

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

In the Matter of the Application of Neutral Tandem-)
Missouri, LLC for Expansion of its Certificate of)
Service Authority to Provide Basic Local Exchange)
Telecommunications Service in the State of) **File No. CA-2010-0245**
Missouri and to Classify Said Services and the)
Company as Competitive)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation, states as follows:

1. On November 20, 2005, Neutral Tandem - Missouri, LLC (“the Company”) was certificated as a Competitive Local Exchange Telecommunications Company in the State of Missouri. On September 8, 2009, the Company filed a new statewide access services tariff, which was approved on December 31, 2009, subject to a condition since, although the tariff was statewide, the Company’s certification was not. Therefore, the Company may not provide services under the tariff in areas outside the scope of its certification until it is granted additional service territory by the Commission. This application seeks that expansion of basic local telecommunications authority to include all Missouri exchanges and to classify the company and its services in those exchanges as competitive.

2. In the attached Memorandum, labeled Appendix A, the Staff recommends that the Missouri Public Service Commission (Commission) grant the Company’s request to expand its basic local telecommunications authority. 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. §§392.430 and 392.440 RSMo 2000.

3. The Staff also recommends that the Commission classify the Company’s newly extended services as competitive. 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 and that such lesser regulation is consistent with the protection of ratepayers and promotes public interest. §392.361.4. RSMo Supp. 2009. A majority of the services a competitive company provides must be classified as competitive. §392.361.3. RSMo Supp. 2009.

4. The Staff further recommends that the Commission state in its order that, pursuant to §392.410 RSMo 2000, the authority conferred by the certificate of service authority shall be null and void unless it is exercised within one year of its issuance.

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

6. The Staff notes that the Company was granted a variance from the access service rate caps pursuant to the tariff approved on December 31, 2009, which establishes three access rate caps throughout the state. In the case of the small company exchanges that are the subject of this matter, the access rate cap is set at the access rate charged by CenturyTel.

7. Finally, the company requests in this filing that it be granted waivers of certain rules and laws. Section 392.245.5(8), as amended by H.B. 1779, states in relevant part that

. . . all alternative local exchange telecommunications companies shall not be required to comply with customer billing rules, network engineering and maintenance rules, and rules requiring the recording and submitting of service objectives or surveillance levels established by the commission.

8. Section 392.245.5(8) does provide, however, that the Commission shall retain the authority to hear and resolve customer complaints based upon certain federal regulations and standards, the company's tariff, or Commission rules "other than those related to customer billing, network engineering and maintenance, and service objectives and surveillance levels or a failure to provide service in a manner that is safe, adequate, usual and customary in the telecommunications industry."

9. In addition to that retention of authority, the Staff notes that these waivers do not relieve the Companies of any reporting or other obligations that arise from a source other than the waived rules or statutory provisions, such as undertakings made in a Stipulation or Agreement or as a merger or other condition.

10. Section 392.420 RSMo, as amended by H.B. 1779, states in part that

"[i]n the case of an application for certificate of service authority to provide basic local telecommunications service filed by an alternative local exchange telecommunications company, and for all existing alternative local exchange telecommunications companies, the commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of subsection 2 of section 392.210, subsection 1 of section 392.240, and sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340."

11. The Company is an alternative local exchange telecommunications company as that term is used in the statutory provisions recited above. Therefore, the Staff recommends the Commission grant the following waivers:

- 4 CSR 240-3.550 (4), (5)(A) and (5)(C) Held orders and quality of service reports
- 4 CSR 240-10.020 Depreciation Records
- 4 CSR 240-30.040 Uniform System of Accounts
- 4 CSR 240-32.060 Engineering and maintenance
- 4 CSR 240-32.070 Quality of Service
- 4 CSR 240-32.080 Service objectives and surveillance levels
- 4 CSR 240-33.040(1-3) and (5-10) Billing and payment standards
- 4 CSR 240-33.045 Clear identification and placement of charges on bills
- 4 CSR 240-33.080 (1) Toll-free number for billing disputes on bills
- 4 CSR 240-33.130 (1), (4) and (5) Operator service billing requirements
- 392.210.2 Accounting requirements (system of accounts)
- 392.240.1 Reasonableness of rates
- 392.270 Accounting requirements (valuation of property)
- 392.280 Accounting requirements (depreciation rates/accounts)
- 392.290 Issuance of stocks, bonds and other indebtedness
- 392.300 Transfer of property and ownership of stock
- 392.310 Approval of issuing stocks, bonds and other indebtedness
- 392.320 Certificate of Commission to be recorded-stock dividends
- 392.330 Accounting requirements (proceeds of sales of stock, bonds, notes, etc.)
- 392.340 Company reorganization

WHEREFORE, Staff recommends that the Commission grant Neutral Tandem-Missouri, LLC's Application to expand its basic local telecommunications authority to include all Missouri exchanges, to classify the company and its services in those exchanges as competitive and to grant the Company those waivers listed above.

Respectfully submitted,



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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 23rd day of March, 2010.

A handwritten signature in black ink, appearing to be "Allan" followed by a stylized flourish.

M E M O R A N D U M

To: Missouri Public Service Commission Official Case File
Case No: CA-2010-0245
Applicant: Neutral Tandem – Missouri, LLC

From: Sara Buyak
Telecommunications Department
William Voight 3/22/10
Utility Operations Division/Date

Subject: Staff Recommendation to Expand Service Area

Date: March 18, 2010

Filing Deadline: April 2, 2010

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 extend basic local exchange telecommunications services in the following service areas.

- ☐ All of AT&T Missouri
- ☐ All of CenturyLink
- ☐ All of Spectra
- ☒ Statewide
- ☐ Other:

☐ 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 partial approval of the waivers listed in the Notice. In its application, Peerless Network of Missouri, LLC requests statute 392.300 in its entirety.

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 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:

On December 23, 2009, the Commission approved Neutral Tandem's tariff in Tariff File No. JX-2010-0151 in Case No. TT-2010-0099.

Approval of Neutral Tandem's certificate to extend basic local exchange telecommunications services statewide is consistent with the Commission's Report and Order in Case No. TT-2010-0099 in which the Commission approved the tariff and granted a certain variance of switched access rates.

Neutral Tandem does not serve end-user customers; rather, it provides only a tandem switching operation for other telecommunications companies. Therefore, the company does not have any Relay Missouri assessments.

☒ 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)

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In the Matter of the Application of Neutral)
Tandem Missouri, LLC, for Expansion of) Case No. CA-2010-0245
Certificate of Service Authority to Provide)
Basic Local Exchange Telecommunications)
Service)

AFFIDAVIT OF Sara Buyak

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Sara Buyak, 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 Staff Recommendation, and that the facts therein are true and correct to the best of her knowledge and belief.


SARA BUYAK

Subscribed and affirmed before me this 18th day of March 2010.


NOTARY PUBLIC



CASSIE M. MELLOWAY
My Commission Expires
October 30, 2011
Cole County
Commission #07337959