



**Missouri Public Service Commission**

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May 5, 2000

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**FILED<sup>3</sup>**

MAY 05 2000

Missouri Public  
Service Commission

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-2000-23 et al.**

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of the **STAFF'S SUGGESTIONS IN SUPPORT OF THE UNANIMOUS STIPULATION AND AGREEMENT.**

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,

Nathan Williams  
Assistant General Counsel  
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NW/lb  
Enclosure  
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

FILED<sup>3</sup>

MAY 05 2000

Missouri Public  
Service Commission

In the Matter of the Application of Fiber )  
Four Corporation d/b/a KLM Long Distance )  
for a Certificate of Service Authority to ) Case No. TA-2000-23  
Provide Interexchange and Local Exchange ) Tariff File No. 200000049  
Telecommunications Services. )

In the Matter of the Application of Fiber )  
Four Corporation d/b/a Holway Long )  
Distance for a Certificate of Service ) Case No. TA-2000-24  
Authority to Provide Interexchange and ) Tariff File No. 200000048  
Local Exchange Telecommunications )  
Services. )

In the Matter of the Application of Fiber )  
Four Corporation d/b/a Iamo Long Distance )  
for a Certificate of Service Authority to ) Case No. TA-2000-25  
Provide Interexchange and Local Exchange ) Tariff File No. 200000047  
Telecommunications Services. )

In the Matter of the Application of Fiber )  
Four Corporation d/b/a Rock Port Long )  
Distance for a Certificate of Service ) Case No. TA-2000-27  
Authority to Provide Interexchange and ) Tariff File No. 200000046  
Local Exchange Telecommunications )  
Services. )

**STAFF'S SUGGESTIONS IN SUPPORT OF  
THE UNANIMOUS STIPULATION AND AGREEMENT**

Comes now the Staff of the Missouri Public Service Commission ("Staff") and in support  
of the Stipulation and Agreement filed in this matter states as follows:

1. On July 15, 1999, Fiber Four Corporation initiated the above-captioned cases by filing separate applications for certificates of service authority and tariffs for each of the above "doing business as" (d/b/a) fictitious names.

2. Four different basic local telecommunications carriers issued customer notices, pursuant to intraLATA Dialing Parity Plans (ILDPs) approved by the Commission in Cases Nos. TO-99-508, TO-99-509, TO-99-511 and TO-99-520, that advised that the default "1+" intrastate interexchange carrier for the customers of each basic local telecommunications carrier, on differing dates, would be one of the four different d/b/a's under which Fiber Four Corporation applied for a certificate of service authority in these above cases. The Staff recommended expedited review and the Missouri Public Service Commission ("Commission") approved the tariffs and issued, under the authority of §392.410.6, RSMo. Supp. 1999, temporary certificates of service authority effective as follows: Case No. TA-2000-23, August 30, 1999 (by consolidated case order dated 8/26/99); Case No. TA-2000-24, August 1, 1999 (by order dated 7/29/99); Case No. TA-2000-25, August 30, 1999 (by consolidated case order dated 8/26/99); and Case No. 2000-27, July 30, 1999 (by order dated 7/29/99). Pursuant to §392.410.6, RSMo. Supp. 1999, these temporary certificates of service authority may be effective for up to one year; thus, the temporary certificates expire no later than August 29, 2000 in Case No. TA-2000-23, July 31, 2000 in Case No. TA-2000-24, August 29, 2000 in Case No. TA-2000-25 and July 29, 2000 in Case No. TA-2000-27, respectively.

3. On July 30, 1999, AT&T Communications of the Southwest, Inc. (AT&T) filed in each of these cases an "Application to Intervene and Motion to Consolidate." The Commission consolidated the above cases for hearing and granted AT&T intervention, but denied AT&T's motion in all other respects.

4. In its Application to Intervene, as clarified by later filings, AT&T sought intervention and consolidation in an effort to obtain a result from the Commission in its then pending case of *In the Matter of AT&T's Tariff Filing to Introduce an IntraLATA Overlay Plan, PSC Mo. No. 15*, MoPSC Case No. TT-2000-22, that is consistent with any result Fiber Four obtains from the Commission in these cases. AT&T has taken the position that Fiber Four Corporation is a single legal entity and that granting it separate certificates of service authority under different d/b/a's with differing service rates under separate tariffs constitutes geographic de-averaging no less than the proposal AT&T made in Case No. TT-2000-22. At issue in MoPSC Case No. TT-2000-22 were tariffs filed by AT&T limited in geographic scope to Southwestern Bell Telephone Company's service area. In these cases Fiber Four Corporation is seeking separate certificates of service authority for each name under which it is doing business with separate tariffs for each such name. In paragraph 3 of each application Fiber Four Corporation represents as follows:

“Applicant proposes to resell one plus (1+) interexchange telecommunications services and associated operator and directory assistance services to business and residential customers throughout the State of Missouri. Initially, Applicant will only provide service to local exchange customers of . . . .”

