

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Broadvox-CLEC, LLC)
for a Certificate of Service Authority to Provide Resold)
and Facilities-based/UNE Basic Local Telecommunications) **File No. CA-2009-0360**
Services in Portions of the State of Missouri and to)
Classify Such Services and the Company as Competitive)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES AND REQUIRING FILING OF TARIFF

Issue Date: June 22, 2009

Effective Date: July 2, 2009

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

On April 2, 2009, Broadvox-CLEC, LLC applied for a certificate of service authority to provide basic local exchange telecommunications services within the state of Missouri, and for competitive classification. The company seeks certification to provide basic local service in portions of Missouri that are currently being served by Southwestern Bell Telephone Company, L.P. d/b/a AT&T Missouri; Embarq Missouri, d/b/a Embarq; CenturyTel of Missouri, LLC d/b/a CenturyTel; and Spectra Communications Group LLC d/b/a CenturyTel.

Broadvox is a Delaware limited liability company authorized to do business in Missouri by the Missouri Secretary of State.

On April 3, 2009, the Commission issued its Notice of Applications, establishing a 15-day deadline for intervention. No applications to intervene were received. On June 19, 2009, the Staff of the Commission recommended that the requested certificate, classification, and waivers be granted, and that Broadvox be required to file a tariff. .

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

Broadvox also requests that it and its services be classified as competitive and that the application of certain statutes and regulatory rules 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.³ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁴ The Commission may waive the application of certain

¹ See Sections 392.450 and 392.451, RSMo Supp. 2008; and § 392.455. All statutory references, unless otherwise specified, are to the 2000 Revised Statutes of Missouri.

² Sections 392.430 and 392.440.

³ Section 392.361.2, RSMo Supp. 2008.

⁴ Section 392.361.3, RSMo Supp. 2008.

statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392, RSMo.⁵

The Commission finds that Broadvox 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 Broadvox will be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Broadvox will offer are qualified for classification as competitive services.

The Commission may waive certain statutes and administrative rules for competitively classified carriers⁶ “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.”⁷ The application includes a list of statutes and regulations that the Commission may waive for competitive local exchange carriers. The Commission finds that the waiver of those statutes and regulation is consistent with the purposes of Chapter 392, and will waive those provisions for Broadvox.

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

⁵ See §§ 392.361.3 and 392.420, RSMo Supp. 2008, and § 392.185.

⁶ Section 392.361.5, RSMo Supp. 2008.

The Commission places Broadvox 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, RSMo 2000. 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, 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 2000.
- 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 licensed 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.

⁷ Section 392.420, RSMo Supp. 2008.

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 interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

Broadvox 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 Broadvox is reminded that it cannot provide service in Missouri until its tariff is approved by this Commission.

THE COMMISSION ORDERS THAT:

1. Broadvox-CLEC, LLC is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of Southwestern Bell Telephone Company, L.P. d/b/a AT&T Missouri; Embarq Missouri, d/b/a Embarq; CenturyTel of Missouri, LLC d/b/a CenturyTel; and Spectra Communications Group LLC d/b/a CenturyTel; subject to the conditions and recommendations contained in the Staff's Memorandum.

2. Broadvox-CLEC, LLC and the services it offers are classified as competitive.

3. Broadvox-CLEC, LLC'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 Broadvox-CLEC, LLC seeks authority to provide service, unless authorized by the Commission pursuant to §§ 392.220 and 392.230, RSMo Supp. 2008.

4. The certificates and competitive service classification for switched exchange access are granted conditioned on the continued applicability of § 392.200, RSMo Supp. 2008, 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.

5. If the directly competing incumbent local exchange carrier, in whose service area Broadvox-CLEC, LLC is operating, decreases its originating or terminating access service rates, Broadvox-CLEC, LLC 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.

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

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-3.550(5)(C) - exchange boundary map
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts

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

8. Broadvox-CLEC, LLC 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, Broadvox-CLEC, LLC cannot lawfully provide telecommunications services until it has a tariff in effect for such services.

9. Broadvox-CLEC, LLC shall file a tariff for the services authorized in this order no later than 30 days after the issuance date of this order. When Broadvox-CLEC, LLC 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 Broadvox-CLEC, LLC's certificate shall become effective on July 2, 2009.

11. This file shall be closed on July 3, 2009.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

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 22nd day of June, 2009.