

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

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

**STAFF’S RESPONSE TO ORDER TO SHOW CAUSE**

COMES NOW the Staff of the Missouri Public Service Commission and in response to the order to show cause states:

1. The applicants are telecommunications companies certificated by the Commission to provide interexchange, non-switched local exchange, and payphone telecommunications services in the State of Missouri. The Commission granted CCNS an interexchange certificate on August 22, 2003, in Case No. XA-2004-0020. CCOS obtained an interexchange and nonswitched local exchange (limited to dedicated private line service) certificate on May 28, 2003, in XA-2003-0456. CCPS obtained a resold interexchange services certificate granted March 22, 1996, in Case No. TA-96-249.

2. In those certificate cases listed in paragraph 1, the Commission explicitly found that each applicant was a telecommunications company subject to the certificate requirements of sections 392.410 through 392.450 and 392.520.

3. The Commission has made no finding or order that the applicants are no longer telecommunications companies and the applicants do not allege that they are no longer telecommunications companies.

4. Section 392.300.1 provides that:

No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of 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.

5. The current version of Section 386.020(52), amended by H.B. 1779, defines a telecommunications company as:

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.

6. An appropriate interpretation of 386.020(52) requires reading the statute as if the “and” between “state” and “every” were a disjunctive “or” so that there are two distinct measures of what a telecommunications company is. The first definition is that telecommunications companies are “telephone corporations as used in the statutes of this state.” The second is that telecommunications companies are also separately defined in the balance of the statute when they are not “telephone corporations.” Rather, they are “persons...owning...facilities...to provide...service for hire, sale or resale within this state” or “trustees...controlling...facilities used to provided telecommunications service...within this state.”

7. In addition, interpreting section 392.300.1 with an emphasis on where facilities are located (within or without the State of Missouri) rather than emphasizing where services are provided, overlooks the fact that many resell telecommunications companies certificated in Missouri have no facilities in Missouri. Resellers offer or provide telecommunications services primarily through the use of services or facilities owned or provided by a separate

telecommunications company. Section 386.020(47) HB 1779. Resellers must be certificated under section 392.440.

8. Dismissal of the amended application for lack of jurisdiction would require the Commission to find that the applicants are no longer telecommunications companies. They clearly are and the surviving company will continue to be a telecommunications company after the transfer of assets.

9. Dismissal based upon a finding that applicants are not telecommunications companies would be tantamount to a finding that applicants are no longer subject to the certification requirements of the Commission in sections 392.410 through 392.450 (interexchange and nonswitched local exchange) and sections 392.440 and 392.520 (payphones). If not a telecommunications company, then CCNS, the surviving company, would not be subject to paying universal service fees, making annual reports to the PSC, or paying an annual assessment to the PSC.

10. The appropriate reading of section 392.300.1 is as Staff suggests. Otherwise, Chapter 392 would provide for different definitions of a telecommunications company depending upon whether the Commission is adjudicating a certificate under 392.410-450 or a merger under 392.300.1.

WHEREFORE, Staff recommends the Commission approve the application for transfer of assets, tariff sheets, and other requests suggested by the Staff at the Commission's earliest convenience.

Respectfully submitted,

/s/ Steven C. Reed  
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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 19<sup>th</sup> day of December, 2008.

/s/ Steven C. Reed\_\_\_\_\_