

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

In the Matter of the Application of)	
Broadvox-CLEC, LLC for a Certificate)	
of Service Authority to Provide Interexchange)	<u>Case No. CA-2009-0360</u>
Telecommunications Services and to Classify)	
Such Services and the Company as Competitive)	

**RESPONSE REGARDING SUFFICIENCY OF FINANCIAL DATA AND
REVISED RECOMMENDATION**

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through the undersigned counsel, and for its Response Regarding Sufficiency of Financial Data and Revised Recommendation states the following:

1. On April 2, 2009, Broadvox-CLEC, LLC (Broadvox-CLEC or the Company) filed an Application with the Missouri Public Service Commission (the Commission) seeking authority to provide resold and facilities-based/UNE basic local exchange telecommunications services in portions of the State of Missouri. The Company also requested competitive classification and the waiver of the corresponding statutory and Commission rule obligations.

2. On April 3, 2009, the Commission issued its Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene, directing interested parties to file applications to intervene by April 18, 2009.

3. On May 5, 2009, the Commission issued its Order Directing Filing, directing Staff to file a recommendation in this matter no later than May 28, 2009.

4. On May 27, 2009, Staff filed a pleading in which Staff stated that the Company's Application could not be processed with certain pro forma financial information required by Commission Rule 4 CSR 240-3.510(1)(D)1.B.

5. On June 11, 2009, the Company submitted certain financial data and requested that the Commission treat such data as propriety information, subject to a Highly Confidential designation.

6. On June 12, 2009, the Commission issued its Order Granting Confidential Treatment and Directing Response, in which it granted the Company's request to treat the filed financial data as confidential, and ordered Staff to both address the sufficiency of the financial data and to file a revised recommendation in this matter.

7. Upon review of the financial information submitted by the Company on June 11, 2009, Staff has since indicated that such data complies with the pro forma financial information requirements contained in Commission Rule 4 CSR 240-3.510(1)(D)1.B.

8. Pursuant to Sections 392.430 and 392.440, RSMo (2000)¹ 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.

9. In the attached Memorandum, labeled Attachment A, Staff states that the grant of authority is in the public interest and recommends that the Commission grant Broadvox a certificate to provide basic local exchange telecommunications services in those areas designated in the Memorandum, subject to the following conditions:

- A. The Applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370 RSMo;
- B. 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.

¹ All statutory references refer to the Revised Statutes of Missouri (2000), as currently supplemented.

10. Staff also recommends that the Commission classify the Company and the services it proposes to offer in its Application 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 and the majority of the services offered are classified as competitive. Sections 392.361.4 and 392.361.3.

11. The Staff further recommends that the Commission grant the 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. Sections 392.185, 392.361.5 and 392.420.

12. The Company did not submit a tariff with the Application. Staff notes that Commission Rule 4 CSR 240-3.510(1)(c) states that the Company cannot lawfully provide service until tariffs are effective.

WHEREFORE, Staff recommends that the Commission issue an order (1) granting Broadvox-CLEC, LLC a certificate to provide basic local exchange telecommunications services, subject to the conditions contained in the attached Staff Memorandum and reproduced herein; (2) granting the Company the requested competitive classification and the waivers listed in the Commission's Notice of Application; (3) indicating that unless exercised within one year from its issuance that authority conferred by a certificate of service authority shall be null and void; and (4) requiring the Company to file a tariff prior to offering telecommunications services in the State of Missouri, but no later than thirty (30) days after the issue date of the Commission's order approving the Company's Application.

Respectfully submitted,

/s/ Eric Dearmont

Eric Dearmont
Assistant General Counsel
Missouri Bar No. 60892

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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 19th day of June, 2009.

/s/ Eric Dearmont

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: CA-2009-0360
Applicant: Broadvox-CLEC, LLC

From: Sara Buyak
Telecommunications Department
William Voight 6-17-09
Utility Operations Division/Date

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

Date: June 17, 2009
Filing Deadline: July 9, 2009

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 AT&T Missouri
- ☒ All of Embark
- ☒ All of CenturyTel
- ☒ All of Spectra
- ☐ Other _____ (please describe)

☐ certificate to provide interexchange telecommunications services.

☐ certificate to provide local exchange telecommunications services.*

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

Staff recommends the applicant and its services receive competitive classification. Staff further recommends a Commission order granting certification state that pursuant to Section 392.410 RSMo, unless exercised within a period of one year from the issuance thereof, authority conferred by a certificate of service authority shall be null and void. In addition, Staff recommends approval of the waivers listed in the Notice.

Granting a certificate to provide basic local exchange telecommunications services should be based on the following two conditions:

1. The applicant's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom the applicant is competing pursuant to Sections 392.361.6 and 392.370 RSMo.
2. 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.

☐ No objection to tariff taking effect (Insert MO PSC number.) Effective Date: The Staff states that the tariff meets the requirements of all applicable statutes, specifically, one or more of the following: Sections 392.200(8), (12); 392.455(3), (4); 392.515(1) and 392.500(2) RSMo. In addition, the tariff filing does not conflict with the following Commission rules: 4 CSR 240-3.545 (4), (6), (7), (8 C,G,H), (9), (15), (16), (19); 4 CSR 240-31.065(1), (2), (3); 4 CSR 240-32.150(5), 32.160(1), (2), 32.190; 4 CSR 240-33.040(4), 33.045(2), 33.050(4) and 33.070(2).

☒ 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.

Additional Comments:

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

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 and/or 4 CSR 240-3.510):

- ☒ Possesses sufficient technical, financial and managerial resources and abilities.
- ☒ Statement that the applicant will satisfy the minimum standards established by the commission.
- ☒ 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):

- ☐ The tariff meets Staff's review for compliance with rules for competitive company tariff filings.

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service authority to provide resold and)
facilities-based/UNE Basic Local)
Telecommunications Services and)
classification as a competitive company.)

AFFIDAVIT OF Sara Buyak

STATE OF MISSOURI)
) ss:
COUNTY OF COLE)

Sara Buyak 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 staff recommendation and that the facts therein are true and correct to the best of her knowledge and belief.


SARA BUYAK

Subscribed and affirmed before me this 17th day of June, 2009




NOTARY PUBLIC

CARLA K. SCHNIEDERS
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: August 25, 2012
Commission Number: 08533187