citing to

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<sup>1</sup> Broadview has withdrawn two similar earlier submissions, Tariff File Nos. YX-2008-0747 and YX-2008-0790.

*State ex rel. City of St. Louis v. Public Serv. Comm'n of Mo.*, 73 S.W. 2d 392, 400 (Mo. banc 1934).

4. Commission rules 4 CSR 240-3.520 (2) and 4 CSR 240-33.150(4) read together direct the Applicants to notify affected customers through a bill notice at least 30 days prior to their transfer to Broadview. The Applicants sent notice to affected customers in July, i.e., more than 30 days prior to the transfer.

WHEREFORE, the Staff recommends that the Commission approve the transfer of assets and customers, and approve Broadview's tariff sheets effective August 31, 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 copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 18<sup>th</sup> day of August 2008.

/s/ William K. Haas

## Memorandum

**To:** Missouri Public Service Commission Official Case File

Case No.: **TO-2008-0257**

File No.: **JX-2009-0087**

Applicants: **Broadview Networks, Inc.** (Broadview)

**ATX Licensing, Inc.** (ATX)

**A.R.C. Networks, Inc. d/b/a InfoHighway** (InfoHighway)

**From:** A. P. Kuss

Telecommunications Department

William L Voight 08/15/08

Utility Operations Division / Date

W K Haas

08/15/08

General Counsel's Office / Date

**Subject:** **Staff Recommendation for Application Seeking Commission Approval of Competitive Company Transaction**

**Date:** August 15, 2008

**The Telecommunications Department Staff (Staff) recommends the Commission** (check, as applicable):

- |  |  |   |   |
|--|--|---|---|
| <input type="checkbox"/> <b>Approve Merger</b><br><b>4 CSR 240-3.525</b>                       | <input type="checkbox"/> <b>Approve Consolidation</b><br><b>4 CSR 240-3.525</b>                                | <input checked="" type="checkbox"/> <b>Approve Sale of Assets</b><br><b>4 CSR 240-3.520</b> | <input type="checkbox"/> <b>Approve Name Change</b><br><b>4 CSR 240-3.545(20)</b> |
| <input type="checkbox"/> <b>Cancel Certificate(s) &amp; Tariff(s)</b><br><b>392.410.5 RSMo</b> | <input checked="" type="checkbox"/> <b>Approve Certificate(s) &amp;/Or Tariff(s)</b><br><b>4 CSR 240-3.510</b> |   |   |

According to Commission rule 4 CSR 240-2.060 and the rule(s) specifically cited above, competitively classified companies are required to provide information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest for the following reason(s) (check all that apply):

- ☒ This transaction solely involves competitively classified companies.
- ☒ Customers have/will receive advance notice.
- ☒ Customers can switch to another provider.
- ☒ Customers will continue to receive service at the same rates, terms and conditions.
- ☐ Other:

The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
Broadview	X	X		X					X
ATX	X		X						
InfoHighway	X		X						

\*See attachment to Staff recommendation for further details associated with approving certificates or tariffs.

#### Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company?

☐ No

☒ Yes

☒ Customers have been notified.

☐ Customers will be notified at least 30 days prior to being switched to a different company.  
(4 CSR 240-3.525)

#### Company Name Change Notification

☐ Company has notified its customers of the name change.

☐ Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? ☐ Yes ☒ No

If yes, a copy of the bankruptcy order is attached.

#### Competitive Company Transaction Review Items

##### Administrative:

☒ Application solely involves competitively classified companies.

☒ No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

☐ Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

☐ Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No.

*Missouri corporations:* A Certificate of Good Standing.

*Foreign corporations:* Authorization to do business in Missouri.

*If business conducted under a fictitious name:* A copy of registration of the fictitious name.

☒ No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).

☒ A statement that no Annual Report or Assessment fees are overdue for any applicant.

**Tariff review items (applicable for all competitively classified companies):**

- ☒ The tariff complies with requirements reviewed by Staff for any competitive telecommunications company tariff filing.

**Are there additional recommendations or special considerations?**

☒ No

☐ Yes

If yes, explain in an attachment.

- ☒ The Company is not delinquent in filing Annual Reports or paying PSC Assessments.
- ☐ 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:

**Attachment to Staff Recommendation**

1. Broadview was granted a certificate of service authority to provide interexchange and non-switched local exchange telecommunications service in Case No. XA-2008-0162, effective December 31, 2007.

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

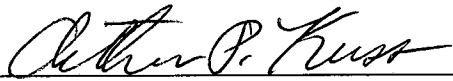
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and )  
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**InfoHighway Communications** )  
For Authority to Migrate Customers )  
Among Affiliated Companies and for )  
Waiver of Commission Rule )  
4 CSR 240-33.150. )

Case No. **TO-2008-0257**

**AFFIDAVIT OF Arthur P. Kuss**

STATE OF MISSOURI )  
 ) ss:  
COUNTY OF COLE )

Arthur P. Kuss, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in the preparation of the accompanying Memorandum, and that the facts therein are true and correct to the best of his knowledge and belief.

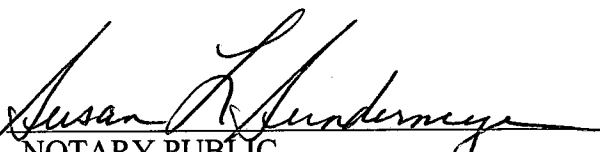
  
\_\_\_\_\_  
Arthur P. Kuss

Subscribed and affirmed before me this 15<sup>th</sup> day of August, 2008.

I am commissioned as a Notary Public within the County of Callaway, State of Missouri  
and my commission expires on September 21, 2010



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

  
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NOTARY PUBLIC