

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

In the Matter of the Application of 321 Communications, Inc.     )  
for a Certificate of Service Authority to provide Basic Local     )  
Exchange and Local Exchange Telecommunications     ) File No. CA-2009-0281  
Services in the State of Missouri and to Classify Said     )  
Services and the Company as Competitive     )

## **ORDER GRANTING CERTIFICATES OF SERVICE AUTHORITY**

Issue Date: March 18, 2009

Effective Date: March 30, 2009

This order grants a certificate of service authority to provide basic local and local exchange telecommunications services in the state of Missouri, classifies those services and the company as competitive, and waives certain statutes and regulations.

On January 30, 2009, 321 Communications, Inc. applied for certificates of service authority to provide basic local and local exchange telecommunications services within the state of Missouri, and for competitive classification. The company seeks certification to provide service throughout the state. 321 is authorized to do business in Missouri by the Missouri Secretary of State.

On February 4, 2009, the Commission issued its Notice of Applications, establishing a deadline for intervention. No applications to intervene were received. On March 16, 2009, the Staff of the Commission recommended that the requested certificate, classification, and waivers be granted.

The Commission may grant an application for a certificate of service authority to provide telecommunications service upon a showing that the applicant has met the

statutory requirements, including relevant service standards,<sup>1</sup> and that the grant of authority is in the public interest.<sup>2</sup> Based on the verified application, including 321's stated commitment to comply with all applicable rules, as well as Staff's uncontested recommendation, the Commission finds that 321 satisfies the requirements for certification and that granting such certificate is in the public interest.

321 also requests that it and its services be classified as competitive and that the application of certain statutes and regulations be waived. The Commission may classify a telecommunications service as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.<sup>3</sup> The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.<sup>4</sup> The Commission may waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.<sup>5</sup>

The Commission finds that 321 will compete with incumbent local exchange carriers, as well as other competitive local exchange carriers in the exchanges in which it provides basic local telecommunications service. The Commission finds that 321 will be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services 321 will offer are qualified for classification as competitive services.

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<sup>1</sup> See §§ 392.450 and 392.451, RSMo Supp. 2008; and § 392.455. Sections are in the 2000 Revised Statutes of Missouri unless otherwise specified.

<sup>2</sup> Sections 392.430 and 392.440.

<sup>3</sup> Section 392.361.2, RSMo Supp. 2008.

<sup>4</sup> Section 392.361.3, RSMo Supp. 2008.

The Commission may waive certain statutes and administrative rules for competitively classified carriers “if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter.”<sup>6</sup> The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange carriers. The Commission finds that the waiver of those statutes and regulations is consistent with the purposes of Chapter 392, and will waive those provisions for 321.

The Commission may also require a telecommunications company to comply with any conditions reasonably necessary to protect the public interest. Staff recommends that 321’s application be granted subject to certain restrictions routinely recommended by Staff and accepted in the application. The conditions proposed by Staff are necessary to protect the public interest and will be adopted.

The Commission places 321 on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against the company. These obligations include, but are not limited to, the following:

- A) The obligation to file an annual report, as established by § 392.210. Failure to comply with this obligation will make the utility liable for a penalty of \$100 per day for each day that the violation continues. Rule 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
- B) The obligation to pay an annual assessment fee established by the Commission, as required by § 386.370.

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<sup>5</sup> Section 392.420, RSMo Supp. 2008.

- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, under § 386.570, RSMo Supp. 2008.
- D) The obligation to keep the Commission informed of its current address and telephone number.

The company is reminded that its officers may not represent it before the Commission. The company must be represented by an attorney admitted to practice law in Missouri.

In addition, § 392.410.5, RSMo Supp. 2008, provides that the company's certificate of service authority becomes null and void one year from the date of this order unless the company has exercised its authority under that certificate.

