

Exhibit No.: _____

Issue(s): Geographic Toll De-Averaging
Witness/Type of Exhibit: Busch/Rebuttal
Sponsoring Party: Public Counsel
Case No.: TA-2000-23, et al.

FILED

FEB 17 2000

Missouri Public
Service Commission

REBUTTAL TESTIMONY

OF

JAMES A. BUSCH

Submitted on Behalf of the Office of the Public Counsel

FIBER FOUR CORPORATION

Case Nos.: TA-2000-23, TA-2000-24, TA-2000-25 and TA-2000-27

February 17, 2000

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

FILED³

FEB 17 2000

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.)

Missouri Public
Service Commission

Case No. TA-2000-23 et al.

AFFIDAVIT OF JAMES A. BUSCH

STATE OF MISSOURI)

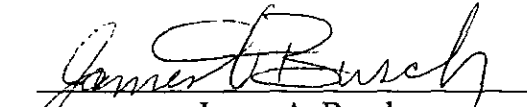
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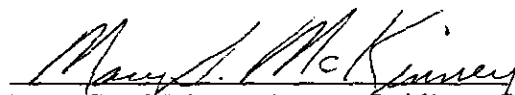
COUNTY OF COLE)

James A. Busch, of lawful age and being first duly sworn, deposes and states:

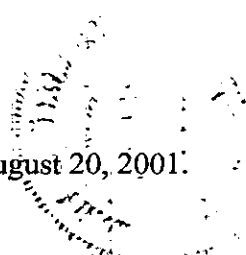
1. My name is James A. Busch. I am the Public Utility Economist for the Office of the Public Counsel.
2. Attached hereto and made a part hereof for all purposes is my rebuttal testimony consisting of pages 1 through 6 and Schedules JAB-1 and JAB-2.
3. I hereby swear and affirm that my statements contained in the attached testimony are true and correct to the best of my knowledge and belief.


James A. Busch

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


Mary S. McKinney, Notary Public

My Commission expires August 20, 2001.



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REBUTTAL TESTIMONY
OF
JAMES A. BUSCH
CASES NO. TA-2000-23, TA-2000-24, TA-2000-25, TA-2000-27
Consolidated
FIBER FOUR CORPORATION

Q. Please state your name and business address.

A. My name is James A. Busch and my business address is P. O. Box 7800, Jefferson City, MO 65102.

Q. By whom are you employed and in what capacity?

A. I am a Public Utility Economist with the Missouri Office of Public Counsel (Public Counsel).

Q. Please describe your educational and professional background?

A. In June 1993, I received a Bachelor of Science degree in Economics from Southern Illinois University at Edwardsville (SIUE), Edwardsville, Illinois. In May 1995, I received a Master of Science degree in Economics, also from SIUE. I am currently a member of the American Economic Association and Omicron Delta Epsilon, an honorary economics society. Prior to joining Public Counsel, I served just over two years with the Missouri Public Service Commission as a Regulatory Economist in the Procurement Analysis Department and served one year with the Missouri Department of Economic Development as a Research Analyst. I accepted my current position with Public Counsel in September 1999.

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1 Q. Have you previously testified before this Commission?

2 A. Yes. Attached is Schedule JAB-1 which is a list of the cases in which I
3 have filed testimony before the Commission.

4 Q. What is the purpose of your testimony?

5 A. I am presenting Public Counsel's position regarding Fiber Four
6 Corporation's proposed tariffs to provide interexchange and local exchange
7 telecommunications service in different areas with different rates for selected areas.

8 Q. In preparation for your testimony, what materials did you review?

9 A. I reviewed the Direct Testimony of Fiber Four witness William J.
10 Warriner, materials from Case No. TT-2000-22 regarding AT&T Communications of the
11 Southwest's proposed overlay plan, Section 392.200 RSMo., and Section 254(g) of the
12 Federal Telecommunications Act of 1996 (96 Act).

13 Q. Please describe the proposed plans.

14 A. Basically, the plans are very similar. Fiber Four has created four fictitious
15 names under which it proposes to provide intrastate, interLATA and intraLATA service
16 to four separate areas distinguished by the LEC that serves the area. Fiber Four
17 Corporation d/b/a KLM Long Distance will serve KLM's territory, Fiber Four
18 Corporation d/b/a Holway Long Distance will serve Holway's territory, Fiber Four
19 Corporation d/b/a Iamo Long Distance will serve Iamo's territory, and Fiber Four
20 Corporation d/b/a Rock Port Long Distance will serve Rock Port's territory.

21 However, the rates charged in these different areas are not uniform. Attached to
22 my testimony is Schedule JAB-2 which is a comparison of the rate plans. KLM
23 customers have two options: Option 1 is for intraLATA and interLATA calls with a

1 \$4.95 fee and \$.15 per minute while option 2 is for intraLATA service only and varies on
2 a mileage basis from \$.10 for the first minute, and \$.08 each additional minute to \$.46 for
3 the first minute, and \$.55 per each additional minute. Also, depending on the time of the
4 call, there can be up to a 35% discount per call (i.e. weekend, nights, etc.).

5 Holway and Iamo customers also have two options. The first option is identical
6 to KLM's option 1. Option 2 is similar to KLM's option 2. The discounts are the same,
7 but the rates are slightly different. The first minute charge ranges from \$.09 to \$.58, and
8 each additional minute ranges from \$.09 to \$.44. Rock Port customers are offered only
9 one option and it is similar to KLM's option 1. However, there is no monthly fee and
10 discounts can potentially reach 20% depending on the amount of minutes billed.

