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PROFESSIONAL CORPORATION

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BRIAN K. BOGARD  
DIANA C. FARR  
JANET E. WHEELER

OF COUNSEL  
RICHARD T. CIOTTONE

July 30, 2002

**FILED**<sup>2</sup>

JUL 30 2002

Missouri Public  
Service Commission

Secretary to the Public Service Commission  
Governor Office Building  
200 Madison Street, Suite 100  
P.O. Box 360  
Jefferson City, MO 65102-0360

**Re: In the Matter of Empire District Industries, Inc., Application  
Case No. \_\_\_\_\_**

Dear Mr. Roberts:

On behalf of Empire District Industries, Inc., enclosed for filing in the above-referenced case please find an original and eight (8) copies of an Application. I have also provided a receipt copy, which I request that you file stamp and return to the messenger delivering same. A copy is being hand-delivered to the Office of the Public Counsel this date.

Thank you for your assistance with this filing.

Sincerely,

BRYDON, SWEARENGEN & ENGLAND, P.C.

By:

  
Paul A. Boudreau

PAB/aw

Enclosures

cc: General Counsel's Office - PSC  
Office of the Public Counsel

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

**FILED<sup>2</sup>**  
JUL 30 2002

Missouri Public  
Service Commission

In the Matter of the Application of Empire )  
District Industries, Inc., for a Certificate of )  
Service Authority to Provide Local )  
Exchange and Intrastate Interexchange ) Case No. \_\_\_\_\_  
Telecommunications Services to the )  
Public Within the State of Missouri. )

**APPLICATION**

COMES NOW Empire District Industries, Inc. (hereinafter "Applicant"), a Delaware corporation, pursuant to §§392.410, 392.420, 392.440, and 392.361 RSMo. 2000, as amended, and 4 CSR 240-2.060(6), and files this verified Application requesting that the Missouri Public Service Commission (hereinafter "Commission") issue an order that:

- (a) grants Applicant a Certificate of Local Exchange and Intrastate Interexchange Service Authority to provide telecommunications services pursuant to Chapter 392 of the Missouri Revised Statutes, as hereinafter described;
- (b) grants competitive status to Applicant; and
- (c) waives certain Commission rules and statutory provisions pursuant to §392.420 RSMo. 2000.

In support of this request, Applicant states that:

1. Applicant is a Delaware corporation with its principal office and place of business at 602 Joplin Street, Joplin, Missouri 64801. Applicant is qualified to do business in the State of Missouri. Applicant proposes to engage, generally, in the business of providing fiber-optic services as hereinafter described. In addition, it is anticipated that Applicant will take over and continue uninterrupted the regulated telecommunications services currently provided by its parent company, The Empire District Electric Company ("Empire"). Empire previously received from this Commission a Certificate of Service Authority to provide intrastate interexchange telecommunications services and, also, local exchange telecommunications services in the form of

dedicated, non-switched local exchange private line service in an order dated January 22, 1998, in Commission Case No. TA-98-233. A copy of the Commission's Order Approving Interexchange and Local Exchange Certificates of Service Authority and Order Approving Tariff is attached hereto as **Appendix 1**.

2. Attached hereto as **Appendix 2** and incorporated herein by reference for all purposes is a copy of a Certificate from the Missouri Secretary of State's Office evidencing that Applicant is authorized to do business in the State of Missouri as a foreign corporation.

3. Applicant has no pending action or final unsatisfied judgments or decisions against it from any state or federal agency or court which involves customer service or rates, which action, judgment or decision has occurred within three (3) years of the date of this Application.

4. Applicant has no annual report or assessment fees that are overdue.

5. All communications, notices, and decisions respecting this Application and proceeding should be addressed to:

Ronald F. Gatz, President  
Empire District Industries  
602 Joplin Street  
Joplin, Missouri 64801  
Telephone (417) 625-5103

Paul A. Boudreau  
Brydon, Swearingen & England P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, Missouri 65102  
Telephone (573) 635-7166

6. Applicant proposes to undertake to conduct the regulated telecommunications business currently being conducted by its parent, Empire. Specifically, Applicant proposes to

provide:

- (a) dedicated, non-switched point-to-point and point-to-multipoint private line telecommunications, which both originate and terminate within an exchange; and
- (b) interexchange telecommunications services throughout the State of Missouri.

