

# FIRST AVENUE NETWORKS INC

## FORM S-8

(Securities Registration: Employee Benefit Plan)

Filed 8/31/2006

Address	230 COURT SQUARE SUITE 202 CHARLOTTESVILLE, Virginia 22902
Telephone	434 220 4988
CIK	0001010286
Industry	Communications Services
Sector	Services
Fiscal Year	12/31

Powered By **EDGAR**Online

<http://www.edgar-online.com/>

© Copyright 2006. All Rights Reserved.

Distribution and use of this document restricted under EDGAR Onlines Terms of Use.

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-8**

**REGISTRATION STATEMENT UNDER  
THE SECURITIES ACT OF 1933**

**FiberTower Corporation**  
(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation or organization)

**52-1869023**  
(I.R.S. Employer  
Identification No.)

**185 Berry Street, Suite 4800**  
**San Francisco, California**  
(Address of Principal Executive Offices)

**94107**  
(Zip Code)

**First Avenue Networks, Inc. Stock Incentive Plan**  
**FiberTower Corporation Amended and Restated Stock Option Plan**  
(Full titles of the plans)

**Thomas A. Scott**  
**FiberTower Corporation**  
**99 Wood Avenue South, Suite 200**  
**Iselin, New Jersey 08830**  
(Telephone number, including area code, of agent for service)

*Copies to:*  
**W. Mark Young**  
**Andrews Kurth LLP**  
**600 Travis, Suite 4200**  
**Houston, Texas 77002**

**CALCULATION OF REGISTRATION FEE**

Title of each class of securities to be registered	Amount to be registered (1) (2)	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$0.001 per share	19,921,270	\$(3)	\$127,426,706.52	\$13,634.66

- (1) This Registration Statement covers 15,714,588 additional shares of common stock of FiberTower Corporation (formerly known as First Avenue Networks, Inc.), that are being registered pursuant to the First Avenue Networks, Inc. Stock Incentive Plan (the "First Avenue Plan"). This Registration Statement also covers 4,206,682 shares subject to assumed options previously granted under the FiberTower Corporation Amended and Restated Stock Option Plan (the "Old FiberTower Plan"), which plan and options were assumed by the Registrant in connection with the merger contemplated by the Agreement and Plan of Merger, dated as of May 14, 2006, among the Registrant, Marlin Acquisition Corporation and FiberTower Network Services Corp. (formerly known as FiberTower Corporation), as more fully described in the explanatory note.
- (2) Pursuant to Rule 416(a) under the Securities Act, there is also being registered such additional number of shares that become available under the plan because of events such as recapitalizations, stock dividends, stock splits or similar transactions effected without the receipt of consideration that increases the number of outstanding shares.
- (3) With respect to 4,206,682 shares subject to assumed options from the Old FiberTower Plan, the fee was estimated in accordance with Rule 457(h) under the Securities Act at a weighted average exercise price of \$1.77 per share. With respect to the additional 15,714,588 shares being registered under the First Avenue Plan, the fee was estimated in accordance with Rule 457(c) and (h) under the Securities Act based on the average of the high and low prices of the shares as reported on The Nasdaq Global Market on August 29, 2006



## EXPLANATORY NOTE

FiberTower Corporation, a Delaware corporation (formerly known as First Avenue Networks, Inc.) (the “Registrant”), entered into an Agreement and Plan of Merger (the “Merger Agreement”), dated as of May 14, 2006, by and among the Registrant, Marlin Acquisition Corporation, a Delaware corporation and a direct and wholly-owned subsidiary of the Registrant (“Merger Sub”), and FiberTower Network Services Corp., a Delaware corporation (formerly known as FiberTower Corporation) (“Old FiberTower”), pursuant to which Merger Sub merged with and into Old FiberTower, with Old FiberTower being the surviving corporation and a direct and wholly-owned subsidiary of the Registrant (the “Merger”).

Pursuant to the Merger Agreement, at the effective time of the Merger, the Registrant assumed (i) the obligations of Old FiberTower under Old FiberTower’s Amended and Restated Stock Option Plan (the “Old FiberTower Plan”) and (ii) each outstanding stock option that remains unexercised under such Old FiberTower Plan, such that each such assumed option is now exercisable for shares of common stock, par value \$0.001 per share (the “Common Stock”), of the Registrant. The Registrant is filing this Registration Statement with respect to the shares of the Registrant’s Common Stock issuable pursuant to the Old FiberTower Plan.

In addition, the Registrant is also filing this Registration Statement on Form S-8 to register an aggregate of 15,714,588 additional shares of Common Stock reserved for issuance under the First Avenue Networks Inc. Stock Incentive Plan (the “First Avenue Plan”).

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The document(s) containing the information specified in Part I of Form S-8 (plan information and registrant information) will be sent or given to participants as specified by Rule 428(b)(1) under the Securities Act of 1933, as amended (the “Securities Act”). In accordance with Rule 428 and the requirements of Part I of Form S-8, such documents are not being filed with the Securities and Exchange Commission (the “Commission”) either as part of this registration statement or as prospectuses or prospectus supplements pursuant to Rule 424 under the Securities Act. The Registrant shall maintain a file of such documents in accordance with the provisions of Rule 428(a)(2) of the Securities Act. Upon request, the Registrant shall furnish to the Commission or its staff a copy of any or all of the documents included in the file.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

##### Item 3. Incorporation of Documents by Reference.

The Registrant incorporates by reference in this registration statement the following documents and information previously filed with the Commission:

- (1) The Registrant’s Annual Report on Form 10-K for the year ended December 31, 2005, as filed by the Registrant with the Commission on March 8, 2006.
- (2) The Registrant’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2006 and June 30, 2006, as filed by the Registrant with the Commission on May 9, 2006 and August 9, 2006, respectively.
- (3) The Registrant’s Current Reports on Form 8-K, as filed by the Registrant with the Commission on February 8, 2006 and May 18, 2006, respectively.
- (4) The description of the Registrant’s common stock contained in the Registrant’s Registration Statement on Form 8-A (File No. 000-21091) as filed by the Registrant with the Commission on February 28, 2002, and any amendment or report filed for the purpose of updating that description.

All documents filed with the Commission by the Registrant pursuant to Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), subsequent to the date of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference in this registration statement and to be a part hereof from the date of filing of such documents.

Any statement contained herein or in a document incorporated or deemed to be incorporated herein by reference shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a

---

statement contained herein or in any subsequently filed document which also is, or is deemed to be, incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

**Item 4. Description of Securities.**

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

The Registrant is incorporated under the laws of the State of Delaware. Section 145 (“Section 145”) of the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (the “General Corporation Law”), inter alia, provides that a Delaware corporation may indemnify any persons who were, are or are threatened to be made, parties to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation, or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation’s best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his conduct was illegal. In addition, the statutes of Delaware contain provisions to the general effect that any director shall in the performance of his duties be fully protected in relying in good faith upon the books of account or records of the corporation or statements prepared by any official of the corporation.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him and incurred by him in any such capacity, arising out of his status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

The Registrant’s amended and restated certificate of incorporation provides that the registrant shall indemnify its directors and officers to the full extent permitted by the General Corporation Law. The Registrant’s amended and restated certificate of incorporation also provides that the registrant’s directors shall not be personally liable to the registrant or its stockholders for monetary damages for breach of fiduciary duty as a director; provided, however, that the registrant’s amended and restated certificate of incorporation provides that the limitation of liability provided for therein shall not eliminate or limit the liability of a director to the extent provided by applicable law (i) for any breach of the director’s duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. In addition, the Registrant’s amended and restated by-laws provide that the Registrant shall indemnify its officers, directors, employees and agents to the full extent permitted by the General Corporation Law and shall provide for the advancement of expenses to such persons.

All of the Registrant’s directors and officers are covered by insurance policies maintained by the Registrant against specified liabilities for actions taken in their capacities as such, including liabilities under the Securities Act of 1933, as amended.

Although the above discussion summarizes the material provisions of our certificate of incorporation and bylaws, as amended, and Section 145 of the DGCL, it is not intended to be exhaustive and is qualified in its entirety by each of those documents and that statute.

