

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

In the Matter of the Application of Toly Digital)	
Networks, Inc. for Certificate of Service Authority)	
to Provide Intrastate Interexchange)	Case No. XA-2006-0405
Telecommunications Services within the State of)	Tariff File No. YX-2006-0786
Missouri and for Competitive Classification.)	

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission, by and through counsel, and for its recommendation states:

1. In the attached Memorandum, which is labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant Toly Digital Networks, Inc., (Applicant) a certificate of service authority to provide intrastate interexchange telecommunications services. The Commission shall grant an application for a certificate of telecommunications service authority upon a finding that the grant of authority is in the public interest. §§ 392.430 and 392.440 RSMo (2000).

2. Staff also recommends that the Commission classify the Applicant and its services as competitive. The Commission may classify a telecommunications provider or its services as competitive if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. §392.361.4. All the services a competitive company provides must be classified as competitive. §392.361.3.

3. Staff further recommends that the Commission approve the standard waivers listed in the Notice of Applications. The Commission may waive the application of its rules and certain statutes if the Commission determines that waiver is consistent with the purposes of Chapter 392. §§ 392.185, 392.361.5 and 392.420.

4. Finally, Staff recommends that the Commission grant approval of the Applicant's proposed tariff, PSC Mo. No. 1, with a proposed effective date of May 29, 2006.

WHEREFORE, Staff recommends that the Commission grant Applicant a certificate of service authority to provide interexchange telecommunications services; approve the Applicant's proposed tariff, PSC Mo. No. 1, with an effective date of May 29, 2006; grant it competitive classification; and approve the standard waivers listed in the Notice of Applications.

Respectfully submitted,

/s/ William K. Haas

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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 18th day of May 2006.

/s/ William K. Haas

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: XA-2006-0405 File No: YX-2006-0786
Applicant: Toly Digital Networks Inc.

From: Lisa Mahaney
Telecommunications Department
William Voight 5/15/06 /s/ William K. Haas 5/15/06
Utility Operations Division/Date General Counsel's Office/Date

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

Date: 5/15/06

Filing Deadline: 5/18/06 (by 4:00 pm 7 working days prior to proposed effective date)

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 Southwestern Bell Telephone, L.P. d/b/a AT&T Missouri
- ☐ All of Sprint
- ☐ All of CenturyTel
- ☐ All of Spectra
- ☐ Other _____ (please describe)

Granting the certificate should be based on the following conditions:

1. The applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for each ILEC within whose service area the applicant seeks authority to provide service, unless authorized by the Commission pursuant to Sections 392.220 and 392.230 RSMo.
2. The certificate and service classification for switched access service is conditioned on the continued applicability of Section 392.200 RSMo, and the requirement that any increases in switched access services rates above the maximum switched access service rates set forth herein shall be made pursuant to Sections 392.220 and 392.230 RSMo, and not Sections 392.500 and 392.510 RSMo.
3. 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.

☒ The Company is not delinquent in filing an annual report and paying the PSC assessment.

☐ 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:)

☒ certificate to provide interexchange telecommunications services.

☐ certificate to provide local exchange telecommunications services.*

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

☒ No objection to tariff taking effect No. 1 (indicate PSC MO numbers) 5/29/06 Effective Date

☐ 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.

Staff recommends the applicant and its services receive competitive classification. In addition, Staff recommends approval of the waivers listed in the Notice.

☒ There is an attachment to this recommendation.

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):

- ☐ Possesses sufficient technical, financial and managerial resources and abilities.
- ☐ 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):

- ☒ Properly formatted: (Company name, PSC MO No., Page #, Page revision #, proposed effective date)
- ☒ Identifies competitive classification.
- ☒ Identifies waivers granted.
- ☒ Customer specific pricing, if proposed, limited for private line, special access or Centrex-like services or to business customers in exchanges where the incumbent local exchange company has had its business services declared competitive pursuant to Section 392.245. (392.200(8))
- ☐ Proposed rates do not establish geographic deaveraged rates (if not checked, explain in attachment). (392.200(4)).
- ☐ If an alternative operator service provider (receives more than 40% of revenues from traffic aggregators) operator service rates do not exceed: Person-to-Person (\$12.50), Station-to-Station/card (\$7.50). (392.515(1)).

Tariff Review Items (applicable only for CLECs):

- ☐ Interconnection agreement approved (if not checked, explain in attachment).
- ☐ Tariff clearly indicates areas offering local service (392.455(3)). Tariff identifies by exchange the areas where it offers basic local telecommunications service.
- ☐ Tariff offers local service as a separate and distinct service. (392.455(4))
- ☐ Switched access rates capped at ILEC's rates.

Attachment to Case No. XA-2006-0405, File No. YX-2006-0786
May 15, 2006

Company states in its application that it proposes to provide only wholesale long distance services to regulated telecommunications carriers throughout the state of Missouri.

Company states in its tariff that end users may not purchase services under this tariff.

The tariff also says that rates will be negotiated on a contract basis.