

Exhibit Number:
Issue(s): Certificates/Tariffs
Witness: John Van Eschen
Sponsoring Party: MoPSC Staff
Case Number: TA-2000-23 et al

MISSOURI PUBLIC SERVICE COMMISSION

UTILITY OPERATIONS DIVISION

FILED²
FEB 17 2000
Missouri Public
Service Commission

**In the Matter of the Applications of Fiber Four Corporation for
Certificates of Service Authority to Provide Interexchange and Local
Exchange Telecommunications Services in Missouri**

CASE NOS. TA-2000-23, TA-2000-24, TA-2000-25 AND TA-2000-27

REBUTTAL TESTIMONY

OF

JOHN VAN ESCHEN

**JEFFERSON CITY, MISSOURI
FEBRUARY 17, 2000**

1 **Missouri Public Service Commission**

2 **Rebuttal Testimony**

3 **Of**

4 **John Van Eschen**

5 **Case No. TA-2000-23, et al**

6 **Q. Please state your name and business address.**

7 A. My name is John Van Eschen. My business address is P.O. Box 360, Jefferson
8 City, Missouri 65102.

9 **Q. By whom are you employed and in what capacity?**

10 A. I am employed by the Missouri Public Service Commission (Commission) as
11 Manager of the Telecommunications Department.

12 **Q. What are your primary responsibilities?**

13 A. My primary responsibilities are to direct and supervise the activities and
14 recommendations of the Commission's Telecommunications Department.

15 **Q. Please describe your background.**

16 A. I have been employed by the Commission since 1984. My duties have been to
17 analyze proposals affecting the Missouri telecommunications industry and
18 provide recommendations to the Commission. My work has generally consisted
19 of the review of tariff filings, certificate applications, interconnection agreements,
20 cost studies, customer inquiries and complaints, proposed legislation, federal
21 regulatory dockets, and various cases before the Missouri Commission. I have
22 previously testified in numerous cases before the Commission. During my
23 employment with the Commission I have been promoted to progressive positions

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1 of responsibility within the Telecommunications Department. I hold a Master of
2 Arts degree in Economics.

3 **Q. What is the purpose of your testimony?**

4 A. My purpose is to respond to the direct testimony of Fiber Four Corporation
5 witness, William J. Warinner. Specifically I intend to address the issue of one
6 corporation operating under multiple fictitious names.

7 **Q. Does the Fiber Four Corporation operate under multiple fictitious names?**

8 A. Yes. As pointed out in the direct testimony of Mr. Warinner, the Fiber Four
9 Corporation has been granted a certificate of service authority to provide
10 interexchange and local exchange telecommunications services. In addition,
11 Fiber Four Corporation d/b/a KLM Long Distance, Fiber Four Corporation d/b/a
12 IAMO Long Distance, Fiber Four Corporation d/b/a Holway Long Distance, and
13 Fiber Four Corporation d/b/a Rock Port Long Distance have each been granted
14 temporary, certificates of service to provide intrastate interexchange and local
15 exchange telecommunications services. Separate tariffs are maintained for each
16 certificated name.

17 **Q. Has the Commission previously granted certificates of service authority to
18 provide interexchange and local exchange telecommunications services for a
19 corporation wanting to operate under multiple fictitious names?**

20 A. Yes. The Commission has granted such certificates on several occasions. The
21 fictitious names listed below each have their respective certificates of service
22 authority to provide interexchange telecommunications services:

23 Communications Cable Laying Company d/b/a Dial U.S.
24 Communications Cable Laying Company d/b/a Dial U.S.A.

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1
2 Lyrihn Communications, Inc. d/b/a Blue Earth.
3 Lyrihn Communications, Inc. d/b/a Community Spirit.

4
5 Nations Bell, Inc. d/b/a Nations Tel.
6 Nations Bell, Inc. d/b/a MTS/Communicall.

7
8 Preferred Carrier Services, Inc. d/b/a Phones For All d/b/a Telefonos Para Todos.

9
10 Intercontinental Communications Group, Inc. d/b/a Fusion Telecom.
11 Intercontinental Communications Group, Inc. d/b/a Fusion-Trucker Phone.

