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August 11, 1999

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65101

FILED

AUG 11 1999

Missouri Public
Service Commission

Re: Case No. TA-2000-23

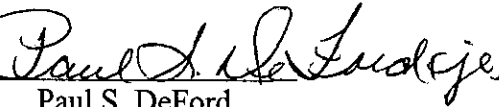
Dear Judge Roberts:

Attached for filing with the Commission is the original and fifteen (15) copies of AT&T Communications of the Southwest Inc's Reply to the Responses of Fiber Four and Staff in the above referenced matter.

I thank you in advance for your cooperation in bringing this to the attention of the Commission.

Very truly yours,

LATHROP & GAGE, L.C.

By: 
Paul S. DeFord

Attachment

cc: All parties of record

BEFORE THE MISSOURI PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

AUG 11 1999

Missouri Public
Service Commission

In the Matter of the application of)
Fiber Four Corporation)
d/b/a KLM Long Distance for a certificate of) Case No. TA-2000-23
service authority to provide interexchange and)
local exchange telecommunications services.)

REPLY TO THE RESPONSES OF FIBER FOUR AND STAFF

COMES NOW AT&T Communications of the Southwest, Inc. ("AT&T") and for its Reply to Fiber Four and Staff states as follows:

1. On July 30, 1999, AT&T filed Applications to Intervene in Fiber Four's Applications for Certificates of Service Authority and its attendant tariff filings. Therein AT&T pointed out that Fiber Four's filings would put in place a rate structure identical to that proposed by AT&T's "intraLATA overlay plan" tariff which has been suspended by the Commission. While AT&T did not oppose Fiber Four's Applications and tariffs it requested that these related cases be consolidated for processing.

2. On August 9, 1999, Fiber Four and the Commission Staff filed responses to AT&T's Applications to Intervene. Fiber Four and, to some extent, Staff have attempted to distinguish Fiber Four's Applications and tariffs from AT&T's proposed overlay tariff. They have also attempted to challenge AT&T's standing to intervene in these proceedings.

3. Fiber Four alleges that it seeks certificates of service authority in four separate and distinct service areas under four separate and distinct fictitious names. It further alleges that it does not purport to serve the entire state of Missouri. A cursory review of the Fiber Four Applications reveals that the only accurate part of these allegations are that Fiber Four has requested the issuance of four certificates of service authority under four different fictitious names. Each Application clearly requests authority to provide interexchange service on a statewide basis.

4. A more detailed review reveals that in Case No. TA-2000-23, Fiber Four Corporation d/b/a KLM Long Distance seeks a Certificate of Service Authority to provide interexchange and local exchange telecommunications throughout the entire state of Missouri. In this case, Fiber Four Corporation seeks to limit the availability of its services to the ILEC exchanges of KLM Telephone Company via its proposed tariff. According to the proposed tariff, "The Company's service will initially be offered only to the local exchange customers of its affiliate, KLM Telephone Company, in the exchanges of Deerfield, Rich Hill, Metz, and Richards."¹

Also according to the proposed tariff, Fiber Four Corporation d/b/a KLM Long Distance will offer an "Option 1" toll calling plan that provides intraLATA and interLATA toll for 15 cents per minute with a \$4.95 monthly charge. The company also proposes an "Option 2" to charge per minute rates ranging from 8 cents per minute to 46 cents per minute depending upon the distance. Option 2 also provides discounts of up to 35% depending upon the time of day.

5. Similarly in Case No. TA-2000-24, Fiber Four Corporation d/b/a Holway Long Distance seeks a Certificate of Service Authority to provide interexchange and local exchange

¹ Fiber Four Corporation d/b/a KLM Long Distance, Intrastate Long Distance Message Telecommunications Service, P.S.. Mo. No. 3, Original Sheet 6.

telecommunications throughout the entire state of Missouri. In this case, Fiber Four Corporation seeks to limit the availability of its services to the ILEC exchanges of Holway Telephone Company via its tariff. According to the proposed tariff, "The Company's service will initially be offered only to the local exchange customers of its affiliate, Holway Telephone Company, in the exchanges of Maitland and Skidmore."²

Also according to the proposed tariff, Fiber Four Corporation d/b/a Holway Long Distance will offer an "Option 1" toll calling plan that provides intraLATA and interLATA toll for 15 per minute with a \$4.95 monthly charge. The company also proposes an "Option 2" to charge per minute rates ranging from 9 cents per minute to 58 cents per minute depending upon the distance. Option 2 also provides discounts of up to 35% depending upon the time of day.

6. In Case No. TA-2000-25, Fiber Four Corporation d/b/a Iamo Long Distance seeks a Certificate of Service Authority to provide interexchange and local exchange telecommunications throughout the entire state of Missouri. In this case, Fiber Four Corporation seeks to limit the availability of its services to the ILEC exchanges of Iamo Telephone Company via its tariff. According to the proposed tariff, "The Company's service will initially be offered only to the local exchange customers of its affiliate, Iamo Telephone Company, in the exchanges of Westboro, Elmo, Clearmont, and Burlington Junction."³

Also according to the proposed tariff, Fiber Four Corporation d/b/a Iamo Long Distance will offer an "Option 1" toll calling plan that provides intraLATA and interLATA toll for 15¢ per minute with a \$4.95 monthly charge. The company also proposes an "Option 2" to charge per minute rates

² Fiber Four Corporation d/b/a Holway Long Distance, Intrastate Long Distance Message Telecommunications Service, P.S.C. Mo. No. 3, Original Sheet 6.

