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August 9, 1999

**FILED**

**AUG 09 1999**

**Missouri Public  
Service Commission**

Mr. Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P. O. Box 360  
Jefferson City, Missouri 65102

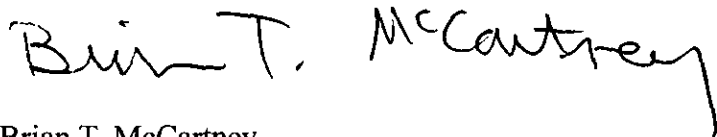
Re: Case No. TA-2000-23 et al.

Dear Mr. Roberts:

Enclosed for filing please find an original and fourteen (14) copies of the Response of Fiber Four Corporation in above-referenced matter.

I would appreciate it if you would bring this filing to the attention of the appropriate Commission personnel. Copies of the attached are being provided to parties of record. I thank you in advance for your cooperation in this matter.

Sincerely,



Brian T. McCartney

BTM/da  
Enclosure  
cc: Parties of Record

**FILED**

AUG 09 1999

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

**Missouri Public  
Service Commission**

In the Matter of the Application of Fiber Four Corporation ) d/b/a KLM Long Distance for a Certificate of Service ) Authority to Provide Interexchange and Local ) Telecommunications Service in Missouri )	Case No. TA-2000-023
In the Matter of the Revised Tariff Filing of Fiber Four ) Corporation d/b/a Holway Long Distance )	Case No. TA-2000-024
In the Matter of the Revised Tariff Filing of Fiber Four ) Corporation d/b/a IAMO Long Distance )	Case No. TA-2000-025
In the Matter of the Application of Fiber Four Corporation ) d/b/a Rock Port Long Distance for a Certificate of Service ) Authority to Provide Interexchange and Local ) Telecommunications Service in Missouri )	Case No. TA-2000-027

**RESPONSE OF FIBER FOUR CORPORATION**

Comes now Fiber Four Corporation ("Fiber Four") and for its Response to AT&T Communications of the Southwest, Inc.'s ("AT&T") Application to Intervene and Motion to Consolidate states to the Missouri Public Service Commission ("Commission") as follows:

1. On June 10, 1999, the Commission issued a Report and Order in Case No. TO-99-254<sup>1</sup> which terminated the Primary Toll Carrier ("PTC") plan and established guidelines for the implementation of intraLATA dialing parity ("ILDLP"). The Commission also approved the ILDP plans of Holway Telephone Company, IAMO Telephone Company, KLM Telephone Company, and Rock Port Telephone Company.<sup>2</sup> Under these ILDP plans, those customers who

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<sup>1</sup> *In the Matter of an Investigation Concerning the Primary Toll Carrier Plan and IntraLATA Dialing Parity.*

<sup>2</sup> Orders approving the ILDP implementation plans were also issued by the Commission on June 10, 1999 in Case Nos. TO-99-508, TO-99-509, TO-99-511, and TO-99-520 respectively.

do not make an affirmative choice of an intraLATA toll provider will be assigned to a toll provider which is an affiliate of the customers' local exchange company. Accordingly, Fiber Four Corporation filed applications for certificate of service authority to provide interexchange and local exchange telecommunications services under four separate fictitious names on July 15, 1999.

2. In order to comply with the Commission's orders terminating the Primary Toll Carrier plan and implementing ILDP, Fiber Four seeks to do business: (a) under four separate fictitious names; (b) under four separate certificates of service authority; (c) under four separate sets of long distance tariffs; and (d) within four separate and discrete service areas. This will result in the establishment of four separate business organizations associated with the four discrete service areas served by the corresponding local exchange companies. For example, Fiber Four d/b/a Rock Port Long Distance ("Rock Port L.D.") will provide long distance service to customers in those exchanges served by Rock Port Telephone Company. All of Rock Port L.D.'s service offerings will be universally available to customers within the exchanges served by Rock Port Telephone Company. This would also be true for the other three fictitious names.

