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Sponsoring Party: AT&T Communications of
the Southwest, Inc.

Case No: TA-2000-23; TA-2000-24
TA-2000-25; TA-2000-27
(Consolidated)

**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 exchange telecommunications services.**

**In the Matter of the application of Fiber Four Corporation d/b/a Holway Long
Distance for a certificate of service authority to provide interexchange and
local exchange telecommunications services.**

**In the Matter of the application of Fiber Four Corporation d/b/a Iamo Long
Distance for a certificate of service authority to provide interexchange and
local exchange telecommunications services.**

**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 exchange telecommunications services.**

REBUTTAL
TESTIMONY

OF

R. Matthew Kohly

Jefferson City, Missouri
February 17, 2000

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

**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.)**

**In the Matter of the application of)
Fiber Four Corporation)
d/b/a Holway Long Distance for a certificate of) Case No. TA-2000-24
service authority to provide interexchange and)
local exchange telecommunications services.)**

**In the Matter of the application of)
Fiber Four Corporation)
d/b/a Iamo Long Distance for a certificate of) Case No. TA-2000-25
service authority to provide interexchange and)
local exchange telecommunications services.)**

**In the Matter of the application of)
Fiber Four Corporation)
d/b/a KLM Long Distance for a certificate of) Case No. TA-2000-27
service authority to provide interexchange and)
local exchange telecommunications services.)**

(Consolidated)

AFFIDAVIT OF R. MATTHEW KOHLY

STATE OF MISSOURI)

COUNTY OF COLE)

I, R. Matthew Kohly, of lawful age, being first duly sworn deposes and states:

1. My name is R. Matthew Kohly. I am a Manager for AT&T Communications of the Southwest, Inc. in its Law and Government Affairs organization.
2. Attached hereto and made a part hereof for all purposes is my Rebuttal Testimony.

3. I hereby swear and affirm that my answers contained in the attached testimony to the questions therein propounded are true and correct to the best of my knowledge and belief.



R. Matthew Kohly

Subscribed and sworn to this 17th day of February, 2000



Notary Public

My Commission Expires



AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.
REBUTTAL TESTIMONY
OF
R. MATTHEW KOHLY

CASE NO. TA-2000-23; TA-2000-24; TA-2000-25; TA-2000-27
(CONSOLIDATED)

1 **Q. PLEASE STATE YOUR NAME AND ADDRESS.**

2 A. My name is R. Matthew Kohly. My business address is 101 West McCarty
3 Street, Jefferson City, Missouri 65101.

4 **Q. HOW ARE YOU EMPLOYED?**

5 A. I am employed by AT&T in its Law and Government Affairs organization as
6 Regulatory Manager – Government Affairs. In this position I am responsible for
7 assisting in the development and implementation of AT&T's regulatory activities in
8 Missouri.

9 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

10 A. I have completed a Master of Science in Agricultural Economics from the
11 University of Missouri as well as a Bachelor of Science in Business Administration also
12 from the University of Missouri.

13 **Q. WHAT IS YOUR PRIOR WORK EXPERIENCE?**

14 A. Prior to joining AT&T, I was employed by Sprint Communications Company L.P.
15 as a Manager, State Regulatory Affairs. My responsibilities included the development of
16 Sprint's regulatory policy focusing on issues surrounding competitive market entry such
17 as TELRIC costing of unbundled network elements, universal service, access charges,
18 and Section 271 proceedings.

19 Before that, I was employed at the Missouri Public Service Commission as a
20 Regulatory Economist in the Telecommunications Department and, later, on the

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1 Commission's Advisory Staff. While in the Telecommunications Department, I assisted
2 in developing Staff's position on issues related to costing, local interconnection and
3 resale, universal service and tariff issues. While serving on the Advisory Staff, I advised
4 the Commission on economic and competitive issues in the telecommunications industry
5 and assisted in the preparation of orders and opinions. Also, while employed at the
6 Commission, I participated on the Commission's Arbitration Advisory Staff assigned to
7 mediation and arbitration proceedings filed pursuant to the 1996 Federal
8 Telecommunications Act ("TA 96"). As part of the arbitration proceedings, I developed
9 an interconnection costing methodology and reviewed and recommended modifications
10 to the cost studies used to set permanent unbundled network elements in Missouri.

