

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 14th
day of June, 1996.

In the Matter of the Application of Fiber Four)
Corporation for a Certificate of Service Au-)
thority to Provide Local Exchange and Intra-) CASE NO. TA-96-376
state 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

Fiber Four Corporation (Fiber Four) applied to the Missouri Public Service Commission (Commission) on May 9, 1996, for a certificate of service authority to provide intrastate interexchange and local exchange telecommunications services in Missouri under § 392.410 - .450 RSMo 1994¹. Fiber Four asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by §§ 392.361 and 392.420. Applicant is a Missouri corporation, with its principal office at 107 Opp Street, Rock Port, Missouri 64482. Fiber Four is wholly-owned subsidiary of Rock Port Telephone Company (Rock Port).

The Commission issued a Notice and Schedule of Applicants on May 14, 1996, directing parties wishing to intervene in the case to do so by May 29, 1996. On May 24, 1996, Southwestern Bell Telephone Company (SWBT) filed an application to intervene, and on May 28, 1996, MCI Telecommunications Corporation (MCI) also filed an application to intervene. Fiber Four and the Staff of the Commission (Staff) both filed a pleading in opposition to SWBT's intervention request on June 3, 1996,

¹All statutory references are to Revised Statutes of Missouri 1994.

and Staff also filed a pleading in opposition to MCI's intervention request on June 7, 1996.

SWBT's application expressed concern with whether Fiber Four intends to provide toll service, which would put it in direct competition with SWBT. SWBT also stated that it had a direct interest in this case, as Fiber Four's plan to offer intraLATA intrastate private line services may adversely affect the primary toll carrier (PTC) plan to which SWBT is a party, since Fiber Four can be expected to serve the most profitable routes, and leave SWBT or other PTC plan participants with noncompensatory routes. In addition, SWBT raised a number of other issues, all related to either the PTC plan or the fact that Fiber Four is an affiliate of Rock Port.

In its response to SWBT's intervention request, Fiber Four stated that it had no current plans to provide two-way switched access within a local calling scope or to provide toll service, and thus the competitive effect on SWBT would be negligible or nonexistent. Fiber Four also challenged SWBT's standing to base its intervention request on the PTC plan, claiming SWBT does not act as the PTC to the exchanges served by Rock Port. Further, Fiber Four contended that this case is not the proper forum to discuss issues related to the PTC plan, which involve industry-wide concerns, and contended that any concerns SWBT might have about Fiber Four's relationship with Rock Port could be addressed in TO-96-328, the pending docket which involves proposed rules for affiliate transactions. Staff in its pleading essentially states that Fiber Four is no different than the hundreds of other interexchange carriers (IXCs) tariffed and certificated in Missouri, which can compete in the intraLATA toll market on a dial around basis. Unlike these carriers, Staff notes that only SWBT and the other PTCs can provide intraLATA toll on a 1+ basis. Staff also

adds that the affiliate transaction issue will be addressed in Case No. TO-96-328.

On June 7, 1996, SWBT filed a motion to withdraw its intervention request. SWBT stated that its withdrawal was based on representations contained in a letter it received from Rock Port on May 29, 1996, and on Fiber Four's response filed on June 3, 1996, to the effect that neither Rock Port nor Fiber Four have short-term or long range plans to provide local or long distance service to any exchange where SWBT provides service. Since SWBT has voluntarily withdrawn its intervention request, pursuant to 4 CSR 240-2.116 there is no longer any need for the Commission to rule on the merits of SWBT's application to intervene.

MCI's application to intervene states that the Commission's decision regarding Fiber Four's application may affect MCI's interests as a purchaser of access services, as well as its interests as a provider of intrastate long distance services. MCI adds that it neither supports nor opposes Fiber Four's application at this time.

Staff's response to MCI's intervention request maintains that MCI's stated concerns do not justify the establishment of proceedings. While Staff's review of Fiber Four's application was incomplete at the time it filed its response, Staff stated that it did not presently have any objection to the proposed application. Staff also stated that it did not believe MCI's access service purchases would be affected since no access rate or rate structure is changed under the application. In addition, Staff pointed out that MCI's interest as an intrastate long distance provider might be affected to the extent Fiber Four will compete with MCI, but noted that MCI claimed in its application that it had an interest in enhancing competition.

The Commission has reviewed MCI's intervention request and Staff's response thereto, and finds that MCI's application for intervention should be denied. While MCI has somewhat generically indicated its interest in this proceeding, the Commission finds that it has neither stated its reasons for seeking intervention nor stated whether it supports or opposes the relief sought, in contravention of Commission Rule 4 CSR 240-2.075(2). As Staff noted in its response to SWBT's intervention request, there are hundreds of IXCs certificated in the State of Missouri. MCI alleges an interest as a provider of intrastate long distance services, but does not indicate how its interest will be uniquely affected by Fiber Four's application, or how Fiber Four's application differs from that of the many other IXC applications received by the Commission and routinely processed without interventions. Similarly, MCI does not indicate how Fiber Four's application will particularly affect it as a purchaser of access services.

