

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Netelligent Corporation for a Certificate of Service Authority to Provide Resold Basic Local Telecommunications Service in Portions of the State of Missouri and to Classify Said Services And the Company as Competitive)))))))	<u>Case No. CA-2009-0141</u>
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ORDER GRANTING CERTIFICATE TO PROVIDE
BASIC LOCAL TELECOMMUNICATIONS SERVICES

Issue Date: December 4, 2008

Effective Date: December 14, 2008

This order grants a certificate of service authority to provide basic local telecommunications services in the state of Missouri, classifies those services and the company as competitive, and waives certain statutes and regulations.

On October 17, 2008, Netelligent Corporation applied for a certificate of service authority to provide basic local telecommunications services within the state of Missouri, and for competitive classification. The company seeks certification to provide basic local service in portions of Missouri that are currently being served by Alma Telephone; Southwestern Bell Telephone LP d/b/a AT&T Missouri; BPS Telephone; Spectra Communications Group, LLC d/b/a CenturyTel (Spectra); CenturyTel of Missouri, Inc. d/b/a CenturyTel; CenturyTel of Northwest Arkansas; Chariton Valley Telephone Company; Choctaw Telephone; Citizens Telephone; Craw-Kan Telephone; Ellington Telephone; Embark Missouri, Inc. d/b/a Embark; FairPoint Communications; Farber Telephone; Fidelity Telephone; Goodman Telephone; Granby Telephone; Grand River Mutual Telephone;

Green Hills Telephone; Holway Telephone; IAMO Telephone; Iowa Telephone; Kingdom Telephone; KLM Telephone; Lathrop Telephone; Le-Ru Telephone; Mark Twain Rural Telephone; McDonald County Telephone; Mid-Missouri Telephone; Miller Telephone; MoKan Dial; New Florence Telephone; New London (TDS) Telephone; Northeast Missouri Rural Telephone; Orchard Farm (TDS) Telephone; Ozark Telephone; Peace Valley Telephone; Rock Port Telephone; Seneca Telephone; Steelville Telephone; Stoutland Telephone; and Windstream Missouri. Netelligent is a Delaware corporation, and is authorized to do business in Missouri by the Missouri Secretary of State.

On October 20, the Commission issued its Notice of Applications, establishing a 15-day deadline for intervention. No applications to intervene were received. On November 21, the Staff of the Commission recommended that the requested certificate, classification, and waivers be granted.

The Commission may grant an application for a certificate of service authority to provide telecommunications service upon a showing that the applicant has met the statutory requirements, including relevant service standards,¹ and that the grant of authority is in the public interest.² Based on the verified application, including Netelligent's stated commitment to comply with all applicable rules, as well as Staff's uncontested recommendation, the Commission finds that Netelligent satisfies the requirements for certification and that granting such certificate is in the public interest.

Netelligent also requests that it and its services be classified as competitive and that the application of certain statutes and regulatory rules be waived. The Commission

¹ See Sections 392.450 (as revised in 2008 by HB 1779), 392.451 (as revised in 2008 by HB 1779) and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

may classify a telecommunications service as competitive if the Commission determines that the applicant is subject to a sufficient degree of competition to justify a lesser degree of regulation.³ The Commission may only classify a telecommunications carrier as competitive if a majority of the telecommunications services it offers are so classified.⁴ The Commission may waive the application of certain statutes and of its rules to a competitive carrier if it determines that such waiver is consistent with the purposes of Chapter 392.⁵

The Commission finds that Netelligent will compete with incumbent local exchange carriers, as well as other competitive local exchange carriers, in the exchanges in which it provides basic local telecommunications service. The Commission finds that Netelligent will be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Netelligent will offer are qualified for classification as competitive services.

The Commission may waive certain statutes and administrative rules for competitively classified carriers “if such waiver or modification is otherwise consistent with the other provisions of Section 392.361 to 392.520 and the purposes of this chapter.”⁶ The Commission has developed a standard list of statutes and regulations that it waives for competitive local exchange carriers. The Commission finds that the waiver of those statutes and regulation is consistent with the purposes of Chapter 392, and will waive those provisions for Netelligent.

² Sections 392.430 and 392.440.

³ Section 392.361.2 (as revised in 2008 by HB 1779).

⁴ Section 392.361.3 (as revised in 2008 by HB 1779).

⁵ See Sections 392.185, 392.361.3 (as revised in 2008 by HB 1779) and 392.420 (as revised in 2008 by HB 1779).

The Commission may also require a telecommunications company to comply with any conditions reasonably necessary to protect the public interest. Staff recommends that Netelligent's application be granted subject to certain restrictions regarding switched access rates. These conditions are routinely recommended by Staff and Netelligent accepted them in its application. The conditions proposed by Staff are necessary to protect the public interest and will be adopted.