11 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY?**

12 A. I have filed written testimony and/or testified before the Missouri Public Service
13 Commission, Montana Public Service Commission, Oklahoma Corporation Commission
14 and the Telecommunications Regulatory Board of Puerto Rico.

15 **Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS**
16 **PROCEEDING?**

17
18 A. The purpose of my rebuttal testimony is to provide AT&T Communications of the
19 Southwest's (AT&T) position regarding the applications for certificates of service
20 authority and the accompanying tariffs of Fiber Four Corporation (F4). The
21 interexchange rates currently charged by F4 are deaveraged. The use of four separate
22 fictitious names does nothing to change that fact. One corporate entity is currently
23 charging different rates for interexchange services in different ILEC exchanges.

24 Recently, in Case No. TO-2000-22, AT&T proposed an optional calling plan called
25 the "Overlay" plan that would be available only in the exchanges served by SWBT. The
26 four incumbent local exchange companies (ILEC) affiliated with F4 opposed that tariff

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1 on the grounds that it constituted geographic deaveraging and, therefore, was unlawful.
2 AT&T believes that if the same standard regarding geographic deaveraging that was
3 advanced by F4's ILEC affiliates in Case No. TT-2000-22 were applied to F4's rate
4 scheme, the rates charged by F4 would also constitute geographic deaveraging. While
5 AT&T does not agree that the standard advanced by F4's ILEC affiliates in Case No. TT-
6 2000-22 is correct, AT&T does believe that the same standard for deaveraging
7 interexchange rates should apply equally to all carriers. The ILEC owners of F4 are
8 attempting to apply one standard to AT&T and a less stringent standard upon F4. There
9 is simply no basis for this disparate treatment. It is, at best, disingenuous for one group
10 of companies oppose a tariff filing on the grounds that it is unlawful while, at the same
11 time, proposing to do the very same thing. AT&T's goal in this case is to ensure that sure
12 the same standard regarding deaveraging applies equally to AT&T and to F4.

13 **Q. CAN YOU BRIEFLY DESCRIBE THE STRUCTURE OF F4 CORPORATION?**

14
15 **A.** Yes. F4 is currently an affiliate of four ILECs. Those four ILECs are Holway
16 Telephone Company (Holway), IAMO Telephone Company (IAMO), KLM Telephone
17 Company (KLM), and Rockport Telephone Company (Rockport). F4 obtained its first
18 interexchange and non-basic local exchange certificate in Case No. TA-96-376. That
19 certificate gave F4 the authority to operate throughout the entire state of Missouri. Since
20 then, F4 has been granted four additional temporary certificates of service authority to
21 provide interexchange services on a statewide basis and has had four tariffs approved.
22 Those tariffs became effective on July 31, 1999 and F4 is currently operating under those
23 approved tariffs.

24 **Q. WHY DID F4 SEEK FOUR ADDITIONAL STATEWIDE CERTIFICATES OF**
25 **SERVICE AUTHORITY TO PROVIDE INTEREXCHANGE SERVICES?**

26

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1 **A.** F4 apparently made the business decision to operate under multiple fictitious
2 names in Missouri. In Case No. TA-95-321, the Commission found "that it is not in the
3 public interest to allow interexchange companies to provide service under more than one
4 name in Missouri without granting an additional certificate."¹ The Commission's stated
5 rationale for imposing this requirement was to "be able to ascertain what companies are
6 operating in Missouri and under what names so that customer complaints can be
7 answered."² This indicates that separate certificates and tariffs were required for
8 administrative and consumer protection purposes and not because the Commission
9 sought to recognize separate fictitious names as separate entities. Since this Order was
10 issued, companies electing to operate under multiple fictitious names have generally
11 obtained a separate certificate and filed a separate tariff for each fictitious name.