Generally, Applicant proposes to provide fiber or circuit capacity and services on a fiber optic network. Applicant will provide capacity on said fiber optic network to schools and school districts and hospitals and health care providers for the purpose of making available distance learning and telemedicine capabilities and, also, to businesses and communications common carriers. Applicant may also provide a competitive access services to interexchange carriers, internet access and other data or communications services to others. Applicant has no plans to provide two-way switched voice service within a local calling scope and no immediate plans to provide message telecommunications service (i.e., toll services). Applicant will utilize its own facilities, or purchase for resale the services or facilities of other companies in order to provide the described facilities and services.

7. Applicant proposes to charge for facilities and services provided based on rates, rules and regulations as proposed in the tariffs attached hereto and incorporated herein by reference as **Appendix 3** and bearing an effective date of September 13, 2002. Said tariffs are nearly identical to the tariffs pursuant to which Empire currently provides regulated telecommunications services.

8. Applicant requests classification as a competitive telecommunications company within the State of Missouri. Applicant believes that its proposed services would be subject to sufficient competition to justify a lesser degree of regulation. Granting this Application will allow greater price and service options for telecommunications customers. *See, Re Digital Teleport*, 1

Mo.P.S.C.3d 303, 307 (1992). Furthermore, the identical services currently provided by Empire have heretofore been classified as competitive by the Commission in its Case No. TA-98-233.

9. Applicant also requests, pursuant to §392.420 RSMo. 2000, that the Commission waive the application of the following rules and statutory provisions as they relate to the regulation of Applicant:

Statutes/Commission Rules	Subject
§392.210.2	Uniform System of Accounts
§392.240(1)	Just and Reasonable Rates
§392.270	Property Valuation
§392.280	Depreciation Accounts
§392.290	Issuance of Securities
§392.300.2	Acquisition of Stock
§392.310	Issuance of Stock and Debt
§392.320	Stock Dividend Payment
§392.330	Issuance of Securities, Debts and Notes
§392.340	Reorganization
4 CSR 240-10.020	Depreciation Fund Income
4 CSR 240-30.010(2)(C)	Rate Schedules Should be Posted in Central Office
4 CSR 240-30.040	Uniform System of Accounts
4 CSR 240-32.030(4)(C)	File Exchange Boundary Maps with Commission
4 CSR 240-33.030	Inform Customers of Lowest Price Service

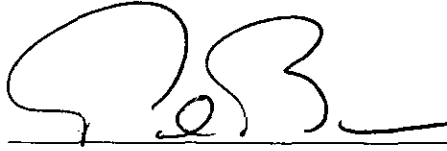
It is Applicant's understanding that the above-referenced rules and statutory provisions have routinely been waived for other competitive telecommunications companies.

10. Applicant possesses sufficient technical, financial and managerial resources and abilities to provide the facilities and interexchange and non-switched local telecommunications services for which certification is being requested.

11. The Commission has found that the interexchange market which Applicant seeks to enter is sufficiently competitive so as to justify a lesser degree of regulation. In the case of *Re Classification of Services Provided by Interexchange Telecommunications Carriers Within the State of Missouri*, Case No. TO-88-142, Report and Order, effective October 16, 1989, at pages 19-20. Expeditious granting of the instant Application will increase the competition in the provisions of communications facilities and interexchange services, consistent with the Commission's policies and, also, increase the variety and number of interexchange telecommunications providers and services available to users. Approval of this Application is consistent with the legislative goals set forth in the federal Telecommunications Act of 1996 and Chapter 392 RSMo. Accordingly, Applicant's proposed operations are in the public interest.

WHEREFORE, Applicant respectfully requests that the Commission grant it a Certificate of Service Authority to provided dedicated, non-switched local exchange private line telecommunications services and intrastate interexchange telecommunications services to the public in the State of Missouri. Applicant also requests classification as a competitive telecommunications company. In addition, Applicant requests a waiver of the above-referenced rules and statutory provisions.

