

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

In the matter of the application of Vistavox of MO, Inc. for a certificate of service authority to provide basic local telecommunications services in portions of the State of Missouri and to classify said services and the company as competitive.)
)
)
)
)
)

Case No. CA-2007-0475

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission and for its recommendation states:

1. On July 19, 2007, Vistavox of MO, Inc. (Applicant) filed a first amended application for a certificate of service authority to provide basic local exchange telecommunications services and for competitive classification.

2. In the attached Memorandum, labeled Appendix A, the Staff recommends that the Missouri Public Service Commission grant Applicant a certificate to provide basic local exchange telecommunications services in the service areas of Southwestern Bell Telephone L.P. d/b/a AT&T Missouri; CenturyTel of Missouri, LLC d/b/a CenturyTel and Spectra Communications Group, LLC d/b/a CenturyTel. 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).

3. Staff recommends that the Commission order granting certification note that pursuant to §392.410, 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.

4. Staff also recommends that the Commission classify the Applicant 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. §392.361.4. All the services a competitive company provides must be classified as competitive. §392.361.3.

5. 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. §§ 392.185, 392.361.5 and 392.420.

6. No tariff was submitted with the application. Although a tariff filing at this time is not required, Staff notes that pursuant to 4 CSR 240-3.510(1)(C), the applicant cannot lawfully provide service until tariffs are effective.

7. Although the Applicant requests a temporary waiver of 4 CSR 240-3.510(1)(C) because the Applicant did not file a proposed tariff with its application (see *Application* at para. 10), Staff sees no need for this waiver to be granted on this basis. The rule states that “filing the tariff and any applicable interconnection agreements simultaneously with the certificate application is optional.” As the rule already explicitly states that filing a proposed tariff with the certificate is optional, the Commission need not waive the rule merely because the Applicant has not yet filed a proposed tariff. Moreover, if the Commission were to waive this rule, it is possible that a waiver could be construed as a waiver of another clause in the rule that states “before service can be provided, a tariff and any applicable interconnection agreements must be filed with the commission and approved.” Accordingly, Staff recommends the Commission specifically *not* grant a waiver of this rule.

WHEREFORE, Staff recommends that the Commission grant Vistavox of MO, Inc., a certificate of service authority to provide basic local exchange telecommunications services;

grant it the requested competitive classification; and grant a waiver of the statutes and regulations listed in the Commission's *Notice of Applications*.

Respectfully submitted,

/s/ **Shelley Syler Brueggemann**

Shelley Syler Brueggemann

Senior Counsel

Missouri Bar No. 52173

Attorney for the Staff of the
Missouri Public Service Commission

P. O. Box 360

Jefferson City, MO 65102

(573) 526-7393 (Telephone)

(573) 751-9285 (Fax)

shelley.brueggemann@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 9th day of August 2007.

/s/ Shelley Syler Brueggemann

MEMORANDUM

To: Missouri Public Service Commission Official Case File
Case No: CA-2007-0475 File No: N/A
Applicant: Vistavox of MO, Inc.

From: Lisa Mahaney
Telecommunications Department
/s/ William Voight 8/7/07 /s/ Shelley Brueggemann 8/7/07
Utility Operations Division/Date General Counsel's Office/Date

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

Date: 8/6/07
Filing Deadline: 8/10/07

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 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.

☒ 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 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:)

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.

In the matter of the application of Vistavox)
of MO, Inc. for a certificate of service)
authority to provide basic local)
telecommunications services in portions of)
the State of Missouri and to classify said)
services and the company as competitive.)

[illegible]

Lisa Mahaney
Lisa Mahaney

Subscribed and affirmed before me this 6th day of August 2007.
I am commissioned as a notary public within the County of Callaway,
State of Missouri and my commission expires on 9-21-10



SUSAN L. SUNDERMEYER
My Commission Expires
September 21, 2010
Callaway County
Commission #06942086

Susan L. Hurdmeyer
NOTARY PUBLIC