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Jean L. Kiddoo  
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November 9, 2012

**Via Hand Delivery**

Marlene H. Dortch, Secretary  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

**Re: FiberTower Corporation - Discontinuance of Service**

Dear Ms. Dortch:

On behalf of FiberTower Corporation ("FiberTower"), enclosed please find an original and six (6) copies of a filing regarding FiberTower's planned discontinuance of service on December 9, 2012. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Should you have any questions, please do not hesitate to contact us.

Respectfully submitted,



Jean L. Kiddoo  
Brett P. Ferenchak

Counsel for FiberTower Corporation

cc via email: Rodney McDonald  
Kimberly Jackson  
William Dever  
Hillary Burchuk

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DOCUMENT NUMBER-DATE  
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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

FiberTower Corporation )  
Discontinuance of Service )

**NOTIFICATION REGARDING THE DISCONTINUANCE  
OF TELECOMMUNICATIONS SERVICE**

FiberTower Corporation (“FiberTower”) hereby notifies the Commission that it plans to discontinue the provision of all domestic telecommunications services on or about December 9, 2012. FiberTower offers point-to-point wireless and fiber optic backhaul and transport services as an interstate private carrier.<sup>1</sup> FiberTower therefore does not believe that this decommissioning is subject to the discontinuance procedures applicable to interstate common carriers set forth in 47 C.F.R. §§ 63.60, et seq., and 101.305. Nevertheless, out of an abundance of caution and without waiving its position, FiberTower has provided notice to its current customers consistent with the Commission’s discontinuance procedures and, to the extent that the Commission decides to process this filing in accordance with the procedures applicable to the discontinuance of telecommunications services by common carriers set forth in 47 C.F.R. § 63.71, FiberTower requests that the Commission promptly do so (including promptly issuing a public notice) given

<sup>1</sup> A private, as opposed to a common, carrier (a) relies on contracts with customers that are individually negotiated and tailored to the individual customer’s needs, (b) has a relatively stable clientele; (c) provides service pursuant to medium to long-term contracts to that clientele; and (d) has diminished market power. *See* National Ass’n. of Regulatory Util. Comm’rs. v. FCC, 533 F.2d 601, 609 (D.C. Cir. 1976); National Ass’n. of Regulatory Util. Comm’rs. v. FCC, 525 F.2d 630, 641 (D.C. Cir. 1976), *cert. denied*, 425 U.S. 992 (1976); *see also* PLDT v. Int’l Telecom, File No. E-95-29, FCC 97-233, ¶13 (rel. July 18, 1997); Independent Data Communications, 10 FCC Rcd 13717, 13723-24 (1995); *Beehive Tel., Inc. v. Bell Operating Cos.*, 10 FCC Rcd 10562, 10564-65 (1995), *remanded*, No. 95-1479 (D.C. Cir. Dec. 27, 1996).

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the circumstances of FiberTower's bankruptcy status that may render it financially incapable of maintaining service beyond the 30 days set forth in its notice to customers.

The Applicant provides the following information required by Section 63.71 of the Commission's Rules:

1. Name and Address of the Carrier: FiberTower is located at 185 Berry Street, Suite 4800, San Francisco, CA 94107.
2. Date of Planned Service Discontinuance, Reduction or Impairment: The Applicant plans to discontinue all services on December 9, 2012.
3. Points of Geographic Areas of Service Affected: Applicant proposes to discontinue services in all areas that it serves. Currently, Applicant provides services in and around: Gillette, AR; Atlanta, GA; Baltimore, MD; Boston, MA; Cleveland, OH; Detroit, MI; Dallas, TX; Denver, CO; Dallas, Houston, San Antonio, Austin and Waco TX; New York/New Jersey; Pittsburgh, PA; Tampa, FL and Washington, D.C./Suburban MD & VA
4. Brief Description of Type of Service Affected: FiberTower provides point-to-point wireless and fiber optic backhaul and transport services utilizing fixed wireless and fiber optic circuits.
5. Brief Description of the Dates and Methods of Notice to All Affected Customers: On November 9, 2012, Applicant mailed written notice to all customers, in a form consistent with the requirements of Section 63.71(a) of the Commission's Rules, to inform customers of the planned December 9, 2012 discontinuance date. A copy of the form of customer notice is appended hereto as Exhibit A. In addition to indicating in the customer notice that FiberTower is discontinuing service at all locations in the United States, FiberTower is attaching to the

customer notice a customer specific list of service locations thus satisfying the requirement in the rules that the notice list the points of geographic areas affected.

