

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of LMDS)	
Holdings, Inc., for a Certificate of Service)	
Authority to Provide Competitive Intrastate)	<u>Case No. TA-2006-0267</u>
Basic and Non-switched Local Exchange and)	Tariff No. YL-2006-0568
Interexchange Telecommunications Services)	

ORDER GRANTING CERTIFICATES TO PROVIDE BASIC LOCAL AND INTEREXCHANGE TELECOMMUNICATIONS SERVICES AND APPROVING TARIFFS

Issue Date: February 8, 2006

Effective Date: February 10, 2006

This order grants certificates of service authority to provide basic local and interexchange telecommunications services in the state of Missouri, classifies those services and the company as competitive, waives certain statutes and regulations, and approves the company's tariffs.

On December 20, 2005, LMDS Holdings, Inc., applied for certificates of service authority to provide basic and non-switched local exchange, as well as interexchange telecommunications services within the state of Missouri, and for competitive classification. The company seeks certification to provide interexchange service throughout the state and basic local service in portions of Missouri that are currently being served by Southwestern Bell Telephone, LP., d/b/a AT&T Missouri. LMDS Holdings is a Delaware corporation and is a wholly owned subsidiary of XO Communications, Inc. LMDS Holdings is authorized to do business in Missouri by the Missouri Secretary of State.

On December 27, the Commission issued its Notice of Applications, establishing January 11, 2006, as the deadline for intervention. No applications to intervene were received. On February 1, the Staff of the Commission recommended that the requested certificates, classifications and waivers be granted.

The Commission may grant an application for a certificate of service authority to provide telecommunications service upon a showing that the applicant has met the statutory requirements,¹ and that the grant of authority is in the public interest.² Based on the verified application and Staff's uncontested recommendation, the Commission finds that LMDS Holdings satisfies the requirements for certification and that granting such certificates is in the public interest.

LMDS Holdings also requests that it and its services be classified as competitive and that the application of certain statutes and regulatory rules be waived. The Commission may classify a telecommunications service as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.³ The Commission may only classify a telecommunications carrier as competitive if all of its services are so classified.⁴ The Commission may waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁵

¹ See Sections 392.450, 392.451 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

² Sections 392.430 and 392.440.

³ Section 392.361.2.

⁴ Section 392.361.3.

⁵ See Sections 392.185, 392.361.3 and 392.420.

The Commission finds that the intrastate interexchange market is competitive and that the interexchange services LMDS Holdings will offer are subject to competition. In addition, LMDS Holdings will compete with incumbent local exchange carriers, as well as other competitive local exchange carriers in the exchanges in which it provides basic local telecommunications service. The Commission finds that LMDS Holdings will be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services LMDS Holdings will offer are qualified for classification as competitive services.

The Commission may waive certain statutes and administrative rules for competitively classified carriers “if such waiver or modification is otherwise consistent with the other provisions of Section 392.361 to 392.520 and the purposes of this chapter.”⁶ The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange and interexchange carriers. The Commission will waive these provisions for LMDS Holdings.

The Commission may also require a telecommunications company to comply with any conditions reasonably necessary to protect the public interest. Staff recommends that LMDS Holdings’ application be granted subject to certain restrictions regarding switched access rates. These conditions are routinely recommended by Staff and LMDS Holdings accepted them in its application. The conditions proposed by Staff are necessary to protect the public interest and will be adopted.

Along with its application, LMDS Holdings submitted a proposed local exchange tariff. The company filed a revised tariff page on January 27. The tariff originally carried an effective date of February 3, but LMDS Holdings subsequently extended the tariff effective

⁶ Sections 392.361.5 and 392.420.

date until February 10. Staff recommends that the tariff be approved. The Commission finds that LMDS Holdings' proposed tariff should be approved to become effective on February 10, 2006.

The Commission places LMDS Holdings on notice that failure to comply with certain obligations pursuant to law may result in penalties assessed against the company. These obligations include, but are not limited to, the following:

- A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable for a penalty of \$100 per day for each day that the violation continues. Rule 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
- B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.
- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, under Section 386.570, RSMo 2000.
- D) The obligation to keep the Commission informed of its current address and telephone number.

The company is reminded that its officers may not represent it before the Commission. The company must be represented by an attorney licensed to practice law in Missouri.

In addition, Section 392.410.6, RSMo Supp. 2005, provides that the company's certificate of service authority becomes null and void one year from the date of this order unless the company has exercised its authority under that certificate.

The Commission notes that prior to providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

IT IS ORDERED THAT:

1. LMDS Holdings, Inc., is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri, subject to the conditions and recommendations contained in the Staff's Memorandum.

2. LMDS Holdings, Inc., is granted a certificate of service authority to provide interexchange telecommunications services.

3. LMDS Holdings, Inc., and its services are granted competitive classification.

4. LMDS Holdings, Inc.'s originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area LMDS Holdings seeks authority to provide service, unless authorized by the Commission pursuant to Section 392.220 and 392.230, RSMo 2000.

5. The certificates and competitive service classification for switched exchange access are granted conditioned on the continued applicability of Section 392.200, RSMo 2000, and the requirement that any increase in switched access service rates above

the maximum switched access service rates set forth herein shall be made pursuant to Section 392.200 and 392.230, RSMo 2000, and not Section 392.500 and 392.510, RSMo 2000.

6. If the directly-competing incumbent local exchange carrier, in whose service area LMDS Holdings, Inc., is operating, decreases its originating or terminating access service rates, LMDS Holdings shall file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates in order to maintain the cap.

7. Application of the following statutes and Commission rules are waived:

Statutes

392.210.2	- uniform system of accounts
392.240.1	- rates-rentals-service & physical connections
392.270	- valuation of property (ratemaking)
392.280	- depreciation accounts
392.290	- issuance of securities
392.300.2	- acquisition of stock
392.310	- stock and debt issuance
392.320	- stock dividend payment
392.330	- issuance of securities, debts and notes
392.340	- reorganization(s)

Commission Rules

4 CSR 240-3.550(5)(C)	- exchange boundary map
4 CSR 240-10.020	- depreciation fund income
4 CSR 240-30.040	- uniform system of accounts

8. The following tariff, assigned file number YL-2006-0568 is approved, as amended, to become effective on February 10, 2006:

**LMDS Holdings, Inc.
Missouri Tariff No. 1**

9. The certification granted herein is conditioned upon the company's compliance with the regulatory obligations set out in this order

10. LMDS Holdings, Inc., is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit LMDS Holdings to lawfully provide telecommunications services in Missouri. Specifically, LMDS Holdings, Inc., cannot lawfully provide switched local service until it has an approved tariff for such service.

11. This order and LMDS Holdings, Inc.'s certificates shall become effective on February 10, 2006.

12. This case shall be closed on February 11, 2006.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', is written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Morris L. Woodruff, Deputy Chief Regulatory
Law Judge, by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 8th day of February, 2006.