



SEP 27 2000

**STAFF REPORT  
UTILITIES DIVISION  
ARIZONA CORPORATION COMMISSION**

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**Application For a Certificate of Convenience and Necessity to  
Provide Resold Local Exchange Service  
and For Determination that Services of the Applicant are Competitive**

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

**Applicant: American Fiber Network, Inc.  
Docket No.: T-03815A-99-0711**

On December 9, 1999, the Applicant filed an application for a Certificate of Convenience and Necessity (CC&N) to provide resold local exchange services in the State of Arizona.

Staff reviews such applications and makes a recommendation to the Commission that the application be approved or denied. In arriving at its recommendation, Staff assesses the following criteria: a) sufficiency of the application, b) technical and managerial capability of the Applicant, c) financial capability, d) proposed tariff, e) complaint history of the Applicant, and f) whether the Applicant's proposed rates will be competitive, just, and reasonable.

**REVIEW OF APPLICANT INFORMATION**

- The necessary information has been filed to process this application, and the Applicant has authority to transact business in the State of Arizona.**
- The Applicant has published legal notice of the application in all counties where service will be provided.**

**REVIEW OF TECHNICAL AND MANAGERIAL INFORMATION**

- The Applicant has sufficient technical and managerial capabilities to provide resold local exchange service in the State of Arizona.**

The Applicant is approved to offer resold local exchange service in 14 states and the District of Columbia. The Applicant is currently offering local and intrastate interexchange service in Massachusetts and New York. The Applicant has a resale agreement with U S WEST Communications, Inc. that was approved in Decision No. 62487. Based on this information, Staff has concluded that the Applicant has sufficient technical and managerial capabilities to provide resold local exchange service.

**REVIEW OF FINANCIAL INFORMATION**

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- The Applicant has sufficient financial resources to provide resold local exchange service in the State of Arizona.**
- The Applicant lacks sufficient financial resources to provide resold local exchange service in the State of Arizona absent the procurement of a performance bond.**

The Applicant has provided financial statements for the year ended December 31, 1999. These financial statements indicate that the Applicant has total assets of \$297,652 and total equity \$172,361. In addition, the Applicant had a net income of \$49,016 on revenue of \$4,108,104. Staff believes the Applicant's liquid assets are insufficient to support an unforeseen reduction in revenue since its total annual expenses are \$4,068,272. The Applicant may be unable to reduce variable costs sufficiently to avoid eroding the Applicant's equity to a nonviable position. Based on this information, the Applicant lacks sufficient financial resources to provide resold local exchange service in the State of Arizona absent the procurement of a performance bond.

Since this Applicant does not appear to have sufficient financial resources, Staff believes that any deposits prepayments, and advances received from the Applicant's customers should be protected by the procurement of a performance bond. Further, measures should be taken to ensure that the Applicant will not discontinue service to its customers without first complying with A.A.C. R14-2-1107.

To that end, Staff recommends: 1) that the Applicant procure a performance bond; 2) that the amount of the performance bond account be sufficient to cover 60 days revenue from its customers, and any prepayments or deposits collected from the Applicant's customers; 3) that the amount of the performance bond be increased if at any time it would be insufficient to cover the aforementioned requirement; 4) that if the Applicant desires to discontinue service it file an application with the Commission pursuant to A.A.C. R14-2-1107; 5) that the Applicant be required to notify each of its customers and the Commission 30 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; 6) that failure to meet requirement number 5 will result in forfeiture of the Applicant's performance bond; 7) that proof of the performance bond be docketed within 30 days of a Decision in this matter, or prior to the provision of service, whichever is first; and 8) that after one year of operation under the CC&N granted by the Commission, Staff recommends that the Applicant be allowed to file a request for cancellation of its established escrow account/surety bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission for a Decision that the requested cancellation is in the public interest.

**REVIEW OF PROPOSED TARIFF**

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**The Applicant's proposed tariff fulfills the requirements of the Commission.**

The Applicant has not filed an adequate tariff with the Commission. Staff has determined that the proposed tariff the Applicant filed with this application refers to a facilities-based provider. Therefore, the tariff does not reflect the request for a CC&N to be a switchless reseller of local exchange services. The proposed tariff does not fulfill the Commission requirements.

**REVIEW OF COMPLAINT INFORMATION**

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**Complaints against the Applicant (if any) are not sufficient to deny the application to provide resold local exchange service in the State of Arizona.**

The Applicant has neither had an application for service denied, nor revoked in any state. There are, and have been, no formal complaint proceedings involving the Applicant. There have not been any civil or criminal proceedings against the Applicant. Consumer Services reports no complaint history within Arizona.