Moreover, Fiber Tower has been working with many of its customers, including its wireless carrier customers whose service represents over 99% percent of FiberTower's revenues, to keep them apprised of FiberTower's Chapter 11 proceedings. As a result, such customers have had considerable notice of FiberTower's financial circumstances and the precarious nature of its creditor-supported plan of reorganization, which plan is dependent upon the Company maintaining its 24 and 39 GHz licenses.<sup>2</sup> They have therefore been aware for some time of the possibility that services provided over FiberTower's legacy network may be terminated as a result of the ongoing bankruptcy and rejection by the Commission of the requests of FiberTower Spectrum Holdings LLC for extension of time to demonstrate substantial service and waiver of the substantial service deadlines.<sup>3</sup>

6. Whether the Carrier is Considered Dominant or Non-dominant with Respect to the Service to be Discontinued, Reduced or Impaired: Applicant is considered non-dominant with respect to the affected services.

7. Service of Application: In accordance with Section 63.71 of the Commission's Rules, a copy of this Notification is being mailed to the Governors and public services commissions of Arkansas, Colorado, the District of Columbia, Florida, Georgia, Maryland,

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<sup>2</sup> In fact, a number of FiberTower's customers acknowledged their awareness of the relationship between the reorganization plan and the status of the FiberTower licenses when they filed letters with the Commission to support the extension of the licenses or express concern about the effect that cancelling them might have on the backhaul services they obtain from FiberTower. See Memorandum Opinion and Order, *In re FiberTower Spectrum Holdings LLC*, DA 12-1785, at ¶ 16 (released Nov. 7, 2012) ("License Termination Order")

<sup>3</sup> *In re FiberTower Spectrum Holdings LLC, Requests for Waiver, Extension of Time, or in the alternative, Limited Waiver of Substantial Service Requirements*, File Nos. 0005207557 et seq., 0005207187 et seq. and 0005207571 et seq. ("Extension Requests").

Massachusetts, Michigan, New Jersey, New York, Ohio, Pennsylvania, Texas and Virginia, and to the Special Assistant for Telecommunications for the Secretary of Defense, concurrently with the filing of this Notification.

8. Questions regarding this Notification may be addressed to:

Jean L. Kiddoo  
Brett P. Ferenchak  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, DC 20006  
(202) 373-6000  
jean.kiddoo@bingham.com  
brett.ferenchak@bingham.com

Joseph M. Sandri, Jr., SVP  
FiberTower Corporation  
1730 Rhode Island Ave, N.W.  
Suite 304  
Washington, DC 20036  
(202) 223-1028  
jsandri@fibertower.com

9. Circumstances of the Discontinuance: As the Commission is aware, on July 17, 2012, FiberTower Network Services Corp., FiberTower Corporation, FiberTower Licensing Corp., and FiberTower Spectrum Holdings LLC filed a petition for relief under Chapter 11 of the Bankruptcy Code.<sup>4</sup> A majority of FiberTower's first lien creditors have endorsed a FiberTower support agreement allowing FiberTower to continue to operate and develop its spectrum services, carrier services, and other services during the bankruptcy proceedings and upon emergence from Chapter 11 protection. However, the FiberTower Chapter 11 reorganization plan and the support agreement are contingent on FiberTower maintaining its 24 and 39 GHz licenses. Now that the Commission has issued an order denying FiberTower's Extension Requests and held that the licenses were terminated as of June 1, 2012,<sup>5</sup> there may be no viable plan for reorganizing FiberTower. FiberTower therefore expects that its secured creditors may terminate the Plan Support Agreement that currently funds FiberTower's operations. As a result, FiberTower would not have the financial resources to continue offer service.

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<sup>4</sup> In re FiberTower Network Services Corp., *et al.*, Case No. 12-44027-DML-11 (Bankr. N.D. Tex).

<sup>5</sup> See License Termination Order at ¶ 1.

10. To the extent that the Commission processes this filing as an Application pursuant to Section 63.71, FiberTower requests that the Commission issue a Public Notice regarding this discontinuance as soon as possible so that FiberTower can proceed with its discontinuance as planned.

