

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

In the Matter of the Joint Application of)
Broadview Networks Holdings, Inc. and)
ATX Licensing Inc. for Approval of an)
Indirect Transfer of Control of ATX)
Licensing, Inc.)

Case No. TM-2006-0547

MOTION TO DISMISS FOR LACK OF JURISDICTION

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

1. The Commission granted ATX Licensing, Inc., a certificate of service authority to provide intrastate interexchange telecommunications services in Case No. XA-2005-0272. ATX Licensing, Inc., is a Delaware corporation.

2. ATX Licensing, Inc. is a wholly owned subsidiary of CoreComm-ATX, Inc., which, in turn, is a wholly owned subsidiary of CoreComm Communications, Inc., which, in turn, is a wholly owned subsidiary of ATX Communications, Inc., which, in turn, is a wholly or partially owned subsidiary of Leucadia National Corporation. ¹

3. On June 28, 2006, Broadview Holdings, Inc., and ATX Licensing Inc., filed a Joint Application requesting the Commission either (a) approve a transaction where Broadview Holdings, Inc., will acquire either all outstanding shares of ATX Communications, Inc. or voting control of ATX Communications, Inc.,² or (b) dismiss the transaction for lack of jurisdiction. The Applicants filed for approval under Section 392.300 RSMo.

4. Section 392.300.1 forbids a telecommunications company to sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise,

¹ See Joint Application, paragraph 1, footnote 2, and paragraph 5.

² See Joint Application, paragraph 1 and Pre-Transaction Illustrative Chart.

facilities or system, necessary or useful in the performance of its duties to the public, or by any means, direct or indirect, to merge or consolidate such line or system, or franchises, or any part thereof, without having first secured from the Commission an order authorizing it so to do.

5. Section 392.300.1 is not applicable to this case because ATX Licensing, Inc., is not disposing, encumbering or merging its assets.

6. Section 392.300.2 forbids a stock corporation, other than a telecommunications company, to purchase, without Commission consent, 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.

7. Section 392.300.2 is not applicable to this case because (a) ATX Licensing, Inc., 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 Licensing, Inc., is not being purchased in this transaction. Also, the Commission granted ATX Licensing, Inc., a waiver from Section 392.300.2 in Case No. XA-2005-0272.

8. The Commission has dismissed other similar applications for lack of jurisdiction.³

WHEREFORE, the Staff requests the Commission to dismiss the application for lack of jurisdiction.

³ *In the Matter of the Joint Application of Integra Telecom Holdings, Inc., and Electric Lightwave, LLC, for Approval of a Transfer of Control of Electric Lightwave, LLC*, Case No. TM-2006-0362, Order Dismissing Joint Application (May 2, 2006); and *In the Matter of the Joint Application of Level 3 Communications, Inc. and TelCove, Inc. for Approval of a Transfer of Control of TelCove Operations, Inc. and Related Transactions*, Case No. TM-2006-0433, Order Dismissing Joint Application (June 13, 2006)

Respectfully submitted,

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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 14th day of July 2006.

/s/ William K. Haas

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