The Commission places Netelligent on notice that failure to comply with certain obligations pursuant to law may result in penalties being assessed against the company. These obligations include, but are not limited to, the following:

- A) The obligation to file an annual report, as established by Section 392.210, RSMo 2000. Failure to comply with this obligation will make the utility liable for a penalty of \$100 per day for each day that the violation continues. Rule 4 CSR 240-3.540 requires telecommunications utilities to file their annual report on or before April 15 of each year.
- B) The obligation to pay an annual assessment fee established by the Commission, as required by Section 386.370, RSMo 2000.
- C) The obligation to comply with all relevant laws and regulations, as well as orders issued by the Commission. If the company fails to comply it is subject to penalties for noncompliance ranging from \$100 to \$2,000 per day of noncompliance, under Section 386.570, RSMo 2000.
- D) The obligation to keep the Commission informed of its current address and telephone number.

⁶ Sections 392.361.5 and 392.420.

The company is reminded that its officers may not represent it before the Commission. The company must be represented by an attorney licensed to practice law in Missouri.

In addition, Section 392.410.5, RSMo Cum. Supp. 2007, provides that the company's certificate of service authority becomes null and void one year from the date of this order unless the company has exercised its authority under that certificate.

The Commission notes that before providing telecommunications services in Missouri, a party shall possess the following: (1) an interconnection agreement approved by the Commission; (2) except for wireless providers, a certificate of service authority from the Commission to provide interexchange or basic local telecommunications services; and (3) except for wireless providers, a tariff approved by the Commission.

Netelligent did not file a proposed tariff as part of its application. The Commission's regulations do not require that such a tariff be filed along with an application for a certificate, but Netelligent is reminded that it cannot provide service in Missouri until its tariff is approved by this Commission.

THE COMMISSION ORDERS THAT:

1. Netelligent Corporation is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of Alma Telephone; Southwestern Bell Telephone LP d/b/a AT&T Missouri; BPS Telephone; Spectra Communications Group, LLC d/b/a CenturyTel (Spectra); CenturyTel of Missouri, Inc. d/b/a CenturyTel; CenturyTel of Northwest Arkansas; Chariton Valley Telephone Company; Choctaw Telephone; Citizens Telephone; Craw-Kan Telephone; Ellington Telephone; Embark Missouri, Inc. d/b/a Embark; FairPoint Communications; Farber Telephone; Fidelity

Telephone; Goodman Telephone; Granby Telephone; Grand River Mutual Telephone; Green Hills Telephone; Holway Telephone; IAMO Telephone; Iowa Telephone; Kingdom Telephone; KLM Telephone; Lathrop Telephone; Le-Ru Telephone; Mark Twain Rural Telephone; McDonald County Telephone; Mid-Missouri Telephone; Miller Telephone; MoKan Dial; New Florence Telephone; New London (TDS) Telephone; Northeast Missouri Rural Telephone; Orchard Farm (TDS) Telephone; Ozark Telephone; Peace Valley Telephone; Rock Port Telephone; Seneca Telephone; Steelville Telephone; Stoutland Telephone; and Windstream Missouri, subject to the conditions and recommendations contained in the Staff's Memorandum.

2. Netelligent Corporation and the services it offers are classified as competitive.

3. Netelligent Corporation's originating and terminating access rates shall not exceed the access rates of the incumbent local exchange company against whom Netelligent is competing pursuant to Sections 392.361.6 and 392.370, RSMo (as revised in 2008 by HB 1779).

4. If the directly competing incumbent local exchange carrier, in whose service area Netelligent Corporation is operating, decreases its originating or terminating access service rates, Netelligent Corporation shall file an appropriate tariff amendment to reduce its originating or terminating access rates in the directly competing incumbent local exchange carrier's service area within 30 days of the directly competing incumbent local exchange carrier's reduction of its originating or terminating access rates in order to maintain the cap.

5. Application of the following statutes and Commission rules is waived:

Statutes

- 392.210.2 - uniform system of accounts
- 392.240.1 - rates-rentals-service & physical connections
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.300.2 - acquisition of stock
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-3.550(5)(C) - exchange boundary map
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.040 - uniform system of accounts

6. The certification granted herein is conditioned upon the company's compliance with the regulatory obligations set out in this order.

7. Netelligent Corporation is advised that the grant of authority contained in this order may not, by itself, be sufficient to permit it to lawfully provide telecommunications services in Missouri. Specifically, Netelligent Corporation cannot lawfully provide telecommunications services until it has a tariff in effect for such services. When Netelligent Corporation submits such a tariff, it shall do so by filing a non-case tariff submission. The tariff submission shall not be filed in this case.

8. This order and Netelligent Corporation's certificate shall become effective on December 14, 2008.

9. This case shall be closed on December 15, 2008.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read 'Colleen M. Dale', written over a horizontal line.

Colleen M. Dale
Secretary

(S E A L)

Morris L. Woodruff, Deputy Chief Regulatory Law Judge,
by delegation of authority pursuant
to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 4th day of December, 2008