

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

In the Matter of the Application of MultiBand, )  
Inc. For a Certificate of Service Authority to )  
Provide Shared Tenant Services in the State of )  
Missouri )

Case No. ZA-2006-0346

**STAFF'S RESPONSE TO MULTIBAND'S MOTION  
FOR DETERMINATION ON THE PLEADINGS**

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

1. The Staff concurs in the motion of MultiBand, Inc., for determination on the pleadings.

2. On March 6, 2006, MultiBand, Incorporated, filed an application under Section 392.410, RSMo 2005 Supp., requesting the Commission to grant it a Certificate of Service Authority to install, own, operate, control, manage and maintain shared tenant services (STS) in the State of Missouri.

3. Section 392.520.1, RSMo 2000, provides that the Commission has jurisdiction of shared tenant services, but "shall subject such services to the minimum regulation permitted by this chapter for competitive telecommunications services." Shared tenant services are also exempted from tariff filing requirements. *Id.*

4. On April 7, 2006, the Staff filed its Recommendation recommending that the Commission grant MultiBand a certificate to provide shared tenant services.

5. On April 11, 2006, the Commission granted intervention to Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri and allowed AT&T Missouri until April 21, 2006, to respond, if it wished, to the Staff Recommendation.

6. In Comments filed on April 21, 2006, AT&T Missouri raised two concerns: (1) that MultiBand had begun the provision of service without Commission certification, and (2) that MultiBand had made “unauthorized use of AT&T Missouri’s facilities”. These concerns were also referenced in AT&T Missouri’s application to intervene.

7. On June 6, 2006, MultiBand filed a motion for determination on the pleadings. MultiBand also requested that the Commission dismiss AT&T Missouri from the case. MultiBand’s motion states that MultiBand, an STS provider in Minnesota, began providing shared tenant services in 2003 within the Jefferson Arms Apartment in St. Louis, unaware of Missouri’s certification requirements for STS providers, and that as soon as it became aware of Missouri’s STS certification requirements, it filed the instant application. MultiBand’s motion also states that it is in the process of reviewing and analyzing AT&T Missouri’s claim of ownership of facilities inside the Jefferson Arms Apartment.

8. Commission Rule 4 CSR 240-2.117, Summary Disposition, provides, in relevant part:

(2) Determination the Pleadings – Except in a case seeking a rate increase or which is subject to an operation of law date, the commission may, on its own motion or on the motion of any party, dispose of all or any part of a case on the pleadings whenever such disposition is not otherwise contrary to law or contrary to the public interest.

9. Federal Communication Commission regulations published at 47 C.F.R. §§ 68.1, *et seq.*, set forth the conditions for the use of terminal equipment. Regulation 68.3 defines “terminal” equipment as communications equipment located on customer premises. Regulation 68.3 also defines “demarcation point” as the point of demarcation and/or interconnection between the communications facilities of a provider of wireline telecommunications and terminal

equipment. Regulation 68.105(d) sets forth the rules for determining the demarcation point for multiunit buildings (such as apartment buildings).

10. AT&T Missouri's claim that MultiBand has made unauthorized use of AT&T Missouri's facilities appears to be a dispute between AT&T Missouri (the provider of wireline telecommunications services) and Jefferson Arms Apartment (the premise owner and/or its agent MultiBand). FCC Regulation 68.105 (d) provides that if the demarcation point is not already at the minimum point of entry (i.e., the closest practical point to where the wiring enters a multiunit building), the provider of wireline telecommunications service must negotiate a request from the premise owner to relocate the demarcation point. Premise owners may file complaints with the FCC for resolution of bad faith bargaining by the provider of wireline telecommunications services.

11. The Staff is not suggesting where the demarcation point for the Jefferson Arms Apartment is located. Nor is the Staff suggesting that Jefferson Arms Apartment has requested, or would need to request, the relocation of the demarcation point. The Staff is suggesting that the determination of those questions is beyond the scope of this case.

12. Although MultiBand began operation without an STS certificate, it filed an application upon learning that an STS certificate is required in Missouri. In Staff's opinion, MultiBand's application meets the requirements for, and MultiBand should be granted, an STS certificate.

13. The Staff takes no position on MultiBand's motion to dismiss AT&T Missouri from this case. The Staff does note, however, that AT&T Missouri's concerns have been addressed by MultiBand and by the Staff.

WHEREFORE, the Staff concurs in MultiBand's motion for determination on the pleadings.

Respectfully submitted,

/s/ William K. Haas

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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 29<sup>th</sup> day of June 2006.

/s/ William K. Haas