

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
September 9, 1999**

CASE NO: TA-2000-35

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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copy:

Philip S. Johnson
General Manager
Grand River Communications, Inc
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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 9th
day of September, 1999.

In the Matter of the Application of Grand)
River Communications, Inc. d/b/a Lathrop)
Long Distance for a Certificate of) <u>Case No. TA-2000-35</u>
Service Authority to Provide Interexchange) Tariff No. 0000062
and Local Exchange Telecommunications)
Services in Missouri)

ORDER REGARDING MOTIONS FOR CONSOLIDATION,
INTERVENTION AND SUSPENSION, ORDER APPROVING
INTEREXCHANGE AND NON-SWITCHED LOCAL EXCHANGE
CERTIFICATES OF SERVICE AUTHORITY AND ORDER
APPROVING TARIFF

PROCEDURAL HISTORY

Grand River Communications, Inc. d/b/a Lathrop Long Distance (Lathrop) applied to the Public Service Commission on July 19, 1999, for certificates of service authority to provide intrastate interexchange and non-switched local exchange telecommunications services in Missouri under Section 392.410-.450, RSMo 1994 and RSMo Supp. 1998¹. Lathrop 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. Lathrop is a Missouri corporation, with its principal

¹ All further statutory references are to the Revised Statutes of Missouri 1994 unless otherwise indicated.

office located at 1001 Kentucky Street, Princeton, Missouri 64663. The Commission issued a Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene on July 27, directing entities wishing to intervene to file their requests by August 11.

Lathrop filed a proposed tariff in conjunction with its application and filed substitute sheets on August 20 and August 26. The tariff's effective date is September 13, 1999. Lathrop's tariff describes the rates, rules, and regulations it intends to use, identifies Lathrop as a competitive company, and lists the waivers requested. Lathrop intends to provide interexchange and non-switched local exchange telecommunications services including 1+ Services, 800/877/888 Services, Directory Assistance, Operator Assistance, Private Live Services, and Travel Card services.

Application for Intervention, Motion to Consolidate and Motion to Suspend

On August 6, AT&T Communications of the Southwest, Inc. (AT&T) filed a request to intervene and to consolidate this case with Case No. TT-2000-52². AT&T alleged that Lathrop's tariff

² AT&T refers to Case No. TT-2000-52 along with the case title "In the Matter of the Tariff Filing by AT&T Communications of the Southwest, Inc. Designed to Implement an IntraLATA Toll Overlay Plan" in its pleading filed August 6. However, AT&T's Toll Overlay Plan tariff is filed in Case No. TT-2000-22. Staff indicated in its responsive pleading that the AT&T misidentified the case it cited, Case No. TT-2000-52, and stated that AT&T should have cited Case No. TT-2000-22. AT&T did not amend or correct its pleading. AT&T did refer to Case No. TT-2000-22 in its pleading filed August 31. Case No. TT-2000-52 is also a case involving a tariff filed by AT&T "In the Matter of AT&T's Tariff Filing to Introduce AT&T's All in One Service." The Commission issued its Order Approving Tariff in Case No. TT-2000-52 on August 26, 1999. Because of the obvious error, hereafter, references to Case No. TT-2000-52 will be shown as Case No. TT-2000-22.

had the same effect as the tariff AT&T had proposed in Case No. TT-2000-22. AT&T stated that its tariff had been suspended by the Commission until May 23, 2000, and that if its tariff constituted geographic deaveraging of toll rates, then Lathrop's proposed tariff also constituted geographic deaveraging of toll rates. AT&T stated that it did not oppose the approval of Lathrop's application or the accompanying tariff but AT&T was compelled to point out that its tariff should be treated and processed in the same manner by the Commission.

On August 16, Lathrop filed its response to AT&T's Application to Intervene and Motion to Consolidate. Lathrop incorrectly filed its response with both Case Nos. TA-2000-33 and TA-2000-35 on the case heading even though the cases had not been consolidated. The filing will be treated as if it were filed only in this case. Lathrop requested that the Commission deny AT&T's application to intervene and approve Lathrop's proposed tariff and application for certificates of service authority.