³ Fiber Four Corporation d/b/a Rock Port Long Distance, Intrastate Long Distance Message

ranging from 9¢ per minute to 58¢ per minute depending upon the distance. Option 2 also provides discounts of up to 35% depending upon the time of day.

7. Finally in Case No. TA-2000-27, Fiber Four Corporation d/b/a Rock Port Long Distance seeks a Certificate of Service Authority to provide interexchange and local exchange telecommunications throughout the entire state of Missouri. In this case, Fiber Four Corporation seeks to limit the availability of its services to the ILEC exchanges of Rock Port Telephone Company via its tariff. According to the proposed tariff, "The Company's service will initially be offered only to the local exchange customers of its affiliate, Iamo Telephone Company, in the exchanges of Rock Port, Watson, and South Hamburg."⁴

Also according to the proposed tariff, Fiber Four Corporation d/b/a Rock Port Long Distance will offer an "Option 1" toll calling plan that provides intraLATA and interLATA toll for 15¢ per minute with a no monthly charge. "Option 1" also provides discounts of up to 20% depending the volume of calls.

8. It is readily apparent that, if granted, these four applications would give one corporation, Fiber Four Corporation, a total of five statewide certificates of service authority to provide interexchange services. Under the proposed tariffs, the same corporation, Fiber Four, will be charging at least four different rates for 1+ intraLATA and interLATA interexchange service in different geographic areas defined by the service area of the respective ILEC. This obviously

Telecommunications Service, P.S.C. Mo. No. 3, Original Sheet 6.

⁴ Fiber Four Corporation d/b/a Iamo Long Distance, Intrastate Long Distance Message Telecommunications Service, P.S.C. Mo. No. 3, Original Sheet 6.

constitutes geographic deaveraging and raises the same issues that are before the Commission in Case No. TT-2000-22, AT&T's "intraLATA overlay plan."⁵

9. Fiber Four's attempt to distinguish its Applications and tariffs based upon the fact that four separate fictitious names will be utilized to offer interexchange service at different rates in different geographic areas is ludicrous. It is without question that the use, by a corporation, of the designation "d/b/a" which means "doing business as" is merely descriptive of a corporation doing business under another name and does not create an entity distinct from the corporation operating the business or relieve it of liability for all of its obligations. Duval v. Midwest Auto City, Inc. 425 F.Supp 1381, (Neb. 1977), *aff'd*, 578 F.2d 721 (8th Cir. 1978). Thus the use of fictitious names does nothing to shield Fiber Four from the application of the relevant statutes.

10. Again, AT&T emphasizes that it does not oppose approval of the Applications or the accompanying tariffs. However, because the effect of the proposed tariffs is to put in place a rate structure identical to that proposed to AT&T's "intraLATA overlay plan" tariff, which has been suspended by the Commission, it is AT&T's position that these cases must be treated and processed in the same manner by the Commission. To do otherwise would constitute blatant and unjust discrimination.

11. Finally AT&T reiterates that as a provider of telecommunication services, AT&T interests are different from that of the public generally and no other party to this case can adequately project those interests. Moreover, as Fiber Four's Response admits, AT&T is currently a competitor of Fiber Four, which is a status that differs from that of the general public. Despite Fiber Four's

⁵ In Case No. TT-2000-22 AT&T, a single corporate entity, proposes to charge different rates for 1+ intraLATA for interexchange service in different geographic areas based upon service area of the respective ILEC.

continuation of its ILEC affiliates' campaign to mislead the Commission, AT&T is not attempting *at this time* to exit the subject markets, and Fiber Four can point to no facts that support those allegations levied in its Response. AT&T *is* seeking to shed itself of the statewide carrier of last resort obligation for interLATA service; AT&T *is* seeking the authority to deaverage its toll rates (just like Fiber Four), and AT&T has chosen not to provide 1+ intraLATA service in some ILEC territories where AT&T *still* provides intraLATA dial around service. None of these actions or proposed actions is the equivalent of "seeking to exit" the subject markets. Fiber Four's allegations of "sour grapes" as AT&T's motivation for intervention is nothing but sheer hypocrisy on the part of Fiber Four, who has so boldly sought the same relief, albeit through a superficial legal fiction, that its ILEC affiliates have opposed for AT&T. Finally, as if AT&T's justiciable interests in these proceedings were not patently obvious, AT&T's intervention in this proceeding is in the public interest because of its interest in enhancing competition and because of its expertise in the telecommunications industry.

WHEREFORE, AT&T respectfully requests the Commission enter its Order granting AT&T's Application to Intervene and consolidating these cases with Case No. TT-2000-22.

Respectfully submitted,

LATHROP & GAGE L.C.



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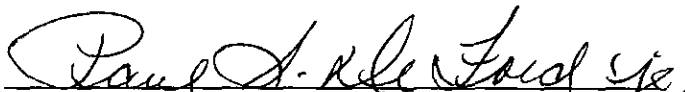
CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing was served upon the following persons by depositing a true copy thereof in the United States mail, postage prepaid, this 11th day of August, 1999.

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