This is a practice which the Commission has approved previously and which is supported by orders entered in the following cases: *In the matter of the Application of GE Capital Communications Services Corporation, d/b/a GE EXCHANGE and d/b/a GE Capital EXCHANGE, for a certificate of service authority to resell interexchange telecommunications services within the State of Missouri*, MoPSC Case No. TA-94-51; *In the matter of Midwest Fibernet Inc.'s tariffs for authority to use in Missouri the fictitious names "Consolidated Communications Long Distance" and "CallAdvantage,"* MoPSC Case No. TO-95-321; and *In the Matter of GTE Card Services Incorporated d/b/a GTE Long Distance's Tariff Revision*

*Designed to Reflect the use of the d/b/a GTE Long Distance and to Expand the Services Offered by the Company to Provide Full Service Long Distance Message Telecommunications and 800/888 Services, MoPSC Case No. TO-96-381. (Copies of these orders are attached to the Staff's filing of August 9, 1999 in these consolidated cases entitled "Staff's Response to AT&T Communications of the Southwest, Inc.'s Application to Intervene and Motion to Consolidate."*

5. The Office of the Public Counsel, in the rebuttal testimony of James A. Busch filed February 17, 2000, unequivocally has taken the position that granting of distinct certificates of service authority to the same legal entity to provide intrastate interexchange services under different aliases with differing rates in different geographic areas violates §254(g) of The Telecommunications Act of 1996 (47 USC §254(g)) and is geographic de-averaging within the meaning of that language in §392.200, RSMo. Supp. 1999, and that, this is what Fiber Four Corporation is seeking with these applications.

6. At this stage in the case Fiber Four Corporation has filed direct testimony and the other parties, including the Office of the Public Counsel, have filed rebuttal testimony. As permitted in the Commission's "Order Establishing Amended Procedural Schedule" entered March 14, 2000, in lieu of making filings pursuant to the procedural schedule stated therein, the parties filed a unanimous stipulation and agreement before 3:00 p.m. on April 28, 2000.

7. As indicated in Paragraph No. 1 of the Stipulation and Agreement, four distinct legal entities are to file separate applications for certificates of service authority, each seeking to provide on a permanent basis the same service the Commission has temporarily granted to one of the four different d/b/a's of Fiber Four Corporation in these above-captioned cases. Jointly in that application, Fiber Four Corporation is to seek authority to transfer to the co-applicant, the assets Fiber Four Corporation is using to provide that service under the temporary certificate of

service authority and is to seek cancellation of the temporary certificate of service authority and implementing tariff effective the same date the co-applicant is authorized to provide service.

8. Rock Port Telephone Company and Fiber Four Corporation have filed a joint application in the case that the Commission has assigned Case No. TA-2000-663 in carrying out the provisions of the Stipulation and Agreement entered into by the parties in these consolidated cases. That application complies with the characterization of the Stipulation and Agreement set forth in the preceding paragraph.

9. By complying with the terms of the Stipulation and Agreement, Fiber Four Corporation will eliminate any question as to whether the Commission's issuing of separate certificates of service authority and approving tariffs with different rates for different d/b/a's constitutes geographic toll de-averaging within the terms of §254(g) of The Telecommunications Act of 1996 (47 USC §254(g)) or §392.200, RSMo. Supp. 1999, thereby eliminating the only issue in this case contested by the parties.

10. One concern the Stipulation and Agreement does not resolve is what is to happen should the contemplated joint applications to be filed by Fiber Four Corporation and other legal entities not be filed and approved by the Commission before the respective certificate of temporary authority expires. This could result in customers without intrastate interexchange telecommunications service. As stated in paragraph no. 2 above, the Staff is of the view that the temporary certificates of service authority will expire, in each case, no later than the dates following: July 29, 2000 in the case of *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*, Case No. TA-2000-27; July 31, 2000 in the case of *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; August 29, 2000 in the case of 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; and August 29, 2000 in the case of 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.*

11. Again, the only joint application filed to date for compliance with the unanimous stipulation and agreement is Case No. TA-2000-663 that, if approved, will resolve Case No. TA-2000-27.

12. Because the Stipulation and Agreement requires the granting of certificates of service authority for new telecommunications providers, only one application of an anticipated four applications has been filed to transfer assets and the existing temporary certificates will expire no later than July or August of 2000, solely for the protection of customers now receiving intrastate toll service from Fiber Four Corporation under one of the above d/b/a's, the Staff, after obtaining input from the other parties, in a separate motion will propose a procedural schedule that will create an opportunity for the Commission to protect customers from loss of intrastate toll service.

WHEREFORE, Staff respectfully requests the Commission to enter its Order Approving Stipulation and Agreement approving the unanimous stipulation and agreement filed herein.

Respectfully submitted,

DANA K. JOYCE  
General Counsel



Nathan Williams  
Assistant General Counsel  
Missouri Bar No. 35512

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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 5<sup>th</sup> day of May, 2000.





Service List for  
Case No. TA-2000-23, et al.  
Revised: May 5, 2000

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