

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 3rd day of May, 2007.

Application of Startec Global Operating Company for)	
Approval of the Merger with Startec Global Licensing)	
Company and the Resulting Transfer of Missouri)	
Customer Assets; Waiver of Commission Rule)	<u>Case No. TM-2007-0367</u>
4 CSR 240-33.150; and to Cancel the Certificate of)	Tariff No. JX-2003-0922
Service Authority of Startec Global Licensing)	
Company to Provide Telecommunications Services)	
In Missouri)	

**ORDER APPROVING MERGER AND TRANSFER OF ASSETS, WAIVING
COMMISSION RULE 4 CSR 240-33.150, AND CANCELLING CERTIFICATE OF
SERVICE AUTHORITY AND ASSOCIATED TARIFF**

Issue Date: May 3, 2007

Effective Date: May 16, 2007

Syllabus: This order approves the merger of Startec Global Licensing Company (“Licensing Company”) with Startec Global Operating Company (“Operating Company”), as well as the resulting transfer of all of Licensing Company’s telecommunications assets to Operating Company, including Licensing Company’s Missouri long distance customer base and associated customer account information. The order also waives the requirements of 4 CSR 240-33.150, the Commission’s anti-slamming rule. Finally, as Licensing Company ceased to exist after the merger, this order also cancels Licensing Company’s certificate of service authority and associated tariff.

Background and Procedural History

In Case Number TA-99-226, the Commission granted Licensing Company (a Delaware corporation domiciled in Maryland) a certificate of service authority to provide intrastate interexchange telecommunications services in Missouri, effective February 13, 1999. On December 26, 2006, Licensing Company merged with and into Operating Company. Operating Company is a Delaware corporation domiciled in Maryland whose principal place of business is located at 7361 Calhoun Place, Suite 650, Rockville, Maryland 20855. It was issued a Certificate of Good Standing by the Missouri Secretary of State on March 16, 2007. Operating Company furnishes long distance, Internet, and other communications services in over 45 states and internationally, and provides its services primarily to customers who place a significant number of calls to international destinations.

As a result of the merger, concerning which the Delaware Secretary of State issued a Certificate of Merger on January 8, 2007: (1) all of Licensing Company's telecommunications assets (including its Missouri long distance customer base and associated customer account information) were transferred to Operating Company; (2) Licensing Company ceased to exist as a business entity and stopped providing any telecommunications services to any consumers within Missouri; and (3) Operating Company began providing the telecommunications services Licensing Company had been furnishing to Missouri consumers.

On March 29, 2007, Operating Company filed a verified application, pursuant to Section 392.300¹ and 4 CSR 240-3.520, seeking the Commission's *post hoc* approval of its December 26, 2006 merger with Licensing Company, as well as of the resulting transfer of

¹ All statutory references throughout this order are to RSMo 2000.

all of Licensing Company's telecommunications assets, including its Missouri customers and operations.² Therefore, this case came to the Commission in an unusual procedural posture, as Operating Company's application seeks Commission approval of a merger which was actually consummated three months ago. Moreover, as a result of that merger, Licensing Company ceased to exist and Operating Company is now providing telecommunications services to Missouri customers without a certificate of service authority and an approved tariff.³

As would be expected, Operating Company addressed these rather unusual circumstances in its application. According to the application:

The services that the Missouri customers received from [Licensing Company] are [currently being] provided by [Operating Company] under the same rates, terms, and conditions as provided by [Licensing Company] under [Licensing Company's] tariffs and amendments on file with the Commission. . . . [Operating Company] emphasizes that the [merger] has not resulted in confusion or inconvenience to its customers or any change in the services that they receive. The change was undertaken to streamline and eliminate inefficiencies from the business and administrative operations of [Licensing Company] and [Operating Company]. The [merger] transaction . . . was strictly *pro forma* in nature and did not adversely affect the provision of telecommunications services in Missouri. There was no change in the ultimate ownership or control nor in the management or day-to-day operations in Missouri as a result of the [merger]. [Licensing Company] had officers and directors that were identical to those of [Operating Company]. Service is provided using the same network, billing systems and customer service operations used by [Licensing Company]. All of [Licensing Company's] employees continue to be employees of [Operating Company], and thus, [Operating Company's] highly qualified management team will continue to manage the provision of service to customers.

² In a separate but related application (Case No. TA-2007-0366), Operating Company has requested a certificate of service authority to provide intrastate interexchange telecommunications services, competitive classification, and approval of its adoption of Licensing Company's approved tariffs. In that case, Operating Company basically seeks the Commission's authorization to provide telecommunications services to all of the former customers of Licensing Company at the same rates, terms and conditions specified in Licensing Company's tariff.

³ To its credit, Operating Company self-reported all of these violations in its application to the Commission.

