

**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 Service in the State of)
Missouri, to Classify Said Services and the)
Company as Competitive and for Waivers)

Case No. CA-2009-0281

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through counsel, and for its recommendation states the following:

1. On January 30, 2009, 321 Communications, Inc. (321 or the Company) filed an *Application* with the Missouri Public Service Commission (the Commission) seeking authority to provide basic local exchange and local exchange telecommunications services. The Company also requested competitive classification and the grant of the corresponding statutory and Commission rule waivers.

2. On February 4, 2009, the Commission issued its *Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene*, directing interested parties to file applications to intervene by February 19, 2009.

3. On February 24, 2009, the Commission issued its *Order Directing Filing of Staff Recommendation*, directing Staff to file a recommendation by March 17, 2009.

4. In the attached Memorandum, labeled Appendix A, Staff recommends that the Commission grant 321 a certificate of service authority to provide local exchange telecommunications services, restricted to dedicated private line services.

5. In the attached Memorandum, Staff further recommends that the Commission grant 321 a certificate to provide basic local exchange telecommunications services, throughout the State of Missouri, subject to the following conditions:

- A. The Applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370 RSMo¹;
- B. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area.

6. Pursuant to Sections 392.430 and 392.440 RSMo. (2000), the Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest.

7. Staff also recommends that the Commission classify the Company and the services it proposes to offer in its *Application* as competitive. Pursuant to Section 392.361.4, the Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. The majority of the services a competitive company provides must be classified as competitive. §392.361.3.

8. The Staff further recommends that the Commission grant the waivers listed in the *Notice of Applications*. The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392. §§ 392.185, 392.361.5 and 392.420.

¹ All statutory references refer to the Revised Statutes of Missouri (2000), as currently supplemented.

9. The Company did not submit a tariff with the *Application*. Staff notes that Commission Rule 4 CSR 240-3.510(1)(c) states that the Company cannot lawfully provide service until tariffs are effective.

WHEREFORE, Staff recommends that the Commission grant 321 Communications, Inc. a certificate to provide local exchange telecommunications services, restricted to dedicated private line services, and a certificate to provide basic local exchange telecommunications services, subject to the conditions contained in the attached Staff Memorandum. Staff further recommends that the Commission grant the Company the requested competitive classification and the waivers listed in the Commission's *Notice of Application*.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont
Assistant General Counsel
Missouri Bar No. 60892

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 16th day of March, 2009.

/s/ Eric Dearmont

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: CA-2009-0281
Applicant: 321 Communications, Inc.

From: Lisa Mahaney
Telecommunications Department
William Voight 3/16/09
Utility Operations Division/Date

Subject: Staff Recommendation for Approval of Certificate

Date: 3/16/09
Filing Deadline: 3/17/09

The Telecommunications Department Staff (Staff) recommends the applicant be granted the following certificate(s), as indicated below, to be effective on the same date the tariff becomes effective:

☒ certificate to provide basic local exchange telecommunications services in the following service areas.

- ☒ All of AT&T Missouri
- ☒ All of Embark
- ☒ All of CenturyTel
- ☒ All of Spectra
- ☒ Other statewide (please describe)

☐ certificate to provide interexchange telecommunications services.

☒ certificate to provide local exchange telecommunications services.*

*local exchange authority should be restricted to dedicated, private line services.

Staff recommends the applicant and its services receive competitive classification. Staff further recommends a Commission order granting certification state that pursuant to Section 392.410 RSMo, unless exercised within a period of one year from the issuance thereof, authority conferred by a certificate of service authority shall be null and void. In addition, Staff recommends approval of the waivers listed in the Notice.

Granting a certificate to provide basic local exchange telecommunications services should be based on the following two conditions:

1. The applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370 RSMo.
2. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area

within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

☐ No objection to tariff taking effect (Insert MO PSC number.) Effective Date: The Staff states that the tariff meets the requirements of all applicable statutes, specifically, one or more of the following: Sections 392.200(8), (12); 392.455(3), (4); 392.515(1) and 392.500(2) RSMo. In addition, the tariff filing does not conflict with the following Commission rules: 4 CSR 240-3.545 (4), (6), (7), (8 C,G,H), (9), (15), (16), (19); 4 CSR 240-31.065(1), (2), (3); 4 CSR 240-32.150(5), 32.160(1), (2), 32.190; 4 CSR 240-33.040(4), 33.045(2), 33.050(4) and 33.070(2).

☒ Tariff was not submitted with application. Pursuant to 4 CSR 240-3.510(1)(C), the applicant cannot lawfully provide service until tariffs are effective.

Additional Comments:

☒ The Company is not delinquent in filing an annual report, paying the PSC assessment, MoUSF, and Relay Missouri.

☐ The 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:
☐ Unpaid MoUSF ☐ Unpaid Relay Missouri)

Review Items for IXC, Non-switched Local and CLEC Certificate Applications (as required by 4 CSR 240-2.060):

- ☒ Proper Secretary of State authorization
- ☒ Statement of character of business performed.
- ☒ Statement declaring no pending action or final unsatisfied judgments
- ☒ Statement declaring no overdue annual reports/assessment fees
- ☒ Application includes an affidavit.

- ☒ The applicant is requesting waivers of rules or statutes previously granted to a competitively classified company

(as required by 392.430/.440):

- ☒ Application shows that grant of authority is in the public interest.

Additional Review Items for CLEC Applications (as required by 392.455 and/or 4 CSR 240-3.510):

- ☒ Possesses sufficient technical, financial and managerial resources and abilities.
- ☒ Statement that the applicant will satisfy the minimum standards established by the commission.
- ☒ Identifies geographic area (no smaller than an exchange).
- ☒ Statement that applicant will offer basic local service as a separate and distinct service.
- ☒ Statement that applicant will give equitable access to all Missourians.

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of Missouri and to Classify Said Services)
and the Company as Competitive)

Case No. CA-2009-0281

AFFIDAVIT OF LISA MAHANEY

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Lisa Mahaney, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying memorandum, and that the facts therein are true and correct to the best of her knowledge and belief.



LISA MAHANEY

Subscribed and affirmed before me this 16th day of March 2009.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



NOTARY PUBLIC