

# BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Peerless Network of Missouri, LLC to Expand its Certificate of Basic Local Exchange Telecommunications Service Authority to Include All Exchanges Throughout the State of Missouri and to Continue to Classify the Company and its Services as Competitive )  
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) **File No. TA-2010-0223**  
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## ORDER GRANTING EXPANSION OF CERTIFICATE OF SERVICE AUTHORITY

Issue Date: February 24, 2010

Effective Date: March 6, 2010

**Syllabus:** This order expands Peerless Network of Missouri LLC's certificate of service authority to provide basic local telecommunications service, continues to classify those services and the company as competitive, and waives certain statutes and regulations.

### **Procedural History**

Peerless Telecom of Missouri, LLC applied to the Missouri Public Service Commission on January 25, 2010, for permission to expand its certificate of service authority to provide basic local exchange telecommunications services to include all exchanges in the state of Missouri. Peerless Network also sought to remain classified as a competitive company and asked the Commission to grant the following waivers:

#### **Statutes**

392.210.2	uniform system of accounts
392.240.1	just and reasonable rates
392.270	valuation of property (ratemaking)
392.280	depreciation accounts
392.290	issuance of securities
392.300	transfer of property and acquisition of stock
392.310	stock and debt issuance

392.320	stock and dividend payment
392.330	issuance of securities, debts and notes
392.340	reorganization(s)

### Commission Rules

4 CSR 240-3.550(4)	records of applications
4 CSR 240-3.550(5)(A)	quality of service quarterly report
4 CSR 240-3.550(5)(C)	exchange boundary maps
4 CSR 240-10.020	depreciation fund income
4 CSR 240-30.040	uniform system of accounts
4 CSR 240-32.050(4)(B)	distribution of telephone directories
4 CSR 240-32.060	engineering and maintenance
4 CSR 240-32.070	quality of service
4 CSR 240-32.080	service objectives and surveillance levels
4 CSR 240-33.040 (excluding (4))	billing and payment standards
4 CSR 240-33.045	customer bills
4 CSR 240-080(1)	company name for billing disputes
4 CSR 240-33.130(1), (4) and (5)	operator service

On January 26, 2010, the Commission issued a Notice of Peerless Network's application and directed that those wishing to intervene file an application requesting intervention no later than February 10, 2010. There were no requests to intervene. The Staff of the Commission then filed its Memorandum on February 18, recommending that the Commission approve the application.

### **Findings of Fact**

1. Peerless Network, LLC is a limited liability company organized under the laws of the state of Missouri.<sup>1</sup>
2. The Commission granted Peerless Network a certificate to provide basic local telecommunications services in the territories of Southwestern Bell Telephone Company, L.P., d/b/a AT&T Missouri, Embarq Missouri, Inc., CenturyTel of Missouri, LLC, and Spectra Communications Group, LLC, d/b/a CenturyTel,<sup>2</sup> as well as authority to provide

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<sup>1</sup> Application, page 3.

<sup>2</sup> Application, page 2.

interexchange and non-switched local exchange telecommunications services throughout the state of Missouri.<sup>3</sup>

3. When it granted Peerless Network its certificate of service authority, the Commission also classified Peerless Network and its service as competitive.<sup>4</sup>

4. Peerless Network applied to the Commission on January 25, 2010, for permission to expand its certificate of service authority to provide basic local telecommunications service in every exchange throughout the state of Missouri.<sup>5</sup>

5. Peerless Network is qualified to do business in the state of Missouri as evidenced by its Certificate of Authority from the Missouri Secretary of State.<sup>6</sup>

6. Peerless Network provided names and addresses for contact purposes.<sup>7</sup>

7. Peerless Network has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court involving customer service or rates.<sup>8</sup>

8. Peerless Network intends to file a tariff, reflecting this grant of authority, before providing basic local service in the expanded service area.<sup>9</sup>

9. Peerless Network will compete with all incumbent local exchange carriers in their respective service territories.<sup>10</sup>

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<sup>3</sup> Application, page 1.

<sup>4</sup> Application, page 5.

<sup>5</sup> See docket.

<sup>6</sup> Exhibit A, Attached to Application.

<sup>7</sup> Application, page 3

<sup>8</sup> Application, page 7.

<sup>9</sup> Application, page 7.

<sup>10</sup> Application, page 6.