3. On July 30, 1999, AT&T filed Applications to Intervene in Fiber Four's tariff filings. Each of AT&T's pleadings plainly state that "**AT&T does not oppose approval of the applications or the accompanying tariffs.**" (emphasis supplied) However, AT&T claims that Fiber Four's applications and their accompanying tariffs are similar to AT&T's proposed "intraLATA toll overlay plan" tariff which was suspended by the Commission in Case No. TT-

2000-22.<sup>3</sup> On August 3, 1999, the Commission issued its Order Consolidating Cases and Directing Answer. Accordingly, Fiber Four now files this Answer and states that **Fiber Four's applications for certificate of service authority and tariff filings are clearly distinguishable from AT&T's intraLATA toll overlay plan** for the reasons set forth below:

A. Standing. AT&T does not oppose Fiber Four's applications or the accompanying tariffs. Moreover, AT&T is not now (nor does it propose to be) a customer of Fiber Four's competitively classified services. Rather, AT&T is, at best, merely a competitor *at this time*. Ironically, AT&T is currently seeking to exit these very markets, and if AT&T successfully abandons these markets, then AT&T will not even be a competitor. These facts call into question AT&T's standing to intervene, as well as AT&T's true motivation. AT&T's applications to intervene appear to be motivated primarily by "sour grapes" because the affiliates of Fiber Four intervened in AT&T's "intraLATA overlay" tariff filing. Thus, it is highly questionable whether AT&T has made the requisite showing of standing to intervene under the Commission's rules.<sup>4</sup>

B. Certificate of Service Authority and Tariffs. Fiber Four seeks certificates of service authority in four separate and distinct service areas under four separate and distinct fictitious names. Fiber Four does not purport to serve the entire state of Missouri. AT&T, on the other hand, currently has a certificate of service authority and tariffs which purport to provide

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<sup>3</sup> "The effect of the proposed tariffs is to put in place a rate structure identical to that proposed to [sic] AT&T's "intraLATA overlay plan" tariff which has been suspended by the Commission. . . . To the extent applicant's proposed tariffs are similar, if not identical, in principal [sic] to AT&T's proposed tariffs, it is AT&T's position that they must be treated and processed in the same manner by the Commission."

<sup>4</sup> See 4 CSR 240-2.075(4)

interexchange service throughout the state of Missouri (limited only by the phrase "where facilities are available"). AT&T is the dominant interexchange carrier ("IXC") in the state of Missouri, and it has Carrier of Last Resort ("COLR") responsibility under Missouri statutes.<sup>5</sup> Until recently, AT&T was honoring this statewide role.<sup>6</sup>

This is the first major difference between Fiber Four's tariff filings and AT&T's proposed intraLATA overlay plan. *Fiber Four will offer service to all customers in the exchanges where it seeks certificates* under the same tariff terms, conditions, and rates. Conversely, the effect of AT&T's intraLATA toll overlay plan will be that AT&T would provide its proposed service *only in a part of the area where it has certificates and tariffs in place*. As explained in the STCG's pleadings in Case No. TO-2000-22, this violates the Federal Telecommunications Act of 1996 and the FCC's rate averaging order in Case No. FCC-96-331.<sup>7</sup>

C. Improper Procedure. Fiber Four seeks to provide service in four distinct areas pursuant to appropriate statutes and prior Commission precedent. On the other hand, AT&T has a certificate of service authority and tariffs in place to provide service throughout the entire state of Missouri, yet it seeks to offer service only in certain areas of the state through its intraLATA toll overlay plan. AT&T has followed a different and improper procedure to accomplish its

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<sup>5</sup> AT&T was authorized by the Commission to provide interexchange telecommunications service within the state of Missouri on January 1, 1984. Thus, AT&T has COLR responsibility under § 392.460 RSMo 1994.

<sup>6</sup> On June 25, 1999, AT&T filed a request to terminate its COLR responsibility.

