

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

In the Matter of the Application of Talk)
America Inc. to Purchase the Stock of)
LDMI Telecommunications, Inc. d/b/a) Case XM-2005-0492
LDMI Telecommunications and Long)
Distance of Michigan, Inc. d/b/a FoneTel)

STAFF RECOMMENDATION

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

1. On June 14, 2005, Talk America, Inc. filed an application seeking approval of a merger between LDMI Telecommunications, Inc. d/b/a LDMI Telecommunications and Long Distance of Michigan, Inc. d/b/a FoneTel (collectively, "LDMI") with Lion Acquisition Corp. Lion Acquisition Corp. is an acquisition subsidiary of Talk America, Inc. The merger will take place as a component of the transaction that will ultimately lead to the acquisition of LDMI by Talk America, Inc. The application also seeks approval of the acquisition of LDMI's stock by Talk America, Inc.

2. LDMI holds two separate certificates of service authority from the Commission, granted to provide service under two different fictitious names. Both certificates are held by the same corporate entity. The shareholders of Long Distance of Michigan, Inc. changed the company's name to LDMI Telecommunications, Inc., on September 11, 2001 and properly filed that amendment with the Michigan Department of Consumer and Industry Services Corporation, Securities and Land Development Bureau on February 12, 2002. However, the company has not completed the transition of that name change at the Commission at this time.

3. Section 392.300.1 RSMo (2000) generally provides that no telecommunications company shall merge its line, system or franchise, or any part thereof, with any other

corporation, person or public utility without having first secured from the Commission an order authorizing it to do so. The standard for approval of a merger is that the merger will not be detrimental to the public interest. *In the Matter of the Application of WorldCom, Inc. and MFS Communications Company, Inc.*, 5 Mo. P.S.C. 3d 312, 315 (1996).

4. In the attached Memorandum, labeled Appendix A, the Staff opines that the merger of LDMI with Lion Acquisition Corp. is not detrimental to the public interest. Staff recommends that the Commission approve the merger.

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. Talk America, Inc., is a corporation organized under the laws of Pennsylvania. LDMI is a corporation organized under the laws of Michigan. 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.¹

WHEREFORE, the Staff recommends that the Commission issue an order that (1) concludes that the Commission does not have jurisdiction to review the sale of the stock of LDMI Telecommunications, Inc. d/b/a LDMI Telecommunications and Long Distance of Michigan, Inc. d/b/a FoneTel; and (2) approves the proposed merger of LDMI

¹ 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).

Telecommunications, Inc. d/b/a LDMI Telecommunications and Long Distance of Michigan,
Inc. d/b/a FoneTel into Lion Acquisition Corp.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ David A. Meyer

David A. Meyer
Senior Counsel
Missouri Bar No. 46620

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8706 (Telephone)
(573) 751-9285 (Fax)
david.meyer@psc.mo.gov

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 14th day of July 2005.

/s/ David A. Meyer

Memorandum

To: Missouri Public Service Commission Official Case File
Case No. **XM-2005-0492**

From: A. P. Kuss, Telecommunications Department

William Voight 07/14/05

Utility Operations Division/Date

/s/ David A. Meyer 7/14/05

General Counsel's Office/Date

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

Date: July 14, 2005

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

☒ **Approve Merger** ☐ **Approve Consolidation** ☐ **Approve Sale of Assets** ☐ **Approve Name Change**

☐ **Cancel Certificate(s) & Tariff(s)**

☐ **Approve Certificate(s) & Tariff(s)**

According to Commission rules, competitively classified companies are required to provide minimal 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. This transaction involves competitively classified companies and is not detrimental to the public interest since a customer has / will receive advance notice and can freely switch to another provider. 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
Talk America Inc.	X	X		X					
Lion Acquisition Corp.				X					
LDMI Telecommunications, Inc. d/b/a LDMI Telecommunications and Long Distance of Michigan, Inc. d/b/a FoneTel	X	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 adequately notified of the transaction and a copy of the notification has been attached to this Staff Recommendation.

Company Name Change Notification

☐ Company has notified its customers of the name change. A copy of the customer notice is attached.

☐ 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?

☒ No☐ Yes

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 Nos. TO-2001-608 (Talk America) and TA-96-208 (LDMI) and TA-2001-545 (FoneTel).

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.

Are there additional recommendations or special considerations?☐ No☐ Yes

If yes, explain in an attachment.

☒ The Companies are not delinquent in filing annual reports or paying PSC assessments.

☐ A 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:

1. Talk America Inc. (Talk America) is a Competitive Local Exchange and Interexchange Carrier (CLEC/IXC), certificated to provide Basic Local exchange and Interexchange and nonswitched local service in Missouri.
2. Talk America was certificated to provide basic local exchange service under Case No. TA-97-485, while operating under the name of Tel-Save, Inc., d/b/a Tel-Save, Incorporated of Pennsylvania (Tel-Save).
3. Tel-Save's name was changed to Tel-Save, Inc., d/b/a The Phone Company (Tel-Save Phone) under Case No. TO-98-494.
4. Tel-Save Phone's name was changed to Talk.com Holding Corp., d/b/a The Phone Company (Talk.com) under Case No. TO-2000-262.
5. Talk.com's name was changed to Talk America under Case No. TO-2001-608.
6. Talk America was certificated to provide interexchange and nonswitched local service under Case No. TA-92-308, while operating under the Tel-Save name.
7. Long Distance of Michigan, Inc. d/b/a LDMI Long Distance is an IXC, certificated to provide Interexchange and nonswitched local exchange service in Missouri under Case No. TA-96-208.
8. Long Distance of Michigan, Inc. d/b/a LDMI Long Distance changed its name to Long Distance of Michigan, Inc. d/b/a LDMI Telecommunications under Case No. TO-2000-669.
9. Long Distance of Michigan, Inc. d/b/a LDMI Telecommunications changed its name to LDMI Telecommunications, Inc. d/b/a LDMI Telecommunications (LDMI) under Case No. XN-2003-0265.
10. Long Distance of Michigan, Inc. d/b/a FoneTel (FoneTel) is an IXC, certificated to provide Interexchange and nonswitched local exchange service in Missouri under Case No. TA-2001-545.
11. LDMI and FoneTel are both operating business names of LDMI Telecommunications, Inc.
12. Talk America provides basic local service under its P.S.C. MO. Tariff No. 3 Resale and Facilities-Based Competitive Local Exchange Telecommunications Services Tariff.
13. Talk America provides interexchange service under its Missouri Tariff No. 1 Interexchange Telecommunications Tariff.
14. LDMI provides interexchange service under its PSC Missouri Tariff No. 3 and PSC Missouri Tariff No. 4 Missouri Interexchange Telecommunications Tariffs.
15. FoneTel provides interexchange service under its P.S.C. MO No. 1 Interexchange/Nonswitched Local Exchange Telecommunications Services Tariff.
16. Following this transaction, there will be no change or interruption of services to customers of either of the parties in Missouri.
17. The parties are in compliance with requirements for filing Annual Reports and Assessment payments.