

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

In the Matter of the Application of Broadview)	
Networks, Inc. for a Certificate of Service Authority)	
to Provide Basic Local Telecommunications Services)	<u>Case No. CA-2010-0126</u>
in Portions of the State of Missouri and to Classify)	
Said Services and the Company as Competitive)	

APPLICATION FOR REHEARING

COMES NOW the Office of the Public Counsel and for its Application for Rehearing and Request for Stay states as follows:

1. On October 27, 2009, Broadview Networks, Inc. (“the company” or “Broadview”) filed an application for a certificate of service authority to provide basic local exchange telecommunications services. The company asked for waivers of several statutes and rules as allowed by law, including a waiver of 4 CSR 240-3.510(1)(D),¹ but notably did not ask for a waiver of Section 392.455(1). The company alleged that it “financially well-poised to enter additional telecommunications markets and financially qualified to expand operations in Missouri.” The company also attached a copy of a recent 10-Q report filed with the United States Securities and Exchange Commission. In further support of its application, the company submitted an affidavit on December 7, stating that: “Broadview possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications services. Neither Broadview nor its parent company has defaulted on any of its financial obligations within the last three years.”

¹ In fact, the Commission did not waive 4 CSR 240-3.510(1)(D) even though the company requested its waiver.

2. On December 15, the Staff of the Commission filed its recommendation recommending that the Commission grant the company the requested certificate. In its memorandum supporting its recommendation, the Staff specifically declined to assert that the company possesses sufficient financial resources and abilities to provide basic local telecommunications service as required by Section 392.455(1).

3. On December 23, the Commission issued its Order Granting Certificate to Provide Basic Local Telecommunications Services, citing its reliance upon the verified application and Staff's uncontested recommendation.² The Commission stated:

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, and that the grant of authority is in the public interest. Based on the verified application, including Broadview's stated commitment to comply with all applicable rules, as well as Staff's uncontested recommendation, the Commission finds that Broadview satisfies the requirements for certification and that granting such certificate is in the public interest.

(December 23 Order, page 2, footnotes omitted)

Although the Commission reached a general conclusion that the company meets the requirements for certification, it did not make a specific finding that the company possesses sufficient financial resources and abilities to provide basic local telecommunications service as required by Section 392.455(1).

² Although the Commission characterizes the Staff recommendation as "uncontested" the Commission did not allow the time for responses specified in 4 CSR 240-2.080(15). The Staff recommendation was filed as a pleading on December 15, and pursuant to 4 CSR 240-2.080(15) and 4 CSR 240-2.050(1) Public Counsel should have had until December 28 to file a response. The Commission issued its order on December 23, only eight days after the filing of the Staff recommendation. In any event, because the certificate is not to become effective until January 2, 2010, the Commission has time to make the required finding, or rescind the order until such time as it can make the required finding.

4. One could argue that Commission-required snap-back procedures will protect consumers if a competitive provider like the company should fail. The snap-back procedures are necessary but not sufficient to protect customers. While they may work to prevent service interruptions, they do nothing to prevent the inconvenience and confusion that accompany the failure of a basic local service provider. Furthermore, customers have a right to expect that the Commission has adequately vetted the financial capabilities of any company to which the Commission grants a certificate, and indeed Section 392.455(1) requires the Commission to establish procedures to do so.

5. The procedures followed in this case – the waiver of 4 CSR 240-3.510(1)(D) and Staff's not verifying financial ability – appear to be relatively new. Public Counsel is not asserting that the company does not have the necessary financial qualifications, but simply that the Commission's procedures are not in conformance with Section 392.455.

WHEREFORE, Public Counsel respectfully requests that the Commission grant rehearing of its December 23 Order Granting Certificate to Provide Basic Local Telecommunications Services.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

/s/ Lewis R. Mills, Jr.

By: _____

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been emailed to all parties this 28th day of December 2009.

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