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Missouri Public Service Commission

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December 15, 1999

GORDON L. PERSINGER
Acting Executive Director
Director, Research and Public Affairs

WESS A. HENDERSON
Director, Utility Operations

ROBERT SCHALLENBERG
Director, Utility Services

DONNA M. KOLILIS
Director, Administration

DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED³

DEC 15 1999

Missouri Public
Service Commission

RE: Case No. TM-2000-103

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of a **STAFF RECOMMENDATION TO DENY APPLICATION AND ENTRY OF APPEARANCE**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Cliff E. Snodgrass
Senior Counsel
(573) 751-3966
(573) 751-9285 (Fax)

CES:sw
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

FILED³

DEC 15 1999

In the Matter of the Joint Application of)
Teligent, Inc., and Teligent Services, Inc.,)
for Consent to the Pro Forma Assignment)
to Teligent Services, Inc., of Existing)
Certificates of Authority to Provide Local)
Exchange and Interexchange)
Telecommunications Services in the State)
of Missouri.)

Missouri Public
Service Commission

Case No. TM-2000-103

STAFF RECOMMENDATION TO DENY APPLICATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. In the attached Memorandum which is incorporated by reference herein and labeled Appendix A, the Staff recommends that the Commission deny the Joint Application of Teligent, Inc. and Teligent Services, Inc. for Consent to the Pro Forma Assignment to Teligent Services, Inc. of Existing Certificates of Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of Missouri. The Application states that it is filed pursuant to Missouri Statute Section 393.300(1) [sic] and 4 CSR 240-2.060.

6

2. The basis for the request to deny the Application is found in 4 CSR 240-2.060 (5) (F) which states that "if the purchaser is not subject to the jurisdiction of the commission, but will be subject to the commission's jurisdiction after the sale, the purchaser must comply with 4 CSR 240-2.060(2) or (4)."
3. Commission Regulation 4 CSR 240-2.060 (2) does not apply because the joint applicants are not "gas, electric, water, sewer or heating" companies as is required under this rule.
4. Commission Regulation 4 CSR 240-2.060(4) deals with telecommunications companies and provides "applications for a certificate of authority to provide telecommunications services...shall include...". This language requires the filing of an application for certification.
5. Because Teligent Services, Inc., the purchaser, will be subject to the jurisdiction of the Commission after the sale, it follows that an application for certification must be submitted to the Commission, and it is required by 4 CSR 240-2.060(4).
6. The Staff has explained to Teligent Services, Inc. that an application for certification must be filed. (Appendix A. p. 1).

WHEREFORE, the Staff requests the Commission deny the application for Approval of the transaction captioned above.

Respectfully submitted,

DANA K. JOYCE
General Counsel

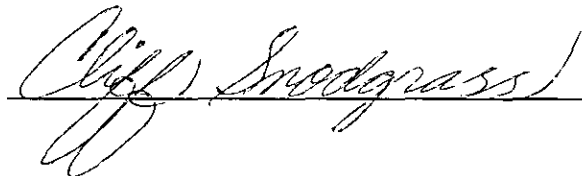


Cliff Snodgrass
Senior Counsel
Illinois Bar No. 3123645

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this December 15th, 1999.



**Service List for
Case No. TM-2000-103
December 15, 1999**

**Office of the Public Counsel
P.O. Box 7800
Jefferson City, MO 65102**

**Carl M. Bennett/Robert E. Strup, Jr.
Squire Sander & Dempsey L.L.P.
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

MEMORANDUM

APPENDIX A

To: Missouri Public Service Commission Official Case File
Tariff File No. N/A Case No. TM-2000-103

From: Natelle Anna *NO*
Telecommunications Department *BN*

Wm Anderson 12-9-99
Utility Operations Division/Date

Wm K Haas 12/10/99
General Counsel's Office/Date

CE5-12-9-99

Subject: Recommendation on the Joint Application of Teligent, Inc. and Teligent Services, Inc. for Consent to the Pro Forma Assignment to Teligent Services, Inc. of Existing Certificates of Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of Missouri

Date: December 7, 1999

RECEIVED

P.S.C. Mo. No. N/A

DEC 09 1999

MS 2145

MISSOURI

Public Service Commission

On August 10, 1999, a Teligent, Inc. (Teligent) and Teligent Services, Inc. (TSI) filed a Joint Application for Consent to the Pro Forma Assignment to Teligent Services, Inc. of Existing Certificates of Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of Missouri. On August 20, 1999, the Commission issued an Order Directing Filing requesting additional application information pursuant to 4 CSR 240-2.060(5)(G) and 4 CSR 240-2.060 (5) (H). This information was filed on September 10, 1999. On November 22, 1999, the Commission issued its Order Directing Staff Report as to the circumstances of the merger and Staff's recommendation.

Teligent was granted authority to provide basic local exchange telecommunications service effective September 22, 1998 in Case No. TA-98-258. Teligent was granted authority to provide interexchange telecommunications service effective May 1, 1998 in Case No. TA-98-259.

As part of a corporate reorganization, Teligent created a wholly-owned subsidiary, TSI, which will act as Teligent's operating company to provide telecommunications services to customers. In their Joint Application, Teligent and TSI are requesting for consent to assign the Certificates of Teligent to TSI. They also state that upon Commission approval of the name change, TSI will adopt Teligent's tariffs or issue duplicate tariffs.

