

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

In the matter of the Application of)
Consolidated Communications Operator Services, Inc.,)
Consolidated Communications Public Services, Inc., and)
Consolidated Communications Network Services, Inc.,) Case No. XN-2009-0196
for Approval of a Transfer of Assets Related to an)
Internal Reorganization, Name Change, and Related)
Approvals)

**ORDER
To Show Cause**

Issue Date: December 18, 2008

Effective Date: December 18, 2008

The Missouri Public Service Commission orders the parties to show cause why the Commission should not dismiss the application for transfer of assets (“the transaction”) for lack of jurisdiction to deny approval, or to grant approval, of the transaction.

A. Procedure

On November 14, 2008, the Commission received a verified application (“the original application”) from Consolidated Communications Operator Services, Inc. (“Operator”); Consolidated Communications Public Services, Inc. (“Public”); and Consolidated Communications Network Services, Inc. (“Network”). Operator, Public, and Network (“the Applicants”) filed the original application seeking the Commission’s orders on several matters.¹ Some of those matters are also the subject of the verified amended application that the Applicants filed on December 15, 2008. On December 18, 2008, the Commission’s

staff (“Staff”) filed its recommendation. The parties discussed the issues at a telephone conference on December 18, 2008.

B. Transaction

Among the amended application’s matters is expedited approval for the transaction.

The transaction is as follows:

- Operator and Public will cease to exist after the transfer of their assets to Network.
- Network will continue to offer the services of Operator, under the name “Consolidated Communications Operator Services,” under the same tariffs as Operator now has.
- Network will continue to offer the services of Public, under the name “Consolidated Communications Public Services,” under the same tariffs as Public now has.

The parties agree that each of the Applicants—Network, Operator and Public—is an interexchange telecommunications company because each provides interexchange telecommunications services.²

¹ Other requests for relief in the application included recognition of a name change, and cancellation of a certificate of service authority to provide private payphone service. In a separate action, Network applied for a certificate of authority to provide payphone services.

² Sections 386.020(24) and (25), RSMo Supp. 2008, and 392.180.

C. Statutes

The Commission should examine its subject matter jurisdiction in each case.³ Because the Commission is a legislative creation, the legislature is the source of the Commission's jurisdiction.⁴ Exceeding jurisdiction renders an agency's action void.⁵

The recommendation argues that the Commission has jurisdiction under § 392.300.1:

No telecommunications company shall hereafter sell, assign, lease, **transfer**, mortgage or otherwise dispose of or encumber the whole or any part of **its franchise, facilities or system**, necessary or useful in the performance of its duties to the public, **nor** by any means, direct or indirect, **merge** or consolidate such **line or system, or franchises**, or any part thereof, **with any other corporation**, person or public utility, **without having first secured from the commission an order authorizing** it so to do.^{6]}

That statute applies only to merging telecommunications facilities of a telecommunications company.

A telecommunications company:

includes telephone corporations as that term is used in the statutes of this state and every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing **any facilities** used to provide telecommunications service for hire, sale or resale **within this state**;⁷

³ *Greene County Nursing & Care Center v. Department of Social Servs.*, 807 S.W.2d 117, 118-19 (Mo. App., W.D. 1991).

⁴ *State Bd. of Regis'n for the Healing Arts v. Masters*, 512 S.W.2d 150, 161 (Mo. App., K.C.D. 1974).

⁵ *New Madrid County Health Center v. Poore*, 801 S.W.2d 739, 741 (Mo. App., S.D. 1990).

⁶ Emphasis added.

⁷ Sections 386.020(52), H.B. 1779, 94th Mo. Gen. Assem., 2nd Reg. Sess. (emphasis added).

Under that provision, none of the Applicants is a “telecommunications company” under § 386.300.1 unless it has in-state telecommunications facilities.⁸ Telecommunications facilities:

includes lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes used, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service[.]

Staff does not dispute the amended application’s allegation:

The Applicants further state that they do not have any structures, facilities or equipment in the State of Missouri.⁹

Therefore, the control and merger of telecommunications facilities by a telecommunications company—which is the sole subject of § 392.300.1—appears absent from the transaction.

The transaction thus seems to be outside the scope of § 392.300.1. If so, § 392.300.1 provides no order authorizing the transaction, which is what the application seeks. If the transaction is not subject to an order of the Commission, the Commission can only exercise its inherent power to dismiss that part of the application.¹⁰

Before doing so, the Commission will review arguments in favor of jurisdiction and against dismissal.

⁸ Each applicant is an interexchange telecommunications company, but an interexchange telecommunications company is not a necessarily a type of telecommunications company. While a telecommunications company is defined by control of physical equipment, an interexchange telecommunications company is defined solely by its provision of interexchange telecommunications service. Sections 386.020(24) and (25), H.B. 1779, 94th Mo. Gen. Assem., 2nd Reg. Sess.

⁹ Amended Application, paragraph 25.

¹⁰ *Moore v. Missouri Highway & Transp. Com'n*, 169 S.W.3d 595, 599 (Mo. App. S.D., 2005).

THE COMMISSION ORDERS THAT:

1. Applicants and Staff shall show cause why the Commission has jurisdiction to decide, and should not dismiss, the amended application's request for approval of the transaction for lack of jurisdiction.
2. The Commission will consider any response to this order filed no later than 5:00 p.m. on December 22, 2008.
3. This order is effective immediately on issuance.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Jordan, Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 18th day of December 2008.