In its response, Lathrop stated that it filed two applications under two fictitious names for authority to provide interexchange and non-switched local exchange telecommunications services, one using the fictitious name "Grand River Long Distance" and the other using the fictitious name "Lathrop Long Distance" because when using fictitious company names, it was informed that separate filing is preferred by the Commission. Lathrop stated that the rates to be charged for both proposed tariffs in Case Nos. TA-2000-33 and TA-2000-35 are identical,

thus, as a matter of law, no deaveraged rates within or among the two service areas occur. In addition, Lathrop compared and contrasted the differences between its proposed tariffs in this case and Case No. TT-2000-22 involving AT&T's proposed "intraLATA toll overlay plan" tariff which was suspended by the Commission. Lathrop further argued that AT&T does not have sufficient interest in this case and should not be permitted to intervene under the Commission's rules. See 4 CSR 240-2.075(4)

On August 17, Staff of the Missouri Public Service Commission (Staff) filed its response to AT&T's Application to Intervene and Motion to Consolidate. Staff recommended that AT&T's Application to Intervene and Motion to Consolidate be granted in part and denied in part. Staff recommended that Case No. TA-2000-33 and Case No. TA-2000-35 be consolidated and that AT&T be permitted to intervene in those cases. Staff also recommended that AT&T's request to join Case Nos. TA-2000-33 and TA-2000-35 with Case No. TA-2000-22 and the Fiber Four cases³ be denied. Staff recommended that all other requests contained in AT&T's Application to Intervene and Motion to Consolidate be

³ In the Matter of the Application of Fiber Four Corporation d/b/a KLM Long Distance for a Certificate of Service Authority to Provide Interexchange and Local Exchange Telecommunications Services, Case No. TA-2000-23; In the Matter of the Application of Fiber Four Corporation d/b/a Holway Long Distance for a Certificate of Service Authority to Provide Interexchange and Local Exchange Telecommunications Services, Case No. TA-2000-24; In the Matter of the Application of Fiber Four Corporation d/b/a IAMO Long Distance for a Certificate of Service Authority to Provide Interexchange and Local Exchange Telecommunications Services, Case No. TA-2000-25; and In the Matter of the Application of Fiber Four Corporation d/b/a Rockport Long Distance for a Certificate of Service Authority to Provide Interexchange and Local Exchange Telecommunications Services, Case No. TA-2000-27.

denied. Staff argued that there are no common issues of law or questions of fact between Case No. TT-2000-22 and Case No. TA-2000-35. Staff also stated that there is a lack of common questions of law or fact between this case and the Fiber Four certification cases (Case Nos. TA-2000-23, TA-2000-24, TA-2000-25, and TA-2000-27). Staff opposed the consolidation of Case No. TA-2000-35 with those cases referred to as the Fiber Four Corporation certification cases.

On August 31, AT&T filed a motion to suspend combined with its reply to Lathrop's and Staff's responses. AT&T incorrectly filed its motion with both Case Nos. TA-2000-33 and TA-2000-35 on the case heading even though these two cases are not consolidated. This filing will be treated as if it were filed only in this case.

In its motion and reply, AT&T points out that Lathrop's application for certificate requests the authority to provide interexchange and local exchange telecommunications services throughout the state of Missouri. AT&T alleges that Lathrop seeks to limit the availability of its services to the ILEC exchanges of Grand River Mutual Telephone Company via the proposed tariff. AT&T alleges that permitting Grand River Communications, Inc. to obtain three separate certificates of service authority to provide interexchange services would permit these entities to charge different rates for 1+ intraLATA and interLATA interexchange service in different geographic areas defined by the service area of the respective ILEC. AT&T

indicated in its motion that this would create a situation where the company could engage in geographic deaveraging and AT&T alleges that this raises the same issues that are before the Commission in Case No. TT-2000-22, AT&T's "interLATA overlay plan."

