

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

In the Matter of the Application of MultiBand, Inc.)  
for a Certificate of Service Authority to Provide     )     Case No. ZA-2006-0346  
Shared Tenant Services in the State of Missouri )

**MULTIBAND'S REPLY TO AT&T MISSOURI'S RESPONSE TO MOTIONS**

COMES NOW MultiBand, Inc. ("MultiBand"), Applicant herein, by and through counsel of record, and submits this Reply to *AT&T Missouri's Response to Motions for Determination on the Pleadings and to Dismiss Intervenor* filed in this case on June 16, 2006. For the reasons discussed below, and in MultiBand's *Motion for Determination on the Pleadings and Motion to Dismiss Intervenor* filed on June 6, 2006, MultiBand repeats its requests that the Missouri Public Service Commission: (1) issue a certificate of service authority to MultiBand to provide Shared Tenant Services (STS) within the State of Missouri based on the pleadings in this case, without the need for additional proceedings; and (2) dismiss Intervenor, AT&T Missouri, from this case.

AT&T Missouri is using its intervention in this matter only to seek to impose discriminatory burdens upon MultiBand not imposed upon other STS certificate applicants in Missouri and to secure a bargaining advantage over MultiBand on matters peripheral to the certification application. In spite of the "holier than thou" attitude demonstrated in its *Response* of June 16, AT&T Missouri (under one of its previous names, either Southwestern Bell Telephone Company or SBC Missouri) knew, or should have known, of MultiBand's presence at the Jefferson Arms Apartment building in St. Louis from Day 1, since

AT&T (d/b/a SWB or SBC) *actually installed* the T-1 line that MultiBand ordered in order to begin providing Shared Tenant Services (STS) at that location (which is MultiBand's only Missouri location).

Now, AT&T has belatedly asserted that MultiBand has been using facilities within the Jefferson Arms building in its provision of STS there which AT&T claims to own. Until these allegations were raised earlier this year, MultiBand management was unaware that AT&T, or anyone other than the building owner with which MultiBand had contracted to provide STS services, might possibly claim ownership of any of the facilities inside the Jefferson Arms Apartment building. The only proof of ownership provided by AT&T to-date consists largely of legal arguments, which MultiBand is reviewing and evaluating. In any event, the instant certificate case is not the proper forum for resolving an issue of ownership of facilities at that location.

Further, MultiBand has freely acknowledged that it mistakenly began providing STS at the Jefferson Arms without knowing that it needed Missouri PSC authorization to do so – a mistake it sincerely regrets. Certification is a requirement MultiBand had not previously faced in Minnesota, where it provides STS (including voice service, as here) on a much broader basis than it does in Missouri. This mistake, when realized, could only be corrected by seeking proper certification by this Commission, which is exactly what MultiBand immediately did by filing its Application in this case.

AT&T, in its *Application to Intervene* in this case filed on March 31, 2006, specifically stated that *it did not oppose* a grant of the certificate sought by

MultiBand, *nor did AT&T propose any “conditions” for such a certificate to be granted.* **Changing its tune once it had been granted intervenor status,** AT&T now insists that MultiBand should be treated as though it is a Competitive Local Exchange Company (CLEC) rather than as an STS provider and be required to enter into a full-blown Interconnection Agreement with AT&T Missouri, *as a condition of STS certification.* Imposing such a requirement on MultiBand would be unjust, unreasonable, discriminatory and anti-competitive.

**As Staff agreed in its Response of May 5, 2006 in this case, the issues raised by AT&T Missouri are peripheral to the issuance of STS certificate of service authority.** To require the filing of testimony, the conduct of hearings and the filing of briefs in this case due to an unrelated commercial issue raised by an intervening Incumbent Local Exchange Carrier (ILEC) would impose discriminatory burdens upon MultiBand not imposed upon other STS certificate applicants in Missouri.

**The bottom line is that AT&T Missouri is attempting to drive MultiBand out of the limited competition it provides in St. Louis by costing MultiBand thousands of dollars in legal and related expenses, all over the few dozen customers which MultiBand serves at its Jefferson Arms STS location.**

Contrary to AT&T’s assertion in its *Response to Motions*, the “higher standard” required in a certification case does *not* preclude application of a determination on the pleadings under 4 CSR 2402.117(2). **Enhanced telecommunications competition is in the public interest, as a matter of**

**law.** The “public interest,” as expressed by the General Assembly of Missouri (See, statutory citations below) and the Congress of the United States (in the Telecommunications Act of 1996), is served by promoting competition in the provision of telecommunications services. The “purpose clause” (Section 392.185 RSMo) and the “intent” language (Section 392.200.4(2) RSMo) which were included in S.B. 507, devices used very sparingly by the Missouri General Assembly, clearly express the policy of the State of Missouri to promote competition in the telecommunications industry.

