

**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	)	<b><u>Case No. CA-2010-0126</u></b>
Services in Portions of the State of	)	
Missouri and to Classify Said Services and	)	
The Company as Competitive.	)	

**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 October 27, 2009, Broadview Networks, Inc. (Broadview or the Company) filed its Application for Certificate of Service Authority to Provide Basic Local Exchange Telecommunications Service and for Competitive Classification (Application) with the Missouri Public Service Commission (the Commission), seeking authority to provide basic local exchange telecommunications services. The Company also requested competitive classification and a waiver of the corresponding statutory and Commission rule obligations.

2. On October 29, 2009, the Commission issued its Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene (Notice of Applications), directing interested parties to file applications to intervene by November 13, 2009.

3. On November 16, 2009, the Commission issued its Order Directing Staff Report, directing Staff to file a pleading informing the Commission of the date by which Staff will file a recommendation in this matter.

4. On November 30, 2009, Staff filed a Status Report, proposing to file its ultimate recommendation by December 23, 2009.

5. On December 7, 2009, the Company filed an affidavit containing statements required in applications by Commission Rules 4 CSR 240-2.060(K) and 4 CSR 240-2.060(L). Also on December 7, 2009, the Company filed a pleading requesting a waiver of Commission Rule 4 CSR 240-3.510(1)(D), which currently requires the submission of certain pro forma financial information in conjunction with an application for a certificate of service authority.

6. Pursuant to Sections 392.430 and 392.440 RSMo. (2000)<sup>1</sup>, 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. In the attached Memorandum, Staff recommends that because the Application demonstrates the grant of authority is in the public interest that the Commission grant Broadview a certificate to provide basic local exchange telecommunications services throughout the State of Missouri, subject to the following two (2) conditions:

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

8. Pursuant to Section 392.361.4, the Commission may classify a telecommunications provider or its services as competitive if the Commission determines the provider is subject to sufficient competition to justify a lesser degree of regulation. In addition, pursuant to Section 392.361.3, the majority of the services provided by a competitive company

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<sup>1</sup> Unless otherwise noted, all statutory references refer to the Revised Statutes of Missouri (2000), as currently supplemented.

must be classified as competitive. In the attached Memorandum, Staff recommends that the Commission classify the Company and the services it proposes to offer in its Application as competitive.

9. The Staff further recommends that the Commission grant the waivers listed in the Notice of Applications. Pursuant to Sections 392.185, 392.361.5 and 392.420 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.

10. Additionally, the company has requested a waiver of Commission Rule 4 CSR 240-3.510(1)(D), requiring submission of certain pro forma financial information in conjunction with applications for certificates of service authority. Because Staff is of the opinion that the Application and waiver, as submitted, demonstrate that the Company possesses sufficient financial resources to provide the requested services, Staff supports granting the requested waiver.

11. The Company did not submit a tariff with its 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.

12. The Company is not delinquent in the filing of its annual report, the payment of its PSC assessment, or the remittance of either the MoUSF or Relay Missouri surcharges.

**WHEREFORE**, Staff recommends that the Commission issue an Order (1) granting Broadview Networks, Inc. a certificate of service authority to provide basic local telecommunications services, subject to the conditions named herein; (2) granting the Company the requested competitive classification and requested waivers listed in the Commission's Notice of Applications; (3) indicating that unless exercised within one year from its issuance that any

authority conferred by a certificate of service authority shall be null and void; and (4) requiring the Company to have an effective tariff on file prior to providing telecommunications services in the State of Missouri.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont

Assistant General Counsel

Missouri Bar No. 60892

Attorney for the Staff of the  
Missouri Public Service Commission

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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 15th day of December, 2009.

/s/ Eric Dearmont

## MEMORANDUM

To: Missouri Public Service Commission Official Case File  
Case No: CA-2010-0126  
Applicant: Broadview Networks, Inc.

From: Sara Buyak  
Telecommunications Department  
William Voight 12-8-09  
Utility Operations Division/Date

Subject: Staff Recommendation for Approval of Certificate and/or Initial Tariff

Date: November 8, 2009  
Filing Deadline: December 23, 2009

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 Embarras
- ☒ All of CenturyTel
- ☒ All of Spectra
- ☐ Other \_\_\_\_\_ (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 and managerial resources and abilities.
- ☐ Possesses sufficient financial 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.

**Tariff Review Items (applicable for all competitively classified companies):**

- ☐ The tariff meets Staff's review for compliance with rules for competitive company tariff filings.

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In the Matter of the Application of                     )  
Broadview Networks, Inc. for a certificate        )   Case No.   CA-2010-0126  
of Service Authority to Provide Basic            )  
Local Telecommunications Services                )

**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 11<sup>th</sup> day of December 2009

  
\_\_\_\_\_  
NOTARY PUBLIC

CARLA K. SCHNIEDERS  
Notary Public - Notary Seal  
State of Missouri  
Commissioned for Cole County  
My Commission Expires: August 25, 2012  
Commission Number: 08533187