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December 27, 2000

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Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, MO 65102

**RE: Case No. TA-2000-709**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF'S MOTION TO DISMISS**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Robert V. Franson  
Assistant General Counsel  
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RVF:sw  
Enclosure  
cc: Counsel of Record

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

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

**DEC 27 2000**

**Missouri Public  
Service Commission**

In the Matter of the Application of )  
OnFiber Carrier Services, Inc., for )  
Authority to Provide and/or Resell Basic )  
Local, and Local Exchange and Intrastate )  
Telecommunications Services in the State )  
of Missouri. )

Case No. TA-2000-709

**STAFF'S MOTION TO DISMISS**

**COMES NOW** the Staff of the Missouri Public Service Commission ("Staff") and respectfully states to the Commission as follows:

1. On April 28, 2000, OnFiber Carrier Services, Inc. ("OnFiber") filed an Application for authority to provide and/or resell basic local, local exchange and interexchange telecommunications services.
2. There were three extensions of time to file a Stipulation and Agreement filed by the Company and the Commission granted each one. No Stipulation and Agreement was ever filed.
3. Pursuant to a Commission Order Adopting Procedural Schedule issued on October 11, 2000, OnFiber's direct testimony was due on October 30, 2000.
4. On October 27, 2000, OnFiber filed its Motion to Amend the Application of OnFiber Carrier Services, Inc. to Delete the Request for Authority to Provide Basic Local Exchange Service (Motion to Amend the Application).
5. Instead of filing direct testimony on October 30, 2000, OnFiber filed a Motion for Continuation of Procedural Schedule.
6. Staff did not oppose OnFiber's Motions.

7. On November 3, 2000, Staff filed its Response to OnFiber's Motions. Staff noted that in light of the Motion to Amend the Application resulting in OnFiber only seeking authority to provide interexchange service and local exchange service, the Staff could file a Staff Memorandum addressing OnFiber's amended Application within 15 days of the Motion to Amend the Application being granted by the Commission. In paragraph 7 of this pleading Staff informed the Commission that a preliminary review of the Application showed that there was no statement in the Application showing that the grant of authority is in the public interest as required by Sections 392.430 and 392.440 RSMo 1994. Staff also noted that the requested list of waivers did not exactly match the standard list of Waivers for Nonswitched and Local Exchange Carriers in the Notice of Applications sent out by the Commission.

8. On November 17, 2000, the Commission issued an Order Granting Motion to Amend Application and Directing Additional Filing. In this Order, the Commission granted OnFiber's Motion to Amend the Application of OnFiber Carrier Services, Inc. to Delete the Request for Authority to Provide Basic Local Exchange Service, filed on October 27, 2000. The Commission also ordered OnFiber to file an amended application correcting the defects noted by Staff in paragraph 7 of Staff's Response to OnFiber Motions, filed November 3, 2000. The Commission ordered this amended application to be filed by November 27, 2000.

9. On December 5, 2000, counsel for Staff wrote a letter to OnFiber's counsel stating that a Motion to Dismiss would be filed if no Amended Motion was filed.

9. On December 11, 2000, the Commission issued an Order Directing Filing. This Order directed OnFiber to file the additional filing ordered in the November 17, 2000 Commission Order by December 21, 2000.

10. On December 21, 2000, OnFiber filed an Amended Application.

11. Staff has reviewed OnFiber's Amended Application. The Amended Application still fails to correct the defects noted by Staff in paragraph 7 of Staff's November 3, 2000 filing and still fails to comply with the November 17, 2000 and December 12, 2000, Orders of the Commission to correct these defects. Staff specifically notes that there is no statement in either the Application or the Amended Application showing that the grant of authority is in the public interest as required by Sections 392.430 and 392.440.

12. Furthermore, there is no proposed tariff filed with the Application or Amended Application as required by 4 CSR 240-2.060(6)(C). However, there is in the Application filed on April 28, 2000, a request for temporary waiver of 4 CSR 240-2.060(4)(H) regarding tariffs. This rule has been recodified at 4 CSR 240-2.060(6)(C). The Company stated that it could not develop tariffs because it had not executed interconnection agreements with incumbent local exchange companies. OnFiber's statement would be correct if it was going to be providing CLEC services. However, Staff notes that this request has been withdrawn and that OnFiber did not ask for this waiver in its Amended Application. Accordingly, Staff submits that OnFiber has not supported a request for waiver of 4 CSR 240-2.060(6)(C) for IXC services and thus this request should be denied.

13. Staff is aware of a proposed tariff submitted by OnFiber on December 12, 2000, (Tariff No. 200100643). This Tariff is entitled: "OnFiber Carrier Services, Inc. Schedule of Rates, Charges, Regulations Governing Regulated ACCESS SERVICES." An interexchange carrier such as OnFiber proposes to become does not offer access services. On the contrary, an interexchange carrier receives access services to originate or to terminate an interexchange telephone call. Accordingly, OnFiber has not filed the appropriate tariff.

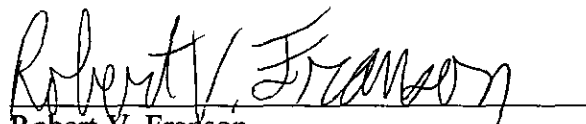
14. Staff hereby seeks dismissal of this case pursuant to 4 CSR 240-2.116(3) and (4). OnFiber has failed to comply with the Commission's Orders of November 17, 2000, and December 12, 2000, in that OnFiber has failed to correct certain procedural defects as ordered by the Commission and documented by Staff in paragraph 10. Staff submits that this is sufficient cause to dismiss the case pursuant to 4 CSR 240-2.116(3).

15. Staff also seeks dismissal of this case pursuant to 4 CSR 240-2.116(4). Good cause for dismissal exists in that this case was initially filed on April 28, 2000 and OnFiber has filed numerous applications, amendments, sought and received numerous extensions of time and still does not have a fully completed application for authority before the Commission.

**WHEREFORE**, the Staff respectfully requests that the Commission dismiss OnFiber's Application and Amended Application.

Respectfully submitted,

DANA K. JOYCE  
General Counsel



Robert V. Franson  
Assistant General Counsel  
Missouri Bar No. 34643

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 27th day of December, 2000.

Robert V. Fruman

**Service List for**  
**Case No. TA-2000-709**  
**Revised: December 27, 2000 (sw)**

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