

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 28th day
of August, 2008.

In the Matter of the Application of Broadview)	
Networks, Inc., ATX Licensing, Inc. and)	
A.R.C. Networks, Inc. d/b/a InfoHighway)	<u>Case No. TO-2008-0257</u>
Communications for Authority to Migrate)	Tracking No. JX-2009-0087
Customers Among Affiliated Companies and)	
for Waiver of Commission Rule 4 CSR 240-33.150)	

**ORDER APPROVING TRANSFER OF CUSTOMERS
AND APPROVING TARIFF**

Issue Date: August 28, 2008

Effective Date: August 31, 2008

Syllabus: This order approves the transfer of customers of ATX Licensing, Inc. (ATX) and A.R.C. Networks, Inc. d/b/a InfoHighway Communications ("InfoHighway") to Broadview Networks, Inc., ("Broadview"). This order also approves Broadview's proposed tariff sheets.

On February 6, 2008, Broadview, ATX, and InfoHighway (collectively, "Applicants") filed an application with the Commission requesting authority pursuant to Section 392.300, RSMo 2000, to transfer a large portion of the Missouri long distance customer base of ATX and InfoHighway to Broadview. The applicants also requested the Commission waive its anti-spamming rule, 4 CSR 240-33.150, to allow the customer consolidation to occur without prior written authorization of each customer.

On June 17, 2008, Broadview filed tariffs with the Commission. On June 30, 2008, Broadview revised Tracking No. YX-2008-0790 and withdrew Tracking

No. YX-2008-0747. On July 30, 2008 the Commission suspended the tariff in order to provide Broadview the opportunity to correctly number the tariff. On August 1, 2008, Broadview withdrew Tracking No. YX-2008-0790 and filed JX-2009-0087 with an effective date of August 31, 2008.

Staff filed its recommendation and supporting memorandum on August 18, 2008. Staff recommends approval of the transfer of customers and approval of Broadview's tariff sheets, to be effective August 31, 2008. Staff also indicated the Applicants have already notified affected customers more than 30 days prior to the transfer to Broadview, as required by Commission rules 4 CSR 240-3.520(2) and 4 CSR 240-33.150(4). No party has filed a response to Staff's recommendation, nor has any party objected to the approval of Broadview's tariff.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence.¹ Therefore, the Commission may grant the request to transfer the customer base of ATX and InfoHighway to Broadview based on the verified application after affording notice and an opportunity to be heard to all proper parties.

After considering the verified application of the Applicants along with the recommendation of Staff and accompanying verified memorandum, the Commission concludes that the transactions will "not be detrimental to the public interest"² and that the application shall be granted. The Commission also concludes that the request for waiver

¹ *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W. 2d 494, 496 (Mo. App. W.D. 1989).

² *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980).

of Commission Rule 4 CSR 240-33.150 shall be granted, and the proposed tariff sheets shall be approved to become effective on August 31, 2008.

IT IS ORDERED THAT:

1. The application to transfer a portion of the Missouri long distance customer base of ATX Licensing, Inc., and A.R.C. Networks, Inc. d/b/a InfoHighway Communications to Broadview Networks, Inc., is approved.

2. The Applicants request for the Commission to waive its anti-spamming rule, 4 CSR 240-33.150, to allow the customer consolidation to occur without written authorization of each customer, is granted.

3. The proposed tariff sheets submitted under Tracking File No. JX-2009-0087 by Broadview Networks, Inc. are approved, effective on and after August 31, 2008. The specific tariff sheets approved are:

M.P.S.C. No. 1

First Revised Page No. 3, Replacing Original Page No. 3

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4. This order shall become effective on August 31, 2008.

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, Clayton,
Jarrett, and Gunn, CC., concur.

Dale, Chief Regulatory Law Judge