The Commission notes that before providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

321 did not file a proposed tariff as part of its application. The Commission's regulations do not require that such a tariff be filed along with an application for a certificate, but 321 is reminded that it cannot provide service in Missouri until its tariff is approved by this Commission.

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<sup>6</sup> Section 392.420, RSMo Supp. 2008.

**THE COMMISSION ORDERS THAT:**

1. 321 Communications, Inc. is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of all incumbent local exchange companies; subject to the conditions and recommendations contained in the Staff's Memorandum.

2. 321 Communications, Inc. is granted certificates of service authority to provide local exchange telecommunications services in the state of Missouri, restricted to dedicated private line services.

3. 321 Communications, Inc. and the services it offers are classified as competitive.

4. 321 Communications, Inc.'s originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area 321 Communications, Inc. seeks authority to provide service, unless authorized by the Commission pursuant to §§ 392.220 and 392.230, RSMo, Supp. 2008.

5. The certificates and competitive service classification are conditioned on the continued applicability of § 392.200, and the requirement that any increase in switched access service rates above the maximum switched access service rates set forth herein shall be made pursuant to §§ 392.200 and 392.230, RSMo Supp. 2008, and not §§ 392.500 and 392.510, RSMo Supp. 2008.

6. If the directly competing incumbent local exchange carrier, in whose service area 321 Communications, Inc. is operating, decreases its originating or terminating access service rates, 321 Communications, Inc. shall file an appropriate tariff amendment to

reduce its originating or terminating access rates in the directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates in order to maintain the cap.

7. Application of the following statutes and Commission rules is waived:

### **STATUTES**

392.210.2 - Uniform System of Accounts  
392.240.1 - Just and Reasonable Rates  
392.270 - Ascertain Property Values  
392.280 - Depreciation Accounts  
392.290 - Issuance of Securities  
392.300 - Acquisition of Stock  
392.310 - Issuance of Stock & Debt  
392.320 - Stock dividend payment  
392.330 - Issuance of securities, debt and notes  
392.340 - Reorganization(s)

### **COMMISSION RULES:**

4 CSR 240-3.550(4) - Telecommunications Company Records and Reports  
4 CSR 240-3.550(5)(A) - Telecommunications Company Records and Reports  
4 CSR 240-10.020 - Income on Depreciation Fund Investments  
4 CSR 240-30.040 - Uniform System of Accounts  
4 CSR 240-32.060 - Engineering and Maintenance Standards  
4 CSR 240-32.070 - Quality of Service  
4 CSR 240-32.080 - Service Objectives and Surveillance Levels  
4 CSR 240-33.030 - Informing Customers of Lowest Priced Services  
4 CSR 240-33.040 (1), (2), (3), (5), (6), (7), (8), (9), and (10) - Billing and Payment Standards for Residential Customers  
4 CSR 240-33.045 - Requiring Clear Identification and Placement of Separately Identified Charges on Customer Bills  
4 CSR 240-33.080(1) - Disputes by Residential Customers  
4 CSR 240-33.130(1) - Operator Service  
4 CSR 240-33.130(4) - Operator Service  
4 CSR 240-33.130(5) - Operator Service

8. The certification granted herein is conditioned upon the company's compliance with the regulatory obligations set out in this order.

9. 321 Communications, Inc. is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit it to lawfully provide telecommunications services in Missouri. Specifically, 321 Communications, Inc. cannot lawfully provide telecommunications services until it has a tariff in effect for such services. When 321 Communications, Inc. submits such a tariff, it shall do so by filing a non-case tariff submission. The tariff submission shall not be filed in this case.

10. This order and 321 Communications, Inc.'s certificate shall become effective on March 30, 2009.

11. This case shall be closed on March 31, 2009.

**BY THE COMMISSION**



Colleen M. Dale  
Secretary

( S E A L )

Daniel Jordan, Regulatory Law Judge,  
by delegation of authority pursuant  
to § 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 19<sup>th</sup> day of March, 2009.