As a result, says Operating Company, the merger “was virtually transparent to Missouri customers in terms of the rates and terms and conditions of service that these customers receive,” and Licensing Company’s former customers “continue to receive services that are consistent with the quality of services provided by [Licensing Company] and which are supported by [Operating Company’s] experienced and well-qualified management team.”

In its application, Operating Company also requested that the Commission waive its anti-slamming rule, 4 CSR 240-33.150.⁴ Under this rule, any telecommunications carrier may change a subscriber’s service provider without first obtaining the subscriber’s authorization and verification as long as “such change is a result of merger or consolidation or the sale, assignment, lease, or transfer of assets *approved by the commission.*”⁵ In this regard, the application states:

On advice of its outside consultants, [Operating Company] characterized this transaction [the merger] as a change in carrier name. [Operating Company] now understand[s] that Commission approval was required for the merger between [Licensing Company] and [Operating Company], the transfer of Customer Assets, waiver of the Commission’s anti-slamming rules, and relinquishment of [Licensing Company’s] Certification. Therefore, [Operating Company] has endeavored to file this Application as soon as possible after learning that Commission authorization is required for [Operating Company] to provide telecommunications services in Missouri. [Operating Company] regrets not realizing sooner that Missouri PSC approval was required for this transaction, and apologizes to the Commission for its oversight.

Finally, Operating Company asked for the cancellation of Licensing Company’s existing certificate of service authority to provide interexchange telecommunications services in Missouri, as well as the associated tariff. As to this element of its application, Operating Company pled:

⁴ Operating Company’s application meets the requirements of 4 CSR 240-2.060(4), which specifies the information that must be contained in “applications for variances or waivers from commission rules and tariff provisions, as well as those statutory provisions which may be waived.”

⁵ 4 CSR 240-33.150(4)(A) (emphasis added).

[Operating Company] hereby informs the Commission that [Licensing Company] had no outstanding obligations to any Missouri customers, in the form of deposits or pre-payments for services that have not been or will not be provided by [Operating Company]. Accordingly, the cancellation of [Licensing Company's] Certificate will be transparent to Missouri customers.

Also on March 29, 2007, Operating Company separately filed a Motion for Expedited Treatment requesting priority treatment and consideration of its application under Commission Rule 4 CSR 240-2.080(16), with an effective date of the resulting order no later than May 16. The Commission granted that motion by order dated April 9, 2007, and on April 19, 2007, Operating Company supplemented its application with certain information requested by Staff, including a proposed after-the-fact customer notice.

Staff's Recommendation

Staff filed its verified recommendation and memorandum regarding the application on April 26, 2007. Staff indicates that Operating Company's amended application substantially complies with Commission Rules 4 CSR 240-3.520 and 4 CSR 240-3.525, which set forth the procedural filing requirements for telecommunications company applications seeking the authority to transfer assets and to merge or consolidate, respectively. Moreover, Staff advises that Operating Company has no pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court which involve customer service or rates as described in Commission Rule 4 CSR 240-2.060(1)(K); does not have an annual report overdue and does not owe any past due PSC assessment fees as described in 4 CSR 240-2.060(1)(L); and is not involved in bankruptcy proceedings.

Staff's recommendation and supporting memorandum also demonstrate that after closely examining the already-completed asset transfer and merger transactions involving

Licensing Company and Operating Company, Staff has concluded that they are not detrimental to the public interest and recommends they be approved. Specifically, Staff notes that the transactions involved only competitively classified companies, that Operating Company has agreed to promptly notify all the former Licensing Company customers involved of their right to switch to another provider within thirty days, and that those customers who choose to stay with Operating Company will continue to receive the same telecommunications services at the same rates and under the same terms and conditions they had before the merger.

As to the failure of Licensing Company and Operating Company to obtain the Commission's approval of the asset transfer and merger transactions *in advance* as required by Missouri law, Staff advises:

In order to encourage such self-reporting and in light of the company's quick response to the discovery of its violation of the Commission's statutes and rules requiring Commission approval of the transaction, Staff has determined not to file a complaint against the Applicant.⁶ The company has acknowledged its violation of Commission law and has agreed to pay \$100 to the Commission (payable to Director of Revenue) to transmit to the Public School Fund within ten (10) days of the Commission's approval of its Application, and the company or Staff will file a pleading in this case when the payment has been received so the case may be closed. Staff believes that this payment is in proportion to the harm caused because the Applicant has had minimal revenues during the approximately three-month period of violation. As the company self-reported the violation, Staff suggests the amount is reasonable and proportionate, so as not to discourage self-reporters in the future.