Reference is made to Item 9 for the Registrant’s undertakings with respect to indemnification for liabilities arising under the Securities Act.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

---

## Item 8. Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
+4.1	Form of Amended and Restated Certificate of Incorporation of the Registrant dated August 29, 2006 (incorporated by reference to Annex C to the Registrant's Definitive Information Statement on Schedule 14C), as filed with the SEC on July 25, 2006.
+4.2	Form of Bylaws of the Registrant (incorporated by reference to Annex D to the Registrant's Definitive Information Statement on Schedule 14C), as filed with the SEC on July 25, 2006.
*4.3	Specimen of Common Stock Certificate.
+4.4	Senior Secured Note and Class A Warrant Agreement (incorporated by reference to Exhibit 2.2 to the Registrant's Current Report Form 8-K dated January 4, 2002).
+4.5	Form of Class A Warrant (incorporated by reference to Exhibit 2.2 to the Registrant's Current Report Form 8-K dated January 4, 2002).
+4.6	Form of First Avenue Networks, Inc. Stock Incentive Plan (incorporated by reference to Annex E to the Registrant's Definitive Information Statement on Schedule 14C), as filed with the SEC on July 25, 2006.
+4.7	Form Stock Purchase Warrant to subscribe for and purchase Common Stock of the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report Form 8-K dated January 29, 2004).
+4.8	Form of 9% Senior Secured Note due December 20, 2008 (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report Form 8-K dated January 29, 2004).
*4.9	FiberTower Corporation Amended and Restated Stock Option Plan.
*4.10	Form of Stock Option Agreement under FiberTower Corporation Amended and Restated Stock Option Plan.
*4.11	Form of Stock Option Agreement under First Avenue Networks, Inc. Stock Incentive Plan.
*5.1	Opinion of Andrews Kurth LLP with respect to legality of the securities.
*23.1	Consent of KBA Group LLP.
*23.2	Consent of Andrews Kurth LLP (included as part of Exhibit 5.1).
*24.1	Power of Attorney (set forth on the signature page of this registration statement).

+ Incorporated by reference.

\* Filed herewith.

## Item 9. Undertakings.

- (a) The undersigned registrant hereby undertakes:
- (1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:
    - (i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933;
    - (ii) To reflect in the prospectus any facts or events arising after the effective date of the registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or

high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement;

(iii) To include any material information with respect to the plan of distribution not previously disclosed in the registration statement or any material change to such information in the registration statement;

*Provided, however,* That paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is on Form S-8, and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to Section 13 or Section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement;

(2) That, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions described under Item 6 above, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment of the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Act and will be governed by the final adjudication of such issue.

---



## EXHIBIT INDEX

<u>Exhibit Number</u>	<u>Description</u>
+4.1	Form of Amended and Restated Certificate of Incorporation of the Registrant dated August 29, 2006 (incorporated by reference to Annex C to the Registrant's Definitive Information Statement on Schedule 14C), as filed with the SEC on July 25, 2006.
+4.2	Form of Bylaws of the Registrant (incorporated by reference to Annex D to the Registrant's Definitive Information Statement on Schedule 14C), as filed with the SEC on July 25, 2006.
*4.3	Specimen of Common Stock Certificate.
+4.4	Senior Secured Note and Class A Warrant Agreement (incorporated by reference to Exhibit 2.2 to the Registrant's Current Report Form 8-K dated January 4, 2002).
+4.5	Form of Class A Warrant (incorporated by reference to Exhibit 2.2 to the Registrant's Current Report Form 8-K dated January 4, 2002).
+4.6	Form of First Avenue Networks, Inc. Stock Incentive Plan (incorporated by reference to Annex E to the Registrant's Definitive Information Statement on Schedule 14C), as filed with the SEC on July 25, 2006.
+4.7	Form Stock Purchase Warrant to subscribe for and purchase Common Stock of the Registrant (incorporated by reference to Exhibit 4.1 to the Registrant's Current Report Form 8-K dated January 29, 2004).
+4.8	Form of 9% Senior Secured Note due December 20, 2008 (incorporated by reference to Exhibit 4.2 to the Registrant's Current Report Form 8-K dated January 29, 2004).
*4.9	FiberTower Corporation Amended and Restated Stock Option Plan.
*4.10	Form of Stock Option Agreement under FiberTower Corporation Amended and Restated Stock Option Plan.
*4.11	Form of Stock Option Agreement under First Avenue Networks, Inc. Stock Incentive Plan.
*5.1	Opinion of Andrews Kurth LLP with respect to legality of the securities.
*23.1	Consent of KBA Group LLP.
*23.2	Consent of Andrews Kurth LLP (included as part of Exhibit 5.1).
*24.1	Power of Attorney (set forth on the signature page of this registration statement).

---

+ Incorporated by reference.

\* Filed herewith.

---

NUMBER

SHARES

FTR

[Logo]

**FIBERTOWER CORPORATION**

**COMMON STOCK**  
THIS CERTIFICATE IS TRANSFERABLE IN CANTON, MA,  
JERSEY CITY, NJ AND NEW YORK, NY

**INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE**

SEE REVERSE FOR CERTAIN DEFINITIONS  
CUSIP 31567R 10 0

This Certifies that

is the owner of

FULLY PAID AND NONASSESSABLE SHARES OF COMMON STOCK, \$.001 PAR VALUE PER SHARE, OF

**FIBERTOWER CORPORATION**

transferable on the books of the Corporation by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed. This certificate is not valid until countersigned by the Transfer Agent and registered by the Registrar.

WITNESS the facsimile seal of the Corporation and the facsimile signatures of its duly authorized officers.  
Dated:

[Corporate Seal]

PRESIDENT AND CHIEF EXECUTIVE OFFICER

SECRETARY

COUNTERSIGNED AND REGISTERED:  
**COMPUTERSHARE TRUST COMPANY, N.A.**

TRANSFER AGENT  
AND REGISTRAR

BY

AUTHORIZED SIGNATURE



[Reverse of Certificate]

FIBERTOWER CORPORATION

The Corporation shall furnish without charge to each stockholder who so requests a statement of the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock of the Corporation or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Any such requests may be addressed to the Corporation.

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM — as tenants in common
TEN ENT — as tenants by the entireties
JT TEN — as joint tenants with right of survivorship and not as tenants in common

UNIF GIFT MIN ACT — Custodian (Cust) (Minor) under Uniform Gifts to Minors Act (State)
UNIF TRF MIN ACT — Custodian (Cust) (Minor) under Uniform Transfers to Minors Act (State)

Additional abbreviations may also be used though not in the above list.

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sell, assign and transfer unto

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

[Empty box for social security or other identifying number]

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE, OF ASSIGNEE)

\_\_\_\_\_ Shares

of the common stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

\_\_\_\_\_ Attorney to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.

Dated \_\_\_\_\_ [Signature line]

[Signature line]

NOTICE: THE SIGNATURE(S) TO THIS ASSIGNMENT MUST CORRESPOND WITH THE NAME(S) AS WRITTEN UPON THE FACE OF THE CERTIFICATE IN EVERY PARTICULAR, WITHOUT ALTERATION OR ENLARGEMENT OR ANY CHANGE WHATSOEVER.

Signature(s) Guaranteed

By \_\_\_\_\_ THE SIGNATURE(S) MUST BE GUARANTEED BY AN ELIGIBLE GUARANTOR INSTITUTION (BANKS, STOCKBROKERS, SAVINGS AND LOAN ASSOCIATIONS AND CREDIT UNIONS WITH MEMBERSHIP IN AN APPROVED SIGNATURE GUARANTEE MEDALLION PROGRAM), PURSUANT TO S.E.C. RULE 17Ad-15.