AT&T also alleged in its motion and reply that geographic deaveraging will be permitted if Lathrop is granted competitive classification and minimal regulation as requested. AT&T alleges that competitive classification and minimal regulation will permit Lathrop to change its rates with a 7- or 10-day effective date, effectively permitting Lathrop the opportunity to offer geographically deaveraged toll services. AT&T again stated that it does not oppose the applications or proposed tariffs of Lathrop. AT&T stated that it does oppose the approval of the proposed tariffs because AT&T takes the position that this case and Case No. TO-2000-22 should be treated and processed in the same manner by the Commission. AT&T requested that the Commission grant AT&T's application to intervene, request to suspend Grand River Communications, Inc.'s proposed tariffs and request to consolidate this case with Case No. TT-2000-22 and TA-2000-23⁴.

Lathrop filed its response to AT&T's motion to suspend on September 2, 1999. Lathrop pointed out that a number of customers might be defaulted to 101XXXX dialing pattern at the

⁴ Case No. TA-2000-23 has been consolidated with Case Nos. TA-2000-24, TA-2000-25 and TA-2000-27. Case No. TA-2000-23 has been designated as the lead case.

termination of the PTC plan if Lathrop were not certificated to provide interexchange telecommunications services in the service area requested. Lathrop also stated that a large number of its end users have chosen AT&T for their interLATA carrier even though AT&T indicated that it would not be providing 1+ intraLATA service where dial around (101XXXX) service is still available. AT&T stated in its August 31 filing that it "had chosen not to provide 1+ intraLATA service in some ILEC territories where AT&T still provides intraLATA dial around service."

Lathrop reiterated that it only filed the applications in this case and in Case No. TA-2000-33 in separate cases because it was informed that it was the preference of the Commission. Lathrop also stated that the proposed tariffs filed in Case Nos. TA-2000-33 and TA-2000-35 are identical which make its proposed tariffs different from AT&T's overlay plan because AT&T proposed to charge different rates for different parts of the state. In response to AT&T's motion to suspend, Lathrop responded that the claim lacks ripeness because AT&T's argument depends upon what might occur in the future, and therefore, AT&T's claim is not ripe for decision by the Commission. Lathrop also alleged that AT&T's motion to suspend was late filed because it was not filed by August 11, 1999, the intervention date established by the Commission, and the Commission should not consider the motion to suspend. Lathrop noted that suspending the proposed tariffs at this late date will only serve to deprive Lathrop's customers of 1+ intraLATA toll service when the PTC plan ends.

Lathrop stated that it had no intention of rate deaveraging at this time or in the future. Lathrop offered to refile its proposed tariffs as a single application or to refile its applications with one proposed tariff concurring in the tariff rates and terms of the other tariff to prove that it does not intend to deaverage its rates. Lathrop requested, in the alternative, the Commission grant Lathrop temporary certificates so that the customers in the companies' exchanges do not experience an interruption in the 1+ intraLATA toll service when the IntraLATA Dialing Plan (ILDPA) is implemented and the PTC exits those markets.

The Commission has reviewed AT&T's application for intervention, motion to consolidate and the responsive pleadings of Staff and Lathrop. The Commission has also reviewed AT&T's motion to suspend. AT&T specifically stated in its pleadings that it does not oppose approval of the application filed in Case No. TA-2000-35 or the accompanying tariff. AT&T requested only that the Commission treat AT&T's proposed tariff in the same manner as the proposed tariff in this case is treated. As a matter of law, the proposed tariff in this case does not constitute geographic deaveraging, even if combined with the proposed tariffs in Case No. TA-2000-33 because the rates proposed are the same. AT&T has not clearly alleged what interest it has in this case and the Commission finds that AT&T does not have a justiciable interest in this matter which is different from that of the general public. 4 CSR 240-2.075(4)

The Commission concludes that AT&T's application for intervention should be denied.

The Commission finds that neither the parties nor the questions of law or fact identified in Case No. TA-2000-35 are the same or related to those in Case Nos. TA-2000-22, TA-2000-23, TA-2000-24, TA-2000-25, and TA-2000-27 and, therefore, this case should not be consolidated with any of those cases. 4 CSR 240-2.110(5)

AT&T filed its motion to suspend in the same document as its response to the responsive pleadings of Lathrop and Staff on August 31. While it may be found that AT&T's motion to suspend is late filed because it was not filed before the August 11, 1999 deadline, it may also be found that AT&T fails to request a hearing on any issue. AT&T only requested that the case be consolidated with Case Nos. TA-2000-22 and TA-2000-23, and that Lathrop's proposed tariff be given the same treatment as AT&T's proposed "interLATA overlay plan." The Commission finds that AT&T has failed to state any reasonable grounds for suspension of the proposed tariff, and that it is not in the public interest to suspend Lathrop's proposed tariff. Therefore, the Commission will deny AT&T's motion to suspend.