Regarding Operating Company's request for waiver of the Commission's anti-slamming rule, 4 CSR 240-33.150, Staff reports:

⁶ While the Commission may approve, on a going-forward basis, a sale or merger which was completed before the Commission's authorization was obtained, pursuant to Section 386.570, the Commission has the authority to levy penalties in such cases of between \$100 and \$2,000 per day for each violation. See, e.g., Report and Order, *In the Matter of a Joint Application of US FiberCom Network, Inc. and Mid-Com Communications, Inc.*, Case No. TM-94-310 (Apr. 7, 1995) at 4-5.

The Applicant has requested waiver of the provisions of 4 CSR 240-33.150, the Commission's antislamming rule. Staff notes that the Applicants have provided copies of the notice the Applicant proposed to give to Startec Global Licensing Company's customers. See *Supplement to Application* (April 19, 2007). The Applicant has complied with part of that rule; however, as the transfer of customers has already taken place, Staff recommends that the Commission grant waiver of that rule, as customers will not receive notice of the "change through a notice in each subscriber's bill at least thirty (30) days prior to the effective date of the change" as required by 4 CSR 240-33.150(4)(B).

Finally, as to Operating Company's request that the Commission cancel Licensing Company's existing certificate of service authority to provide interexchange telecommunications services in Missouri, as well as the associated tariff, Staff indicates:

In the *Application*, the Applicant stated that Startec Global Licensing Company is no longer providing telecommunications services to consumers within Missouri and its corporate existence has been terminated. See Paragraph 13. Accordingly, Staff recommends that should the Commission approve the Applicant's Applica[tion], then Startec Global Licensing Company's certificate and tariff should also be cancelled.

The Office of the Public Counsel, which is the other party to this case, has not filed a recommendation of its own and has not opposed Staff's recommendation that the Commission approve Operating Company's application, waive Commission Rule 4 CSR 240-33.150, cancel Licensing Company's certificate and tariff, and, upon receipt of verification that the Public School Fund has received the appropriate payment, close this case.

Decision

Substantively, mergers and asset transfers of telecommunications companies are governed by Section 392.300. Under that statute, "[t]he Commission may not withhold its approval of the disposition of assets unless it can be shown that such disposition is

detrimental to the public interest.”⁷ Based on the information provided in the verified application, and upon the verified recommendation and memorandum of Staff, which are hereby admitted into evidence, the Commission finds that the asset transfer and merger transactions involving Licensing Company and Operating Company are not detrimental to the public interest and that the application should be approved.

As to penalties, the Commission is well aware that Operating Company voluntarily brought this situation to the Commission’s attention. On the other hand, the Commission does not wish to encourage the mindset that “It is easier to seek forgiveness than to get permission” by tacitly condoning or simply overlooking violations of its regulations or Chapter 386, the Public Service Commission Law. Even so, in this particular case the Commission finds that Operating Company’s voluntary disclosure of the facts and circumstances establishing the violations, as well as its willingness to pay \$100 into the Public School Fund within ten days of the Commission's approval of its application and the fact that none of its customers have evidently been harmed, constitute significant mitigating factors. Therefore, the Commission finds that the specific facts of this case do not warrant further consideration of the issue of penalties at this time.

IT IS ORDERED THAT:

1. Startec Global Operating Company’s application for the Commission’s approval of its recent merger with Startec Global Licensing Company, as well as of the resulting transfer of all of Licensing Company’s telecommunications assets, including its Missouri customers and operations, is granted.

⁷ *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W.2d 466, 468 (Mo. App. E.D. 1980) (citing *State ex rel. City of St. Louis v. Pub. Serv. Comm’n*, 73 S.W.2d 392, 400 (Mo banc 1934)).

2. Startec Global Operating Company shall comply with all terms and conditions recited by Staff in its recommendation, including but not limited to the issuance of customer notice and the payment of \$100 to the Commission within ten days of the effective date of this order, with the funds to be deposited (via the Director of Revenue) to the Public School Fund. The company or Staff shall file a pleading in this case when the notice has been issued and the payment has been received so the case may be closed.

3. Startec Global Operating Company's request that the Commission waive its anti-slamming rule (4 CSR 240-33.150) as applied to the recent asset transfer and merger transactions involving it and Startec Global Licensing Company is granted.

4. Startec Global Licensing Company's existing certificate of service authority to provide interexchange telecommunications services in Missouri (which was granted in Case No. TA-99-226), as well as the associated tariff (Tariff No. JX-2003-0922), are hereby cancelled effective May 16, 2007.

5. Nothing in this order shall be considered a finding by the Commission of the value of these transactions for ratemaking purposes. The Commission reserves the right to consider, in any future proceeding, the ratemaking treatment to be afforded the transactions and their results in cost of capital.

6. This order shall become effective on May 16, 2007.

(S E A L)

BY THE COMMISSION



Colleen M. Dale
Secretary

Davis, Chm., Murray, Clayton and Appling, CC., concur
Gaw, C., dissents

Lane, Regulatory Law Judge