



telecommunications services. Counsel for the above applicants filed a motion to consolidate these cases on June 17, 2005. Staff is filing its Response In Support of Motion To Consolidate contemporaneously with this filing.

3. In support of its application, Se-Ma-No states in pertinent part that:

- “Applicant has not provided telecommunications service to the public”,
- “...Applicant provides unlit fiber facilities to other certificated carriers by contract with another carrier”,
- Applicant “...does not foresee, that it will provide telecommunications services to end user members of the public”, and
- Applicant “no longer desires to be certificated by the Commission, no longer desires to have to file annual reports to the Commission when it provides no telecommunications service to the public” and “no longer desires to file end user retail revenue reports with the Commission for Missouri Universal Service Fund assessment purposes when Applicant has no end user retail revenue to report.”

4. Applicant reports substantial revenue and pays assessments to the Commission from the leasing of its fiber facilities to other certificated carriers. Applicant intends to stay in the business of leasing its fiber facilities to other carriers, with or without a certificate from the Commission. The Application raises the fact questions of what activities and services are provided by Applicant in support of its offering of “unlit fiber” to other carriers and whether or not “unlit fiber” is the only telecommunications service provided by Applicant. The Application raises questions of law as to whether Commission jurisdiction is limited under Missouri statute to telecommunications services that are offered to the “public” at large and whether such “public” customers must pass an “end user” test as end-use consumers in order to invoke Commission jurisdiction over the service provider. Presently, the Commission regulates the provision of wholesale telecommunications services.

5. Section 386.020 provides the following pertinent definitions:

(51) “Telecommunications company” includes telephone corporations ...owning, operating, controlling or managing any facilities used to provide telecommunications service for hire<sup>1</sup>, sale or resale within this state;

(52) “Telecommunications facilities” includes lines, conduits, ducts, poles, wires, cables, crossarms, receivers, transmitters, instruments, machines, appliances and all devices, real estate, easements, apparatus, property and routes uses, operated, controlled or owned by any telecommunications company to facilitate the provision of telecommunications service; [and]

(53) “Telecommunications service”, the transmission of information by wire, radio, optical cable, electronic impulses, or other similar means...

Applying the above statutory definitions, Se-Ma-No is a telecommunications company that owns facilities, i.e. “unlit fiber”, used for the purpose of providing the transmission of information by optical cable. By leasing its “unlit fiber” facilities to other telecommunications companies, Se-Ma-No has allowed its lessees “to procure the temporary use of property...”<sup>2</sup> that is owned by Se-Ma-No for the purpose of providing telecommunications service under the Black’s Law Dictionary definition of “for hire”.

6. Because Applicant’s telecommunications facilities and services fall within the meaning of Missouri’s statutory definitions and because the statutes contain no limiting language as to the intended recipient of these services, whether Se-Ma-No’s customers are “end users” or certificated providers, the Staff finds no reasons to support approval of this Application. Therefore, the Staff recommends that the Commission reject Se-Ma-No’s Application to withdraw its certificates of service authority.

WHEREFORE, for the reasons stated above, the Staff recommends that the Commission issue an order setting the Application of Se-Ma-No Technologies, LLC to Withdraw and Have Canceled All Certificates of Service Authority for hearing.

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<sup>1</sup> Black’s Law Dictionary, 7<sup>th</sup> Edition, page 735, defines the verb “hire” (1) “To engage the labor or services of another for wages or other payment.” (2) “To procure the temporary use of property, usu[ally] at a set price.” (3) “To grant the temporary use of services <hire themselves out>.”

<sup>2</sup> See Black’s Law Dictionary definition of “hire” at FN 1.

Respectfully submitted,

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### **Certificate of Service**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, or transmitted by facsimile or electronic mail to all counsel of record this 20th day of June 2005.

**/s/ Robert S. Berlin**

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