

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

In the Matter of the Application of NovaTel Ltd.,)
for a Certificate of Service Authority Interexchange)
Telecommunications Services in the State of) File No. XA-2009-0399
Missouri and to Classify Such Services and the)
Company as Competitive)

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and submits this *Staff Recommendation* as directed by the Missouri Public Service Commission's (Commission) May 11, 2009 *Order Directing Filing Of Staff Recommendation*. Staff respectfully states the following:

Procedural History

1. On May 4, 2009, NovaTel Ltd., (NovaTel or Company) filed an *Application* requesting the Commission grant a certificate of service authority to provide interexchange telecommunications services in the State of Missouri and classify the Company and its services as competitive. Tariff YX-2009-0797 was filed with an effective date of June 20, 2009.
2. The *Application* requests the Commission waive certain statutes and rules as they relate to the regulation of the Company: Sections 392.210.2, 392.240(1), 392.270, 392.280, 392.290, 392.300.2, 392.310, 392.320, 392.330, 392.340 RSMo, and rules 4 CSR 240-10.020, 4 CSR 240-30.040, and 4 CSR 240-3.550(5)(c).
3. On May 11, 2009, the Commission directed the Staff to file a recommendation on or before May 26, 2009. Also on the same day, the Commission sent notice to certificated Missouri telecommunications companies, indicating NovaTel applied for interexchange

service authority, and allowing until May 26, 2009, for interested persons to file an application to intervene. No applications have been received at the time of this filing.

4. On May 22, 2009, NovaTel filed an *Amended Application*, to add the request for a certificate of service authority to provide local exchange services in the State of Missouri and classify the Company and its services as competitive. An amended tariff was filed with an effective date of June 20, 2009.

Applicable Commission Statutes, Rules, and Case Law

5. 4 CSR 240-2.060 and 4 CSR 240-3.510 contain the requirements an application must meet for the Commission to grant the relief requested within.
6. Section 392.455 RSMo (2000) provides the certification process the Commission must follow for the review of basic local telecommunications certificate applications.
7. Pursuant to Section 392.440 RSMo (2000), "...the commission shall approve an application for a certificate for the resale of local exchange or interexchange telecommunications service upon a showing by the applicant, and a finding by the commission, after notice and hearing, that the grant of authority is in the public interest."
8. Pursuant to Section 392.361.3 "[t]he commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services."
9. Additionally, "[b]y its order classifying a telecommunications services as competitive....or a telecommunications company as competitive....the commission may,....suspend or modify the application of its rules or the application of any statutory

provision contained in sections 392.200 to 392.340, except as provided in section 392.390.”

10. The Commission need not hold a hearing, if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

Staff Recommendation

11. The *Staff Recommendation* is attached, labeled as Attachment A.
12. Staff has reviewed the *Application*, and recommends it meets the minimum filing requirements of 4 CSR 240-2.060 and 4 CSR 240-3.510.
13. NovaTel is not delinquent in the filing of any annual report, paying any Commission assessment, or remittances of any Missouri Universal Service Fund or Relay Missouri surcharges.
14. Staff has reviewed the services to be offered by NovaTel and recommends the Commission make the finding that the Company and all telecommunications services offered by the Company are competitive.
15. Staff recommends the Commission grant NovaTel certificates of service authority to provide interexchange and local exchange services, with the local services restricted to dedicated private line services, and approve the submitted tariff.

WHEREFORE, Staff recommends the Missouri Public Service Commission issue an order which (1) grants NovaTel Ltd., certificates of service authority to provide interexchange and local exchange services, with the local services restricted to dedicated private lines, with the following conditions: (a) NovaTel Ltd.’s, originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company

against whom the Company is competing pursuant to Sections 392.361.6 and 392.370 RSMo, and (b) if the directly competing incumbent local exchange carrier (ILEC), in whose service areas NovaTel Ltd., is operating, decreases its originating and/or terminating access service rates, NovaTel Ltd., shall file an appropriate tariff amendment to reduce its originating and/or terminating access rates in the directly competing ILEC's service area within thirty (30) days of the directly competing ILEC's reduction of its originating and/or terminating access rates in order to maintain the cap; (2) classifies NovaTel Ltd., and its services as competitive; (3) states that unless exercised within a period of one year from the issuance thereof, the authority conferred by a certificate of service authority shall be null and void; (4) approves the waivers as listed in the Commission May 11, 2009 notice; and (5) approves the submitted tariff.

Respectfully submitted,

/s/ Jennifer Hernandez

Jennifer Hernandez

Legal Counsel

Missouri Bar No. 59814

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed, hand-delivered, e-mailed or transmitted by facsimile to all counsel and parties of record this 26th day of May, 2009.