Respectfully submitted,



Paul A. Boudreau #33155  
BRYDON, SWEARENGEN & ENGLAND P.C.  
312 East Capitol Avenue  
P.O. Box 456  
Jefferson City, MO 65102-0456  
Telephone (573) 635-7166  
Facsimile (573) 635-0427  
E-Mail: [PaulB@brydonlaw.com](mailto:PaulB@brydonlaw.com)

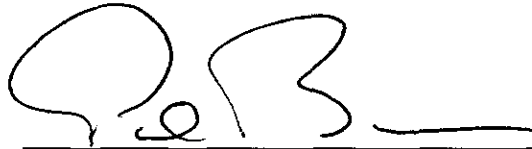
Attorneys for Empire District Industries, Inc.

Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was sent by U.S. mail, postage prepaid, or hand-delivered, on this 30<sup>th</sup> day of July, 2002, to:

General Counsel's Office  
Missouri Public Service Commission  
200 Madison Street, P.O. Box 360  
Jefferson City, MO 65102

Office of the Public Counsel  
Governor Office Building  
200 Madison Street, P.O. Box 7800  
Jefferson City, MO 65102



AFFIDAVIT

State of Missouri )  
County of Jasper ) ss

I, Ronald F. Gatz, having been duly sworn upon my oath, state that I am the President of Empire District Industries, that I am duly authorized to make this affidavit on behalf of Empire District Industries, and that the matters and things stated in the foregoing Application and appendices thereto are true and correct to the best of my information, knowledge and belief.

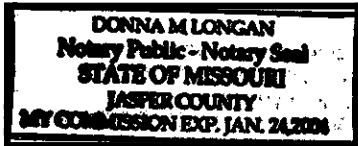
Ronald F. Gatz

Subscribed and sworn before me this 25<sup>th</sup> day of June, 2002.

Donna M. Longan  
Notary Public

My Commission expires:

01-24-2004





**RECEIVED**  
JAN 26 1998

**BRYDON, SWEARENGEN  
& ENGLAND P.C.**

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 22nd day of January, 1998.

In the Matter of the Application of The Empire )  
District Electric Company for a Certificate of )  
Service Authority to Provide Local Exchange and ) Case No. TA-98-233  
Intrastate Interexchange Telecommunications )  
Services to the Public Within the State of )  
Missouri. )  
)

**ORDER APPROVING INTEREXCHANGE AND LOCAL EXCHANGE  
CERTIFICATES OF SERVICE AUTHORITY AND ORDER APPROVING TARIFF**

The Empire District Electric Company (Empire) applied to the Public Service Commission on December 5, 1997, for a certificate of service authority to provide intrastate interexchange and local exchange telecommunications services in Missouri under Section 392.410-.450, RSMo 1994<sup>1</sup>. Empire subsequently filed an Amended Application by Interlineation which included a Certificate of Corporate Good Standing-Foreign Corporation from the Missouri Secretary of State. Empire asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. Empire is a Kansas corporation, with its principal office located at 602 Joplin Street, Joplin, Missouri 64801.

The Commission issued a Notice of Applications and Opportunity to Intervene on December 9, directing parties wishing to intervene to file their requests by December 24. The requirement for a hearing is met when

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to intervene or requested a hearing, the Commission may grant the relief requested based on the verified application.

Empire filed a proposed tariff in conjunction with its application and filed a substitute sheet on January 9, 1998. The tariff's effective date is January 26, 1998. Empire's tariff describes the rates, rules, and regulations it intends to use, identifies Empire as a competitive company, and lists the waivers requested. Empire intends to provide interexchange and local exchange telecommunications services including private line services.

The Staff of the Commission filed a Memorandum recommending approval of Empire's application and tariff on January 7, 1998. Staff subsequently filed an amended recommendation on January 14. In its amended recommendation, Staff stated that Empire's proposed services are similar to existing IXC offerings. Staff recommended that the Commission grant Empire a certificate of interexchange service authority, and a certificate of service authority for local exchange telecommunication services on condition that this authority be restricted to providing dedicated, nonswitched local exchange private line services. Staff recommended that the Commission grant Empire competitive status, and waiver of the statutes and rules listed in the Notice. Staff recommended that the Commission approve the proposed tariff to become effective on January 26, 1998.

