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**COUNSEL FOR
MARKLEY BOSTON, LLC**

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

In re: § Chapter 11
§
FIBERTOWER NETWORK SERVICES § Case No. 12-44027-DML-11
CORP., *et al.* §
§ (Jointly Administered)
Debtors. §
§

AFFIDAVIT OF DEVON S. CUTCHINS

BEFORE ME, the undersigned notary public, on this day personally appeared Devon S. Cutchins, who, after first being duly sworn by me, deposed as follows:

1. My name is Devon S. Cutchins. I am more than twenty-one (21) years of age, of sound mind, and capable of making this Affidavit. The facts stated in this Affidavit are true and correct to my personal knowledge.

2. I am the Senior Vice President and Chief Legal Officer for The Markley Group LLC (“Markley Group”), One Summer Street, Boston, MA 02110.

3. Markley Group is a New England multi-tenant telecommunications and data center operator that leases physical space and sells bandwidth for connecting to national and international network providers. Markley Boston, LLC (“Markley”) is an affiliate of The Markley Group LLC.

4. Markley and FiberTower Network Services Corp. (“FiberTower”) entered into a Data Center/Technology Lease (the “Lease Agreement”) on December 31, 2004, in which Markley provided operating space for FiberTower’s equipment. The Lease Agreement required that all notices and other communications given by either party must be in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested; delivered by overnight courier; or delivered personally to the parties specified therein.

5. In accordance with the notice provision, Markley and FiberTower included their physical addresses in Lease Agreement. Markley provided the address and individual contact for its Boston office and Markley Group’s Los Angeles office and the phone and facsimile numbers for its Los Angeles office.

6. On July 18, 2012, FiberTower and its affiliated entities (collectively with FiberTower, the “Debtors”) sent notice of bankruptcy (the “Notice”) to Markley Group’s e-mail address info@markleygroup.com, which they found on Markley Group’s website under its “Contact Us” page. Debtors did not bother to contact the individuals they knew should receive notice under the Lease Agreement to obtain their e-mail addresses.

7. The e-mail address on Markley Group’s website used is primarily used to field inquiries from potential customers interested in Markley Group’s services. Markley Group’s Executive Vice President in charge of sales and marketing monitors the address’s inbox and forwards sales inquiries to Markley Group’s salespersons.

8. Debtors’ Notice did not state specifically that Markley had a potential claim or include any filing deadlines, but it instead provided a link to a website where interested parties could find information on Debtors’ bankruptcy as it became available. The sales

personnel did not know that the Notice was something that required action. By the time the Notice was received by the legal department, it was too late.

9. On April 5, 2013, the Debtors filed a 392-page motion seeking to reject hundreds of unspecified executory contracts and leases and abandon certain personal property (the “Rejection Motion”). The Lease Agreement was among those listed in the Rejection Motion. This was just one of several motions like this filed by Debtors. The Rejection Motion was sent to a lock box address in Hicksville, New York. On page 202 of the Rejection Motion, in a proposed form of order approving the Rejection Motion, it contained a paragraph fixing the bar date at thirty (30) days from entry of the order approving the Rejection Motion.

10. On April 30, 2013, the Bankruptcy Court entered the order approving the Rejection Motion (the “Rejection Order”). In the Rejection Order, the bar date for rejection damages claims was fixed at May 30, 2013 (the “Bar Date”). Other than entry of the Rejection Order on the Bankruptcy Court’s docket, no additional notice of the Bar Date was sent.

11. On January 27, 2014, the Bankruptcy Court confirmed the Debtor’s Chapter 11 Plan (the “Plan”). The Plan affirmed the Bar Date. The Plan was mailed to Atlanta, Georgia, a different address than the address used for the Rejection Motion.

12. Almost a year into the bankruptcy and prior to the Bar Date, Markley’s controller noticed the gap in FiberTower’s rent revenue. Upon further investigation, the controller learned that FiberTower had turned off its equipment in that leased space. The controller brought it to the attention of Markley’s legal department. One of the younger

attorneys in the department made several attempts through correspondence to collect the past due rent.

13. Not long thereafter, Markley turned the matter over to outside counsel. The Bar Date was brought to the attention of Markley by outside counsel. At no time was Markey ever told or made aware of the Bar Date prior to then or served with any official notification.

14. Markley last received payment on the Lease Agreement in April 2013. FiberTower owes Markley \$70,869.48 under the Lease Agreement.

FURTHER AFFIANT SAYETH NOT.



Devon S. Cutchins

SUBSCRIBED AND SWORN TO BEFORE ME on May __, 2014.


NOTARY CERTIFICATE
ATTACHED
5/20/14

Notary Public in and for the State of Texas

My Commission Expires: _____

JURAT

State of California
County of Orange

Subscribed and sworn to (or affirmed) before me on this

20 day of May, 2014, by Devon S. Cutchins

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature



CERTIFICATE OF SERVICE

I certify that on May 20, 2014, a true and correct copy of the foregoing document was served via email through the Bankruptcy Court's Electronic Case Filing System on those parties that have consented to such service, including the Debtors. Furthermore, the foregoing document has been served on the parties appearing on the Limited Service List maintained in these chapter 11 cases via first class U.S. mail, postage prepaid and, where possible, via electronic mail.

/s/ Trey A. Monsour
Trey A. Monsour