

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

In the Matter of the Joint Application of Sage)
Telecom, Inc. and SP Sage, LLC, for Approval of a)
Transfer of Control of Sage Telecom, Inc.) **Case No. TM-2007-0288**

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation for approval of a proposed merger states:

1. The Commission granted Sage Telecom, Inc., a certificate of service authority to provide basic local telecommunications service in Case No. TA-2002-29 and a certificate of service authority to provide interexchange telecommunications service in Case No. TA-2002-30.

2. Sage Telecom and SP Sage LLC filed an application pursuant to Section 392.300 RSMo requesting Commission approval of a proposed transaction to transfer control of Sage Telecom from its multiple shareholders to SP Sage. The proposed transaction calls for a subsidiary of SP Sage to merge with and into Sage Telecom with Sage Telecom surviving the merger.

3. Section 392.300 recognizes two types of transaction to transfer control of a telecommunications company: (1) a stock purchase and (2) a merger or consolidation.

Subsection 2 of 392.300 generally provides that no stock corporation shall, without the consent of the Commission, purchase or acquire, take or hold 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.

This subsection is not applicable to the proposed transaction because the Commission waived this subsection in Sage Telecom's certificate cases and because Sage Telecom is a Texas corporation.¹

Subsection 1 of 392.300 generally provides that no telecommunications company shall sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, *merge or consolidate* such line or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the Commission an order authorizing it so to do.

This subsection is applicable to the proposed merger because the certificated telecommunications company, Sage Telecom, is a party to the merger.²

4. The standard for approval of a merger is the same as for the sale of assets: that the transaction will not be detrimental to the public interest. See, *In the Matter of the Application of Computer Network Technology Corporation for Authority to Enter into a Merger and Transfer of Control Transaction with Condor Acquisition, Inc., and McDATA Corporation, and Their Respective Shareholders*, Order Approving Merger And Directing Filing, Case XM-2005-0283 (March 29, 2005) (citing *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980)).

¹ See, *In re the Joint Application of Integra Telecom Holdings, Inc., and Electric Lightwave, LLC for Approval of a Transfer of Control of Electric Lightwave, LLC*, Order Dismissing Joint Application, Case No. TM-2006-0362 (May 12, 2006) (citing *Public Service Commission v. Union Pacific RR Co.*, 197 S.W. 39 (Mo. banc 1917)).

² In contrast, the Commission has dismissed for lack of jurisdiction an application for approval of a merger at the parent company level. *In the Matter of the Joint Application of Talk America Holdings, Inc., Talk America, Inc., LDMI Telecommunications, Inc., and Cavalier Telephone Company for Approval of an Indirect Transfer of Control and Related Financing Transactions*, Order Dismissing Joint Application, Case No. TM-2007-0140 (October 19, 2006).

5. In the attached Memorandum, labeled as Appendix A, the Staff states its opinion that the merger will not be detrimental to the public interest because the transaction will be transparent Sage Telecom's customers.

WHEREFORE, the Staff recommends that the Commission conclude that it has jurisdiction pursuant to subsection 392.300.1 RSMo to review the proposed merger, find that the merger will not be detrimental to the public interest, and approve the merger.

Respectfully submitted,

/s/ William K. Haas

William K. Haas
Deputy General Counsel
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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 record this 27th day of February 2007.

/s/ William K. Haas

Memorandum

To: Missouri Public Service Commission Official Case File
Case No. TM-2007-0288
Sage Telecom, Inc. and SP Sage, LLC

From: Sherri Kohly, Telecommunications Department
William L. Voight 02/21/07 /s/ William K. Haas 02/21/07
Utility Operations Division/Date General Counsel's Office/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of
Competitive Company Transaction**

Date: February 21, 2007

The Telecommunications Department Staff (Staff) recommends the Commission (check, as applicable):

- | | | |
|--|--|--|
| <input checked="" type="checkbox"/> Approve Merger
4 CSR 240-3.525 | <input type="checkbox"/> Approve Consolidation
4 CSR 240-3.525 | <input type="checkbox"/> Approve Sale of Assets
4 CSR 240-3.520 |
| <input type="checkbox"/> Approve Name Change
4 CSR 240-3.545(20) | | |
| <input type="checkbox"/> Cancel Certificate(s) & Tariff(s)
392.410.5 RSMo | <input type="checkbox"/> Approve Certificate(s) & Tariff(s)
4 CSR 240-3.510 | |

According to Commission rule 4 CSR 240-2.060 and the rule(s) specifically cited above, competitively classified companies are required to provide information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest for the following reason(s) (check all that apply):

- ☒ This transaction solely involves a competitively classified company.
- ☐ Customers have/will receive advance notice.
- ☐ Customers can switch to another provider.
- ☒ Customers will continue to receive service at the same rates, terms and conditions.
- ☒ Other: **Customers will continue to receive service from the same provider. This merger results in a transfer of control and will be transparent to the customers.**

The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
Sage Telecom	X	X							

*See attachment to Staff recommendation for further details associated with approving certificates or tariffs.

Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company?

☒ No

☐ Yes

☐ Customers have been notified.

☐ Customers will be notified at least 30 days prior to being switched to a different company.
(4 CSR 240-3.525)

Company Name Change Notification

☐ Company has notified its customers of the name change.

☐ Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? ☐ Yes ☒ No

If yes, a copy of the bankruptcy order is attached.

Competitive Company Transaction Review Items

Administrative:

☒ Application solely involves a competitively classified company.

☒ No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

☒ Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

☒ Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No.

Missouri corporations: A Certificate of Good Standing.

Foreign corporations: Authorization to do business in Missouri.

If business conducted under a fictitious name: A copy of registration of the fictitious name.

☒ No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).

☒ A statement that no annual report or assessment fees are overdue for any applicant.

Are there additional recommendations or special considerations?

☒ No

☐ Yes

If yes, explain in an attachment.

☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.

☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.

(☐ No annual report ☐ Unpaid PSC assessment. Amount owed:)

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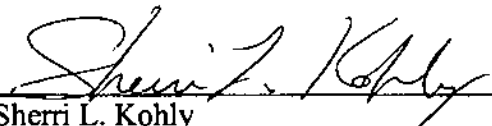
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Approval of a Transfer of Control of Sage)
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AFFIDAVIT OF SHERRI L. KOHLY

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Sherri L. Kohly, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying Memorandum, and that the facts therein are true and correct to the best of her knowledge and belief.



Sherri L. Kohly

Subscribed and affirmed before me this 21st day of February 2007
I am commissioned as a notary public within the County of Callaway,
State of Missouri and my commission expires on 9-21-10



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



NOTARY PUBLIC