**COMPETITIVE SERVICES' RATES AND CHARGES**

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**The Applicant's proposed rates will be competitive, just, and reasonable.**

The Applicant is a reseller of services it purchases from other telecommunications companies. It is not a monopoly provider of service nor does it control a significant portion of the telecommunications market. The Applicant cannot adversely affect the local exchange market by restricting output or raising market prices. In addition, the entities from which the Applicant buys bulk services are technically and financially capable of providing alternative services at comparable rates, terms, and conditions. Staff has concluded that the Applicant has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. In light of the competitive market in which the Applicant will be providing its services, Staff believes that the Applicant's proposed tariffs for its competitive services will be just and reasonable.

The Commission provides pricing flexibility by allowing competitive telecommunication service companies to price their services at or below the maximum rates contained in their tariffs as long as the pricing of those services complies with A.A.C. R14-2-1109. The Commission's rules require the Applicant to file a tariff for each competitive service that states the maximum rate as well as the effective (actual) price that will be charged for the service. Staff recommends that the Applicant's competitive services be priced at the rates proposed by the Applicant in its most recently

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filed tariffs. In the event that the Applicant states only one rate in its tariff for a competitive service, Staff recommends that the rate stated be the effective (actual) price to be charged for the service as well as the service's maximum rate. Any changes to the Applicant's effective price for a service must comply with A.A.C. R14-2-1109.

A.A.C. R14-2-1109(A) provides that minimum rates for the Applicant's competitive services must not be below the Applicant's total service long run incremental costs of providing the services. The Applicant's maximum rates should be the maximum rates proposed by the Applicant in its most recent tariffs on file with the Commission. Any future changes to the maximum rates in the Applicant's tariffs must comply with A.A.C. R14-2-1110.

**STAFF RECOMMENDATIONS**

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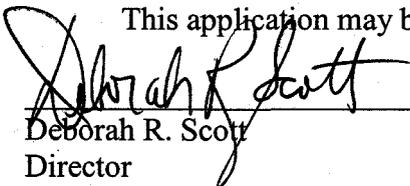
Staff has reviewed the Applicant's application for a Certificate of Convenience and Necessity to offer resold local exchange services and its petition to classify its local exchange services as competitive. Based on its evaluation of the Applicant's technical and financial capabilities to provide resold local exchange services, Staff recommends approval of the application subject to the following:

1. The Applicant should be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
2. The Applicant should be ordered to maintain its accounts and records as required by the Commission;
3. The Applicant should be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
4. The Applicant should be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
5. The Applicant should be ordered to comply with the Commission's rules and modify its tariffs to conform to these rules if it is determined that there is a conflict between the Applicant's tariffs and the Commission's rules;
6. The Applicant should be ordered to cooperate with Commission investigations of customer complaints;
7. The Applicant should be ordered to participate in and contribute to a universal service fund, as required by the Commission;
8. The Applicant should be ordered to file its tariffs within 30 days of an Order in this matter, and in accordance with the Decision;

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9. The Applicant should be ordered to notify the Commission immediately upon changes to the Applicant's address or telephone number;
10. The Applicant's local exchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
11. The Applicant's competitive services should be priced at the rates proposed by the Applicant in its most recently filed tariffs. The maximum rates for these services should be the maximum rates proposed by the Applicant in its tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;
12. In the event that the Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be the effective (actual) price to be charged for the service as well as the service's maximum rate; and
13. In order to protect the Applicant's customers,
  - a. the Applicant should be ordered to procure a performance bond in an amount sufficient to cover 60 days revenue from its customers, and any prepayments or deposits collected from the Applicant's customers; and the amount of the performance bond should be increased if at any time it would be insufficient to cover the aforementioned requirement;
  - b. if the Applicant desires to discontinue service, it should file an application with the Commission pursuant to A.A.C. R14-2-1107;
  - c. the Applicant should be required to notify each of its customers and the Commission 30 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond;
  - d. proof of the performance bond should be docketed within 30 days of a Decision in this matter, or prior to the provision of service, whichever is first; and
  - e. after one year of operation under the CC&N granted by the Commission, Staff recommends that the Applicant be allowed to file a request for cancellation of its established performance bond. Such request should be accompanied by information demonstrating the Applicant's financial viability. Upon receipt of such filing and after Staff review, Staff will forward its recommendation to the Commission for a Decision that the requested cancellation is in the public interest.

This application may be approved without a hearing pursuant to A.R.S. § 40-282.

  
Deborah R. Scott  
Director  
Utilities Division

9/26/00  
Date

Originator: Rodney Moore

Date: September 26, 2000