

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 18th
day of February, 1994.

Application of Metropolitan Fiber Systems of) CASE NO. TM-94-196
St. Louis, Inc. for approval to acquire assets.)

ORDER APPROVING ACQUISITION OF ASSETS

On December 23, 1993, Metropolitan Fiber Systems of St. Louis, Inc. (MFS-SL) filed an application pursuant to Sections 392.300 and 392.310, RSMo 1986, seeking authorization of the Commission approving the acquisition of the assets of MWR FiberCom, Inc. (MWR-FC), specifically approximately 18 miles of fiber currently used by MWR-FC in the provision of dedicated telecommunications service in St. Louis, Missouri, and the immediate vicinity.

MFS-SL is a Missouri corporation, with its principal place of business located at One Tower Lane, Suite 1600, Oakbrook Terrace, Illinois 60181. MFS-SL is a wholly-owned subsidiary of MFS Telecom, Inc. (MFS), a Delaware corporation, which in turn is a subsidiary affiliate of MFS Communications Company, Inc. (MFS-CC), also a Delaware corporation. MFS-SL was certificated by this Commission on October 2, 1992 in Case No. TA-92-126 to provide competitive private line interstate interexchange telecommunications services and competitive dedicated, nonswitched, local exchange private line telecommunications services within the State of Missouri, and is classified as a competitive telecommunications company and public utility as defined in Section 386.020, RSMo Cum. Supp. 1993. MWR-FC is a Missouri corporation with its principal place of business located at 1868 Craigshire Drive, St. Louis, Missouri 63141. MWR-FC is a wholly-owned subsidiary of MWR Telecom, Inc. (MWR), an Iowa corporation, which in turn is a wholly-owned subsidiary of Midwest Capital Group, Inc. (MCG), also an Iowa corporation. MWR-FC was certificated by this Commission

on February 10, 1993 in Case No. TA-93-36 to provide intrastate, interexchange telecommunications services and dedicated, nonswitched local exchange private line services within the State of Missouri, and is classified as a competitive telecommunications company and public utility as defined in Section 386.020, RSMo Cum. Supp. 1993.

MFS-SL states in its application that it is in the public interest for the Commission to approve the proposed transaction in that MFS-SL, combined with the resources of its parent, MFS, is technically and financially qualified to acquire the assets of MWR-SF without compromising high-quality customer service or its financial stability. In addition, MFS-SL states that the proposed transaction is a cost-effective and efficient means of acquiring network facilities with which to provide its service to customers in the St. Louis area, and consummation of the transaction will expedite the deployment of reliable, high-capacity fiber optic facilities by MFS-SL throughout St. Louis, Missouri and the immediate vicinity. Moreover, MFS-SL will be able to draw upon the substantial marketing and technical expertise of MWR-FC in addition to its own technical and marketing expertise.

Attached to the application as Exhibit C is a pro forma balance sheet for MFS-SL. Also filed with the application as Exhibit A is an Agreement Regarding Incorporation and Shareholders of Metropolitan Fiber Systems of St. Louis, Inc. (Transaction Agreement) executed by MFS Telecom, Inc. and Midwest Capital Group, Inc. dated November 15, 1993, which proposes to transfer certain assets of MWR-FC to MFS-SL. MFS-SL has requested confidential treatment of the Transaction Agreement, as it contains highly sensitive, confidential business information, and thus the Transaction Agreement has been filed separately under seal.

The assets to be acquired include all of MWR-FC's assets related to the business of offering dedicated telecommunications services in St. Louis,

Missouri and the immediate vicinity, including approximately 18 miles of ninety-six fiber count cable, running from the East St. Louis 5th and Missouri Station platform to a temporary termination near the southeastern corner of Lambert International Airport which will ultimately be extended an additional one and one-half miles to the main airport terminal, with an anticipated completion date by spring of 1994. The assets also include any and all additional construction, rights-of-way, and improvements to the network. In addition, MFS-SL may acquire MWR-FC's interests in an office lease at Craigshire Drive expiring on October 31, 1995, and included and pending agreements for easements and rights-of-way with Bi-State Development Agency, St. Louis County, the State of Missouri, the City of Maryland Heights, the City of Creve Coeur, the City of Olivette, and Malinkrodt Chemical.

Currently MFS owns 1,000 shares of outstanding common stock of MFS-SL. The Transaction Agreement contemplates that MFS-SL will issue 9,000 additional shares of common stock, with MCG acquiring 2,000 shares of common stock for \$2,000 in cash, and MFS acquiring 7,000 shares of common stock for \$7,000 in cash. MCG will thus acquire a 20 percent ownership interest in MFS-SL, while the addition of 7,000 shares to its current 1,000 shares will give MFS an 80 percent ownership interest in MFS-SL. In addition, the Transaction Agreement also contemplates that MCG will subscribe and pay for 1,381,609 shares of MFS-SL preferred stock by transferring and assigning to MFS-SL the MWR-FC assets, and that MFS-SL will pay to MWR-FC an amount equal to the actual hard costs incurred by MWR-FC since June 30, 1993 in acquiring, constructing, and installing its fiber network. The Transaction Agreement also includes an election clause, which provides that in the event the transaction is not closed by the 120th day after the signing of the Transaction Agreement, MCG may elect to either sell all of the MWR-FC assets to MFS-SL for a cash price, or terminate the Transaction Agreement

in its entirety. For this reason, MFS-SL asks that the Commission's approval be broad enough to encompass either scenario.

On February 16, 1994, the Commission's Staff filed a memorandum recommending approval of the application. Staff indicated that it had reviewed the application of MFS-SL to acquire the assets of MWR-FC, and has no objection to the transaction. The Staff also indicated that it has no objection to the request for expedited treatment, made by motion of MFS-SL on January 19, 1994.

Upon review of the verified application and exhibits, and Staff's recommendation, the Commission finds that MFS-SL is technically and financially qualified to acquire the assets of MWR-FC, that the proposed sale transaction is an acceptable method of acquiring network facilities, and that the proposed acquisition of MWR-FC's assets by MFS-SL is not detrimental to the public interest. The Commission also finds that the application should be granted expedited treatment, as the parties expect to close on March 1, 1994, and the Transaction Agreement contains provisions which are time-sensitive, such as the election clause.

IT IS THEREFORE ORDERED:

1. That the acquisition of the assets of MWR FiberCom, Inc. by Metropolitan Fiber Systems of St. Louis, Inc. in accordance with the Agreement Regarding Incorporation and Shareholders of Metropolitan Fiber Systems of St. Louis, Inc. executed by MFS Telecom, Inc. and Midwest Capital Group, Inc. filed as Exhibit A with the application be and is hereby approved.

2. That the aforesaid approval of the Commission encompasses either the election of a cash sale, or the original proposed sale of common and preferred stock, and payment of hard costs.


3. That Metropolitan Fiber Systems of St. Louis, Inc., MFS Telecom, Inc., MCF Communications Company, Inc., MWR FiberCom, Inc., MFS Telecom, Inc., and Midwest Capital Group, Inc. be hereby authorized to take any and all other

actions necessary to effectuate the transaction contemplated by the application and this Order.

4. That the applicaion of Metropolitan Fiber Systems of St. Louis, Inc. be and is hereby granted expedited treatment.

5. That this Order shall become effective on February 28, 1994.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Mueller, Chm., McClure and
Kincheloe, CC., Concur.
Perkins and Crumpton, CC.,
Absent.