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**COMMISSIONERS**  
MIKE GLEASON - Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE



BRIAN C. McNEIL  
Executive Director

ORIGINAL

ARIZONA CORPORATION COMMISSION

DATE: SEPTEMBER 5, 2008

Arizona Corporation Commission  
DOCKETED

DOCKET NO: T-03815A-06-0747

SEP 5 2008

TO ALL PARTIES:

DOCKETED BY *mm*

Enclosed please find the recommendation of Administrative Law Judge Belinda A. Martin. The recommendation has been filed in the form of an Opinion and Order on:

AMERICAN FIBER NETWORK, INC  
(CC&N/FACILITIES BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

SEPTEMBER 15, 2008

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

SEPTEMBER 23, 2008 AND SEPTEMBER 24, 2008

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

AZ CORP COMMISSION  
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1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MIKE GLEASON - Chairman  
4 WILLIAM A. MUNDELL  
5 JEFF HATCH-MILLER  
6 KRISTIN K. MAYES  
7 GARY PIERCE

8 IN THE MATTER OF THE APPLICATION  
9 OF AMERICAN FIBER NETWORK, INC.,  
10 FOR APPROVAL OF A CERTIFICATE OF  
11 CONVENIENCE AND NECESSITY TO PROVIDE  
12 FACILITIES-BASED LOCAL EXCHANGE AND  
13 SWITCHED ACCESS TELECOMMUNICATIONS  
14 SERVICES.

DOCKET NO. T-03815A-06-0747

DECISION NO. \_\_\_\_\_

OPINION AND ORDER

11 DATE OF HEARING: July 25, 2008  
12 PLACE OF HEARING: Phoenix, Arizona  
13 ADMINISTRATIVE LAW JUDGE: Belinda A. Martin  
14 APPEARANCES: Mr. Robert E. Heath, Executive Vice President,  
15 American Fiber Network, on behalf of Applicant; and  
16 Ms. Amanda Ho, Staff Attorney, Legal Division, on  
17 behalf of the Utilities Division of the Arizona  
18 Corporation Commission.

18 **BY THE COMMISSION:**

19 On November 29, 2006, American Fiber Network, Inc. ("AFN" or "Company") submitted to  
20 the Arizona Corporation Commission ("Commission") an application for a Certificate of  
21 Convenience and Necessity ("Certificate" or "CC&N") to provide resold local exchange and  
22 facilities-based local exchange telecommunications services in Arizona ("Application"). The  
23 Company also requested that such services be classified as competitive.

24 On May 1, 2007, the Commission's Utilities Division ("Staff") filed a Letter of Insufficiency  
25 and first set of data requests in this matter.

26 On May 30, 2007, AFN filed its response to the data requests.

27 On August 10, 2007, Staff filed its second set of data requests.  
28

1 On November 19, 2007, AFN filed an amended Application to request authority only to  
2 provide facilities-based local exchange telecommunications services.

3 On December 7, 2007, AFN filed its responses to the second set of data requests. In addition,  
4 the Company amended its Application to specify that it also seeks to provide switched access  
5 telecommunications services.

6 On April 30, 2008, Staff filed its Staff Report recommending approval of AFN's Application.

7 On June 4, 2008, a Procedural Order was issued scheduling the hearing in the matter for July  
8 25, 2008, and establishing other procedural deadlines.

9 On July 16, 2008, AFN docketed its Affidavit of Publication.

10 On July 21, 2008, AFN filed a Corporate Resolution authorizing Robert E. Heath, Vice  
11 President of AFN, to represent the Company at the hearing.

12 On July 25, 2008, a full public hearing was held before a duly authorized Administrative Law  
13 Judge of the Commission at its offices in Phoenix, Arizona. The Company and Staff appeared and  
14 presented evidence and testimony. No members of the public appeared to give public comments in  
15 this matter. At the conclusion of the hearing the matter was taken under advisement pending  
16 submission of a Recommended Opinion and Order of the Commission.

17 \* \* \* \* \*

18 Having considered the entire record herein and being fully advised in the premises, the  
19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. On June 30, 2000, the Commission granted to AFN a CC&N to provide resold long  
22 distance telecommunications services in Arizona pursuant to Decision No. 62718.

23 2. On June 28, 2001, the Commission granted to AFN a CC&N to provide resold local  
24 exchange telecommunications services in Arizona pursuant to Decision No. 63837.

