

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 19th day of
October, 2006.

In the Matter of the Joint Application of)	
Talk America Holdings, Inc., Talk America, Inc.,)	
LDMI Telecommunications, Inc., and Cavalier)	
Telephone Corp. for Approval of an Indirect)	<u>Case No. TM-2007-0140</u>
Transfer of Control and Related Financing)	
Transactions)	

ORDER DISMISSING JOINT APPLICATION

Issue Date: October 19, 2006

Effective Date: October 29, 2006

Syllabus: This order dismisses the Joint Application filed by Cavalier Telephone Corporation (“CTC”) and Talk America Holdings, Inc. (“TA Holdings”) due to a lack of jurisdiction.

On October 2, 2006, CTC and TA Holdings jointly filed an application (“Joint Application”) seeking approval of a transaction whereby a wholly owned subsidiary of CTC would acquire indirect control of two Commission-regulated, wholly owned subsidiaries of TA Holdings – namely, LDMI Telecommunications, Inc. (“LDMI”) and Talk America, Inc. (“Talk America”).

According to the Joint Application, the transaction will be achieved through the acquisition of all the issued and outstanding shares of stock of TA Holdings by an acquisition subsidiary of CTC.¹ Ultimately, TA Holdings will merge into and be the survivor

¹ *Joint Application* at 5-6.

of that acquisition subsidiary.² The Joint Application also indicates that no transfer of certificates, assets, or customers will result from the transaction.³

Section 392.300.1, RSMo 2000, generally provides that no telecommunications company may “sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system” or direct or indirectly merge or consolidate its “line or system, or franchises, or any part thereof” with any other corporation, person, or public utility without first obtaining permission from the Commission. However, as noted *supra*, the Joint Application clearly indicates that no transfer of the certificates, assets, or customers of either LDMI or Talk America will result from the transaction.⁴ Rather, after this transaction, LDMI and Talk America will both retain all of their existing assets, and will become controlled, albeit indirectly, by a different holding company. Thus section 392.300.1 does not apply to the transaction described by the joint applicants because it will not result in a change of ownership of the whole or any part of the assets of a Missouri-regulated telecommunications company. Indeed, the “Commission has consistently found that the Commission does not have jurisdiction over transactions at the holding company level[.]”⁵

Meanwhile, section 392.300.2, RSMo 2000, generally provides that no domestic or foreign stock corporation shall “purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing

² *Joint Application* at 6.

³ *Joint Application* at 2.

⁴ Moreover, the joint applicants describe the transaction as being seamless and transparent to Missouri consumers inasmuch as LDMI Telecommunications, Inc. and Talk America, Inc. will continue to offer the same services they currently offer with no change in the rates, terms, or conditions of service.

⁵ Order Closing Case, *In the Matter of the Proposed Merger of Verizon Communications, Inc. and MCI, Inc.*, Case No. TM-2005-0370 (May 3, 2005), at 1.

under or by the virtue of the laws of this state” without the consent of the Commission. However, CTC is incorporated in the state of Delaware and its headquarters are in the state of Virginia. Likewise, TA Holdings is incorporated in Delaware, with its headquarters in Pennsylvania. Accordingly, section 392.300.2 is inapplicable and does not give the Commission jurisdiction over this transaction since it does not involve the purchase, acquisition, taking, or holding of any of the capital stock issued by a telecommunications company organized or existing under or by virtue of the laws of Missouri.

The Commission has previously dismissed, for lack of jurisdiction under section 392.300.2, a number of similar applications seeking its approval of the purchase or acquisition of the stock of foreign corporations not organized under or existing by virtue of Missouri law.⁶ In addition, when originally certificating what is now known as LDMI to provide interexchange and non-switched local telephone service in Missouri in May 2001, the Commission waived the application of section 392.300.2 as to LDMI.⁷

For all of these reasons, on October 12, 2006, the Staff of the Commission recommended that the Commission issue an order dismissing the Joint Application on the ground that the Commission does not have jurisdiction over the transaction outlined therein.⁸

Because neither section 393.300.1 nor section 393.300.2 gives the Commission jurisdiction, the Commission will dismiss the application.

⁶ See, e.g., Case No. TM-2000-524, *In the Matter of NEXTLINK Missouri, Inc., and NEXTLINK Long Distance Services, Inc.* (acquired company was organized under the laws of the state of Washington); Case No. XM-2005-0219, *In the Matter of SBC Long Distance, Inc., and SBC Telecom, Inc.* (acquired company was organized under the laws of the state of Delaware).

⁷ See Order Approving Interexchange and Nonswitched Local Exchange Certificates of Service Authority and Order Approving Tariff, Case No. TA-2001-545 (May 17, 2001). This case involved Long Distance of Michigan, Inc., which was later renamed as LDMI Telecommunications, Inc.

⁸ This was the stated position of the joint applicants as well, who explained that they sought Commission approval of the transaction “out of an abundance of caution should the Commission determine otherwise.” *Joint Application* at 1 n.3.

IT IS ORDERED THAT:

1. The Joint Application filed by Cavalier Telephone Corporation and Talk America Holdings, Inc. on October 2, 2006, is dismissed for lack of jurisdiction.
2. This order shall become effective on October 29, 2006.
3. This case shall be closed on October 30, 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

Lane, Regulatory Law Judge