10. Granting the expansion of the certificate will benefit the public interest by increasing equitable access for Missourians, creating and enhancing competition and expanding customer service options.<sup>11</sup>

11. Granting the expansion of the certificate will also benefit the public interest by increasing equitable access for Missouri, regardless of where they live or their income, to affordable telecommunications services.<sup>12</sup>

12. The Staff of the Commission recommended that the Commission grant Peerless Network's request.<sup>13</sup>

13. Staff recommended that the Commission grant Peerless Network's request to expand its basic local certificate subject to the following conditions:

- A. Peerless Network's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom Peerless Network is competing pursuant to Section 392.361.6 and 392.370.
- B. If the directly competing ILEC, in whose service areas Peerless Network is operating, decreases its originating and/or terminating access service rates, Peerless Network shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

14. Peerless Network agrees with the conditions suggested by Staff and found in paragraph 13, above.<sup>14</sup>

15. Peerless Network is not delinquent in filing an annual report or in paying the Commission assessment and Relay Missouri.<sup>15</sup>

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<sup>11</sup> Application, page 8.

<sup>12</sup> *Id.*

<sup>13</sup> Staff Recommendation, para. 1.

<sup>14</sup> Application, page 7.

<sup>15</sup> Staff Memorandum.

### **Conclusions of Law**

The Missouri Public Service Commission has reached the following conclusions of law:

1. The requirement for a hearing is met when the opportunity for a hearing was provided and no party requested the opportunity to present evidence.<sup>16</sup> Notice was issued in this case and no hearing has been requested.
2. Peerless Network is an “alternative local exchange telecommunications company” as that term is defined by Section 386.020, RSMo.
3. The Commission is authorized to create a process by which to certify new entrants to provide local exchange telecommunications services in Missouri as common carriers, and is further authorized to grant such certificates where it is in the public interest.<sup>17</sup>
4. Peerless Network was certificated to provide basic local telecommunications services on July 10, 2008.
5. Peerless Network has requested that the Commission grant it an expansion of its certificate to provide basic local exchange telecommunications services to include all exchanges in the state of Missouri. Peerless Network has satisfied the requirements of the Commission’s regulations and of Section 392.455, and consequently, the Commission concludes that Peerless Network has complied with the certification process established by the Commission in satisfaction of Section 392.450.1.
6. The Commission shall modify the existing certificate of service authority to provide basic local telecommunications service to any alternative local exchange telecommunications company which was certificated to provide basic local

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<sup>16</sup> *State ex rel. Deffenderfer Enterprises, Inc. v. Public Service Comm’n*, 776 S.W.2d 494, 495-496 (Mo. App. 1989).

<sup>17</sup> Sections 392.430, 392.450 and 392.455, RSMo.

telecommunications service as of August 28, 2008, as long as the alternative local exchange company is in good standing, in all respects, with all applicable Commission rules and requirements.<sup>18</sup> Peerless Network “is in good standing, in all respects, with all applicable Commission rules and requirements.”<sup>19</sup> Therefore, the Commission shall grant the certificate expansion.

7. Peerless Network requests that it and its basic local services continue to be classified as competitive. The Commission may classify a telecommunications service as competitive if the Commission determines that it is subject to a sufficient degree of competition to justify a lesser degree of regulation and that such lesser regulation is consistent with the protection of ratepayers and promotes the public interest.<sup>20</sup> The Commission may classify a telecommunications carrier as competitive if the Commission finds that a majority of its services are so classified.<sup>21</sup>
8. Peerless Network has been found to be a competitive company in prior Commission cases. Furthermore, all the services to be provided by Peerless Network in the state will be competitive. The Commission also found that the expansion of Peerless Network’s certificate will benefit the public and will be in direct competition with the incumbent basic local provider. Considering these findings, the Commission concludes that Peerless Network will be subject to a sufficient level of competition to justify a lesser degree of regulation and its services and the company shall continue to be classified as competitive.