**FIBERTOWER CORPORATION**

**AMENDED AND RESTATED STOCK OPTION PLAN**

---

**FIBERTOWER CORPORATION**

**AMENDED AND RESTATED STOCK OPTION PLAN**

**TABLE OF CONTENTS**

	<b>Page</b>
1. PURPOSES OF THE PLAN	1
2. DEFINITIONS	1
3. STOCK SUBJECT TO THE PLAN	4
4. ADMINISTRATION OF THE PLAN	4
(a) PROCEDURE	4
(b) POWERS OF THE ADMINISTRATOR	4
(c) EFFECT OF ADMINISTRATOR'S DECISION	5
5. ELIGIBILITY	5
6. LIMITATIONS	5
7. TERM OF PLAN	6
8. TERM OF OPTION	6
9. OPTION EXERCISE PRICE AND CONSIDERATION	6
(a) EXERCISE PRICE	6
(b) FORM OF CONSIDERATION	6
10. EXERCISE OF OPTIONS	7
(a) VESTING	7
(b) PROCEDURE FOR EXERCISE; RIGHTS AS A STOCKHOLDER	8
(c) TERMINATION OF RELATIONSHIP AS A SERVICE PROVIDER	8
(d) DEATH OR DISABILITY OF OPTIONEE	8
(e) BUYOUT PROVISIONS	9
11. CORPORATE TRANSACTIONS	9
(a) ASSUMPTION OR REPLACEMENT OF OPTIONS BY SUCCESSOR	9
(b) OTHER TREATMENT OF OPTIONS	9
(c) ASSUMPTION OF OPTIONS ABSENT CORPORATE TRANSACTION	9
12. NON-TRANSFERABILITY OF OPTIONS AND OPTION SHARES	10
(a) RESTRICTIONS ON TRANSFER OF OPTIONS	10
(b) RESTRICTIONS ON TRANSFER OF OPTION SHARES	10
13. ADJUSTMENTS UPON CHANGES IN CAPITALIZATION	10

	<u>Page</u>
14. DATE OF GRANT	10
15. AMENDMENTS AND TERMINATION OF THE PLAN	11
(a) AMENDMENT AND TERMINATION	11
(b) STOCKHOLDER APPROVAL	11
(c) EFFECT OF AMENDMENT OR TERMINATION	11
16. CONDITIONS UPON ISSUANCE OF SHARES	11
(a) LEGAL COMPLIANCE	11
(b) INVESTMENT REPRESENTATIONS	11
(c) EFFECT OF AMENDMENT OR TERMINATION	11
17. INABILITY TO OBTAIN AUTHORITY	11
18. RESERVATION OF SHARES	11
19. INFORMATION TO OPTIONEES	11

**FIBERTOWER CORPORATION**

**AMENDED AND RESTATED STOCK OPTION PLAN**

This Amended and Restated Stock Option Plan (the "Plan") of FiberTower Corporation, a Delaware corporation (the "Corporation"), amends and restates in its entirety, as of May 12, 2006, the Stock Option Plan of the Corporation as adopted on May 10, 2001 and amended on May 20, 2002, and amended and restated on July 17, 2003, and amended on February 11, 2004, and amended on July 5, 2005.

**1. PURPOSES OF THE PLAN .** The purposes of this Plan are:

- (a) to attract and retain the best available personnel for service to the Corporation;
- (b) to attract and retain competent executives with outstanding ability for positions of substantial responsibility;
- (c) to provide additional incentive to key employees, officers, Directors and consultants of the Corporation; and
- (d) to promote the success of the Corporation's business.

Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Board at the time of grant. Although this Plan is intended to be a written compensatory benefit plan within the meaning of Rule 701 promulgated under the Securities Act, grants may be made pursuant to this plan which do not qualify for exemption under Rule 701 or Section 25102(o) of the California Corporations Code. Any requirement of this Plan which is required in law only because of Section 25102(o) need not apply if the Administrator so provides.

**2. DEFINITIONS .** As used herein, the following definitions shall apply:

- (a) "Administrator" means the Board, or a committee of the Board, in accordance with Section 4 of the Plan.
- (b) "Affiliate" means any Person who is an "affiliate" as defined in Rule 12b-2 of the General Rules and Regulations under the Exchange Act.
- (c) "Anniversary Date" has the meaning set forth in Section 10(a)(i) hereof.
- (d) "Applicable Laws" means the requirements relating to the administration of stock option plans under state corporate laws, U.S. federal and state securities laws, the Code, any stock exchange or quotation system on which the Common Stock is listed or quoted and the applicable laws of any foreign country or jurisdiction where options are, or will be, granted under the Plan.
- (e) "Board" means the Board of Directors of the Corporation.
- (f) "Certificate of Incorporation" means the Corporation's Amended and Restated Certificate of Incorporation, as the same may be amended from time to time.
- (g) "Code" means the U.S. Internal Revenue Code of 1986, as amended.

(h) “Common Stock” means the Common Stock, par value \$0.0001 per share, of the Corporation.

(i) “Consultant” means any person or entity that provides services to the Corporation that is not an Employee, Officer or Director.

(j) “Corporate Transaction” means (a) a merger or consolidation in which the Corporation is not the surviving corporation (other than a merger or consolidation with a wholly-owned subsidiary, a reincorporation of the Corporation in a different jurisdiction, or other transaction in which there is no substantial change in the stockholders of the Corporation and the Awards granted under the Plan are assumed or replaced by the successor corporation, which assumption shall be binding on all Optionees), (b) a dissolution or liquidation of the Corporation, (c) the sale of substantially all of the assets of the Corporation, (d) a merger in which the Corporation is the surviving corporation but after which the stockholders of the Company immediately prior to such merger (other than any stockholder that merges, or which owns or controls another corporation that merges, with the Corporation in such merger) cease to own their shares or other equity interest in the Corporation; or (e) any other transaction which qualifies as a “corporate transaction” under Section 424(a) of the Code wherein the stockholders of the Corporation give up all of their equity interest in the Corporation (except for the acquisition, sale or transfer of all or substantially all of the outstanding shares of the Corporation); provided, however, that the corporate transaction by and between the Corporation and First Avenue Networks, Inc. pursuant to that certain Agreement and Plan of Merger between the same shall not constitute a Corporate Transaction for purposes of the Plan.

(k) “Corporation” has the meaning set forth in the preamble hereto.

(l) “Director” means a member of the Board.

(m) “Disability” shall have the meaning set forth in Section 22(e)(3) of the Code.

(n) “Employee” means any employee, including, without limitation, Officers employed by the Corporation or any Subsidiary of the Corporation, and any Director. An Employee may also serve as a Director of the Corporation and maintain his status as an Employee hereunder.

(o) “Excess Vesting Amount” has the meaning set forth in Section 10(a)(ii) hereof.

(p) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(q) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange or a national market system, including without limitation the New York Stock Exchange, the Nasdaq National Market or The Nasdaq SmallCap Market, its Fair Market Value shall be the closing sales price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system for the last market trading day prior to the time of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(ii) If the Common Stock is regularly quoted by a recognized securities dealer but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the

mean between the high bid and low asked prices for the Common Stock on the last market trading day prior to the day of determination, as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined in good faith by the Administrator.

(r) “Family Members” has the meaning set forth in Section 12(b) hereof.

(s) “Incentive Stock Option” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(t) “Initial Vesting Amount” has the meaning set forth in Section 10(a)(i) hereof.

(u) “Liquidation” has the meaning set forth in Corporation’s Restated Certificate.

(v) “Nonstatutory Stock Option” means an Option not intended to qualify as an Incentive Stock Option.

(w) “Notice of Grant” means a written or electronic notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is part of the Option Agreement.

(x) “Officer” means a person who is an officer of the Corporation within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(y) “Option” means a stock option granted pursuant to the Plan.

(z) “Option Agreement” means an agreement between the Corporation and any Optionee evidencing the terms and conditions of an individual Option grant. Each Option Agreement will be subject to the terms and conditions of the Plan.

(aa) “Option Share” means a share issued upon the exercise of an Option.

(bb) “Optionee” means the holder of an outstanding Option granted under the Plan.

(cc) “Person” means any individual, firm, corporation, partnership, trust, incorporated or unincorporated association, joint venture, joint stock company, limited liability company, governmental authority or other entity of any kind, and shall include any successor (by merger or otherwise) of such entity.

(dd) “Plan” has the meaning set forth in the preamble hereto.

(ee) “Rule 16b-3” means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(ff) “Securities Act” means the Securities Act of 1933, as amended.

(gg) “Service Provider” means an Officer, Employee, Consultant, Director or non-Employee advisor (including any member of a board of advisors) of the Corporation.

- (hh) “Share” means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.
- (ii) “Subsidiary” means a “subsidiary corporation,” whether now or hereafter existing, as defined in Section 424(f) of the Code.
- (jj) “Target Corporation” has the meaning set forth in 11(c) hereof.
- (kk) “Transfer” has the meaning set forth in Section 12(b) hereof.

**3. STOCK SUBJECT TO THE PLAN.**

(a) Subject to the provisions of Section 3(b) and 13 of the Plan, the maximum aggregate number of Shares which may be optioned and issued under the Plan is 30,041,195 Shares. If an Option expires or becomes exercisable without having been exercised in full, or if the Corporation retains Shares as a method of payment under Section 9(b)(iv) hereof, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued under the Plan shall not be returned to the Plan and shall not become available for future distribution under the Plan.