25 3. AFN is a foreign "C" corporation incorporated in the State of Delaware and authorized  
26 to transact business in Arizona.

27 4. AFN currently provides, or is authorized to provide, competitive facilities-based  
28 telecommunications services in 28 states.

1           5.       On November 29, 2006, AFN filed its Application for a CC&N to provide facilities-  
2 based local exchange telecommunications services in Arizona. The Company later amended its  
3 Application to include the provision of switched access telecommunications services. The  
4 Application also seeks a determination that its proposed services be classified as competitive.

5           6.       Staff recommends approval of AFN's Application for a CC&N and its petition for a  
6 determination that its proposed telecommunications services should be classified as competitive.

7           7.       Staff further recommends that:

- 8           a.)       AFN comply with all Commission Rules, Orders, and other requirements  
9 relevant to the provision of intrastate telecommunications services;  
10          b.)       AFN abide by the quality service standards that were approved by the  
11 Commission for Qwest in Docket No. T-01051B-93-0183;  
12          c.)       AFN be prohibited from barring access to alternative local exchange service  
13 providers who wish to serve areas where AFN is the only provider of local  
14 exchange service facilities;  
15          d.)       AFN be required to notify the Commission immediately upon changes to  
16 AFN's name address or telephone number;  
17          e.)       AFN cooperate with Commission investigations including, but not limited to  
18 customer complaints;  
19          f.)       AFN's rates be classified as competitive;  
20          g.)       Although Staff considered the fair value rate base ("FVRB") information  
21 submitted by AFN, the fair value information provided should not be given  
22 substantial weight in this analysis;  
23          h.)       AFN offer Caller ID with the capability to toggle between blocking and  
24 unblocking the transmission of the telephone number at no charge;  
25          i.)       AFN offer Last Call Return service that will not return calls to telephone  
26 numbers that have the privacy indicator activated; and  
27          j.)       AFN be authorized to discount its rates and service charges to the marginal  
28 cost of providing the services.  
29          k.)       AFN abide by the Commission-adopted rules that address Universal Service in  
30 Arizona, Arizona Administrative Code ("A.A.C.") R14-2-1204(B), requiring  
31 AFN to make the necessary monthly payments into the Arizona Universal  
32 Service Fund ("AUSF").

33           8.       Staff further recommends that AFN comply with the following conditions, within the  
34 timeframes outlined below, or AFN's CC&N should be considered null and void, after due process.

- 35           a.)       That AFN docket conforming tariff pages for each service within its CC&N  
36 within 365 days from the date of an Order in this matter or 30 days prior to  
37 providing service, whichever comes first. The tariffs submitted to the  
38 Commission shall coincide with the Application.

1           b.)    AFN shall:

2           (i).    Procure a performance bond(s) or irrevocable sight draft letter(s) of  
3           credit totaling \$125,000.<sup>1</sup> The minimum performance bond(s) or the  
4           irrevocable sight draft letter(s) of credit amount of \$125,000 should be  
5           increased if at any time it would be insufficient to cover advances,  
6           deposits, and/or prepayments collected from AFN's customers. The  
7           performance bond(s) or irrevocable sight draft letter(s) of credit amount  
8           should be increased in increments of \$62,500. This increase should  
9           occur when the total amount of the advances, deposits, and  
10          prepayments is within \$12,500 of the performance bond(s) or the  
11          irrevocable sight draft letter(s) of credit amount.

12          (ii).    Docket proof of the performance bond(s) or irrevocable sight draft  
13          letter(s) of credit within 30 days of the effective date of an Order in this  
14          matter. The original performance bond(s) or irrevocable sight draft  
15          letter(s) of credit shall be filed with the Commission's Business Office  
16          and copies of the performance bond(s) or irrevocable sight draft  
17          letter(s) of credit with Docket Control, as a compliance item in this  
18          docket. The performance bond(s) or the irrevocable sight draft letter(s)  
19          of credit must remain in effect until further order of the Commission.