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<sup>18</sup> Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

<sup>19</sup> Subsection 392.450.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

<sup>20</sup> Section 392.361.2 and 4, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

<sup>21</sup> Section 392.361.3, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

9. The Commission shall waive, at a minimum, the application and enforcement of its quality of service and billing standards rules, as well as the provisions of Subsection 2 of Section 392.210, Subsection 1 of Section 392.240, and Sections 392.270, 392.280, 392.290, 392.300, 392.310, 392.320, 392.330, and 392.340, RSMo.<sup>22</sup> In accordance with Section 392.420, RSMo, the Commission shall grant the requested waivers.
10. An applicant for a basic local certificate must meet the minimum service standards that the Commission requires of the competing incumbent local exchange carriers.<sup>23</sup> Peerless Network has agreed to provide services that will meet the minimum basic local service standards required by the Commission. The Commission concludes that Peerless Network has met the requirements of Section 392.450.2(2).
11. The Commission may also “require a telecommunications company to comply with any conditions reasonably made necessary to protect the public interest by the suspension of the statutory requirement.”<sup>24</sup> Staff recommends that Peerless Network’s application be granted subject to the conditions set out above.<sup>25</sup> Peerless Network has agreed to these conditions.<sup>26</sup> The Commission has considered the conditions proposed by Staff and concludes that they are reasonably necessary to protect the public interest and shall be adopted.
12. Prior to providing telecommunications service in the expanded area, Peerless Network shall have in effect a tariff authorizing it to provide service in the area.<sup>27</sup>

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<sup>22</sup> Subsection 392.420, RSMo (amended by H.B. 1779 effective Aug. 28, 2008).

<sup>23</sup> Section 392.450.2(2), RSMo.

<sup>24</sup> Section 392.361.6, RSMo.

<sup>25</sup> See Finding of Fact 13.

<sup>26</sup> See Finding of Fact 14.

<sup>27</sup> Section 392.450.2(1).

13. The certificate of service authority granted in this order becomes null and void one year from the date of this order unless Peerless Network has exercised its authority under that certificate.<sup>28</sup>
14. The Commission reminds the company that failure to comply with its regulatory obligations may result in the assessment of penalties against it. These regulatory 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 to a penalty of \$100 per day for each day that the violation continues. 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, pursuant to Section 386.570, RSMo 2000.
  - D) The obligation to keep the Commission informed of its current address and telephone number.

**THE COMMISSION ORDERS THAT:**

1. Peerless Network of Missouri, LLC is granted an expansion of its certificate of service authority to provide basic local telecommunications services to include all exchange

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<sup>28</sup> Section 392.410.5, RSMo Cum. Supp. 2007.



in the state of Missouri subject to the conditions set out below and to all applicable statutes and Commission rules except as specified in this order.

2. Peerless Network of Missouri, LLC and its telecommunications services are classified as competitive.

3. Peerless Network of Missouri, LLC's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom Peerless Network is competing pursuant to Sections 392.361.6 and 392.370, RSMo.

4. If the directly competing incumbent local exchange company in whose service area Peerless Network is operating decreases its originating and/or terminating access service rates, Peerless Network shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within 30 days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap.

5. The following statutes and Commission regulations are waived:

Statutes

392.210.2	uniform system of accounts
392.240.1	just and reasonable rates
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Commission Rules

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4 CSR 240-10.020	depreciation fund income
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4 CSR 240-32.060	engineering and maintenance
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4 CSR 240-33.040 (excluding (4))	billing and payment standards
4 CSR 240-33.045	customer bills
4 CSR 240-080(1)	company name for billing disputes
4 CSR 240-33.130(1), (4) and (5)	operator service

6. Prior to delivering service under its expanded certificate of service authority, Peerless Network of Missouri, LLC, shall file tariff sheets with an effective date which is not fewer than 45 days from the issue date, and which reflect the rates, rules, regulations, and the services it will offer. The tariff shall also include a listing of the statutes and Commission rules waived above.

7. Peerless Network of Missouri, LLC is granted a waiver of Commission rule 4 CSR 240-32.050(4)(B), subject to the conditions that: (1) Peerless Network advise its customers in the metropolitan calling areas that they will not receive printed residential white page directories unless they call Peerless Network's toll-free number or use Peerless Network's website to request delivery of such printed directories; and, (2) Peerless Network forward to AT&T electronic files identifying those customers that make such requests, so that delivery can be accomplished pursuant to the applicable interconnection agreement.

8. This order shall become effective on March 6, 2010.

**BY THE COMMISSION**



Steven C. Reed  
Secretary

( S E A L )

Kennard L. Jones, Senior Regulatory  
Law Judge, by delegation of authority  
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,  
on this 24th day of February, 2010.