The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has timely 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). AT&T did file its

application to intervene, which the Commission has denied for lack of justiciable interest. Even though AT&T filed an application to intervene, AT&T did not request a hearing. In addition, AT&T specifically stated that it did not oppose the application or proposed tariffs in this case. Since no one requested a hearing, the Commission may grant the relief requested based on the verified application.

Certificate for Service Authority to Provide Interexchange and Non-switched Local Exchange Telecommunications Services

In its memorandum filed on August 31, the Staff of the Commission stated that Lathrop's proposed services are similar to existing interexchange telecommunications offerings. Staff recommended that the Commission grant Lathrop 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, non-switched local exchange private line services. Staff recommended that the Commission grant Lathrop competitive status, and waiver of the statutes and rules listed in the Notice. Staff recommended that the Commission approve the proposed tariff as amended to become effective on September 13, 1999.

The Commission finds that competition in the intrastate interexchange and non-switched local exchange telecommunications markets is in the public interest and Lathrop should be granted certificates of service authority. The Commission finds that the

services Lathrop proposes to offer are competitive and Lathrop should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraph below is reasonable and not detrimental to the public interest.

The Commission finds that Lathrop'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 non-switched local exchange carriers. In addition, Lathrop has agreed that the proposed rates for the certificated service area granted will be the same as the certificated service area granted in Case No. TA-2000-33, and the Commission's approval of this certificate to provide interexchange telecommunications services will be conditioned on this representation unless otherwise approved by the Commission. The Commission finds that the proposed tariff filed on July 19 shall be approved as amended and subject to stated conditions to become effective on September 13, 1999.

IT IS THEREFORE ORDERED:

1. That the Application to Intervene filed by AT&T Communications of the Southwest, Inc. on August 6, 1999 is denied.

2. That the Motion to Consolidate filed by AT&T Communications of the Southwest, Inc. on August 6, 1999 is denied.

3. That the Motion to Suspend filed by AT&T Communications of the Southwest, Inc. on August 31, 1999 is denied.

4. That Grand River Communications, Inc. d/b/a Lathrop Long Distance is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above, and on the additional condition that the tariff rates for this certificated service area remain the same as the tariff rates for the certificated service area granted in Case No. TA-2000-33, unless otherwise approved by the Commission.

5. That Grand River Communications, Inc. d/b/a Lathrop Long Distance is granted a certificate of service authority to provide local exchange telecommunications services in the state of Missouri limited to providing dedicated, non-switched local exchange private line services, subject to all applicable statutes and Commission rules except as specified in this order.

6. That Grand River Communications, Inc. d/b/a Lathrop Long Distance 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. 1998 - 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

7. That the tariff filed by Grand River Communications, Inc. d/b/a Lathrop Long Distance on July 19, 1999, and assigned Tariff File No. 0000062, is approved as amended to become effective on September 13, 1999. The tariff approved is:

P.S.C. Mo. No. 1
Original Sheets 1-48

8. That this order shall become effective on September 13, 1999.

9. That this case may be closed after September 14, 1999.

BY THE COMMISSION

(S E A L)



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur
Schemenauer, C., absent

Register, Regulatory Law Judge

Atty/Secy:

Register/Boyle

Date Circulated

9-8

TH-2000-35
CASE NO.

18 17
Lunne, Chair

[Signature]
Crimpton, Commissioner

cm
Murray, Commissioner

als
Schemenauer, Commissioner

[Signature]
Drainer, Vice-Chair

Agenda Date

9-9

Action taken:

4-OAS

Must Vote Not Later Than

OK

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and

I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson
City,

Missouri, this 9TH day of SEPTEMBER, 1999.



Dale Hardy Roberts

Dale Hardy Roberts

Secretary/Chief Regulatory Law Judge