

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

In the Matter of the Application of Telrite Corporation and Applewood Communications Corporation for Approval of an Asset Purchase Agreement and Transfer of Customers)))
		<u>File No. XM-2013-0308</u>	Tariff No. YX-2013-0312

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), through the undersigned counsel, and hereby respectfully submits this Staff Recommendation.

1. On November 21, 2012, the above-reference companies filed a Joint Application and a revised tariff bearing an effective date of February 3, 2013. As the Staff notes in the attached Memorandum, the companies filed all requisite documentation.

2. In this filing, the Companies essentially seek to accomplish the following:

- a. Telrite Corporation will acquire all of the assets, including the customers, of Applewood Communications Corporation.
- b. The current customers of Applewood will continue to be served under the same terms and conditions as they presently enjoy. To these customers, the transaction will appear to be a name change, as nothing else relating to their service will change.
- c. The Applewood tariff provisions relevant to the current customers will be incorporated into the Telrite tariff.
- d. Applewood, as a separate entity, will cease to exist, and its certificate and tariff will be canceled.

3. Although this matter has been filed under a “merger” case designation, the Staff is of the opinion that the Commission should no longer approve mergers. Effective August 28, 2008, §392.420 RSMo Supp. 2011 provides that “for all existing alternative local exchange telecommunications companies, the commission shall waive...the application and enforcement of ...section ...392.300...” Approval or denial of the Application would constitute “application and enforcement” of §392.300 RSMo 2000. The Staff has taken the position that,

although interexchange carriers are not mentioned, since they have always been subject to a lesser degree of regulation than alternative local exchange telecommunications companies, logic dictates that the waiver of the provisions cited above apply equally to them and that the requirement to obtain Commission approval for the transfer of assets, to the extent it ever applied to them, no longer applies.

4. However, the Staff grasps that this rather complicated shift of customers, the decertification of a company and the extensive tariff amendments need to be filed somewhere, and believes that this combined filing is the most straightforward way of accomplishing it.

5. As to the transfer of the customers, the Companies have complied with the customer notice requirements for certificated company name changes. No entities intervened to oppose the transaction. The filed tariff revisions are compliant with Commission rules.

6. The Companies also asked for a waiver of the slamming rules in the transfer of those customers; that section, 392.461 provides that the slamming rules are waived for any telecommunications company that notifies the Commission; therefore, those rules do not apply.

7. The Companies are both compliant with all annual filings.

WHEREFORE, the Staff recommends that Commission recognize the transfer of customers, cancel the certificate and tariff of Applewood Communications Corporation, and either approve the tariff revisions to Telrite Corporation or allow them to take effect by operation of law.

Respectfully submitted,



Colleen M. Dale
Senior Counsel
Missouri Bar No. 31624
Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 751-4255 (Telephone)
cully.dale@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 11th day of January, 2013.



Memorandum

To: Missouri Public Service Commission Official Case File
Case No. **XM-2013-0308**
Tariff No. **YX-2013-0312**

Date: January 10, 2013

From: Contessa Poole-King
Utility Policy Analyst
Telecommunications Unit

William Voight
Tariff, Safety, Economic and Engineering Analysis

Subject: Staff Recommendation for Joint Application Seeking Commission Approval of an Asset Purchase Agreement, Transfer of Customers, Revised Tariff Sheets and Cancellation of Certificate

Applicants: Telrite Corporation
Applewood Communications Corporation

The Telecommunications Unit 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.
- Customers can switch to another provider.
- Customers will continue to receive service at the same rates, terms and conditions.
- Other:

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
Applewood Communications Corporation	X		X		C			No. 1	
Telrite Corporation		X		X					No. 1

The following chart summarizes this transaction.

Merger, Consolidation, Sell or Transfer Assets:

Will affected customers be switched to a different company? No Yes

Customers have been notified.

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.

The tariff complies with requirements reviewed by Staff for any competitive telecommunications company tariff filing.

Appropriate Secretary of State authorization has been submitted for any applicant (or if previously submitted, reference to prior case number). Case No. **XA-2004-0197 (Telrite Corporation)**

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.

[Annual report](#)

[Assessment Information](#)

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)

Under penalty of perjury, I affirm that the above statement is true and correct.



CONTESSA POOLE-KING