WHEREFORE, FiberTower believes that the proposed discontinuance is reasonable and necessary.

Respectfully submitted,



Jean L. Kiddoo  
Brett P. Ferenchak  
Bingham McCutchen LLP  
2020 K Street, N.W.  
Washington, DC 20006  
(202) 373-6000  
jean.kiddoo@bingham.com  
brett.ferenchak@bingham.com

Counsel to FiberTower Corporation

Dated: November 9, 2012

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing Notification Regarding the Discontinuance of Telecommunications services was served this 9th day of November, 2012, by mailing true and correct copies thereof, postage prepaid, to the following persons at the addresses listed below.

Secretary of Defense  
ATTN: Special Assistant for Telecommunications  
Pentagon  
Washington, DC 20301

Arkansas Public Service Commission  
1000 Center Street  
Little Rock, AR 72201-4300

Governor Mike Beebe  
State Capitol Room 250  
Little Rock, AR 72201

Colorado Public Utilities Commission  
1560 Broadway, Suite 250  
Denver, CO 80202

John W Hickenlooper, Governor  
136 State Capitol  
Denver, CO 80203-1792

District of Columbia Public Service Commission  
1333 H Street, N.W.  
2nd Floor, West Tower  
Washington, D.C. 20005

The Honorable Mayor Vincent C. Gray  
Executive Office of the Mayor  
1350 Pennsylvania Avenue, NW, Suite 316,  
Washington, DC 20004

Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Office of Governor Rick Scott  
State of Florida  
The Capitol  
400 S. Monroe St.  
Tallahassee, FL 32399-0001

Georgia Public Service Commission  
244 Washington Street, S.W.  
Atlanta, GA 30334

Governor Nathan Deal  
The Office of the Governor  
State of Georgia  
203 State Capitol  
Atlanta, Georgia 30334

Maryland Public Service Commission  
6 St. Paul Street  
William Donald Schaefer Tower  
Baltimore, MD 21202

Governor Martin O'Malley  
100 State Circle  
Annapolis, Maryland 21401-1925

Massachusetts Department of Telecommunications  
and Cable  
1000 Washington Street, Suite 820  
Boston, MA 02118-6500

Office of the Governor  
Massachusetts State House  
Room 280  
Boston, MA 02133

Michigan Public Service Commission  
6545 Mercantile Way, Suite 7  
Lansing, MI 48911

Governor Rick Snyder  
P.O. Box 30013  
Lansing, Michigan 48909

New Jersey Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

New York Public Service Commission  
Agency Building 3  
Three Empire State Plaza  
Albany, NY 12223-1350

Public Utilities Commission of Ohio  
180 E. Broad St.  
Columbus, OH 43215-3793

Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Public Utility Commission of Texas  
1701 N. Congress Avenue  
Austin, Texas 78711-3326

Virginia State Corporation Commission  
Tyler Building  
1300 East Main Street  
Richmond, VA 23219

The Honorable Chris Christie  
Office of the Governor  
PO Box 001  
Trenton, NJ 08625

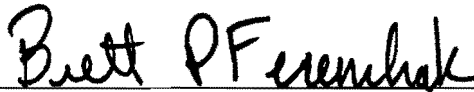
The Honorable Andrew M. Cuomo  
Governor of New York State  
NYS State Capitol Building  
Albany, NY 12224

Governor John R. Kasich  
Governor's Office  
Riffe Center, 30th Floor  
77 South High Street  
Columbus, OH 43215-6108

Governor Tom Corbett  
225 Main Capitol Bldg.  
Harrisburg, PA 17120

Texas Governor Rick Perry  
State Capitol  
P.O. Box 12428  
Austin, TX 78711

Governor Bob McDonnell  
State Capitol  
Richmond, VA 23219



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Brett P. Ferenchak



**EXHIBIT A**

**Sample Customer Notice**



FiberTower Corp.  
1730 Rhode Island Avenue, NW  
Suite 304  
Washington DC 20036  
Direct: 202.223.1028  
Main: 202.223.9690  
Fax: 202.223.9692

## ***IMMEDIATE ATTENTION REQUIRED***

November 9, 2012

[Customer Name  
Address]

Re: **SERVICE DISCONTINUANCE NOTICE**

Dear Sir or Madam:

As you are likely aware, on July 17, 2012, FiberTower Corporation (FiberTower) filed for Chapter 11 bankruptcy protection. Although it had hoped that it would be able to restructure its operations and emerge from bankruptcy as a strong and vibrant provider of backhaul services including those that we provide to your company, FiberTower has been unable to secure certain regulatory waivers needed to operate FiberTower's long-term business plan, without which FiberTower is unable to operate the existing business. As a result, FiberTower hereby notifies you that it will decommission its private microwave network transmission and other facilities (including fiber facilities) at all locations throughout the United States on or after December 9, 2012. This decommissioning will result in the discontinuance of the fixed wireless and/or fiber optic backhaul services currently provided to your company pursuant to a contract between the parties. Should the circumstances change such that FiberTower will remain able to provide services to your company at any or all locations, we will immediately advise you of that change, but we cannot assure you that such a change will occur and therefore urge that you begin to take any and all necessary steps to promptly transition your services to another provider no later than December 9, 2012.

FiberTower is committed to doing what it can to aid the transition of the affected service locations. Towards that end, please find attached to this letter a comprehensive list of all your service locations as of October 31, 2012. This list includes pertinent information associated with such locations including service location address, customer identifier, billing account identifier and service being provided. Should you have questions with the respect to the information provided or other queries, please do not hesitate to contact either of the persons below. Either person will be able to answer questions or direct you in the appropriate manner.

Steve Merriman  
[smerriman@fibertower.com](mailto:smerriman@fibertower.com)  
330-416-7327

Ornella Napolitano  
[onapolitano@fibertower.com](mailto:onapolitano@fibertower.com)  
202-251-5210

FiberTower currently operates as an interstate private carrier<sup>1</sup> and does not believe that this decommissioning is subject to the discontinuance procedures applicable to interstate common carriers set forth in 47 C.F.R. § 63.60, *et seq.* Nevertheless, FiberTower is advising the Federal Communications Commission (FCC) of the discontinuance and has provided a description of the timing and nature of the decommissioning and the other information required by 47 C.F.R. § 63.71(b). And, should the Commission treat FiberTower's filing as an Application under 47 C.F.R. §63.71, FiberTower is also providing, without waiving its position with respect to the Company's private carrier status, the following statement required by the FCC's rules:

*The FCC will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20554, and include in your comments a reference to the § 63.71 Application of FiberTower Corporation. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.*

We regret that we have been obliged to issue this decommissioning notice and will advise you immediately should there be any change in our plans, but as noted above, we cannot assure you that such a change will occur and therefore urge that you begin to take any and all necessary steps to promptly transition your services to another provider no later than December 9, 2012. Please do not hesitate to contact us regarding the discontinuance notice and to answer any questions you may have.

Sincerely,

Joseph M. Sandri, Jr.  
SVP Regulatory Affairs  
FiberTower Corporation  
[jsandri@fibertower.com](mailto:jsandri@fibertower.com)  
202-253-3956

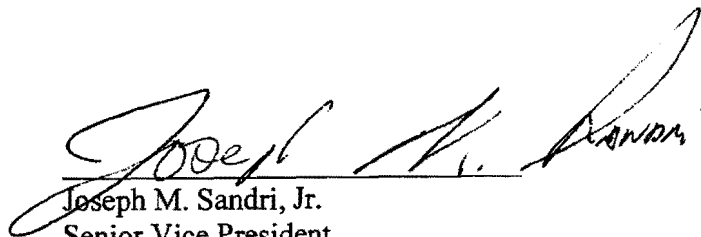
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<sup>1</sup> A private, as opposed to a common, carrier (a) relies on contracts with customers that are individually negotiated and tailored to the individual customer's needs, (b) has a relatively stable clientele; (c) provides service pursuant to medium to long-term contracts to that clientele; and (d) has diminished market power.

## VERIFICATION

I, Joseph M. Sandri, Jr., state that I am Senior Vice President, Government & Regulatory, of FiberTower Corporation ("FiberTower"); that I am authorized to make this Verification on behalf of FiberTower; that the foregoing filing was prepared under my direction and supervision; and that matters set forth in the filing are true and correct to the best of my knowledge, information, and belief.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9<sup>th</sup> day of November 2012.



Joseph M. Sandri, Jr.  
Senior Vice President  
Government & Regulatory  
FiberTower Corporation