The Commission finds that Fiber Four's application and tariff adequately describe the services Fiber Four intends to offer. Thus, the Commission is of the opinion that there is little or no justification for MCI's failure to take a position on whether it supports or opposes Fiber Four's application, or to further delineate its reasons for seeking intervention. While the Commission recognizes that there may be particular cases or situations in which a requested intervention might be granted even in the absence of a stated position by the potential intervenor, the Commission notes that MCI has not given any reasons for its failure to take a position on Fiber Four's application. This is particularly problematic in the context of an IXC application, since but for MCI's intervention request, the application would be processed based on the verified application and attachments thereto, and would not ordinarily proceed to

hearing. The Commission determines that in the absence of any indication of a genuine controversy, it is not inclined to waste scarce administrative resources or the resources of the parties by treating this matter as a contested case and scheduling a hearing. Thus the Commission finds that it would not be appropriate to grant intervention to MCI.

Since SWBT has withdrawn its intervention request and the Commission has denied MCI's intervention request, the Commission determines that no hearing is necessary. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo.App. 1989).

Fiber Four filed a proposed tariff at the time of its application, on May 9, 1996, and filed substitute sheets on June 11, 1996. The tariff's effective date is June 23, 1996. Fiber Four's tariff describes the rates, rules, and regulations it intends to use, identifies Fiber Four as a competitive company, and lists the waivers requested. Fiber Four intends to provide interexchange telecommunications services including private line services.

In its Memorandum filed June 12, 1996, the Staff of the Commission stated that Applicant's proposed services are the same or equivalent to those classified as competitive in Case No. TO-88-142, *In re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri*, 30 Mo. P.S.C. (N.S.) 16 (September 1989). Staff recommended that the Commission grant Applicant 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 Applicant

competitive status, and waiver of the statutes and rules listed in the Notice. Staff recommended that the Commission approve the tariff as amended, effective June 23, 1996.

The Commission finds that competition in the intrastate interexchange telecommunications market is in the public interest and Applicant should be granted a certificate of service authority. The Commission finds that the services Applicant proposes to offer are competitive and Applicant should be classified as a competitive company. The Commission is of the opinion that waiving the statutes and Commission rules set out in Ordered Paragraph 2 is reasonable and not detrimental to the public interest.

The Commission determines, by authority of § 392.470, that Applicant should comply with the following regulatory requirements as reasonable and necessary conditions of certification:

- (1) Applicant must comply with reasonable requests by Staff for financial and operating data to allow Staff to monitor the intraLATA toll market. § 386.320.3.
- (2) Applicant must file tariffs containing rules and regulations applicable to customers, a description of the services provided, and a list of rates associated with those services in accordance with 4 CSR 240-30.010 and § 392.220.
- (3) Applicant may not unjustly discriminate between its customers. §§ 392.200, 392.400.
- (4) Applicant must comply with all applicable rules of the Commission except those specifically waived by this order. §§ 386.570, 392.360.
- (5) Applicant must file a Missouri-specific annual report. §§ 392.210, 392.390.1.

- (6) Applicant must comply with jurisdictional reporting requirements as set out in each local exchange company's access services tariffs. § 392.390.3.
- (7) Applicant must submit to the staff, on a confidential basis, a copy of the jurisdictional report it submits to local exchange companies. The report must be submitted within ten (10) days of the date on which it is submitted to the local exchange company.

The Commission finds that Fiber Four's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange carriers. The Commission finds that the proposed tariff filed on May 9, 1996, and amended on June 11, 1996, should be approved, effective June 23, 1996.

IT IS THEREFORE ORDERED:

1. That Fiber Four Corporation be 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.
2. That Fiber Four Corporation be 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 the conditions of certification set out above.
3. That Fiber Four Corporation be classified as a competitive telecommunications company. 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
- 392.330 - issuance of securities, debts and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2) (C) - rate schedules
- 4 CSR 240-30.040(1) - Uniform System of Accounts
- 4 CSR 240-30.040(2) - Uniform System of Accounts
- 4 CSR 240-30.040(3) - Uniform System of Accounts
- 4 CSR 240-30.040(5) - Uniform System of Accounts
- 4 CSR 240-30.040(6) - 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 Fiber Four Corporation on May 9, 1996, be approved as amended, effective June 23, 1996. The tariff approved is:

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

5. That this order shall become effective on June 23, 1996.

BY THE COMMISSION

(S E A L)



David L. Rauch
Executive Secretary

Zobrist, Chm., McClure, Kincheloe,
Crumpton, and Drainer, CC., Concur.

ALJ: Bensavage