

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

In the Matter of the Application of First Choice)
Technology, Inc. and NetLojix Telecom, Inc. for) Case No. XM-2009-0263
Approval of an Asset Purchase Agreement)

STAFF RECOMMENDATION

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

1. On January 13, 2009, First Choice Technology, (“First Choice”) and NetLojix Telecom, Inc. (“NetLojix”) (collectively “Applicants”) asked the Commission, pursuant to Section 392.300 RSMo 2000, and 4 CSR 240-2.060 and 3.535, to grant them the authority necessary to consummate transactions involving the transfer of NetLojix’s Missouri residential and business long distance customer accounts to First Choice. NetLojix does not have any customers in the state of Missouri. Thereby, First Choice is not submitting any tariffs with this request.

2. Applicable case law provides that the 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.” *State ex rel. Fee Fee Trunk Sewer, Inc. v. Litz*, 596 S.W. 2d 466, 468 (Mo. App. E.D. 1980), citing to *State ex rel. City of St. Louis v. Public Serv. Comm’n of Mo.*, 73 S.W. 2d 392, 400 (Mo. banc 1934).

3. In the attached Memorandum, labeled Appendix A, the Staff states its opinion that the transfer is not detrimental to the public interest and recommends approval of the transfer and tariff sheets.

4. NetLojix requested, and Staff recommends that the Commission cancel NetLojix's certificate of service authority to provide interexchange telecommunications and its tariffs.

5. The Commission has the authority to cancel a telecommunications certificate pursuant to Section 392.410.5 RSMo (Supp. 2007), which provides "[a]ny certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected." 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 (1989).

WHEREFORE, the Staff recommends the Commission approve the proposed transfer and cancel NetLojix's certificate and tariff.

Respectfully submitted,

/s/ Jaime N. Ott
Jaime N. Ott
Assistant General Counsel
Missouri Bar No. 60949
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-8700 (Telephone)
(573) 751-9285 (Fax)
jaime.ott@psc.mo.gov

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 19th day of February, 2009.

/s/ Jaime N. Ott_____

Memorandum

To: Missouri Public Service Commission Official Case File
Case No. XM-2009-0263

From: Lisa Mahaney, Telecommunications Department
William Voight 2/17/09
Utility Operations Division/Date

**Subject: Staff Recommendation for Application Seeking Commission Approval of
Competitive Company Transaction**

Date: 2/17/09

The Telecommunications Department Staff (Staff) recommends the Commission (check, as applicable):

- | | | |
|----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|
| <input type="checkbox"/> Approve Merger
4 CSR 240-3.525 | <input type="checkbox"/> Approve Consolidation
4 CSR 240-3.525 | <input checked="" type="checkbox"/> Approve Sale of Assets
4 CSR 240-3.520 |
| <input type="checkbox"/> Approve Name Change
4 CSR 240-3.545(20) | | |
| <input checked="" type="checkbox"/> Cancel Certificate(s) & Tariff(s)
392.410.5 RSMo | <input type="checkbox"/> Approve Certificate(s) & Tariff(s)
4 CSR 240-3.510 | |

According to Commission rule 4 CSR 240-2.060 and the rule(s) specifically cited above, competitively classified companies are required to provide information in applications to merge, consolidate or sell/transfer assets. Based on the information provided to Staff, Staff does not believe this particular transaction will be detrimental to the public interest for the following reason(s) (check all that apply):

- ☒ This transaction solely involves competitively classified companies.
- ☐ Customers have/will receive advance notice. **No Missouri customers.**
- ☐ Customers can switch to another provider. **No Missouri customers.**
- ☐ Customers will continue to receive service at the same rates, terms and conditions.
No Missouri customers.
- ☐ Other:

The following chart summarizes this transaction.

Companies Involved in Transaction	Customer Served By ("X", if applicable)		Sale of Assets ("X", if applicable)		Certificates* (If applicable, indicate "C" to cancel, "A" to approve)			Tariffs* (If applicable, indicate Tariff PSC MO Nos.)	
	Before	After	Seller	Buyer	IXC	Local	Basic Local	Cancel	Approve
NetLojix Telecom, Inc.			X		C			No. 1	
First Choice Technology, Inc.				X					

*See attachment to Staff recommendation for further details associated with approving certificates or tariffs.

Merger, Consolidation, Sell or Transfer Assets

Will affected customers be switched to a different company?

☒ No

☐ Yes

☐ Customers have been notified. **No Missouri customers.**

☐ Customers will be notified at least 30 days prior to being switched to a different company.
(4 CSR 240-3.525)

Company Name Change Notification

☐ Company has notified its customers of the name change.

☐ Staff recommends the Commission order the Company to notify its customers at or before the next billing cycle of the name change and file a copy of the notice with the Commission.

Does this transaction involve a company in bankruptcy? ☐ Yes ☒ No

If yes, a copy of the bankruptcy order is attached.

Competitive Company Transaction Review Items

Administrative:

☒ Application solely involves competitively classified companies.

☒ No applications to intervene filed.

Noteworthy Transaction Application Requirements of 4 CSR 240-3.520 and 4 CSR 240-3.525:

☒ Will have no impact on tax revenues pursuant to 4 CSR 240-3.520(F) or 4 CSR 240-3.525(F)

☒ Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No.

Missouri corporations: A Certificate of Good Standing.

Foreign corporations: Authorization to do business in Missouri.

If business conducted under a fictitious name: A copy of registration of the fictitious name.

☒ No pending or final judgments/decisions described in 4 CSR 240-2.060(1)(K).



A statement that no annual report or assessment fees are overdue for any applicant.

Are there additional recommendations or special considerations?

☒ No

☐ Yes

If yes, explain in an attachment.

☒ The Company is not delinquent in filing an annual report, and 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)

Attachment to Staff Recommendation

Is this transaction requesting the granting of certificates and approval of tariffs? ☒ No ☐ Yes
(If yes, see below. Attach additional sheets, if necessary.)

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

In the Matter of the Application of First)
Choice Technology, Inc. and NetLojix)
Telecom, Inc. for Approval of an Asset)
Purchase Agreement)

Case No. XM-2009-0263

AFFIDAVIT OF LISA MAHANEY

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 MAHANEY

Subscribed and affirmed before me this 17th day of February 2009.



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



NOTARY PUBLIC