11 Q. What is Public Counsel's position regarding these tariffs?

12 A. Public Counsel believes that the tariffs as submitted should not be
13 approved. It is Public Counsel's belief that the plans constitute geographic toll
14 deaveraging which violates section 254(g) of the 1996 Telecommunications Act and
15 Section 392.200, RSMo.

16 Q. What is the purpose of these prohibitions on geographic toll deaveraging?

17 A. The purpose is to guarantee that all customers of a telecommunications
18 company are charged the same rate for the same service regardless of where they live or
19 where their business is located.

20 Q. What justification does Fiber Four give for charging different rates for
21 their customers in different LEC service territories?

22 A. Basically, Fiber Four justifies the different rate structure on the grounds
23 that these were the same rates charged to these same ratepayers in each respective area by

1 the Primary Toll Carrier (either Sprint or Southwestern Bell) that previously served that
2 area.

3 Q. Are there any cost differentials among the different areas that would help
4 explain the difference in rates?

5 A. The Company did not provide that information and did not rely on that
6 justification. Fiber Four simply wants to charge the rates that the previous provider
7 charged.

8 Q. Fiber Four witness Warriner on page 11 of his Direct Testimony indicates
9 that he does not think these tariffs constitute geographic toll rate deaveraging because the
10 Company intends to offer their services in four separate areas with four separate
11 certificates and four separate tariffs, with no overlapping of areas. Is he correct in his
12 assessment?

13 A. No, he is not. Section 254(g) of the 96 Act expressly forbids a company
14 from charging different rates merely because of the location of the service areas. Within
15 a class of customers (business or residential) all customers of a company must be offered
16 the same services at the same rate. Fiber Four, one corporation, is merely trying to avoid
17 this section by operating under different fictitious names in the different areas.
18 Furthermore, the Company, in its Application, states that it proposes to offer 1+
19 interexchange telecommunications services to business and residential customers located
20 throughout the State of Missouri, initially in the given service area.

21 Q. What does that mean?

22 A. It means that if Fiber Four's tariffs are approved there will be nothing to
23 prevent it from operating in every exchange in Missouri and providing services at

1 different rates in each exchange. Also, every other company that provides interexchange
2 service can avoid the deaveraging prohibition by simply operating under different
3 fictitious names for the same company to provide service at different rates in different
4 exchanges. Clearly, this violates not only the letter of the law, but also the spirit of the
5 law.

6 Q. Do you believe that the approval of these tariffs is in the public interest?

7 A. No I do not. This is geographic toll deaveraging that is prohibited by
8 federal and Missouri law. Therefore, approval would be inconsistent and in violation of
9 established public policy legislated by Congress and our General Assembly. If this
10 practice is approved and allowed to continue, customers in rural parts of the state will be
11 forced to pay higher rates, perhaps extraordinary rates as compared to urban residents
12 served by the same companies. Companies can circumvent the law's purpose by simply
13 going to the Secretary of State's office to acquire a fictitious name and do business under
14 that name to charge higher rates to these consumers. This would be very harmful to the
15 residents of this state by discriminating between rural and urban customers and customers
16 in different exchanges. For these reasons, approval of these tariffs is definitely not in the
17 public interest.

18 Q. Please summarize your testimony.

19 A. My testimony discusses Public Counsel's position regarding Fiber Four's
20 tariffs for interexchange service in Missouri. It is Public Counsel's opinion that the
21 tariffs, as designed, constitute geographic toll deaveraging, which violates federal and
22 Missouri law. Furthermore, if approved, precedent will be set to allow any company to
23 establish fictitious names in order to provide service at different rates to different

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1 customers. This will be extremely harmful to the citizens of Missouri. Therefore, the
2 tariffs should not be approved.

3 Q. Does this conclude your testimony?

4 A. Yes it does.

**Cases of Filed Testimony
James A. Busch**

<u>Company</u>	<u>Case No.</u>
Union Electric Company	GR-97-393
Missouri Gas Energy	GR-98-140
Laclede Gas Company	GO-98-484
Laclede Gas Company	GR-98-374
St. Joseph Light & Power	GR-99-246
Laclede Gas Company	GT-99-303
Laclede Gas Company	GR-99-315

Option 1

<u>Fictitious Company Name</u>	<u>Type of Calls</u>	<u>Fees</u>	<u>Per Minute charge</u>
Fiber Four d/b/a KLM Long Distance	IntraLata	\$4.95	\$0.15
	InterLata		
Fiber Four d/b/a Holway Long Distance	IntraLata	\$4.95	\$0.15
	InterLata		
Fiber Four d/b/a Iamo Long Distance	IntraLata	\$4.95	\$0.15
	InterLata		
Fiber Four d/b/a Rock Port Long Distance	IntraLata	no fees	\$0.15
	InterLata		

Note: Fiber Four d/b/a Rock Port Long Distance also has a discount program based on monthly billing volumes.

Option 2

<u>Fictitious Company Name</u>	<u>Type of Calls</u>	<u>First Minute Charge</u>	<u>Each Additional Minute</u>	<u>Discounts</u>
Fiber Four d/b/a KLM Long Distance	IntraLata	\$0.10 - \$0.46	\$0.08 - \$0.35	20 - 35%
Fiber Four d/b/a Holway Long Distance	IntraLata	\$0.09 - \$0.58	\$0.09 - \$0.44	20 - 35%
Fiber Four d/b/a Iamo Long Distance	IntraLata	\$0.09 - \$0.58	\$0.09 - \$0.44	20 - 35%
Fiber Four d/b/a Rock Port Long Distance		n/a		

Notes: The minute charges are based on a mileage chart provided in the applications. The discounts are based on the time of the call (i.e. nighttime, weekend, etc.)