(b) Notwithstanding the foregoing, at no time shall the total number of Shares issuable upon exercise of outstanding Options and the total number of securities provided for under any bonus or similar plan of the Corporation exceed the applicable percentage as calculated in accordance with the conditions and exclusions of Rule 260.140.45 of Title 10 of the California Code of Regulations.

**4. ADMINISTRATION OF THE PLAN.**

(a) **PROCEDURE.**

(i) If the Common Stock is registered under Section 12 of the Exchange Act and to the extent desirable to qualify transactions hereunder as exempt under Rule 16b-3, the transactions contemplated hereunder shall be structured to satisfy the requirements for exemption under Rule 16b-3.

(ii) The Plan shall be administered by the Board, provided, that the Board may delegate part or all of the administration of the Plan to a duly created Committee of the Board.

(b) **POWERS OF THE ADMINISTRATOR** . Subject to the provisions of the Plan, the Administrator shall have the authority, in its discretion:

- (i) to determine the Fair Market Value in accordance with the Plan;
- (ii) to select the Service Providers to whom Options may be granted hereunder;
- (iii) to determine the number of shares of Common Stock to be covered by each Option granted hereunder;
- (iv) to approve forms of Option Agreements for use under the Plan;

(v) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any Option granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, any vesting or forfeiture restrictions and any acceleration or waiver thereof, and any restriction or limitation regarding any Option or the Shares subject thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vi) to construe and interpret the terms of the Plan and Options granted pursuant to the Plan;

(vii) to prescribe, amend and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(viii) to modify or amend each Option (subject to Section 15(c) of the Plan);

(ix) to require or allow Optionees to satisfy withholding tax obligations by, without limitation, making a cash payment to the Corporation or electing to have the Corporation withhold from the Shares to be issued upon exercise of an Option that number of Shares having a Fair Market Value equal to the amount required to be withheld. In the latter case, the Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined, and all elections by an Optionee to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable;

(x) to authorize any person to execute on behalf of the Corporation any instrument required to effect the grant of an Option previously granted by the Administrator; and

(xi) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) **EFFECT OF ADMINISTRATOR'S DECISION.** The Administrator's decisions, determinations and interpretations shall be final and binding on all Optionees and any other holders of Options.

**5. ELIGIBILITY.** Options may be granted to such Service Providers, and in such amounts, as the Administrator, in its sole discretion, shall choose. Nonstatutory Stock Options may be granted to any Service Provider. Incentive Stock Options may be granted only to Service Providers who are Employees.

**6. LIMITATIONS.**

(a) Each Option shall be designated in the attendant Option Agreement as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designation, to the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Corporation and any Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted. The Fair Market Value of the Shares shall be determined as of the time the Option with respect to such Shares is granted.

(b) Neither the Plan nor any Option shall confer upon an Optionee any right with respect to continuing the Optionee's relationship as a Service Provider of the Corporation, nor shall they interfere in any way with the Optionee's right or the Corporation's right to terminate such relationship at any time, with or without cause.

**7. TERM OF PLAN.** This Plan will become effective on the date that it is adopted by the Board (the "Effective Date"). Unless earlier terminated as provided herein, this Plan will terminate ten (10) years from the Effective Date or, if earlier, the date of shareholder approval, unless terminated earlier under Section 15 hereof.

**8. TERM OF OPTION.** The term of each Option shall be stated in the Option Agreement and shall be ten (10) years from the date of grant or such shorter term as may be provided in the Option Agreement. Moreover, in the case of an Incentive Stock Option granted to an Optionee who, at the time the Incentive Stock Option is granted, owns Common Stock representing more than 10% of the voting power of all classes of stock of the Corporation or any Subsidiary, the term of the Incentive Stock Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Option Agreement.

**9. OPTION EXERCISE PRICE AND CONSIDERATION.**

(a) **EXERCISE PRICE.** The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, subject to the following:

(i) In the case of an Incentive Stock Option, which may only be granted to employees of the Corporation,

(A) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than 10% of the voting power of all classes of stock of the Corporation or any Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant; or

(B) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant; provided, however, that, at the time the Nonstatutory Stock Option is granted, if the grant of such Nonstatutory Stock Option is to be made to a Person who owns stock representing more than 10% of the total combined voting power of all classes of stock of the Corporation or any Subsidiary, then the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(b) **FORM OF CONSIDERATION.** The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. Such consideration may consist of

(i) cash;

(ii) check;

(iii) by surrender of shares that: (i) either (A) have been owned by Optionee for more than six (6) months and have been paid for within the meaning of SEC Rule 144 (and, if such shares were purchased from the Corporation by use of a promissory note, such note has been fully paid with respect to such shares) or (B) were obtained by Optionee in the public market and (ii) are clear of all liens, claims, encumbrances or security interests;

(iv) Intentionally Omitted;

(v) any combination of the foregoing methods of payment; or

(vi) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

## 10. EXERCISE OF OPTIONS.

(a) **VESTING.** Options granted under the Plan to an Optionee shall vest according to the following schedule so long as an Optionee is providing services to the Corporation, unless the Administrator otherwise provides:

If the Optionee is an Employee:

(i) 25% of the Options so granted (the "Initial Vesting Amount") shall vest in the Optionee on the one (1) year anniversary of the date of hire of such Optionee or such later date as the Administrator shall determine (the "Anniversary Date"); and

(ii) the balance of the Options in excess of the Initial Vesting Amount (the "Excess Vesting Amount") shall vest in the Optionee at the rate of one thirty-sixth (1/36) per month on the last day of each calendar month commencing with the calendar month next following the Anniversary Date and continuing thereafter until fully vested;

If the Optionee is a Consultant, such Options shall be fully vested on the date of grant or such later date as the Administrator shall determine;

If the Optionee is a non-Employee advisor, or a Director who is not also an Employee, the Options so granted shall vest monthly in twenty-four (24) equal installments commencing either (a) on the first day of the calendar month immediately following the date of the grant of the Options or (b) such later date as the Administrator shall determine and continuing thereafter on the first day of each successive calendar month for twenty-four (24) months;

provided, however, that notwithstanding the foregoing, and unless otherwise determined by the Administrator, with respect to Optionees that are Employees, upon the occurrence of a Liquidation or Corporate Transaction (A) prior to or on the Anniversary Date, any unvested portion of the Initial Vesting Amount shall become immediately and fully vested in the Optionee on the day immediately preceding such Liquidation or Corporate Transaction, or (B) subsequent to the Anniversary Date, 25% of any unvested portion of the Excess Vesting Amount shall become immediately and fully vested in the Optionee on the day immediately preceding such Liquidation or Corporate Transaction. Unless otherwise determined by the Administrator, with respect to Optionees that are non-

Employee advisors, Consultants or non-Employee Directors, upon the occurrence of a Liquidation or Corporate Transaction, 25% of any unvested shares of Option Stock shall become fully vested on the day immediately preceding the Liquidation or Corporate Transaction.

At the time an Option is granted, the Administrator shall determine any additional conditions which must be satisfied before the Option may be exercised, which conditions shall be specified in the Option Agreement. Unless the Administrator provides otherwise, vesting of Options granted hereunder shall be tolled during any unpaid leave of absence.

(b) **PROCEDURE FOR EXERCISE; RIGHTS AS A STOCKHOLDER.** An Option shall be deemed exercised when the Corporation has received: (i) written or electronic notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, (ii) full payment for the Shares with respect to which the Option is exercised, and (iii) full payment to allow the Corporation to satisfy any withholding tax obligations arising as a result of such exercise. Full payment in each case may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. An Option may not be exercised for a fraction of a Share. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Corporation or of a duly authorized transfer agent of the Corporation), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to such Shares, notwithstanding the exercise of the Option. The Corporation shall issue (or cause to be issued) such Shares promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 14 of the Plan. Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for exercise under the Option, by the number of Shares as to which the Option is exercised.

(c) **TERMINATION OF RELATIONSHIP AS A SERVICE PROVIDER.** Unless otherwise determined by the Administrator and set forth in the Option Agreement, if Optionee is terminated as a Service Provider for cause, his or her unexercised Option, whether vested or unvested in whole or in part, shall immediately become terminated and lapse and the Shares covered thereby shall revert to the Plan. Unless otherwise provided by the Administrator and set forth in the Option Agreement, if an Optionee ceases to be a Service Provider, other than as a result of having been dismissed for cause or upon the Optionee's death or Disability, the Optionee may exercise his or her Option within ninety (90) days or such shorter period of time as is specified in the Option Agreement to the extent that the Option is vested on the date of termination. If, on the date of termination, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified by the Administrator, the Option shall terminate and the Shares covered by such Option shall revert to the Plan.

