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May 29, 2002

VIA FEDERAL EXPRESS

Missouri Public Service Commission
Mr. Dale Hardy Roberts, Secretary
200 Madison Street, Suite 100
P.O. Box 360
Jefferson City, MO 65102

Re: Case No. **AX-2002-158**

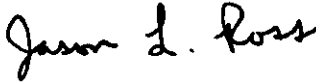
Dear Mr. Roberts,

Enclosed for filing with the Commission is an original and six (6) copies of the Statements In Opposition of Proposed Amendment filed on behalf of Fidelity Communication Services I, Inc., Fidelity Communication Services II, Inc., Fidelity Communication Services III, Inc., and Fidelity Cablevision, Inc.

We have enclosed one extra copy of the Statements which we would appreciate being date stamped upon receipt and returned to the undersigned in the envelope provided. Thank you for your assistance in this matter.

Yours very truly,

GREENSFELDER, HEMKER & GALE, P.C.

By 
Jason L. Ross

JLR/kka
Enclosures
540579.1

cc: Mr. John T. Davis
Mr. Dave Beier



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Mr. Dale Hardy Roberts, Secretary
200 Madison Street, Suite 100
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Re: Case No. **AX-2002-158**

Dear Mr. Roberts,

On behalf of Fidelity Communication Services I, Inc., Fidelity Communication Services II, Inc., Fidelity Communication Services 111, Inc., and Fidelity Cablevision, Inc. (collectively, the "Fidelity CLECs"), we submit the following statements in opposition to certain provisions of the proposed amendment to 4 CSR 240-2.115, Stipulations and Agreements, as published in the May 1, 2002, Missouri Register (the "Proposed Rule").

In particular, the Fidelity CLECs oppose Sections 2(B), (C) and (E) of the Proposed Rule on the grounds, as discussed further below, that such provisions (i) may violate the due process rights of a party that is not a signatory to a "nonunanimous" stipulation and agreement; (ii) may discourage interested parties from intervening in cases that may affect their interests; and (iii) appear to effectively eliminate a party's ability to agree "not to oppose" a stipulation and agreement, and seemingly force the party to either join as a signatory in support of the stipulation or file an objection to said stipulation.

At the outset, the Fidelity CLECs respectfully submit to the Commission that there is a distinction between a party's "waiving" its right to a hearing with respect to a particular issue and being deemed to have "joined in" or to support a "nonunanimous" stipulation and agreement. Section 2(C) of the Proposed Rule suggests that, not only does a failure to object to a nonunanimous stipulation and agreement within seven (7) days of the date of filing constitute a *waiver* of the right to object and the right to a hearing, but also has the procedural effect of making the stipulation "*unanimous*." Further, Section 2(E) states that a party that has stated no position and filed no testimony on an issue, does not have the right to object to the stipulation and agreement, and such stipulation and agreement shall be treated as "unanimous" with respect to such issue. While the Fidelity CLECs do not necessarily take issue with the notion that a failure to timely object constitutes a waiver-although seven (7) days is a very short period-they are concerned that a failure to timely object may be viewed, procedurally, as consent to the resolution of the stipulated issues or to the validity of the statement of the stipulated facts.

The problem that the Fidelity CLECs face, like many other small carriers in the State, is one of resource allocation. Oftentimes, only a few issues (and not all issues) raised in a proceeding to which they are joined as parties, i.e., a generic case, or in which they have intervened, directly implicate interests significant enough to devote the resources, financial and otherwise, necessary to actively participate, i.e., by filing position statements or testimony. While the Fidelity CLECs make every effort to comply with the Commission's filing requirements, and appreciate the Commission's need and desire to expeditiously move cases forward on the docket, they maintain that eliminating the mechanism by which a party can participate only with respect to those issues that are of importance to it, and agree not to oppose the resolution of the remainder, constitutes a denial of due process, by forcing a procedural presumption—namely that the stipulation is unanimous—that may adversely affect the party in future cases. The Fidelity CLECs request that the Commission preserve some procedural mechanism, i.e., the ability to agree not to oppose certain stipulated facts or resolved issues, where a party, although bound by the decision in the case, is not forced or deemed to take a position either way on every issue. To hold otherwise may discourage parties from intervening and participating in cases.

The wording of Section 2(E) also seems to ignore the fact that stipulations and agreements are often the product of informal negotiations between the parties, reached prior to any formal statement of position or filing of testimony in the record. Accordingly, the Fidelity CLECs request that, should the Commission reject the suggestions stated above, that Section 2(E) be clarified to apply only where position statements or testimony could have been filed in the case under the procedural schedule. Otherwise, a party may be "steam rolled" early in a case before it has had the opportunity to conduct discovery or otherwise thoroughly investigate the issues.

Finally, the Fidelity CLECs also have concerns about the meaning of the terms "conditional assent" (used in Section 2(C)) and "stipulation and agreement," as such terms are apparently not defined in the Proposed Rule or otherwise in the Code of State Regulations. For example, must a stipulation and agreement be captioned as such when filed with the Commission to be considered a "stipulation and agreement?" Also, would a provision in a stipulation and agreement that conditions the agreement on the acceptance by the Commission of all terms contained therein be considered "conditional assent?"

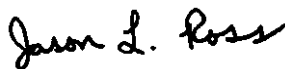
Should you have any questions or comments, please do not hesitate to contact us.

Thank you in advance for your attention to this matter.

Yours very truly,

GREENSFELDER, HEMKER & GALE, P.C.

By



Sheldon K. Stock
Jason L. Ross

SKS/jlr
540337.1

cc: Mr. John T. Davis
Mr. Dave Beier