12 Consistent with this practice, F4 sought a separate statewide certificate of service
13 authority for each of the fictitious names and submitted four proposed tariffs.
14 Specifically F4 sought four separate statewide certificates to operate under the following
15 fictitious names; Holway Long Distance, IAMO Long Distance, KLM Long Distance,
16 and Rock Port Long Distance. It is important to remember that even though F4 has four
17 temporary certificates and four separate tariffs under four fictitious names, F4 is still a
18 single corporate entity.

19 **Q. WHAT INTEREXCHANGE SERVICES DOES F4 OFFER?**

20 **A.** As previously indicated, F4 filed a separate tariff for each of its fictitious names.
21 Each tariff limits the serving area for each fictitious entity to the exchanges of a single
22 ILEC affiliate. For example, F4 d/b/a Holway Long Distance limits its services to the

¹ Case No. TO-95-321, *In the matter of Midwest Fibernet Inc's tariffs for authority to use in Missouri the fictitious names "Consolidated Communications Long Distance" and "Call Advantage"*, Order Suspending Tariffs and Addressing Operation of Interexchange Companies Under Fictitious Names, May 30, 1995, page 1.

² *Ibid.*, page 2.

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1 exchanges served by Holway Telephone Company while F4 d/b/a Rock Port Long
2 Distance limits its services to the exchanges served by Rock Port Telephone Company.
3 In total, F4 proposes to offer interexchange toll services in the exchanges served by its
4 four corporate affiliates; Holway Telephone Company, IAMO Telephone Company,
5 KLM Telephone Company, and Rock Port Telephone Company.

6 Throughout its serving territory, F4 offers an IntraLATA-only offering called
7 "Option 1" and an IntraLATA and InterLATA offering called "Option 2". F4 charges
8 different rates for each of these options that depend upon which underlying ILEC is
9 involved. The following tables identify selected rates charged by F4 in each of the
10 different ILECs exchanges where it operates.

11

Underlying ILEC	Monthly Charge	Per Minute*
Holway	\$4.95	15¢
IAMO	\$4.95	15¢
KLM	\$4.95	15¢
Rock Port	n/a	15¢

Underlying ILEC	Minimum Monthly Charge	First Minute*	Additional Minute*
Holway		9¢ - 58¢	9¢ - 44¢
IAMO	\$4.95	9¢ - 58¢	9¢ - 44¢
KLM		10¢ - 46¢	8¢ - 35¢
Rock Port		n/a	n/a

* Per minutes rates vary depending upon the mileage of the call.

12
13 These tables clearly demonstrate that F4 is charging different rates for
14 intraLATA and interLATA toll services in different ILEC territories. This, under the
15 standard advanced by the F4 ILECs in Case No. TT-2000-22, constitutes the geographic
16 deaveraging of interexchange toll rates.

1 **Q. DOES AT&T OPPOSE F4's RATE SCHEME?**

2 A. As long as the same standard regarding a carrier's ability to limit the availability
3 of optional calling plans is applied to all carriers, AT&T does not oppose F4's rate
4 scheme. If the Commission continues to allow F4 to charge different rates depending
5 upon the customer's underlying ILEC, AT&T as well as other carriers, must be allowed
6 the same opportunity. It would be discriminatory to allow F4 to limit the availability of
7 optional calling plans while prohibiting AT&T and others from doing the same thing.

8 **Q. IF AT&T IS NOT NECESSARILY OPPOSED TO F4'S RATE SCHEME, WHY IS**
9 **AT&T PARTICIPATING IN THIS CASE?**

10
11 A. AT&T's concern is to make sure the same standard that is applied to F4 is
12 applied to AT&T. Given the position taken by the four ILEC affiliates of F4 in Case No.
13 TT-2000-22, it is clear that those companies are attempting to have a different standard
14 imposed upon AT&T than they want to have applied to their affiliate, F4. AT&T
15 believes this is pure hypocrisy and should not be allowed.