(d) **DEATH OR DISABILITY OF OPTIONEE.** Unless otherwise determined by the Administrator and set forth in the Option Agreement, if an Optionee dies or incurs a Disability while a Service Provider, the Option may be exercised within one (1) year after the death or Disability of the Optionee, by the Optionee, the Optionee's estate or a Person that acquired the right to exercise the Option by bequest or inheritance where such Person is a Family Member of

the Optionee or a trust, corporation, partnership or limited liability company, all of the beneficial interests in which are held by the Optionee, the Optionee's estate or Family Members of such Optionee. An Option may be exercised pursuant to the foregoing sentence only to the extent that such Option is vested on the date the Optionee ceased to be a Service Provider. If, at the time the Optionee ceased to be a Service Provider, the Optionee is not vested as to his or her entire Option, the Shares covered by the unvested portion of the Option shall immediately revert to the Plan. The Option may be exercised by the Optionee or executor or administrator of the Optionee's estate or, if none, by the person (s) entitled to exercise the Option under the Optionee's will or laws of descent or distribution. If the Option is not so exercised within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) **BUYOUT PROVISIONS.** The Administrator may at any time offer to buy out for a payment in cash or Shares, an Option previously granted based on such terms and conditions as the Administrator shall establish and communicate to the Optionee at the time that such offer is made.

## **11. CORPORATE TRANSACTIONS.**

(a) **ASSUMPTION OR REPLACEMENT OF OPTIONS BY SUCCESSOR .** In the event of a Corporate Transaction any or all outstanding Options may be assumed or replaced by the successor corporation, which assumption or replacement shall be binding on all optionees. In the alternative, the successor corporation may substitute equivalent Options or provide substantially similar consideration to optionees as was provided to stockholders (after taking into account the existing provisions of the Options). The successor corporation may also issue, in place of outstanding Option Shares of the Company held by the Optionee, substantially similar shares or other property subject to repurchase restrictions no less favorable to the Optionee. In the event such successor corporation, if any, refuses to assume or replace the Options, as provided above, pursuant to a Corporate Transaction or if there is no successor corporation due to a dissolution or liquidation of the Corporation, such Options shall immediately vest as to 100% of the Shares subject thereto at such time and on such conditions as the Board shall determine and the Options shall expire at the closing of the transaction or at the time of dissolution or liquidation.

(b) **OTHER TREATMENT OF OPTIONS .** Subject to any greater rights granted to Optionees under Section 11(a), in the event of a Corporate Transaction, any outstanding Options shall be treated as provided in the applicable agreement or plan of merger, consolidation, dissolution, liquidation or sale of assets.

(c) **ASSUMPTION OF OPTIONS ABSENT CORPORATE TRANSACTION .** In the event of a merger or consolidation with another corporation (the "Target Corporation") in which the stockholders of the Corporation immediately prior to such merger or consolidation retain fifty percent (50%) or more of the voting power and fully diluted common stock of the combined corporation immediately following such merger or consolidation, the Board, in its sole discretion, may provide that any or all outstanding Options may be assumed or replaced by the Target Corporation, which assumption or replacement shall be binding on all Optionees. The Target Corporation may also issue, in place of outstanding Option Shares of the Corporation held by the Optionee, substantially similar shares or other property subject to repurchase restrictions no less favorable to the Optionee. In the event Options are so assumed by the Target Corporation, the terms and conditions of such Options shall remain unchanged (except that the exercise price and

the number and nature of Shares issuable upon exercise of any such option will be adjusted appropriately pursuant to Section 424(a) of the Code) or to reflect any applicable exchange ratio.

**12. NON-TRANSFERABILITY OF OPTIONS AND OPTION SHARES.**

(a) **RESTRICTIONS ON TRANSFER OF OPTIONS.** Unless determined otherwise by the Administrator, Options may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner other than by will or by the laws of descent or distribution, and, during the lifetime of the Optionee, no Option may be exercised other than by the Optionee.

(b) **RESTRICTIONS ON TRANSFER OF OPTION SHARES.** Unless and until the Corporation has become a reporting company with respect to any class of its equity securities under the Exchange Act, and except as set forth in Section 11 of the Plan, Option Shares may not be sold, pledged, assigned, hypothecated, transferred or disposed of in any manner (a "Transfer") other than by operation of law or expressly permitted herein, except that: (i) Option Shares may be Transferred pursuant to any Transfer approved by the Board; (ii) Option Shares may be Transferred by the Optionee of such Option Shares to (A) a member of such Optionee's immediate family, which shall include his spouse, siblings, parents, children or grandchildren (collectively, "Family Members") or (B) a trust, corporation, partnership or limited liability company, all of the beneficial interests in which shall be held by such Optionee or one or more Family Members of such Optionee; provided, however, that during the period that any such trust, corporation, partnership or limited liability company holds any right, title or interest in any Option Shares, no Person other than such Optionee or one or more Family Members of such Optionee may be or may become beneficiaries, stockholders, limited or general partners or members thereof; and (iii) Option Shares may be Transferred in connection with and as a part of a Liquidation or Corporate Transaction.

**13. ADJUSTMENTS UPON CHANGES IN CAPITALIZATION.** Subject to any required action by the stockholders of the Corporation, the number of shares of Common Stock covered by each outstanding Option, and the number of shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the exercise price per Share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the Common Stock or other distribution of the Corporation's equity securities without the receipt of consideration by the Corporation. Such adjustment shall be made by the Board in its sole discretion, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Corporation of Shares of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or price of Shares subject to an Option.

**14. DATE OF GRANT.** The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator. Notice of the determination, and an Option Agreement for execution, shall be provided to each Optionee within a reasonable time after the date of such grant.

**15. AMENDMENTS AND TERMINATION OF THE PLAN.**

(a) **AMENDMENT AND TERMINATION.** The Board shall amend the Plan from time to time as required to comply with the requirements of Applicable Laws, and may amend any or all Option Agreements as it deems necessary or appropriate. Additionally, in its sole discretion the Board may at any time amend, alter, suspend or terminate the Plan.

(b) **STOCKHOLDER APPROVAL.** If necessary to comply with Applicable Laws, the Corporation shall obtain stockholder approval of any Plan amendment.

(c) **EFFECT OF AMENDMENT OR TERMINATION.** No amendment, alteration, suspension or termination of the Plan or any Option Agreement shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Corporation. Termination of the Plan shall not affect the Administrator's ability to exercise the powers granted to it hereunder with respect to Options granted under the Plan prior to the date of such termination.

**16. CONDITIONS UPON ISSUANCE OF SHARES.**

(a) **LEGAL COMPLIANCE.** Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with Applicable Laws and shall be further subject to the approval of counsel for the Corporation with respect to such compliance.

(b) **INVESTMENT REPRESENTATIONS.** As a condition to the exercise of an Option, the Corporation may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Corporation, such a representation is required.

**17. INABILITY TO OBTAIN AUTHORITY.** The inability of the Corporation to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Corporation's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Corporation of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

**18. RESERVATION OF SHARES.** The Corporation, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

**19. INFORMATION TO OPTIONEES.** The Corporation shall deliver to each Optionee financial statements of the Corporation at least annually as required by the provisions of Rule 260.140.46 of Title 10 of the California Code of Regulations.

[End of Plan]

FIBERTOWER CORPORATION

INCENTIVE STOCK OPTION AGREEMENT

(Employees)

FiberTower Corporation, a Delaware corporation (the "Corporation"), desiring to afford an opportunity to the Optionee named below to purchase certain shares of the Corporation's common stock, \$.0001 par value per share ("Common Stock"), to provide the Optionee with an added incentive to enhance the profitability and value of the Corporation for the benefit of its stockholders, hereby grants to Optionee, and the Optionee hereby accepts, an option to purchase the number of shares of Common Stock specified below (the "Optioned Stock"), during the term ending at midnight (prevailing local time at the Corporation's principal offices) on the expiration date of this Option specified below, at the option exercise price specified below, subject to and upon the following terms and conditions:

1. Identifying Provisions : As used in this Option, the following terms shall have the following respective meanings:

- (a) Optionee: \_\_\_\_\_
(b) Date of grant: \_\_\_\_\_
(c) Vesting Commencement Date: \_\_\_\_\_
(d) Number of shares of Optioned Stock: \_\_\_\_\_
(e) Option exercise price per share: \_\_\_\_\_
(f) Expiration date: \_\_\_\_\_

This Option is intended to be an incentive stock option under Section 422 of the Internal Revenue Code (the "Code").