20          The Commission may draw on the performance bond(s) or irrevocable  
21          sight draft letter(s) of credit, on behalf of, and for the sole benefit of,  
22          the Company's customers, if the Commission in its discretion finds that  
23          the Company is in default of its obligations arising from its CC&N.  
24          The Commission may use the performance bond(s) or irrevocable sight  
25          draft letter(s) of credit funds, as appropriate, to protect the Company's  
26          customers and the public interest and take any and all actions the  
27          Commission deems necessary, in its discretion, including, but not  
28          limited to, returning prepayments or deposits collected from the  
29          Company's customers.

30          **Technical Capabilities**

31          9.       AFN provides, or has been authorized to provide, facilities-based local exchange  
32          telecommunications services in 28 states.

33          10.      AFN's witness testified that the key personnel for AFN have a combined total of over  
34          87 years experience in the telecommunications industry. (Tr. Pg. 10-11.)

35          11.      AFN already provides resold long distance and resold local exchange  
36          telecommunications services in Arizona.

37          12.      Based on AFN's experience in the telecommunications industry, AFN has the

38          <sup>1</sup> The Company currently has a performance bond on file with the Commission in the amount of \$25,000 pursuant to  
Decision No. 63837 (June 28, 2001). See Paragraph nos. 14 and 15, herein.

1 technical capabilities to provide the additional telecommunications services it is requesting to provide  
2 in Arizona.

3 **Financial Capabilities**

4 13. AFN provided to Staff several Balance and Income Statements. For the twelve-month  
5 period ending March 31, 2006, the statement showed total assets of \$1,759,223, total equity of  
6 \$468,413 and net income of \$1,763,287. For the twelve-month period ending March 31, 2007, the  
7 statement showed total assets of \$2,176,369, total equity of \$923,955 and net income of \$473,624.  
8 For the six-month period ending September 30, 2007, the statement showed total assets of  
9 \$2,352,123, total equity of \$1,440,168, and net income of \$516,183.

10 14. The Company currently has a performance bond in the amount of \$25,000 on file with  
11 the Commission for its competitive resold local exchange telecommunications services previously  
12 approved by the Commission in Decision No. 63837 (June 28, 2001).

13 15. All CC&Ns for facilities-based local exchange service must be secured by a minimum  
14 bond or irrevocable sight draft letter of credit in the amount of \$100,000. As such, the Company's  
15 total performance bond(s) or irrevocable sight draft letter(s) of credit filed with the Commission must  
16 be increased to equal \$125,000.

17 16. Pursuant to A.A.C. R-14-2-1107, if AFN desires to discontinue service in Arizona, it  
18 must file an application with the Commission, and notify its customers and the Commission sixty  
19 (60) days prior to filing the application to discontinue service. Further, AFN's failure to meet the  
20 requirements of the rule will result in a forfeiture of AFN's performance bond(s) or irrevocable sight  
21 draft letter(s) of credit.

22 **Rates and Charges**

23 17. Pursuant to A.A.C. R14-2-1109, AFN may charge rates for service that are not less  
24 than its total service long-run incremental costs of providing service.

25 18. AFN's proposed rates are for competitive services. In general, rates for competitive  
26 services are not set according to the rate of return regulation.

27 19. AFN will have to compete with ILECs and various CLECs currently providing local  
28 exchange service.

1           20.     Based on the competitive environment that AFN will be operating in, it will not be  
2 able to exert any market power and the competitive process should result in rates that are just and  
3 reasonable.

4           21.     AFN's FVRB is zero and is therefore not useful in a fair value analysis.

5           22.     AFN docketed an updated tariff in this matter.

6           23.     AFN's proposed rates, as they appear in its updated tariff, are just and reasonable and  
7 should be approved.

8 **Local Exchange Carrier Specific Issues**

9           24.     Pursuant to A.A.C. R14-2-1308(A) and federal laws and rules, AFN will make  
10 number portability available to facilitate the ability of customers to switch between authorized local  
11 carriers within a given wire center without changing their telephone number and without impairment  
12 to quality, functionality, reliability or convenience of use.

13          25.     In compliance with A.A.C. R14-2-1204, all telecommunications service providers that  
14 interconnect into the public switched network shall provide funding for the AUSF.

15          26.     AFN will contribute to the AUSF as required by the A.A.C., and shall make the  
16 necessary monthly payments as required under A.A.C. R14-2-1204(B).

17          27.     In Commission Decision No. 59421 (December 20, 1995) the Commission approved  
18 quality of service standards for Qwest which imposed penalties due to an unsatisfactory level of  
19 service. In this matter, AFN does not have a similar history of service quality problems, and  
20 therefore the penalties in that decision should not apply.