16 In Case No. TO-2000-22, AT&T proposed an optional calling plan called the
17 "Overlay" plan. AT&T proposed to make this optional calling plan available only in the
18 exchanges served by Southwestern Bell Telephone (SWBT) because of the access
19 differential that exists in Missouri. The Small Telephone Company Group (STCG)
20 opposed AT&T's proposed filing on the grounds that it constituted geographic
21 deaveraging and was prohibited by state and federal statutes. F4's corporate ILEC
22 affiliates are members of the STCG and participated in Case No. TT-2000-22. Even
23 while Holway, Iamo, KLM, and Rock Port opposed AT&T's proposed Overlay filing,
24 these four ILECs sought to achieve similar results through their own corporate affiliate; F4.
25 I understand that F4 thinks that because it has used fictitious names it is technically not
26 engaging in geographic deaveraging, but I believe, F4's attempted use of such a technical

1 loophole is sheer hypocrisy. Loophole or not, F4 is offering different toll rates in
2 different ILEC territories. This is simply a case of one group of companies "gaming" the
3 regulatory system to allow their IXC affiliate to deaverage toll rates while opposing
4 AT&T's attempts to limit the geographic availability of an optional calling plan. These
5 conflicting actions should certainly cause the Commission to question the rationale
6 behind the STCG's opposition to AT&T's proposed "Overlay" filing.

7 AT&T believes the Commission has already allowed both ILECs and IXCs to
8 deaverage interexchange toll rates. However, because of objections raised by STCG and
9 other parties, this issue was raised in Case No. TT-2000-22. Regardless of what decision
10 the Commission makes regarding a carrier's ability to limit the geographic availability of
11 calling plans, the same standard must apply equally to all carriers. Whether the carrier is
12 a small or large IXC, an IXC affiliate of an ILEC, or even an ILEC, there is no statutory
13 or regulatory basis to allow some carriers to deaverage toll rates while prohibiting other
14 carriers from engaging in the same thing. It is simply disingenuous for Holway, Iamo,
15 KLM and Rock Port to oppose AT&T's proposed tariff on the grounds that it constitutes
16 geographic deaveraging in one case while simultaneously pursuing geographic
17 deaveraging in another case.

18 **Q. DOES THE USE OF MULTIPLE FICTITIOUS NAMES MEAN THAT F4'S**
19 **RATE STRUCTURE DOES OR DOES NOT CONSTITUTE GEOGRAPHIC**
20 **DEAVERAGING?**

21 **A.** No. Regardless of the use of fictitious names, F4's rate structure constitutes
22 geographic deaveraging under the standard they advanced in the Overlay hearing. With
23 its four approved tariffs, F4 is currently charging different rates based upon the
24 customer's underlying local exchange carrier.
25

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1 Regardless of the number of fictitious names, it is very obvious to even a laymen
2 that there is only one corporate entity, Fiber Four Corporation, that is charging different
3 interexchange rates in different geographically defined areas. Each of the recent
4 applications submitted by F4 relies on the same articles of incorporation. Even the cover
5 sheet of Mr. Warinner's Direct Testimony indicates that he his testifying on behalf of
6 single corporation; Fiber Four Corporation.

7 From a practical perspective, a fictitious name is nothing more than a company
8 operating under a different name. It does not create a separate corporate entity nor does
9 it relieve the underlying corporation of any obligations and responsibilities. Practically
10 speaking, it is similar to a person using an alias.