The Commission finds that competition in the intrastate interexchange and local exchange telecommunications markets is in the

public interest and Empire should be granted a certificate of service authority. The Commission finds that the services Empire proposes to offer are competitive and Empire should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in Ordered Paragraph 3 is reasonable and not detrimental to the public interest.

The Commission finds that Empire's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange and local exchange carriers. The Commission finds that the proposed tariff filed on December 5 shall be approved as amended to become effective on January 26, 1998.

**IT IS THEREFORE ORDERED:**

1. That The Empire District Electric Company is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to all applicable statutes and Commission rules except as specified in this order.

2. That The Empire District Electric Company is granted a certificate of service authority to provide local exchange telecommunications services in the state of Missouri limited to providing dedicated, nonswitched local exchange private line services, subject to all applicable statutes and Commission rules except as specified in this order.

3. That The Empire District Electric Company is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

- 392.240(1) - ratemaking
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.340 - reorganization(s)
- 392.330, RSMo Supp. 1996 - issuance of securities,  
debts and notes

Commission Rules

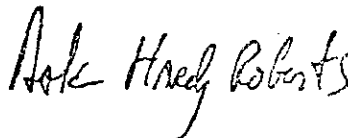
- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - rate schedules
- 4 CSR 240-30.040 - Uniform System of Accounts
- 4 CSR 240-32.030(1)(B) - exchange boundary maps
- 4 CSR 240-32.030(1)(C) - record-keeping
- 4 CSR 240-32.030(2) - in-state record-keeping
- 4 CSR 240-32.050(3) - local office record-keeping
- 4 CSR 240-32.050(4) - telephone directories
- 4 CSR 240-32.050(5) - call intercept
- 4 CSR 240-32.050(6) - telephone number changes
- 4 CSR 240-32.070(4) - public coin telephone
- 4 CSR 240-33.030 - minimum charges rule
- 4 CSR 240-33.040(5) - financing fees

4. That the tariff filed by The Empire District Electric Company on December 5, 1997, is approved as amended to become effective on January 26, 1998. The tariff approved is:

**P.S.C. Mo. No. 1**

- 5. That this order shall become effective on January 26, 1998.
- 6. That this case shall be closed on February 3, 1998.

**BY THE COMMISSION**



( S E A L )

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

Lumpe, Ch., Crumpton, Drainer  
and Murray, CC., concur.

Hennessey, Regulatory Law Judge

No. F00502765

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

CORPORATION DIVISION

CERTIFICATE OF CORPORATE RECORDS


EMPIRE DISTRICT INDUSTRIES, INC.

using in Missouri the name

EMPIRE DISTRICT INDUSTRIES, INC.

I, MATT BLUNT, Secretary of State of the State of Missouri and Keeper of the Great Seal thereof, do hereby certify that the annexed pages contain a full, true and complete copy of those certain original documents on file and of record in this office for which certification has been requested.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 12th day of JULY, 2002.

  
Secretary of State



No. F00502765

# STATE OF MISSOURI



Matt Blunt  
Secretary of State

CORPORATION DIVISION - CERTIFICATE OF AUTHORITY

WHEREAS,  
EMPIRE DISTRICT INDUSTRIES, INC.

using in Missouri the name  
EMPIRE DISTRICT INDUSTRIES, INC.

has complied with the General and Business Corporation Law which governs Foreign Corporations; by filing in the office of the Secretary of State of Missouri authenticated evidence of its incorporation and good standing under the Laws of the State of DELAWARE.

NOW, THEREFORE, I, MATT BLUNT, Secretary of State of the State of Missouri, do hereby certify that said corporation is from this date duly authorized to transact business in this State, and is entitled to all rights and privileges granted to Foreign Corporations under the General and Business Corporation Law of Missouri.

IN TESTIMONY WHEREOF, I have set my hand and imprinted the GREAT SEAL of the State of Missouri, on this, the 27th day of NOVEMBER, 2001.