2. Stock Option Plan : This Option is subject to, and the Corporation and the Optionee agree to be bound by, all of the terms and conditions of the Corporation's Amended and Restated Stock Option Plan dated as of May 12, 2006 (the "Plan"), under which this Option was granted, as the same shall have been amended from time to time in accordance with the terms of the Plan, provided that no such amendment shall impair the rights of the Optionee hereunder, unless mutually agreed otherwise in writing between the Optionee and the Corporation. Pursuant to said Plan, the Board, or a duly created Committee to which the Board has delegated the administration of the Plan, is vested with final authority to interpret and construe the Plan and this Option, and is authorized to adopt rules and regulations for carrying out the Plan. A copy of the Plan in its present form is available for inspection during business hours by the Optionee or other persons entitled to exercise this Option at the Corporation's principal office. Capitalized terms used herein and not otherwise defined herein shall be as defined in the Plan. Optionee acknowledges that a copy of the Plan as in effect on the date of this Option Agreement has been delivered to Optionee and that the Option and/or the shares of Common Stock that may be issued upon any exercise of the Option are subject to the provisions of the Plan, including, without limitation, certain drag-along provisions set forth in Section 11 of the Plan.

**3. Vesting :** Subject to the provisions for termination and acceleration herein, this Option shall vest and first become exercisable as follows:

Twenty-five percent (25%) of the shares of Optioned Stock (“Initial Vesting Amount”) shall vest in the Optionee and first become exercisable one (1) year from the Vesting Commencement Date, as such date is determined pursuant to the Plan (the “Anniversary Date”). The number of shares of Optioned Stock in excess of the Initial Vesting Amount (the “Excess Vesting Amount”) shall vest in the Optionee and first become exercisable at a rate of one thirty-sixth (1/36) per month on each monthly anniversary of the Vesting Commencement Date thereafter until fully vested.

Notwithstanding the foregoing, upon the occurrence of a Liquidity Event (as defined herein) (A) prior to or on the Anniversary Date, any unvested portion of the Initial Vesting Amount shall become immediately and fully vested in the Optionee on the day immediately preceding such Liquidity Event, or (B) subsequent to the Anniversary Date, twenty-five percent (25%) of any unvested portion of the Excess Vesting Amount shall become immediately and fully vested in the Optionee on the day immediately preceding such Liquidity Event. For purposes hereof, “Liquidity Event” means (A) (1) the merger or consolidation of the Corporation into or with one or more entities, (2) the merger or consolidation of one or more entities into or with the Corporation or (3) a tender offer or other business combination if, in the case of (1), (2) or (3), the stockholders of the Corporation prior to such merger, consolidation, tender offer or business combination (together with such stockholders’ “Affiliates” (as defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended)) do not retain at least a majority of the voting power and fully diluted common equity of the surviving entity or (B) the sale, conveyance, exchange or transfer to another entity or entities (in one transaction or a series of related transactions) of (1) the voting capital stock of the Corporation (but excluding any sales of securities to the public pursuant to an offering registered under the Securities Act (as hereinafter defined) or to the public through a broker, dealer or market maker pursuant to the provisions of Rule 144 (other than Rule 144(k) prior to a public offering) adopted under such act) if, after such sale, conveyance, exchange or transfer, the stockholders of the Corporation prior to such sale, conveyance, exchange or transfer (together with such stockholders’ Affiliates) do not retain at least a majority of the voting power and fully diluted Common Stock of the Corporation or (2) more than fifty percent (50%) of the assets of the Corporation (in one transaction or a series of related transactions). The acquisition of one stockholder’s capital stock in the Corporation by another stockholder shall not be deemed a Liquidity Event (unless the transaction by which the acquiring stockholder first became a stockholder of the Corporation was conditioned upon or is otherwise related to such acquisition).

Vesting of the Option granted hereunder shall be tolled during any unpaid leave of absence of Optionee from Optionee’s employment with the Corporation.

Subject to the foregoing, this Option may be exercised at any time, or from time to time, in whole or in part. Upon the expiration date, this Option shall expire and may thereafter no longer be exercised.

**4. Market Stand-Off :** The Optionee agrees to bind all shares of Optioned Stock or shares acquired pursuant to the Optioned Stock to the requirement that Optionee shall not, to the extent requested by the Corporation or an underwriter of securities of the Corporation, sell or otherwise transfer or dispose of any shares of Common Stock of the Corporation then owned by

such Optionee for a period specified by the representative of the underwriters of Common Stock (or other securities) of the Corporation not to exceed one hundred eighty (180) days following the effective date of any registration statement of the Corporation filed under the Securities Act of 1933, as amended (the "Securities Act") (the "Market Stand-off"). In furtherance thereof the Optionee hereby agree to not offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any Common Stock (or other securities) of the Corporation or enter into any swap, hedging or other arrangement that transfers to another, in whole or in part, any of the economic consequences of ownership of any Common Stock (or other securities) of the Corporation held by the Optionee (other than those included in the registration) during the period of the Market Stand-off. The Optionee further agrees to execute and deliver such other agreements as may be reasonably requested by the Corporation or the underwriter which are consistent with the foregoing or which are necessary to give further effect thereto. The Optionee further agrees that any transferee of the Optioned Stock or shares acquired pursuant to the Optioned Stock shall be bound by the terms of this Market Stand-off provision.

**5. Adjustments upon Changes in Capitalization :** Subject to the provisions of the Plan under which this Option is granted, the number of shares of Optioned Stock and the exercise price of such shares, to the extent that the Option is unexercised with respect to such shares, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the Common Stock or other distribution of the Corporation's equity securities without the receipt of consideration by the Corporation. Such adjustment shall be made by the Board in its sole discretion, whose determination in that respect shall be final, binding and conclusive. Except as expressly provided herein, no issuance by the Corporation of shares of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number or exercise price of the shares of Optioned Stock covered by this Option.

**6. Restrictions on Exercise :** The following additional provisions shall apply to the exercise of this Option:

(i) *Termination of Relationship as Service Provider* . If Optionee is terminated as a Service Provider for cause, the unexercised portion of this Option, whether vested or unvested in whole or in part, shall immediately become terminated and lapse and the shares of Optioned Stock covered thereby shall revert to the Plan. If an Optionee ceases to be a Service Provider, other than as a result of having been dismissed for cause or upon the Optionee's death or Disability, the Optionee may exercise this Option within ninety (90) days to the extent that the Option is vested on the date of termination. If, on the date of termination, the Optionee is not vested as to this entire Option, the shares of Optioned Stock which are unvested shall revert to the Plan. If, after termination, the Optionee does not exercise this Option within the time specified herein, the Option shall terminate, and the shares of Optioned Stock covered by this Option shall revert to the Plan.

(ii) *Death or Disability* . If Optionee dies or incurs a Disability while a Service Provider, this Option may be exercised within one (1) year after the death or Disability of the Optionee, by the Optionee, the Optionee's estate or a Person that acquired the right to exercise the Option by bequest or inheritance where such Person is a Family Member of the

Optionee or a trust, corporation, partnership or limited liability company, all of the beneficial interests in which are held by the Optionee, the Optionee's estate or Family Members of such Optionee. This Option may be exercised pursuant to the foregoing sentence only to the extent that this Option is vested on the date the Optionee ceased to be a Service Provider. If, at the time the Optionee ceased to be a Service Provider, the Optionee is not vested as to this entire Option, the shares of Optioned Stock which are unvested shall immediately revert to the Plan. This Option may be exercised by the Optionee or executor or administrator of the Optionee's estate or, if none, by the person(s) entitled to exercise this Option under the Optionee's will or laws of descent or distribution. If this Option is not so exercised within the time specified herein, this Option shall terminate, and the shares of Optioned Stock covered by this Option shall revert to the Plan.