11 In addition, the statutes regarding geographic deaveraging refer to the underlying
12 corporation. In its intervention in Case No. TT-2000-22, the STCG alleged that AT&T
13 was required to show by clear and convincing evidence that the proposed Overlay plan is
14 consistent with the purposes and policies of Section 392.200 RSMo³. While AT&T does
15 not agree that these sections are applicable to its "Overlay" filing, if the sections cited by
16 the STCG are applicable to AT&T's proposed filing, they are also applicable to rate
17 structure implemented by F4. Each of the sections of 392.200 cited by the STCG,
18 including F4's affiliates, refer to a corporation not to a certificate. Section 392.200(2)
19 through Section 392.200(5) begin with the words "No telecommunications company"
20 and are applicable to the corporate entity. The legal fiction created by F4 through the use
21 multiple of fictitious names does nothing to insulate F4 from the requirements of Section
22 392.200 that it asserted were applicable to AT&T's proposed filing.

³ Case No. TO-2000-22, *In the Matter of AT&T's Tariff Filing to Introduce an IntraLATA Overlay Plan*, PSC Mo. No. 15, Motion to Suspend Tariff and Applications to Intervene filed by the Small Telephone Company Group, July

1 **Q. HAS THE COMMISSION RECOGNIZED THAT FIRMS OPERATING UNDER**
2 **MULTIPLE FICTITIOUS NAMES COULD LEAD TO DEAVERAGED RATES?**

3
4 A. In my opinion, yes. In Case No. TA-99-33 and TA-99-35, an affiliate of Grand
5 River Mutual Telephone Company, Grand River Communications, Inc., filed two
6 applications for service authority to provide interexchange and non-switched local
7 service throughout Missouri. In Case No. TA-99-33, Grand River Communications, Inc.
8 (GRC) requested statewide authority and submitted a proposed tariff to operate under the
9 name Grand River Long Distance in the exchanges served by Grand River Mutual
10 Telephone Company. In Case No. TA-99-35, (GRC) requested authority and filed a
11 proposed tariff to operate under the name Lathrop Long Distance in the exchanges served
12 by Lathrop Telephone Company. AT&T intervened in both cases on the grounds that if
13 the two tariffs if were approved, GRC would be in a position to offer deaveraged toll
14 rates without additional Commission approval. In response, GRC agreed to charge the
15 same toll rates throughout its serving territory. The Commission denied AT&T's request
16 to suspend the tariffs. Nevertheless, the Commission conditioned approval of GRC's two
17 applications and tariffs on its commitment to charge the same rates in both the exchanges
18 served by Lathrop Telephone Company and Grand River Mutual Telephone Company.
19 Specifically, in the Report and Order for Case No. TA-2000-33, the Commission stated,

20
21 In addition, Grand River has agreed that the proposed rates for the
22 certificated service area granted will be the same as the certificated
23 service area granted in Case No. TA-2000-35, and the Commission's
24 approval of this certificate to provide interexchange telecommunications
25 services will be conditioned on this representation unless otherwise
26 approved by the Commission.
27

1 It does not seem likely that the Commission would have imposed such a
2 requirement on GRC unless the Commission believed that GRC's proposed rate
3 structure would allow deaveraging without additional Commission approval.

4

5 **Q. IF F4'S APPLICATIONS ARE APPROVED AND THE CURRENT STRUCTURE**
6 **IS ALLOWED TO REMAIN IN PLACE, WHAT STEPS WILL AT&T TAKE?**

7

8 **A.** If the Commission determines that the use of fictitious names is necessary to
9 offer deaveraged rates, AT&T will follow F4's precedent. In doing so, AT&T will file
10 another application for statewide authority to provide interexchange services under a
11 fictitious name. AT&T will also file a tariff specific to the non-SWBT exchanges in
12 Missouri' for that fictitious name. Simultaneously, AT&T will file a tariff to modify its
13 existing interexchange tariff to only be applicable in the exchanges served by SWBT.
14 These filings would be entirely consistent with F4's actions. AT&T would expect that
15 F4's ILEC affiliates would not oppose such an action.

16 While it is entirely possible to follow F4's actions, jumping through a series of
17 technical loopholes should not be necessary. Rather than require a single company to
18 seek fictitious names in order to deaverage toll rates, the Commission should just allow
19 all companies to deaverage toll rates for optional calling plans. Certainly, AT&T does
20 not believe that it is appropriate to allow some carriers to offer deaveraged toll rates
21 while prohibiting other carriers from deaveraging toll rates.

