

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 25th day
of July, 2006.

In the Matter of the Joint Application of)	
Broadview Networks Holdings, Inc. and)	<u>Case No. TM-2006-0547</u>
ATX Licensing, Inc. for Approval of an Indirect)	
Transfer of Control of ATX Licensing, Inc.)	

ORDER DISMISSING JOINT APPLICATION

Issue Date: July 25, 2006

Effective Date: August 4, 2006

Syllabus: This order dismisses the Joint Application filed by Broadview Networks Holdings, Inc. and ATX Licensing, Inc. due to a lack of jurisdiction.

On June 28, 2006, Broadview Networks Holdings, Inc. (Broadview Holdings), and ATX Licensing, Inc. (ATX), filed an application for approval of the indirect transfer of control of ATX, to Broadview Holdings.

ATX is a Delaware corporation and is registered in Missouri as a foreign corporation. ATX is a wholly owned subsidiary of CoreComm-ATX, Inc., which is a wholly owned subsidiary of CoreComm Communications, Inc, which is a wholly owned subsidiary of ATX Communications, Inc. In Missouri, ATX is authorized to provide resold long distance telecommunications services pursuant to a certificate granted by the Commission in Case No. XA-2005-0272.

Broadview Holdings is a privately held Delaware corporation. Broadview Holdings is the parent of Broadview Networks, Inc., Broadview NP Acquisition Corp., BridgeCom International, Inc., and TruCom Corporation, which are each authorized to

provide competitive telecommunications services in multiple states. None of Broadview Holdings' current operating subsidiaries hold any certifications nor provide any telecommunications services in Missouri. Following the transfer Broadview Holdings would acquire voting control of ATX Communications, Inc., the ultimate parent of ATX.

Applicants state that although the proposed transaction will result in a change in the ultimate ownership of ATX, no transfer of certificates, assets or customers will occur as a result, and ATX will retain its authorization to provide intrastate telecommunications services in Missouri. ATX will operate as a separate subsidiary of Broadview Holdings, and following the consummation of the transaction, its customers will continue to receive service under the same rates, terms and conditions of service. Applicants expect that the transaction will be transparent to ATX's customers.

On July 14, 2006, the Staff of the Commission filed a Motion to Dismiss Application for Lack of Jurisdiction. Staff states that Section 392.300.2, RSMo, does not apply to this transaction because (a) ATX, as a Delaware corporation, is not organized or existing under or by virtue of the laws of this state, and (b) the stock of ATX is not being purchased in this transaction. Staff also states that the Commission granted ATX a waiver from Section 392.300.2 in Case No. XA-2005-0272. The Staff further states that Section 392.300.1, RSMo, does not apply because ATX is not disposing of, encumbering or merging its assets.

Section 393.300.2 states that no stock corporation, other than a telecommunications company, may buy more than ten percent of the stock of a telecommunications company organized or existing under the laws of this state without first obtaining the Commission's consent. ATX, the telecommunications company being indirectly purchased, is not a Missouri corporation, but is organized under the laws of the

state of Delaware. Thus, ATX is not subject to the requirements of Section 392.300.2, RSMo 2000.

Section 392.300.1 states that no telecommunications company shall sell or otherwise dispose of its franchise, facilities or system, or merge or consolidate its system or franchise without first having Commission authority to do so. If the Commission approves this transaction, ATX will retain all of its assets. The ownership interest of the company, however, will transfer to Broadview Holdings.

While the Commission is not bound by the precedent set out in its previous orders, the Commission has consistently interpreted the *Union Pacific* case¹ as stating that the Commission lacks jurisdiction where the transfer of control does not affect the operations of the certificated entity.

Consistent with the recommendations of its Staff and its previous decisions, the Commission concludes that it has no jurisdiction over the proposed transactions.

IT IS ORDERED THAT:

1. The Joint Application filed by Broadview Networks Holdings, Inc., and ATX Licensing, Inc. on June 28, 2006, is dismissed for lack of jurisdiction.

¹ *Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917).

2. This order shall become effective on August 4, 2006.
3. This case may be closed on August 5, 2006.

BY THE COMMISSION

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

Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray and Appling, CC., concur.
Gaw and Clayton, CC., dissent.

Voss, Regulatory Law Judge