

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

In the Matter of the Application for Approval of)
the Transfer of Control of DSLnet)
Communications, LLC to MDS Acquisition, Inc.)

Case No. LO-2007-0133

MOTION TO DISMISS APPLICATION FOR LACK OF JURISDICTION

COMES NOW the Staff of the Missouri Public Service Commission, by counsel, and for its motion states:

1. The Commission granted DSLnet Communications, LLC (DSLnet) interexchange and non-switched local exchange certificates of authority in Case No. TA-99-395.

2. On September 28, 2006, DSLnet and MDS Acquisition, Inc., (MDSAI) filed an application for approval of the transfer of control of DSLnet from DSL.net, Inc., to MDSAI. Through a series of transactions, DSL.net, Inc., will be merged into MDSAI, with MDSAI surviving. The application states, at page 6, “Immediately following the transfer of control, DSLnet will continue to offer the services it currently offers with no change in the rates or terms and conditions of service.”¹

3. The application states that it is being submitted pursuant to Sections 386.320.1, 392.290, and 392.300 RSMo.

4. Section 386.320.1 provides that the Commission shall have the general supervision of telephone corporations.

5. Section 392.290.1 provides that the power of telecommunications companies to issue stocks, bonds, notes and other evidence of indebtedness and to create liens upon their

¹ The application further states, at page 7, “Indeed, DSLnet does not have any intrastate customers in Missouri.”

property situated in this state is a special privilege to be exercised as the Commission may prescribe. Section 392.290.2 provides that no telecommunications company operating in Missouri and one or more other states shall be required to obtain authorization from the Commission to issue stocks, bonds, notes or any other evidence of indebtedness or to encumber its franchise, line or system.

6. Section 392.290 is not applicable to this case. DSLnet is not proposing to issue stocks, bonds, notes or other evidence of indebtedness, or to create liens. Moreover, the Commissions granted DSLnet a waiver from Section 392.290 in Case No. TA-99-395.

7. Section 392.300.1 forbids a telecommunications company to sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or systems, necessary or useful in the performance of its duties to the public, or by any means, direct or indirect, to merge or consolidate such line or system, or franchises, or any part thereof, without having first secured from the Commission an order authorizing it so to do.

8. Section 392.300.1 is not applicable to this case because DSLnet is not disposing, encumbering or merging its assets.

9. Section 392.300.2 forbids a stock corporation, other than a telecommunications company, to purchase, without Commission consent, more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state.

10. Section 392.300.2 is not applicable to this case because (a) DSLnet, as a Delaware limited liability company, is not organized or existing under or by virtue of the laws of this state. Also, the Commission granted DSLnet a waiver from Section 392.300.2 in Case No. TA-99-235.

11. The Commission has dismissed other similar applications for lack of jurisdiction.²

WHEREFORE, the Staff requests the Commission to dismiss the application for lack of jurisdiction.

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 this 13th day of October 2006

/s/ William K. Haas

² *In the Matter of the Joint Application of Integra Telecom Holdings, Inc., and Electric Lightwave, LLC, for Approval of a Transfer of Control of Electric Lightwave, LLC*, Case No. TM-2006-0362, Order Dismissing Joint Application (May 2, 2006); and *In the Matter of the Joint Application of Level 3 Communications, Inc. and TelCove, Inc. for Approval of a Transfer of Control of TelCove Operations, Inc. and Related Transactions*, Case No. TM-2006-0433, Order Dismissing Joint Application (June 13, 2006)