

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

In the Matter of the Application of)	
Se-Ma-No Technologies, LLC, to)	
Withdraw and Have Canceled All)	Case No. XD-2005-0440, et al.
Certificates of Service Authority)	

STAFF REPLY

COMES NOW the Staff of the Missouri Public Service Commission (Staff), and for its reply to Applicants' response to Staff's recommendation, states as follows:

1. On July 13, 2005, the counsel for Applicants in the above captioned consolidated case filed their Response to Staff Recommendation (Response). In accordance with the Commission approved procedural schedule, the Staff submits its Reply.

2. In paragraph 4 of its Staff Recommendation, the Staff identified and raised the following questions of fact and law concerning the Application as submitted:

Question of Fact:

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.

Question of Law:

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.

3. Without conceding or limiting any of Staff's legal arguments, the Staff addresses the fact issue of what comprises "unlit fiber". Applicants assert in their pleadings that they provide "unlit fiber" to certificated carriers. Newton's Telecom Dictionary¹ provides the following definition of dark fiber, in pertinent part, when it defines "Lit Fiber":

"... When a carrier initially installs an optical fiber ...it's called "dark" fiber. That means he hasn't put any electronics on it, so he's not sending any light down the fiber and thus he's not transmitting any information. Usually a dark fiber is one of many dark fibers in a cable containing a great many fibers.... Sometimes dark fiber is sold or leased by a carrier without the accompanying transmission service, e.g., SNET. *The customer is expected to put his own electronics and photonics on the fiber and thus be able to make transmissions.* [emphasis added] This process is call[ed] "lighting" the fiber"

Applicants have provided no description or explanation of their services and facilities related to providing "unlit fiber". "Applicants lease unlit fiber to regulated carriers" and "Applicants have not, and do not now offer any telecommunications service to the public." (See Response, p. 1) "Applicants merely lease unlit fiber to Sho-Me." (*Id.* at p.3, para. 3)

4. The Staff contends that the law must be applied to the facts. Applicant's Response attempts a legal argument without addressing the factual issues that have been raised by the Staff.

5. The Staff asserts that there remains a fact question as to whether the particular services, and/or facilities that Applicants provide their customers are "unlit fiber". Do any of the Applicants supply or operate the electronics and photonics needed to "light" the fiber and make transmissions or is this equipment supplied and operated by other regulated carriers such as Sho-Me? An answer to these questions can be developed through the discovery and hearing processes. However, in the absence of answers to these questions and based on historical

¹ Newton's Telecom Dictionary, 18th Updated and Expanded Edition, February 2002, Harry Newton, p.433.

information, the Staff believes that Applicants are providing lit fiber according to Staff's definition (see para. 3 above).

WHEREFORE, the Staff offers its Reply in anticipation of the August 9th prehearing conference and in accordance with the Commission approved procedural schedule.

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 25th day of July 2005.

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