12
13 Grand River Communications, Inc. d/b/a Grand River Long Distance
14 Grand River Communications, Inc. d/b/a Lathrop Long Distance
15

16 **Q. What action, if any, has the Commission required for a corporation wanting**
17 **to operate under multiple fictitious names?**

18 A. Prior Commission orders¹ associated with responding to requests for a corporation
19 wanting to operate under multiple fictitious names requires a certificate and tariff
20 for each fictitious name. From this standpoint the Commission treats multiple
21 fictitious names as separate companies. The only exception might be found for
22 Preferred Carrier Services, Inc. In addition, the Commission recently established
23 a special condition for Grand River Communications, Inc.'s applications to
24 provide interexchange and nonswitched local exchange telecommunications
25 services under two fictitious names.

26 **Q. Please explain the exception for Preferred Carrier Services, Inc.**

27 A. The Commission's decision for Case No. TA-97-347 allowed two fictitious
28 names to share the same certificate and tariff. Specifically, Preferred Carrier

¹ For example, see Commission's Order Suspending Tariffs and Addressing Operation of Interexchange Companies Under Fictitious Names issued on May 30, 1995 for Case No. TO-95-321. Order Rejecting Tariffs issued on June 21, 1996 for Case No. TO-96-381.

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1 Services, Inc. d/b/a Phones For All d/b/a Telefonos Para Todos share the same
2 certificate and tariff. This exception was allowed because the second name is
3 simply the Spanish translation of the English fictitious name.

4 **Q. Please explain the exception for Grand River Communications, Inc.**

5 A. In Case Nos. TA-2000-33 and TA-2000-35, involving the certificate applications
6 of Grand River Communications, Inc. d/b/a Grand River Long Distance and
7 Grand River Communications, Inc. d/b/a Lathrop Long Distance, the Commission
8 established a special condition whereby their tariff rates remain the same unless
9 otherwise approved by the Commission.

10 **Q. Why was this special condition established?**

11 A. Both tariffs were originally filed with identical services and rates. The tariffs also
12 limited service to specified geographic areas; however neither tariff shared the
13 same area. Based on the proposed tariffs containing identical rates, the special
14 condition appears to provide a means to avoid the issue of geographic toll rate
15 deaveraging. The Commission specifically dismissed any concerns regarding the
16 issue of geographic toll rate deaveraging because the rates proposed for Grand
17 River Long Distance and Lathrop Long Distance are the same.

18 **Q. Do you have any comments regarding this special condition?**

19 A. The special condition is troubling for several reasons. This condition has not been
20 placed on other corporations operating under multiple fictitious names. Therefore
21 it appears to place a restrictive condition on Grand River Communications, Inc.
22 In contrast other corporations operating under multiple fictitious names are not
23 required to comply with this condition.

1 The special condition appears to remove some rate flexibility associated
2 with competitive classification. Competitive classification allows the provider to
3 have the flexibility to raise or lower rates on ten or seven days, respectively. For
4 the competitively classified Grand River Long Distance and Lathrop Long
5 Distance this flexibility is limited to the extent rates must match each other.

6 From an administrative standpoint, ensuring identical rates may be
7 difficult if separate tariffs are maintained. The difficulty is ensuring the tariff
8 rates will remain the same, absent specific approval by the Commission.
9 Typically tariffs do not indicate rates must match the rates found in a separate
10 tariff.

11 **Q. Do you have any comments regarding Mr. Warinner's belief the Fiber Four**
12 **tariffs do not constitute geographic toll rate deaveraging?**

13 **A.** Such a conclusion may depend on how geographic toll rate deaveraging is defined
14 and whether a corporation using multiple fictitious names should be considered as
15 one company.

16 **Q. How does Missouri law address the issue of geographic toll rate deaveraging?**

17 **A.** According to 392.200.4(1) RSMo,

18 "[N]o telecommunications company may define a telecommunications
19 service as a different telecommunications service based on the
20 geographic area or other market segmentation within which such
21 telecommunications service is offered or provided, unless the
22 telecommunications company makes application and files a tariff or
23 tariffs which propose relief from this subsection. Any such tariff shall
24 be subject to the provisions of sections 392.220 and 392.230 and in any
25 hearing thereon the burden shall be on the telecommunications
26 company to show, by clear and convincing evidence, that the definition
27 of such service based on the geographic area or other market within
28 which such service is offered is reasonably necessary to promote the
29 public interest and the purposes and policies of this chapter."