(iii) *Continuity of Employment* . This Option shall not be exercisable by the Optionee in any part unless at all times beginning with the date of grant and ending no more than three (3) months prior to the date of exercise, the Optionee has, except for military service leave, sick leave or other bona fide leave of absence (such as temporary employment by the United States Government) been in the continuous employ of the Corporation or a parent or subsidiary thereof, except that such period of three (3) months shall be one (1) year following any termination of the Optionee's employment by reason of Optionee's Disability.

**7. *Non-Transferable*** : The Optionee may not transfer this Option except by will or the laws of descent and distribution. This Option shall not be otherwise transferred, assigned, pledged, hypothecated or disposed of in any way, whether by operation of law or otherwise, and shall be exercisable during the Optionee's lifetime only by the Optionee or Optionee's guardian or legal representative. The shares of Common Stock purchased upon any exercise of this Option shall be subject to the restrictions on transfer set forth in the Plan.

**8. *Exercise, Payment For and Delivery of Stock*** : This Option may be exercised by the Optionee or other person then entitled to exercise it by giving four (4) business days' written notice of exercise to the Corporation in substantially the form of Exhibit A hereto specifying the number of shares of Optioned Stock to be purchased and the total purchase price, accompanied by cash or a check to the order of the Corporation in payment of such price. If the Corporation is required to withhold on account of any present or future tax imposed as a result of such exercise, the notice of exercise shall be accompanied by cash or a check to the order of the Corporation in payment of the amount of such withholding.

**9. *Rights in Shares Before Issuance and Delivery*** : Until the shares of Optioned Stock issuable upon exercise of this Option are issued (as evidenced by the appropriate entry on the books of the Corporation or of a duly authorized transfer agent of the Corporation), no right to vote or receive dividends or any other rights as a stockholder shall exist with respect to such shares notwithstanding the exercise of the Option. No adjustment will be made for a dividend or other right for which the record date is prior to the date the shares of Optioned Stock issuable upon exercise of this Option are issued, except as provided in accordance with the Plan.

**10. *Requirements of Law and of Stock Exchanges*** : By accepting this Option, the Optionee represents and agrees for the Optionee and the Optionee's transferees by will or the laws of descent and distribution that, unless a registration statement under the Securities Act, is in effect as to shares of Common Stock purchased upon any exercise of this Option, (i) any and all shares so purchased shall be acquired for the Optionee's personal account and not with a view

to or for sale in connection with any distribution, and (ii) each notice of the exercise of any portion of this Option shall be accompanied by a representation and warranty in writing, signed by the person entitled to exercise the same, that the shares are being so acquired in good faith for such person's personal account and not with a view to or for sale in connection with any distribution.

No certificate or certificates for shares of Common Stock purchased upon exercise of this Option shall be issued and delivered prior to the admission of such shares to listing on notice of issuance on any stock exchange or other securities market on which shares of Common Stock are then listed, nor unless and until, in the opinion of counsel for the Corporation, such securities may be issued and delivered without causing the Corporation to be in violation of or incur any liability under any federal, state or other securities law, any requirement of any securities exchange listing agreement to which the Corporation may be a party, or any other requirement of law or of any regulatory body having jurisdiction over the Corporation.

Optionee understands that the shares of Common Stock purchased upon exercise of this Option are not registered under the Securities Act or any state securities act and will be issued to Optionee pursuant to exemptions from registration thereunder. Optionee also understands that applicable securities laws may restrict the right of Optionee to exercise this Option or to dispose of any shares of Common Stock which Optionee may acquire upon any such exercise and may govern the manner in which such shares must be sold. Optionee shall not offer, sell or otherwise dispose of any of the shares of Common Stock acquired by reason of the exercise of this Option in any manner which would violate the Securities Act or any other state or federal law or cause the Corporation to have to make any filing or take any action to avoid such a violation and Optionee agrees that no transfer of this Option or the shares of Common Stock acquired by reason of the exercise of the Option shall be made except pursuant to an effective registration statement unless the Corporation has received an opinion of counsel or other evidence satisfactory to the Corporation and its counsel that such registration is not required. Any certificates evidencing shares of Common Stock may contain such legends as the Corporation may deem necessary or advisable to reflect and give effect to the restrictions imposed thereon hereunder, including, without limitation, a legend that such shares are subject to the drag-along and put/call provisions set forth in the Plan.

**11. Withholding Taxes :** As a condition of exercise of this Option, the Corporation may, in its sole discretion, withhold or require the Optionee to pay or reimburse the Corporation for any taxes which the Corporation determines are required to be withheld in connection with the grant or any exercise of this Option.

**12. Notices :** Any notice to be given to the Corporation shall be addressed to the Corporation in care of its President at its principal office, and any notice to be given to the Optionee shall be addressed to the Optionee at the address given beneath the Optionee's signature hereto or at such other address as the Optionee may hereafter designate in writing to the Corporation. Any such notice shall be deemed duly given when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, registered or certified, and deposited, postage and registry or certification fee prepaid, in a post office or branch post office regularly maintained by the United States Postal Service.

**13. *Laws Applicable to Construction* :** This Option Agreement shall be construed and enforced in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of law.

**14. *Limitations* :** To the extent that the aggregate Fair Market Value of the Shares with respect to which Incentive Stock Options are exercisable for the first time by the Optionee during any calendar year (under all plans of the Corporation and any Subsidiary) exceeds \$100,000, such Options shall be treated as Nonstatutory Stock Options.

**IN WITNESS WHEREOF** , the Corporation has granted this Option on the date of grant specified above.

**FIBERTOWER CORPORATION**

By: \_\_\_\_\_

Its: \_\_\_\_\_

ACCEPTED:

\_\_\_\_\_  
Optionee

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
City and State

**Exhibit A**

TO: FiberTower Corporation

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Pursuant to the Incentive Stock Option Agreement (herein called the "Agreement"), dated as of \_\_\_\_\_, by and between FiberTower Corporation (the "Corporation") and me, I hereby give notice that I elect to exercise the stock option granted under the Agreement with respect to \_\_\_\_\_ shares of the common stock of the Corporation as of the date on which this notice is delivered to the Corporation, and accordingly I hereby agree to purchase such shares at the price and on the terms established under the Agreement. Full payment for such shares is enclosed. Such payment consists of:

\_\_\_\_\_ Cash  
\_\_\_\_\_ Check

I hereby represent and warrant that I am purchasing such shares for investment purposes only and not with a view to distribution or resale.

I hereby agree that the stock option granted under the Agreement shall be deemed to have been exercised to the extent specified in this notice on the exercise date below my signature, and I hereby warrant that on such date this notice was delivered to the Corporation.

Sincerely,

\_\_\_\_\_  
(Sign Name)

\_\_\_\_\_  
(Print Name)

DATED: \_\_\_\_\_



**FIRST AVENUE NETWORKS, INC.**Incentive Stock Option  
Granted Under First Avenue Networks, Inc. Stock Option Plan

Stock Option granted by First Avenue Networks, Inc., a Delaware corporation. (the "Company"), to \_\_\_\_\_ (the "Participant"), pursuant to the First Avenue Networks, Inc. Stock Option Plan (the "Plan"). Terms used herein and not herein defined shall have the meanings ascribed to them in the Plan.

1. Grant of Option.

This certificate evidences the grant by the Company on \_\_\_\_\_, \_\_\_\_\_ to the Participant of an option to purchase, in whole or in part, on the terms herein provided, a total of \_\_\_\_\_ shares of common stock of the Company (the "Shares") at \$\_\_\_\_\_ per Share. The last date on which this option may be exercised is \_\_\_\_\_ (the "Final Exercise Date"). To the extent available, the option evidenced by this certificate shall be an incentive stock option as defined in Section 422 of the Internal Revenue Code of 1986, as amended from time to time.

Subject to earlier termination as provided herein or in the Plan, this option is exercisable in the following installments prior to the Final Exercise Date: \_\_\_\_\_.

provided, however, that in the event of a Change in Control of the Company (as defined below), then immediately prior to the consummation of such Change in Control, any of the Shares which remain unexercisable at such time shall become vested and exercisable, on a basis that gives the Participant an opportunity, as determined by the Company's board of directors, to participate as a stockholder in the Change of Control transaction following exercise.