In conversations with Teligent and TSI counsel (counsel), the Telecommunications Department Staff (Staff) attempted to clarify whether TSI was requesting certification as a separate entity or simply effecting a name change and adopting the Teligent tariffs. Counsel stated that this was not a name change and that TSI would be the company providing service in Missouri. It was explained that TSI would have to apply for a Certificate of Service Authority in its own name before the transaction

TM-2000-103

Teligent, Inc. and Teligent Services, Inc.

Page 2 of 2

application could be finalized. Counsel responded that the merger application was filed in accordance with a letter received from the PSC General Counsel's Office. A copy of this letter was faxed to Staff on October 13, 1999 and is attached for reference.

After receiving the faxed copy of the letter and discussing with its own counsel, Staff contacted Teligent counsel and advised that this letter does not release TSI from filing requirements as set forth in Commission rules and, in order to proceed, TSI would need to apply for a Certificate of Service Authority in its own name.

No further contact has been received from TSI or Teligent. Since TSI, as the company seeking to provide service in Missouri is not certificated and has not filed an Application requesting any authority to provide service in Missouri, Staff recommends that the Commission deny the Joint Application of Teligent, Inc. and Teligent Services, Inc. for Consent to the Pro Forma Assignment to Teligent Services, Inc. or Existing Certificates of Authority to Provide Local Exchange and Interexchange Telecommunications Services in the State of Missouri.

Squire, Sanders & Dempsey
LLP.

Counsellors at Law

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If Problems: ()

Bratislava • Brussels • Budapest • Cleveland • Columbus • Hong Kong • Houston • Jacksonville • Kyiv
London • Madrid • Miami • Moscow • New York • Phoenix • Prague • Taipei • Washington

October 13, 1999

PLEASE DELIVER THESE PAGES IMMEDIATELY

No. of Pages (including cover): 3

To: Natellé Anna
Company: Missouri Public Service Commission

Facsimile No: (573) 751-1847
Confirmation No: (573) 751-3234

From: Robb Stup
Re: Teligent

Direct Dial No: (202) 626-6884

Message: Per our discussion, attached please find the letter upon which I relied to file the request for pro forma assignment to TSi of Teligent's authority. Please call me to discuss how to proceed.

CONFIDENTIALITY NOTICE:

The attached information is LEGALLY PRIVILEGED AND CONFIDENTIAL and is intended only for the use of the addressee named above. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, please be aware that any dissemination, distribution or duplication of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the address above via the postal service. Thank you.

**Commissioners****SHEILA LUMPE**
Chair**HAROLD CRUMPTON****CONNIE MURRAY****ROBERT G. SCHEMENAUER****M. DIANNE DRAINER**
Vice Chair**Missouri Public Service Commission****POST OFFICE BOX 360**
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Director, Utility Services**DONNA M. KOLILIS**
Director, Administration**DALE HARDY ROBERTS**
Secretary/Chief Regulatory Law Judge**DANA K. JOYCE**
General Counsel

June 25, 1999

Robert Stup, Jr.
Squire, Sanders & Dempsey, LLP
1201 Pennsylvania Ave., N.W., PO Box 407
Washington, D.C. 20044-0407

RE: Proposed Assignment of Certificate of Service Authority, Teligent and TSI

Dear Mr. Stup.

The Missouri Public Service Commission (PSC) has jurisdiction over the sale, assignment, lease, transfer and mortgage of any franchise, facilities or system necessary or useful in the performance of duties to the public of a regulated telecommunications company. The Missouri PSC also has jurisdiction over the merger or consolidation of the franchise, facilities or system of a regulated telecommunications company, Section 392.300, RSMo 1994. Generally the Commission has interpreted this section to mean any sale, assignment, lease, transfer, mortgage or merger which affects the regulated operations of a regulated company must first be approved by the Commission.

However, the Commission has determined that certain transactions clearly do not fall within the Commission's jurisdiction and therefore do not need Commission approval. These transactions are:

1. Where a merger or consolidation involves non-regulated parent corporations of a regulated company, and where there is no change in the operations of the regulated company.
2. Where the parent corporation of the regulated company merges or sells assets to a non-regulated entity; and there are no changes in the operations of the regulated company.

Date

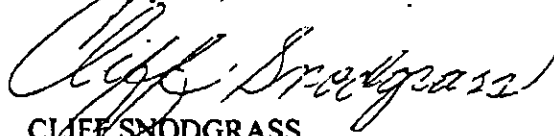
Page 2

Even though the companies involved in the transactions described above do not need to file an application for Commission approval, they will need to notify the Commission by letter of the transaction. Please note, however, that if the name of any regulated company is being changed, a formal application for Commission approval is required along with a copy of the certificate with a new corporate name or fictitious name registration from the Missouri Secretary of State.

In all instances where Commission approval is required the applicant must comply with 4 CSR 240-2.060. If there are any questions regarding a specific set of circumstances feel free to contact me at General Counsel's Office at (573) 751-3966. I would prefer that contacts with me be in written form, either by correspondence or by fax. It appears from the factual circumstance of your correspondence that the assignment of service authority would clearly be a transaction that would require Commission approval. The appropriate statute to review in this factual scenario is Revised Mo. Statute, Section 392.300 (1).

Hopefully, this analysis will be of assistance to your inquiry. Please note that this letter should not be relied upon as an official determination of the Missouri Public Service Commission, rather it should be viewed as an informal opinion of the General Counsel's Office. If you have any further questions, please feel free to contact me.

Sincerely yours,



CLIFF SNODGRASS

Senior Counsel, General Counsel's Office

CES/wf