

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the Application of Broadband)
Dynamics, L.L.C. for a Certificate of Authority to)
Provide Basic Local Telecommunications Services) **File No. CA-2013-0113**
in Portions of the State of Missouri and to Classify)
such Services and the Company as Competitive)

ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL TELECOMMUNICATIONS SERVICES

Issue Date: November 1, 2012

Effective Date: November 11, 2012

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 September 20, 2012, Broadband Dynamics, L.L.C. applied for a certificate of service authority to provide basic local exchange 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 Southwestern Bell Telephone Company, L.P. d/b/a AT&T Missouri; Embarq Missouri, Inc. d/b/a Embarq; CenturyTel of Missouri LLC d/b/a CenturyTel; and, Spectra Communications Group, LLC d/b/a CenturyTel. Broadband is a Missouri corporation and is authorized to do business in Missouri by the Missouri Secretary of State.

On September 21, 2012, the Commission issued its Notice of Applications, establishing October 6 as the deadline for intervention. No applications to intervene were received. On October 26, 2012, 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 Broadband's stated commitment to comply with all applicable rules, as well as Staff's uncontested recommendation, the Commission finds that Broadband satisfies the requirements for certification and that granting such certificate is in the public interest.

Broadband 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 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 all of its services 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 Broadband 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 Broadband will be subject to a sufficient level of competition to justify a lesser degree of regulation. Furthermore, all of the services Broadband will offer are qualified for classification as competitive services.

¹ See Sections 392.450, 392.451 and 392.455, RSMo 2000. All statutory references, unless otherwise specified, are to the Revised Statutes of Missouri (RSMo), revision of 2000.

² Sections 392.430 and 392.440.

³ Section 392.361.2.

⁴ Section 392.361.3.

⁵ See Sections 392.185, 392.361.3 and 392.420.

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 regulations is consistent with the purposes of Chapter 392, and will waive those provisions for Broadband.

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

The Commission places Broadband on notice that failure to comply with certain obligations pursuant to law may result in penalties 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.

⁶ Sections 392.361.5 and 392.420.

- 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.

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. 2010, 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.

Broadband 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 Broadband is reminded that it cannot provide service in Missouri until its tariff is approved by this Commission.

THE COMMISSION ORDERS THAT:

1. Broadband Dynamics, L.L.C. is granted a certificate of service authority to provide basic local telecommunications services in the exchanges of Southwestern Bell

Telephone Company, L.P. d/b/a AT&T Missouri; Embarras Missouri, Inc. d/b/a Embarras; CenturyTel of Missouri LLC d/b/a CenturyTel; and, Spectra Communications Group, LLC d/b/a CenturyTel; subject to the conditions and recommendations contained in the Staff's Recommendation.

2. Broadband Dynamics, L.L.C. and the services it offers are classified as competitive.

3. Broadband Dynamics, L.L.C.'s originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for each incumbent local exchange carrier within whose service area Broadband Dynamics, L.L.C. seeks authority to provide service, unless authorized by the Commission pursuant to Section 392.220 and 392.230, RSMo.

4. If the directly competing incumbent local exchange carrier, in whose service area Broadband Dynamics, L.L.C. is operating, decreases its originating or terminating access service rates, Broadband Dynamics, L.L.C. 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. Broadband Dynamics, L.L.C. will undertake all necessary measures to ensure its contracts with underlying carriers do not contain provisions preventing delivery of traffic to any telephone exchange area of Missouri. Such measures include but are not limited to:

- a) Prevention of call blocking or call gapping based on the cost of traffic termination.

- b) Preventing the alteration or stripping of Calling Party Number identification termination, and
- c) Ensuring sufficient network capacity exists to process all traffic according to industry accepted practices.

6. Application of those statutes and Commission rules listed in the Staff of the Commission's Recommendation is waived.

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

8. Broadband Dynamics, L.L.C. 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, Broadband Dynamics, L.L.C. cannot lawfully provide telecommunications services until it has a tariff in effect for such services. When Broadband Dynamics, L.L.C. 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.

9. This order and Broadband Dynamics, L.L.C.'s certificate shall become effective on November 11, 2012.

10. This file shall be closed on November 12, 2012.

(S E A L)

Kennard L. Jones, Senior Regulatory
Law Judge, by delegation of authority
pursuant to Section 386.240, RSMo 2000.

Dated at Jefferson City, Missouri,
on this 1st day of November, 2012.

BY THE COMMISSION



Steven C. Reed
Secretary