22

23 **Q. LASTLY, ON PAGE 10 AND PAGE 11, MR. WARINNER STATES THAT THE**
24 **INTRALATA RATES THAT F4 CHARGES WHEN IT OPERATES IN THE**
25 **EXCHANGES SERVED BY HOLWAY, AND IAMO REFLECT THE RATES**
26 **SPRINT MISSOURI INC. CHARGED WHEN IT SERVED AS THE PRIMARY**
27 **TOLL CARRIER. IS THIS CORRECT?**

28

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1 A. This is not correct. While F4 charges the same per minute intraLATA rates in
2 the exchanges served by Holway and IAMO, F4 charges customers located in Iamo's
3 exchanges a \$4.95 per month minimum fee⁴. F4 does not assess a minimum charge in
4 the exchanges served by Holway. Based upon a review of Sprint Missouri Inc.'s (Sprint)
5 tariff, Sprint did not impose a minimum monthly fee to customers subscribing to the
6 basic schedule of rates when it served as the PTC. Mr. Warinner's claim that F4 is
7 merely mirroring the rates of the former PTC's is erroneous. Similarly, his assertion that
8 F4 is mirroring the rates of the PTCs to avoid rate changes and the resulting customer
9 confusion is also false. F4 is charging different rates than the former PTCs charged and
10 has even increased rates since it filed its original tariffs.

11

12 **Q. EVEN IF MR. WARINNER WERE CORRECT IN HIS STATEMENT THAT F4**
13 **WAS MIRRORING THE RATES OF THE FORMER PTCs, DO YOU HAVE**
14 **ANY COMMENTS?**

15

16 A. Yes, In Case No. TT-2000-22, I pointed out that the toll rates charged by the
17 former PTCs are not uniform and that, on a statewide basis, intraLATA toll rates are
18 currently deaveraged across Missouri. This was one of many reasons put forth by
19 AT&T in support of its proposed Overlay filing.⁵ This is the same argument that Mr.
20 Warinner is currently relying on to justify F4's rate scheme. In fact, this appears to be
21 F4's sole basis for charging different rates in different ILEC's exchanges. However, in
22 Case No. TT-2000-22, the witness appearing on behalf of F4's ILEC affiliates, Mr.
23 Schoonmaker, disagreed with that argument. This just illustrates the pure hypocrisy
24 behind F4's and its ILECs affiliates position. The same standard must apply equally.

⁴ Fiber Four Corporation d/b/a IAMO Long Distance filed a tariff to establish a minimum monthly charge of \$4.95 that was effective on November 1, 1999.

⁵ Case No. TT-2000-22. *In the Matter of AT&T's Tariff Filing to Introduce an IntraLATA Overlay Plan*, PSC Mo. No. 15, Direct Testimony of R. Matthew Kohly, pages 4-5.

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1 There is simply no regulatory basis for allowing F4 to limit the availability of calling plan
2 to a particular ILEC's exchanges without allowing AT&T the same opportunity.

3

4 **Q. CAN YOU PLEASE SUMMARIZE YOUR TESTIMONY?**

5 **A.**Yes. F4 is currently providing intrastate, interexchange toll service at different
6 rates in different geographic areas in Missouri. AT&T does not oppose that. However,
7 AT&T believes that it is disingenuous for Holway, IAMO, KLM and Rockport to oppose
8 AT&T's proposed Overlay plan on the grounds that it constitutes geographic deaveraging
9 and is therefore unlawful, while they simultaneously deaverage interexchange toll rates
10 through their wholly-owned affiliate; F4. AT&T believes the ability to limit the
11 availability of optional deaverage toll rates should be equally available to all carriers.
12 Anything different would be unfair and anti-competitive.

13 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

14 **A.**Yes, it does.