*Matt Blunt*

\$155.00

Secretary of State



# State of Missouri

Matt Blunt, Secretary of State

Corporations Division  
P.O. Box 778, Jefferson City, MO 65102

James C. Kirkpatrick State Information Center  
600 W. Main Street, Rm 322, Jefferson City, MO 65101

# FILED

NOV 27 2001

## Application for Certificate of Authority For a Foreign For-Profit Corporation

(Submit in duplicate with filing fee of \$155.00)

1. The corporation's name is EMPIRE DISTRICT INDUSTRIES, INC.  
and it is organized and existing under the laws of DELAWARE

Matt Blunt  
SECRETARY OF STATE

2. The name it will use in Missouri is EMPIRE DISTRICT INDUSTRIES, INC.

3. The date of its incorporation was 07/23/01, and the period of its duration is PERPETUAL  
month/day/year

4. The address of its principal place of business 1002 JOPLIN AVENUE JOPLIN, MO 64801  
Address City/State/Zip

5. The name and address of its registered agent and office in the State of Missouri is  
JANET S. WATSON 1002 JOPLIN AVENUE JOPLIN, MO 64801  
Name Address City/State/Zip

6. The specific purpose(s) of its business in Missouri are:  
SALE OF NON-REGULATED PRODUCTS AND SERVICES

7. The name of its officers and directors and their business addresses are as follows:  
(Officers)

	Name	Address	City/State/Zip
President	<u>RONALD F. GATZ</u>	<u>1002 JOPLIN AVENUE</u>	<u>JOPLIN, MO 64801</u>
Vice President	<u>NA</u>		
Secretary	<u>JANET S. WATSON</u>	<u>1002 JOPLIN AVENUE</u>	<u>JOPLIN, MO 64801</u>
Treasurer	<u>JANET S. WATSON</u>	<u>1002 JOPLIN AVENUE</u>	<u>JOPLIN, MO 64801</u>

(Board of Directors)

Director RONALD F. GATZ  
Director MYRON W. MCKINNEY  
Director WILLIAM L. GIPSON

8. The effective date of this document is the date it is filed by the Secretary of State of Missouri, unless you indicate a future date, as follows:  
(Date may not be more than 90 days after the filing date in this office)

In affirmation thereof, the facts stated above are true.

Janet Watson JANET S. WATSON SECRETARY-TREASURER 11/26/01  
(Authorized Signature) (Printed Name) (Title) (Date)

Note: You must submit current original certificate of good standing or certificate of existence with this application. This may be obtained from your Secretary of State or other authority that issues corporate charters.

November 27, 2001

Secretary of State, Corporations Division  
Attn: Kay  
149 Park's Central Square, Room 1020  
Springfield, MO 65806

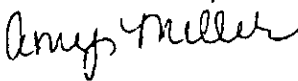
Dear Kay:

The following are the addresses associated with the directors for Empire District Industries, Inc.:

Ronald F. Gatz	602 Joplin Avenue	Joplin, MO 64801
Myron W. McKinney	602 Joplin Avenue	Joplin, MO 64801
William L. Gipson	602 Joplin Avenue	Joplin, MO 64801

Please let me know if you need any additional information at (417) 625-6535.

Thank you.



Amy Miller  
Non-Utility Accountant

**FILED**

**NOV 27 2001**

  
SECRETARY OF STATE



State of Delaware  
Office of the Secretary of State

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PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THAT "EMPIRE DISTRICT INDUSTRIES, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE NOT HAVING BEEN CANCELLED OR DISSOLVED SO FAR AS THE RECORDS OF THIS OFFICE SHOW AND IS DULY AUTHORIZED TO TRANSACT BUSINESS.

THE FOLLOWING DOCUMENTS HAVE BEEN FILED:

CERTIFICATE OF INCORPORATION, FILED THE TWENTY-THIRD DAY OF JULY, A.D. 2001, AT 2 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE AFORESAID CERTIFICATES ARE THE ONLY CERTIFICATES ON RECORD OF THE AFORESAID CORPORATION.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE NOT BEEN ASSESSED TO DATE.

FILED

NOV 27 2001

*Matt Blunt*  
SECRETARY OF STATE



*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

3417184 8310

AUTHENTICATION: 1448709

010579146

DATE: 11-15-01