/s/ Jennifer Hernandez

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: XA-2009-0399 File No: YX-2009-0797
Applicant: NovaTel, Inc.

From: Lisa Mahaney
Telecommunications Department
William Voight 5/26/09
Utility Operations Division/Date

Subject: Staff Recommendation for Approval of Certificate and/or Initial Tariff

Date: 5/26/09
Filing Deadline: 5/26/09

The Telecommunications Department Staff (Staff) recommends the applicant be granted the following certificate(s), as indicated below, to be effective on the same date the tariff becomes effective:

☐ certificate to provide basic local exchange telecommunications services in the following service areas.

- ☐ All of AT&T Missouri
- ☐ All of Embarq
- ☐ All of CenturyTel
- ☐ All of Spectra
- ☐ Other _____ (please describe)

☒ certificate to provide interexchange telecommunications services.

☒ certificate to provide local exchange telecommunications services.*

*local exchange authority should be restricted to dedicated, private line services.

Staff recommends the applicant and its services receive competitive classification. Staff further recommends a Commission order granting certification state that pursuant to Section 392.410 RSMo, unless exercised within a period of one year from the issuance thereof, authority conferred by a certificate of service authority shall be null and void. In addition, Staff recommends approval of the waivers listed in the Notice.

Granting a certificate to provide basic local exchange telecommunications services should be based on the following two conditions:

1. The applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370 RSMo.
2. If the directly competing ILEC, in whose service area the applicant is operating, decreases its originating and/or terminating access service rates, the applicant 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.

- ☒ No objection to tariff taking effect No. 1 6/20/09
The Staff states that the tariff meets the requirements of all applicable statutes, specifically, one or more of the following: Sections 392.200(8), (12); 392.455(3), (4); 392.515(1) and 392.500(2) RSMo. In addition, the tariff filing does not conflict with the following Commission rules: 4 CSR 240-3.545 (4), (6), (7), (8 C,G,H), (9), (15), (16), (19); 4 CSR 240-31.065(1), (2), (3); 4 CSR 240-32.150(5), 32.160(1), (2), 32.190; 4 CSR 240-33.040(4), 33.045(2), 33.050(4) and 33.070(2).
- ☐ Tariff was not submitted with application. Pursuant to 4 CSR 240-3.510(1)(C), the applicant cannot lawfully provide service until tariffs are effective.

Additional Comments:

- ☒ The Company is not delinquent in filing an annual report, paying the PSC assessment, MoUSF, and Relay Missouri.
- ☐ The Company is delinquent. Staff recommends the Commission grant the requested relief/action on the condition the applicant corrects the delinquency. The applicant should be instructed to make the appropriate filing in this case after it has corrected the delinquency.
- (☐ No annual report ☐ Unpaid PSC assessment. Amount owed:
☐ Unpaid MoUSF ☐ Unpaid Relay Missouri)

Review Items for IXC, Non-switched Local and CLEC Certificate Applications (as required by 4 CSR 240-2.060):

- ☒ Proper Secretary of State authorization
- ☒ Statement of character of business performed.
- ☒ Statement declaring no pending action or final unsatisfied judgments
- ☒ Statement declaring no overdue annual reports/assessment fees
- ☒ Application includes an affidavit.

- ☒ The applicant is requesting waivers of rules or statutes previously granted to a competitively classified company

(as required by 392.430/.440):

- ☒ Application shows that grant of authority is in the public interest.

Additional Review Items for CLEC Applications (as required by 392.455 and/or 4 CSR 240-3.510):

- ☐ Possesses sufficient technical, financial and managerial resources and abilities.
- ☐ Statement that the applicant will satisfy the minimum standards established by the commission.
- ☐ Identifies geographic area (no smaller than an exchange).
- ☐ Statement that applicant will offer basic local service as a separate and distinct service.
- ☐ Statement that applicant will give equitable access to all Missourians.

Tariff Review Items (applicable for all competitively classified companies):

- ☒ The tariff meets Staff's review for compliance with rules for competitive company tariff filings.

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of Missouri and to Classify Such Services)	
and the Company as Competitive)	

AFFIDAVIT OF LISA MAHANAY

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Lisa Mahaney, employee of the Missouri Public Service Commission, being of lawful age and after being duly sworn, states that she has participated in preparing the accompanying memorandum, and that the facts therein are true and correct to the best of her knowledge and belief.



LISA MAHANAY

Subscribed and affirmed before me this 26th day of May 2009.



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086



NOTARY PUBLIC