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AZ CORP COMMISSION
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IN THE MATTER OF THE APPLICATION OF
AMERICAN FIBER NETWORK, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE COMPETITIVE
LOCAL EXCHANGE TELECOMMUNICATIONS
SERVICES AS A RESELLER

DOCKET NO. T-03815A-99-0711

PROCEDURAL ORDER

BY THE COMMISSION:

On December 9, 1999, American Fiber Network, Inc. ("Company") filed with Docket Control of the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive local exchange telecommunications services as a reseller within the State of Arizona. The Company is required to publish notice of its filing in newspapers in all counties where service is to be provided. The record shows that the Company filed an affidavit of publication on April 3, 2000.

On August 29, 2000, the Arizona Court of Appeals, Division One, ("Court") issued its Opinion in Cause No. 1 CA-CV 98-0672 ("Opinion"). The Court determined that Article XV, Section 14 of the Arizona Constitution requires the Commission to "determine fair value rate base ("FVRB") for all public service corporations in Arizona prior to setting their rates and charges." Although that Opinion will more than likely be appealed to the Arizona Supreme Court, we are going to request FVRB information at this time to insure compliance with the Constitution should the ultimate decision of the Supreme Court affirm the Court's interpretation of Section 14. We also are concerned that the cost and complexity of FVRB determinations must not offend the Telecommunications Act of 1996.

On September 27, 2000, the Commission's Utilities Division Staff ("Staff") filed its Staff Report in this matter.

The time frame for processing the Company's application is March 30, 2001.

1 Pursuant to A.R.S. § 40-282, the Commission may act on an application for a Certificate to
2 provide resold telecommunications services without a hearing, or with a hearing if one is requested
3 by any party.

4 The Commission now issues this Procedural Order to govern the preparation and conduct of
5 this proceeding.

6 IT IS THEREFORE ORDERED that the deadline for processing this application shall be
7 March 30, 2001.

8 IT IS FURTHER ORDERED that intervention shall be in accordance with A.A.C. R14-3-105
9 except that all motions to intervene must be filed on or before January 19, 2001.

10 IT IS FURTHER ORDERED that American Fiber Network, Inc. shall file its proposed FVRB
11 within 30 days of the date of this Order (pursuant to A.A.C. R14-2-103(B), this may be the same as
12 original cost rate base). The FVRB shall include a description and value of all plant and equipment
13 (including the cost and location) currently held by Company and intended to be used to provide
14 competitive telecommunications services to Arizona customers. In doing so, American Fiber
15 Network, Inc. may use any reasonable means of asset allocation, direct assignment or combination.
16 In the alternative, upon request made within 30 days of the date of this Order, American Fiber
17 Network, Inc. may file its FVRB information at least 90 days prior to providing service.

18 IT IS FURTHER ORDERED that American Fiber Network, Inc. shall file information
19 demonstrating how the value of its plant and equipment (both current and projected) is related to its
20 minimum and maximum rates within 30 days of the date of this Order, if the alternative is chosen, or
21 at least 90 days prior to providing service (such demonstration must include the amount of
22 depreciation expense and capital carrying costs related to the FVRB). In the alternative, American
23 Fiber Network, Inc.. must demonstrate that such rates and charges are not unreasonable and constitute
24 a fair rate of return on rate base.

25 IT IS FURTHER ORDERED that Staff shall review the FVRB information filed and ascertain
26 that American Fiber Network, Inc. is utilizing the appropriate amount of depreciation and capital
27 carrying costs in determining its minimum and maximum rates.

28 IT IS FURTHER ORDERED that Staff shall file disagreements, if any, with the proposed

1 FVRB and/or rates and charges, within 30 days of Company filing its FVRB information.

2 IT IS FURTHER ORDERED that if there are any disagreements with any FVRB information,
3 then the Certificate shall be stayed pending resolution of the matter.

4 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
5 pursuant to Rule 6(a) or (e) of the Arizona Rules of Civil Procedure.

6 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend or waive
7 any portion of this Procedural Order by subsequent Procedural Order or by ruling at hearing.

8 DATED this 30th day of November, 2000.

9
10 
11 ALICIA GRANTHAM
ADMINISTRATIVE LAW JUDGE

12 Copies of the foregoing mailed/delivered
13 this 30th day of November, 2000 to:

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27 By: 
28 Debbi Person
Secretary to Alicia Grantham