

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 13th day
of January, 2010.

In the Matter of the Application of Broadview
Networks, Inc. for a Certificate of Service Authority
to Provide Basic Local Telecommunications
Services in Portions of the State of Missouri and to
Classify Said Services and the Company as
Competitive)
)
)
)
)
)

File No. CA-2010-0126

**ORDER DENYING APPLICATION FOR REHEARING
AND AMENDING ORDER GRANTING A CERTIFICATE**

Issue Date: January 13, 2010

Effective Date: January 13, 2010

On December 23, 2009, the Commission issued an Order granting Broadview Networks, Inc. the authority to provide basic local telecommunications services. On December 28, the Office of the Public Counsel filed a timely application for rehearing. Public Counsel argues that the Commission did not make a specific finding, as required by Section 392.455(1), that Broadview possesses sufficient financial resources and abilities to provide basic local service. Public Counsel further states that the Staff of the Commission “specifically declined to assert that the company possesses sufficient financial resources and abilities”

Section 392.455(1) requires that the Commission, in granting certificates to provide basic local service, shall establish a process which shall include, among other things; “a requirement that the applicant posses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.” This statute

does not require that the Commission make a specific finding, as Public Counsel asserts, that the company possesses these resources and abilities. Rather, it requires that the Commission establish a process which includes a requirement as such.

In establishing a process as required by 392.455(1), the Commission promulgated rule 4 CSR 240-3.510(1)(D), which requires the submission of 12 months of historical financial statement comprised of a balance sheet and an income statement. Rather than submit the information as required by the rule, the company requested a waiver of the rule and instead submitted a Securities and Exchange Commission Form 10-Q which contains actual financial information demonstrating the sufficiency of Broadview's financial and managerial resources and abilities. In its Recommendation, Staff supports the company's request for a waiver and states that the company has demonstrated that it possesses sufficient financial resources. However, in its Memorandum, Staff did not mark a box indicating that the company possesses sufficient financial resources and abilities. It is because of this that Public Counsel asserts that Staff specifically declined to make an assertion regarding the company's financial ability.

Staff immediately responded to Public Counsel's application and stated that the omission was an oversight and again stated that the company possesses sufficient financial resources to provide service. Broadview also filed a response consistent with Staff's and offered further support of its financial competency.

Under Section 386.500.1, the Commission shall grant a rehearing if in its judgment sufficient reason be made to appear. Staff not indicating in its memorandum that the company was financially suited to provide service was an oversight. In fact, in its Recommendation, Staff specifically states that the company has demonstrated that it

possesses sufficient resources to provide service. This is not sufficient reason to grant a rehearing. Having not presented sufficient reason to rehear this matter, the Commission will deny Public Counsel's application for rehearing.

Rather than submit the specific documents required by rule 240-3.510, Broadview submitted alternative information which likewise satisfies the requirement that it possess sufficient financial resources and abilities and enabled Staff to conclude as such. The Commission will therefore amend its order granting Broadview the authority to provide service by including in it a waiver of rule 4 CSR 240-3.510(1)(D).

THE COMMISSION ORDERS THAT:

1. The Application for Rehearing filed by the Office of the Public Counsel is denied.
2. The Commission's order granting Broadview Networks, Inc. the authority to provide basic local telecommunications services is amended to include a waiver of Commission rule 4 CSR 240-3.510(1)(D).
3. This order shall become effective upon issuance.
4. This case shall be closed on January 14, 2010.

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett,
Gunn, and Kenney, CC., concur.

Jones, Senior Regulatory Law Judge