BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of the Application of Webster Technologies, LLC, to Withdraw and have Canceled All Certificates of Service Authority.	))))	Case No. XD-2005-0442

STAFF RECOMMENDATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its recommendation, states as follows:

1. On May 25, 2005, Webster Technologies, LLC (Webster or Applicant) filed its application requesting that the Commission cancel the company's certificates of service authority and applicable tariffs. On June 1, 2005, the Commission issued its Order Directing Filing directing Staff to file its recommendation not later than June 20, 2005. Staff is also filing its recommendation in two similar cases, XD-2005-0439 and XD-2005-0440.

2. Staff points out that Webster is one application case from a total of eight nearly identical application cases filed by attorneys Craig Johnson and Jason Paulsmeyer of Andereck, Evans, Milne, Peace & Johnson, L.L.C. These cases are:

XD-2005-0439 Laclede Technologies, LLC filed May 25, 2005
XD-2005-0442 Webster Technologies, LLC filed May 25, 2005
XD-2005-0443 Crawford Technologies, LLC filed May 25, 2005
XD-2005-0440 Se-Ma-No Technologies, LLC filed May 25, 2005
XD-2005-0444 Howell-Oregon Technologies, LLC filed May 25, 2005
XD-2005-0477 Southwest Fiber Communications, LLC filed June 7, 2005
XD-2005-0475 Gascosage Technologies, LLC filed June 7, 2005
XD-2005-0476 White River Technologies, LLC filed June 7, 2005

All of the above companies are subsidiary companies of rural electric cooperatives and all have been granted authority by the Commission to provide interexchange and local exchange 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, Webster 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[1], 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, Webster 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, Webster has allowed its lessees "to procure the temporary use of property…"[2] that is owned by Webster 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 Webster'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 Webster's Application to withdraw its certificates of service authority.

[1] Black's Law Dictionary, 7th 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>."
[2] See Black's Law Dictionary definition of "hire" at FN 1.

WHEREFORE, for the reasons stated above, the Staff recommends that the Commission issue an order setting the Application of Webster Technologies, LLC to Withdraw and Have Canceled All Certificates of Service Authority for hearing.

Respectfully submitted,

DANA K. JOYCE
General Counsel

/s/ Robert S. Berlin

Robert S. Berlin
Associate General Counsel
Missouri Bar No. 51709

Attorney for the Staff of the
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102
(573) 526-7779 (Telephone)
(573) 751-9285 (Fax)
email: bob.berlin@psc.mo.gov

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

Craig S. Johnson
Jason A. Paulsmeyer
Andereck, Evans, Milne, Peace & Johnson L.L.C.
700 East Capitol Avenue
P.O. Box 1438
Jefferson City, MO 65102
cjohnson@aempb.com
jpaulsmeyer@aempb.com

Lewis R. Mills, Jr.
Office of Public Counsel
P.O. Box 2230
200 Madison Street, Suite 650
Jefferson City, MO 65102