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Missouri Public Service Commission

MEMORANDUM

To: Missouri Public Service Commission Official Case File  
Tariff File No. TM-2000-85

From: Sara Buyak *SB*  
Telecommunications Department *[Signature]*

*9-30-99  
CES*

*Wendy Hendricks 10-1-99*  
Utility Operations Division/Date

*Wm K Haas 10/1/99*  
General Counsel's Office/Date

Subject: Staff Recommendation to Approve Joint Application of Eclipse Telecommunications Inc., IXC Communications Services Inc., and Telecom One Inc. to transfer control to Cincinnati Bell, Inc.

Date: September 28, 1999

On August 3, 1999, Eclipse Telecommunications Inc. (Eclipse), IXC Communications Services, Inc. (IXC-CSI), Telecom One, Inc. (Telecom One) (referred to collectively as the applicants), and Cincinnati Bell, Inc. (CBI) filed an application requesting approval to transfer control of Eclipse, IXC-CSI, and Telecom One to CBI. IXC Communications, Inc. (IXC) is also involved in this matter as the corporate parent of IXC-CSI. IXC is a non-regulated holding company. According to the Applicants, CBI has entered into an agreement with IXC, the ultimate corporate parent of Eclipse, IXC-CSI, and Telecom One whereby IXC will be acquired by CBI in a merger with CBI's non-regulated subsidiary, Ivory Merger, Inc. and will become a structurally separate, wholly owned subsidiary of CBI.

The Staff contends that the merger transaction between IXC and Ivory Inc. is not within the jurisdiction of the Commission because it involves a merger of a non-regulated parent company and another non-regulated corporation. See the Commission's Report and Order in Case No. TM-99-76, In the matter of the merger of Southwestern Bell Communications, Inc. and Ameritech. If the Commission does not dismiss the Application because it determines that it does have jurisdiction, the Staff has reviewed and has no objection to the proposed transactions

Eclipse was granted a certificate of public convenience and necessity to provide Interexchange telecommunications services in Missouri in Case No. TA-93-296, approved on 9-28-93. IXC-CSI was granted a certificate of public convenience and necessity to provide Interexchange telecommunications services in Missouri in Case No. TA-95-387, approved on 8-11-95. Telecom One was granted a certificate of public convenience and necessity to provide Interexchange telecommunications services in Missouri in Case No. TA-94-266, approved on 4-27-94. A merger between Eclipse and Telecom One, Case No. TM-99-605 was approved on 8-24-99 after this merger transaction was filed. As a result of the merger in Case No. TM-99-605, Eclipse is the surviving company.

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According to the applicants, the proposed transfer of control will create a strong company with a national presence, whose operating subsidiaries will be well positioned to provide customers with the most technologically advanced competitive services, and improve the operational efficiency in Missouri. The proposed merger will not adversely affect the provision of telecommunications services in Missouri, the day-to-day operations of Eclipse and IXC-CSI, and will not adversely affect the current customers of Eclipse or IXC-CSI. Eclipse and IXC-CSI will continue to provide services to customers under existing service arrangements. The proposed transaction will combine the complementary management skills, background, and experience of CBI and IXC-CSI allowing Eclipse and IXC-CSI to strengthen their competitive positions and capitalize and build on the diverse expertise of their new parent corporation. The Applicants state the proposed transfer will benefit Missouri customers by enhancing the ability of IXC-CSI and Eclipse to offer a full range of competitively priced services in the interexchange marketplace thereby invigorating competition in Missouri. The joint application states that the merger will have no impact on the tax revenues of any political subdivision of the State of Missouri.

Applicants are wholly owned subsidiaries of IXC Communications, Inc. (IXC). IXC-CSI is a wholly owned subsidiary of IXC. IXC's stock is publicly traded on the NASDAQ stock market. Telecom One surrendered its Missouri certification and the merged company will continue as Eclipse. Eclipse and IXC-CSI will continue to operate under their own authorizations, and continue to provide telecommunications services to current customers under the existing service arrangements. Applicants assert that the proposed merger will serve the public interest by enhancing the ability of IXC-CSI and Eclipse to offer a full range of competitively priced services in the interexchange marketplace.

The Applicants further state to close the transaction, Ivory Merger, Inc. (a wholly owned subsidiary of CBI) (Merger Inc.) will be merged with and into IXC. The merger will result in each issued and outstanding share of IXC common stock being converted into the right to receive 2.0976 fully paid and nonassessable shares of CBI common stock; and each issued and outstanding share of capital stock of Merger Inc. will be converted into and become one fully paid and nonassessable share of common stock of the surviving corporation. A diagram of the proposed merger is in Exhibit D of the application.

As a result of this transaction, the Applicants state:

- Eclipse and IXC-CSI will continue to operate under their own certificates and tariffs,
- Eclipse and IXC-CSI will continue to provide telecommunications services to customers under existing service arrangements,
- IXC will become a wholly owned subsidiary of CBI after requisite regulatory approvals have been obtained. A copy of the Agreement is attached as Exhibit C of the application.

As a result of the merger in Case No. TM-99-605:

- Eclipse will file tariff sheets to incorporate the services and rates of Telecom One into its tariff within 30 days, and
- Telecom One will cancel its certificate and tariff.

The Telecommunications Department Staff (Staff) has reviewed the application and the tax impact statement and believes the Applicants have met the requirements of 4 CSR 240.060(5). The Staff is unaware of any other filing which affects or which would be affected by this proposal and has no objection to the proposed merger transaction.

Copies:

- Director – Utility Operations Division
- Director – Research and Public Affairs Division
- Director – Utility Services Division
- General Counsel
- Leland B. Curtis – Attorney for the Applicants
- Office of the Public Counsel