<sup>7</sup> Moreover, Missouri law requires that AT&T show *by clear and convincing evidence* that deaveraged rates are reasonably necessary to promote the public interest and the purposes and policies of Chapter 392 of Missouri's Revised Statutes.

objective. In fact, AT&T proceeded backwards. AT&T should have first sought to be relieved of its COLR responsibility. Then, assuming AT&T can be relieved of its COLR obligations, AT&T should have sought to terminate its statewide certificate of service authority and establish certificates of service authority in those exchanges where AT&T wishes to provide service. Alternatively, AT&T could create separate and distinct business entities or divisions, seek to obtain separate certificates of service authority, and establish separate service areas (as Fiber Four has appropriately done). However, AT&T should not seek to foist its own procedural missteps on Fiber Four when Fiber Four has followed the established and proper procedure in filing its applications for certificates of service authority and tariffs.

4. Temporary Authority. Fiber Four is a relatively new IXC seeking to provide service in four separate areas and fill a void created by the elimination of the PTC plan and, now, the apparent abandonment by AT&T of the small companies' rural markets. Fiber Four d/b/a Holway Long Distance ("Holway L.D.") and Rock Port L.D. have already been granted temporary certificates by the Commission, and their accompanying tariffs have also been approved on a temporary basis.<sup>8</sup> In these cases, the Commission found that good cause existed to grant Fiber Four temporary certificates of service authority. Specifically, the Commission observed that temporary certificates would assure the maintenance of adequate service to customers and ensure the implementation of ILDP while continuing "1+" toll service to customers.

Fiber Four's certificates and tariffs are entirely different from AT&T's certificate of

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<sup>8</sup> See Case Nos. TA-2000-24 and TA-2000-27.

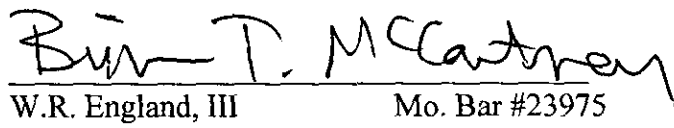
service authority and AT&T's statewide tariffs. Therefore, it would make no sense to suspend Fiber Four's remaining tariffs for Fiber Four d/b/a IAMO Long Distance ("IAMO L.D.") and Fiber Four d/b/a KLM Long Distance ("KLM L.D.") pending the resolution of the case examining AT&T's intraLATA toll overlay plan. However, if the Commission does determine that Fiber Four's certificates and tariffs do require further examination, then the Commission should, at the very least, grant temporary certificates to IAMO L.D. and KLM L.D. so that customers in the corresponding exchanges may have Fiber Four as a choice once ILDP is implemented and the PTC exits those markets.<sup>9</sup>

WHEREFORE, because Fiber Four has complied with the established and proper procedure in filing its applications for certificates of service authority and tariffs and because Fiber Four's tariff filings are clearly distinguishable from AT&T's proposed intraLATA toll overlay plan, Fiber Four respectfully requests that the Commission issue an Order: (1) denying AT&T's application to intervene; (2) approving Fiber Four's tariffs and applications for certificates of service authority; and (3) for such other orders as are reasonable under the circumstances.

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<sup>9</sup> Under the Commission's orders, the PTC plan will terminate on August 20, 1999 in IAMO's exchanges and on September 16, 1999 in KLM's exchanges.

Respectfully submitted,



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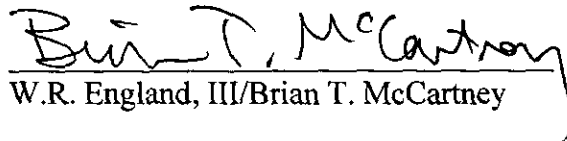
Certificate of Service

I hereby certify that a true and correct copy of the above and foregoing document was mailed or hand-delivered, this 9<sup>th</sup> day of August, 1999, to:

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