

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

In the Matter of the Application of)
Bandwith.com CLEC, LLC for Certificates)
of Service Authority to Provide Resold and)
Facilities Based Local Exchange and)
Interexchange Telecommunications)
Services in the State of Missouri and to)
Classify Those Services and the Company)
as Competitive.)

Case No. LA-2008-0120

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”) and for its recommendation states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant Bandwidth.com CLEC, LLC, d/b/a Bandwidth.com (“Applicant”), a certificate of service authority to provide basic local telecommunications services in the service areas of Southwestern Bell Telephone L.P. d/b/a AT&T Missouri; Embarq Missouri Inc. d/b/a Embarq; CenturyTel of Missouri, LLC; and Spectra Communications Group, LLC d/b/a CenturyTel; conditioned upon certain access rate provisions. Staff also recommends that the company receive a certificate of service authority to provide interexchange telecommunications services and local exchange services restricted to dedicated, private line services. 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. (See §§ 392.430 and 392.440 RSMo. (2000).)

2. Staff also recommends that the Commission classify the Applicant and its 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. (See §392.361.2.) All the services a competitive company provides must be classified as competitive. (See §392.361.3.)

3. No tariff was submitted with application. Although a tariff filing at this time is not required, Staff notes that pursuant to 4 CSR 240-3.510(1)(C), the applicant cannot lawfully provide service until tariffs are effective. Although the Applicant requests a temporary waiver of 4 CSR 240-3.510(1)(C) because the Applicant did not file a proposed tariff with its application (see *Application* at ¶ 19), Staff sees no need for this waiver to be granted on this basis. The rule states that “filing the tariff and any applicable interconnection agreements simultaneously with the certificate application is optional.” As the rule already explicitly states that filing a proposed tariff with the certificate is optional, the Commission need not waive the rule merely because the Applicant has not yet filed a proposed tariff. Moreover, if the Commission were to waive this rule, it is possible that a waiver could be construed as a waiver of another clause in the rule that states “before service can be provided, a tariff and any applicable interconnection agreements must be filed with the commission and approved.” Accordingly, Staff recommends the Commission *not* grant a waiver of rule 3.510(1)(C).

4. Staff further recommends that a Commission order granting certification specifically state, pursuant to §392.410, 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.

5. Staff recommends the Commission grant the waivers listed in the Commission’s *Notice of Applications*.

WHEREFORE, Staff recommends that the Commission grant Bandwidth.com CLEC LLC, d/b/a Bandwidth.com a certificate to provide basic local exchange telecommunications services, conditioned upon the access rate provisions described in the Staff memorandum; grant a

certificate of service authority to provide interexchange telecommunications services and local exchange services restricted to dedicated, private line services; grant competitive classification; deny a waiver of 4 CSR 240-3.510(1)(C); and grant a waiver of the statutes and regulations listed in the Commission's *Notice of Applications*.

Respectfully Submitted,

/s/ Shelley Syler Brueggemann
Shelley Syler Brueggemann
Senior Counsel
Missouri Bar No. 52173

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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 20th day of December 2007.

/s/ Shelley Syler Brueggemann

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No.: **LA-2008-0120** File No.: **N/A**
Applicant: **Bandwidth.com CLEC, LLC d/b/a Bandwidth.com** (Bandwidth)

From: A.P. Kuss
Telecommunications Department
Wm L Voight 12/18/07 Shelley Brueggemann 12/19/07
Utility Operations Division/Date General Counsel's Office/Date

Subject: Staff Recommendation for Approval of Certificate to Provide Service

Date: December 18, 2007 **Filing Deadline:** December 20, 2007

The Telecommunications Department Staff (Staff) recommends the applicant be granted the 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 Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (AT&T Mo)
 - All of Embarq Missouri Inc. d/b/a Embarq (Embarq)
 - All of CenturyTel of Missouri, LLC (CenturyTel Mo)
 - All of Spectra Communications Group, LLC d/b/a CenturyTel (Spectra)
 - Other (please describe): Windstream Missouri, Inc. (Windstream)
- 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 the certificate to provide basic local exchange telecommunications services should be based on the following conditions:

1. The applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each ILEC within whose service area the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230 RSMo.
2. The certificate and service classification for switched access service is conditioned on the continued applicability of Section 392.200 RSMo, and the requirement that any increases in switched access services rates above the maximum switched access

service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.

- 3. 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:

PSC No. N/A

Effective Date: N/A

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); 392.245; 392.455(3), (4); 392.500(2); and 392.515(1) 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 or paying the PSC Assessment.

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: _____

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 or 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 RSMo 392.430/.440):

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

Additional Review Items for CLEC Certificate Applications:

(As required by RSMo 392.455 and/or 4 CSR 240-3.510):

- Possesses sufficient technical, financial and managerial resources and abilities.
- Statement that applicant will satisfy the minimum standards of 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): N/A

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

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Case No. **LA-2008-0120**

AFFIDAVIT OF **Arthur P. Kuss**

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Arthur P. Kuss, employee of the Staff of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that he has participated in the preparation of the accompanying Memorandum, and that the facts therein are true and correct to the best of his knowledge and belief.

Arthur P. Kuss

Arthur P. Kuss

Subscribed and affirmed before me this 18th day of December, 2007.

I am commissioned as a Notary Public within the County of Callaway, State of Missouri
and my commission expires on September 21, 2010



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

Susan L. Sundermeyer
NOTARY PUBLIC