1 Q. **Should the tariffs of Fiber Four be considered geographic toll rate**
2 **deaveraging?**

3 A. The arrangement does not clearly represent geographic toll rate deaveraging.
4 Each tariff indicates the service will be offered only to the exchanges as reflected
5 in the tariff. For example, Iamo Long Distance's tariff states, "[T]he Company's
6 service will initially be offered only to the local exchange customers of its
7 affiliate, Iamo Telephone Company, in the exchanges of Westboro, Elmo,
8 Clearmont and Burlington Junction." From this perspective, the Iamo Long
9 Distance Company is not actually defining a service as a different
10 telecommunications service based on geographic area because the same service is
11 offered to all areas it serves. The service areas for each fictitious name of the
12 Fiber Four Corporation also do not coincide or overlap. Nevertheless, a
13 determination of geographic toll rate deaveraging will depend on whether a
14 corporation operating under multiple fictitious names should be considered one
15 company for purposes of providing telephone services.

16 As previously indicated, in such situations the Missouri Commission has
17 required each fictitious name to have its own certificate(s) and approved tariff. In
18 this respect, the Missouri Commission treats each fictitious name as a separate
19 company. In my opinion, this regulatory treatment is appropriate because a
20 certificate and tariff will match the name of the provider identifiable to the
21 consumer. This regulatory treatment makes it more difficult to raise claims of
22 geographic toll rate deaveraging.

1 Q. **Do you have any other comments related to geographic toll rate**
2 **deaveraging?**

3 A. Yes. Even if it is determined the services provided under the fictitious names of
4 the Fiber Four Corporation represent geographic toll deaveraging, it doesn't mean
5 it should not be allowed. Section 392.200.4 places the burden on the carrier to
6 demonstrate why it should be allowed to define a telecommunications service as a
7 different telecommunications service based on the geographic area. The carrier
8 must show such a proposal is reasonably necessary to promote the public interest
9 and the purposes and policies of Chapter 392. Mr. Warinner points out in his
10 direct testimony the proposed rates are designed to mirror existing toll plans as
11 much as possible to ensure customers can continue to place 1+ intraLATA toll
12 calls and pay comparable rates as they had before the implementation of
13 intraLATA dialing parity.

14 In my opinion, such a proposal is in the public interest even if it is
15 determined to be geographic toll rate deaveraging. The implementation of
16 intraLATA dialing parity, the elimination of the primary toll carrier plan and the
17 reluctance of a major interexchange carrier to enter certain intraLATA 1+ dialed
18 toll markets raised uncertainty about the number of available toll providers in
19 exchanges served by small local exchange companies. The proposed tariffs, as
20 presently configured, represent a reasonable means to simply ensure customers in
21 the service areas of the affiliated local telephone company will continue to have
22 access to similar toll rates as experienced prior to the implementation of
23 intraLATA dialing parity.

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1 Q. **What is your recommendation for the Commission?**

2 A. The Commission should remove the temporary nature of the certificates of service
3 authority previously granted to the respective fictitious names of the Fiber Four
4 Corporation.

5 Q. **Does this conclude your testimony?**

6 A. Yes, it does.

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

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 in Missouri)
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 in Missouri)
Case No. TA-2000-24

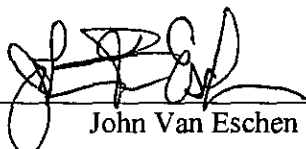
In the Matter of the Application of Fiber Four)
Corporation d/b/a Iamo Long Distance for a)
Certificate of Service Authority to Provide)
Interexchange and Local Exchange)
Telecommunications Services in Missouri)
Case No. TA-2000-25

In the Matter of the Application of Fiber Four)
Corporation d/b/a Rock Port Long Distance for)
a Certificate of Service Authority to Provide)
Interexchange and Local Exchange)
Telecommunications Services in Missouri)
Case No. TA-2000-27

AFFIDAVIT OF JOHN VAN ESCHEN

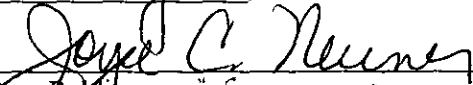
STATE OF MISSOURI)
)
) SS.
COUNTY OF COLE)

John Van Eschen, of lawful age on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 8 pages to be presented in the above-referenced case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.



John Van Eschen

Subscribed and sworn to before me this 17th day of February, 2000.



Notary Public

My Commission Expires: _____
Joyce C. Neuner
Notary Public, State of Missouri
County of Osage
My Commission Exp. 06/18/2001