"Change in Control" shall mean (i) the sale or transfer of all or substantially all of the Company's assets, (ii) a reorganization, recapitalization, consolidation or merger where the voting securities of the Company outstanding immediately preceding such transaction, or the voting securities issued in exchange for or with respect to the voting securities of the Company outstanding immediately preceding such transaction, represent 50% or less of the voting power of the surviving entity following the transaction, or (iii) a transaction or series of related transactions which results in the acquisition of more than 50% of the Company's outstanding voting power by a single person or entity or by a group of persons and/or entities acting in concert; provided, that a transaction solely for the purpose of reorganizing the Company into a holding company structure or reincorporating the Company in another jurisdiction shall not constitute a "Change in Control."

---

2. Exercise of Option.

*Notice of Exercise* . Each election to exercise this option shall be in writing, signed by the Participant or the Participant's executor or administrator or the person or persons to whom this option is transferred by will or the applicable laws of descent and distribution (the "Legal Representative"), and received by the Company at its principal office, accompanied by this certificate, and payment in full as provided in the Plan.

*Payment of Exercise Price* . The purchase price may be paid by delivery of cash, certified check, bank draft, money order, through a broker-assisted exercise program or through any combination of the foregoing permissible forms of payment. In the event that this option is exercised by a Legal Representative, the Company shall be under no obligation to deliver Shares hereunder unless and until the Company is satisfied as to the authority of the person or persons exercising this option.

3. Application of Stock Transfer Agreement.

If at the time this option is exercised the Company is a party to any agreement restricting the transfer of any outstanding shares of its Common Stock, the Company's board of directors may condition the exercise of this option or the Shares so acquired being made subject to the transfer restrictions set forth in that agreement (or if more than one such agreement is then in effect, the agreement specified by the board of directors of the Company).

4. Withholding.

No Shares will be transferred pursuant to the exercise of this option unless and until the person exercising this option remits to the Company an amount sufficient to satisfy any federal, state or local withholding tax requirements, or makes other arrangements satisfactory to the Company with regard to such taxes.

5. Termination of Employment.

a) In the event the Participant's employment on a full-time basis shall be terminated for cause (as determined by the Company's board of directors) or shall be terminated by the Participant for any reason whatsoever other than as a result of the Participant's death or "disability" (within the meaning of Section 22(e)(3) of the Code), the unexercised portion of this option held by the Participant at that time may only be exercised within 30 days after the date on which the Participant ceased to be an Employee, and only to the extent that the Participant could have otherwise exercised such option as of the date on which the Participant ceased to be an Employee.

b) In the event the Participant's employment on a full-time basis shall terminate for any reason other than (x) a termination specified in clause (a) above or (y) by reason of the Participant's death or "disability" (within the meaning of

Section 22(e)(3) of the Code), the unexercised portion of this option may only be exercised within 90 days after the date on which the Participant ceased to be an Employee, and only to the extent that the Participant could have otherwise exercised such option as of the date on which the Participant ceased to be an Employee.

c) In the event the Participant shall cease to be an ‘Employee on a full-time basis by reason of “disability” (within the meaning of Section 22(e)(3) of the Code), the unexercised portion of this option held by the Participant at that time may only be exercised within one year after the date on which the Participant ceased to be an Employee, and only to the extent that the Participant could have otherwise exercised this option as of the date on which the Participant ceased to be an Employee.

d) In the event the Participant shall die while employed (or within a period of one month after ceasing to be an Employee for any reason other than “disability” (within the meaning of Section 22(e)(3) of the Code) or within a period of one year after ceasing to be an Employee by reason of such “disability”), the unexercised portion of this option held by such Participant at the time of death may only be exercised within one year after the date of the Participant’s death, and only to the extent that the Participant could have otherwise exercised the option at the time of death. In such. event, this option may be exercised by a Legal Representative.

6. Nontransferability of Option.

This option is not transferable by the Participant other than by will or the laws of descent and distribution, and is exercisable during the Participant’s lifetime only by the Participant (or in the event of the Participant’s incapacity, the person or persons legally appointed to act on the Participant’s behalf).

7. Provisions of the Plan.

This option is subject to the provisions of the Plan, a copy of which is furnished to the Participant with this option.

*[The remainder of this page has intentionally been left blank.]*

IN WITNESS WHEREOF, the Company has caused this option to be executed under its corporate seal by its duly authorized officer. This option shall take effect as a sealed instrument.

FIRST AVENUE NETWORKS, INC.

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

### Acceptance of Stock Option

I, \_\_\_\_\_, hereby accept the stock option granted to me dated as of \_\_\_\_\_ and agree that such option is subject to all terms and conditions of both the certificate of grant and the First Avenue Networks, Inc. Stock Option Plan.

---

Name:

Date:

August 30, 2006

FiberTower Corporation  
7925 Jones Branch Drive, Suite 3300  
McLean, Virginia 22102

Ladies and Gentlemen:

We have acted as counsel to FiberTower Corporation, a Delaware corporation (formerly known as First Avenue Networks, Inc.) (the “Company”), in connection with the preparation and filing of the Registration Statement on Form S-8 (the “Registration Statement”), under the Securities Act of 1933, as amended (the “Securities Act”), relating to the issuance and proposed sale by the Company of up to an aggregate of 78,092,012 shares (the “Shares”) of the Company’s common stock, par value \$0.001 per share (the “Common Stock”) which are subject to issuance by the Company under the First Avenue Networks Inc. Stock Incentive Plan (the “First Avenue Plan”) and the FiberTower Corporation Amended and Restated Stock Option Plan (the “FiberTower Plan” and together with the First Avenue Plan, the “Plans”).

The shares issuable under the Plans are being registered on the Registration Statement in connection with the Agreement and Plan of Merger, dated as of May 14, 2006 (the “Merger Agreement”), among the Company, Marlin Acquisition Corporation, a Delaware corporation and a direct and wholly-owned subsidiary of the Company (“Merger Sub”), and FiberTower Network Services Corp., a Delaware corporation (formerly known as FiberTower Corporation) (“Old FiberTower”), pursuant to which Merger Sub merged with and into Old FiberTower, with Old FiberTower being the surviving corporation and a direct and wholly-owned subsidiary of the Company (the “Merger”).

We have examined originals or copies of (i) the Registration Statement, (ii) the Plans, (iii) the Amended and Restated Certificate of Incorporation of the Company, (iv) the Amended and Restated Bylaws of the Company, (v) certain resolutions of the Board of Directors of the Company certified to us to be true and correct by the Secretary of the Company, (vi) the form of the Certificate of Incorporation of the Company as in effect as of the time of the Merger, (vii) the form of the Bylaws of the Company as in effect as of the time of the Merger, (viii) the Merger Agreement and the transactions contemplated thereby and (ix) such other documents and records as we have deemed necessary and relevant for purposes hereof. We have relied upon certificates of public officials and officers of the Company as to certain matters of fact relating to this opinion and have made such investigations of law as we have deemed necessary and relevant as a basis hereof. We have not independently verified any factual matter relating to this opinion.

---

We have assumed and have not verified (i) the genuineness and authenticity of all signatures on all documents that we have examined, (ii) the legal capacity of all natural persons, (iii) the authenticity, accuracy and completeness of all documents submitted to us as originals and (iv) the conformity to the authentic originals of all documents supplied to us as certified or photostatic or faxed copies.

Based upon the foregoing, and subject to the limitations, qualifications, exceptions and assumptions set forth herein, and having due regard for such legal considerations as we deem relevant, we are of the opinion that the issuance of the Shares in accordance with the Plans have been duly authorized by the Company and, when issued and delivered upon receipt by the Company of lawful consideration under Delaware law in accordance with the Plans, will be validly issued, fully paid and non-assessable.

We express no opinion other than as to the federal laws of the United States of America and the Delaware General Corporation Law (which is deemed to include the applicable provisions of the Delaware Constitution and reported judicial opinions interpreting those laws).

We consent to the filing of this opinion as an exhibit to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations issued thereunder. Our opinion is rendered as of the date hereof, and we assume no obligation to update or supplement our opinion to reflect any change of fact, circumstance or law after such time as the Registration Statement becomes effective.

Very truly yours,

/s/ ANDREWS KURTH LLP

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Registration Statement on Form S-8 of FiberTower Corporation (formerly known as First Avenue Networks, Inc.) of our reports dated February 3, 2006, relating to the consolidated financial statements and financial statement schedule of First Avenue Networks, Inc. and management's assessment on the effectiveness of internal control over the financial reporting, appearing in the Annual Report on Form 10-K of First Avenue Networks, Inc. for the year ended December 31, 2005.

**/s/ KBA GROUP LLP**

Dallas, Texas

August 28, 2006

---