The Missouri General Assembly has also made it clear that the Commission is to construe the provisions of Chapter 392 to permit “flexible regulation of competitive telecommunications companies” such as MultiBand. (Section 392.185 RSMo) Section 392.520.1 RSMo provides that the Commission has jurisdiction of shared tenant services, but also that the Commission “shall subject such services to the minimum regulation permitted by this chapter for competitive telecommunications services.” Shared tenant services are also exempted from tariff filing requirements. It is clear from the pleadings, other than those of AT&T discussing peripheral issues, that the public interest would be promoted, through enhanced competition, by a grant of the STS certificate of service authority sought in this case.

AT&T’s efforts to squelch competition appear to be growing in strength as the company itself grows, as the old Southwestern Bell Telephone Company attempts to reassemble the old “Ma Bell.” To devote the attention it has already to “combating” the threat of MultiBand serving a few dozen STS customers in

one apartment building is an extraordinary display of anti-competitive zeal on the part of AT&T Missouri.

Ignorance of the law may not technically be an “excuse” for MultiBand’s delay in seeking STS certification in Missouri, but it is the truth. MultiBand had not been pursuing a corporate business plan for expansion of STS services into Missouri, but responded to a specific request by a specific building owner for its services. Its experience in other states did not suggest that the provision of STS services was regulated. As soon as MultiBand became aware of the Missouri certification requirement, it filed its Application in this case. Thus, the reason these issues have now been raised before the Commission is because of the voluntary actions of MultiBand to *comply* with Missouri’s certification requirements.

Companies such as MCI and Sprint provided competitive long-distance services in Missouri for years without ever seeking PSC certification, until finally required to do so by HB 360 in 1987. In contrast, MultiBand has made no issue of the Commission’s authority, now that it has become aware of it.

Since MultiBand was unaware of the statutory requirements in Missouri, it could not have known of, and therefore did not “disregard,” annual report and other regulatory requirements; nor would its small level of Missouri revenues have affected the Commission’s annual assessments. As previously stated, MultiBand sincerely regrets that it was unaware of these requirements and is committed to full compliance with all such regulatory requirements going forward.

AT&T Missouri cannot show that its interest in this peripheral issue would be adversely affected by a final order granting MultiBand certificate of service authority to provide STS service. As Staff stated in its pleading of May 5, 2006 in this case, "Granting MultiBand a shared tenant services certificate will neither foreclose nor prejudice the pursuit by AT&T Missouri of its claim. If MultiBand and AT&T Missouri are unable to resolve their differences, they may seek a remedy in an appropriate forum." Indeed, MultiBand management is engaged in discussions with AT&T personnel appointed by AT&T concerning the facilities and interconnection agreement issues. However, those issues are not germane to the issue before the Commission in this case and should be resolved outside of this case.

**There is no requirement under Missouri law or PSC rule that an applicant for STS authority in Missouri be required to file an interconnection agreement or facilities agreement with the local ILEC as a part of its application or as a condition of its approval.** MultiBand has provided to the Commission all the information required by law and by Commission rule and practice to secure certificate of service authority to provide shared tenant services (STS) in Missouri. Staff reviewed MultiBand's application, concurred in the just-stated conclusion, and recommended that the certificate of service authority be granted by the Commission. AT&T Missouri intervened in the case, *and did not oppose the application.*

Whether or not AT&T Missouri is dismissed as an Intervenor, MultiBand's *Motion for Determination on the Pleadings* should be granted by the

Commission. Being granted Intervenor status does not give a party the authority to change the legal standard or procedures employed by the Commission to grant certificate of service authority as an STS provider, nor should it give an Intervenor the right to demand a hearing or the addition of conditions designed to address an unrelated issue the Intervenor believes it has with the Applicant. Since the only issues raised by AT&T in this case are only peripheral to the subject of this case, and not properly addressed in this certificate case, AT&T should either be dismissed as an Intervenor, or its stated concerns should be declared not to be germane to the instant proceeding and should be ignored by the Commission for purposes of certification of MultiBand.

Within the meaning of 4 CSR 240-2.117 (2), a determination on the pleadings in this case that MultiBand's application herein would be consistent with, not contrary to, law and would serve, not be contrary to, the public interest by increasing competition for telecommunications services in Missouri and by protecting the Commission's process for securing certificate of service authority. Further, **a grant of the instant application would promote the public interest by enhancing competition in Missouri's telecommunications markets.** Based upon the pleadings in this case, the Commission should grant STS certificate of service authority to MultiBand, Inc., without further proceedings and without the condition proposed by AT&T Missouri.

**WHEREFORE**, MultiBand, Inc. respectfully repeats its requests that the Public Service Commission of Missouri: (1) dismiss AT&T Missouri, Intervenor herein, from the case; and/or (2) issue the certificate of service authority requested by MultiBand, Inc. in this case, without further proceedings, based upon the pleadings herein, consistent with the Staff Recommendation filed on April 7, 2006 and Staff's pleading of May 5, 2006.

Respectfully submitted,

***/s/ William D. Steinmeier***

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document has been served electronically on the General Counsel's Office, the Office of the Public Counsel and counsel for SBC Missouri-AT&T Missouri this 26<sup>th</sup> day of June 2006.

***/s/ William D. Steinmeier***

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William D. Steinmeier