21          28.     In the areas where AFN is the only local exchange service provider, AFN is prohibited  
22 from barring access to alternative local exchange service providers who wish to serve the area.

23          29.     AFN will provide all customers with 911 and E911 service where available, or will  
24 coordinate with ILECs, and emergency service providers to facilitate the service.

25          30.     Pursuant to prior Commission Decisions, AFN may offer customer local area  
26 signaling services such as Caller ID and Call Blocking, so long as the customer is able to block or  
27 unblock each individual call at no additional cost.

28

1 31. AFN must also offer Last Call Return service, which will not allow the return of calls  
2 to the telephone numbers that have the privacy indicator activated.

3 **Complaint Information**

4 32. AFN has not had an application for service denied, or revoked, in any state.

5 33. AFN has no outstanding complaints in Arizona.

6 34. AFN has not had any formal complaints against it.

7 35. AFN has not had any civil or criminal proceedings filed against it.

8 36. None of AFN's officers, directors or partners have been involved in any civil or  
9 criminal investigations, or any formal or informal complaints.

10 37. None of AFN's officers, directors or partners have been convicted of any criminal acts  
11 in the past ten years.

12 **Competitive Services Analysis**

13 38. AFN has requested that its telecommunications services in Arizona be classified as  
14 competitive. AFN's proposed services should be classified as competitive because there are  
15 alternatives to AFN's services; ILECs hold a virtual monopoly in local markets; AFN will have to  
16 convince customers to purchase its services; AFN has no ability to adversely affect the local  
17 exchange service market as several CLECs and ILECs provide local exchange services; and AFN  
18 therefore will have no market power in those local exchange markets where alternative providers to  
19 telecommunications services exists.

20 39. Staff's recommendations are reasonable and should be adopted.

21 40. The rates proposed by this filing are for competitive services.

22 **CONCLUSIONS OF LAW**

23 1. The Company is a public service corporation within the meaning of Article XV of the  
24 Arizona Constitution and A.R.S. §40-281 and 40-282.

25 2. The Commission has jurisdiction over the Company and the subject matter of the  
26 Application.

27 3. Notice of the Application was given in accordance with the law.  
28



1 IT IS FURTHER ORDERED that American Fiber Network, Inc. shall file the original  
2 performance bond(s) or irrevocable sight draft letter(s) of credit with the Commission's Business  
3 Office and copies of the performance bond(s) or irrevocable sight draft letter(s) of credit with Docket  
4 Control, as a compliance item in this docket, within 30 days of the effective date of this Decision.

5 IT IS FURTHER ORDRED that if American Fiber Network, Inc., fails to comply with the  
6 timeframes listed above, the Certificate of Convenience and Necessity granted herein shall be  
7 considered null and void after due process.

8 IT IS FURTHER ORDERED that American Fiber Network, Inc.'s performance bond(s) or  
9 irrevocable sight draft letter(s) of credit shall remain in effect until further Order of the Commission,  
10 and the Commission may draw on the performance bond or irrevocable sight draft letter of credit, on  
11 behalf of, and for the sole benefit of the customers of American Fiber Network, Inc., if the  
12 Commission, in its discretion, finds that American Fiber Network is in default on its obligations  
13 arising from its Certificate of Convenience and Necessity.

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1 IT IS FURTHER ORDERED that American Fiber Network, Inc.'s performance bond(s) or  
2 irrevocable sight draft letter(s) of credit may be used by the Commission, as appropriate, to protect  
3 American Fiber Network, Inc.'s customers and the public interest and take any and all actions the  
4 Commission deems necessary, in its discretion, including, but not limited to returning prepayments or  
5 deposits collected from customers.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.  
8  
9

10 CHAIRMAN \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
11

12 COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_  
13

14 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
15 Director of the Arizona Corporation Commission, have  
16 hereunto set my hand and caused the official seal of the  
17 Commission to be affixed at the Capitol, in the City of Phoenix,  
18 this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

19 \_\_\_\_\_  
20 BRIAN C. McNEIL  
21 EXECUTIVE DIRECTOR

22 DISSENT \_\_\_\_\_

23 DISSENT \_\_\_\_\_  
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27  
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1 SERVICE LIST FOR: AMERICAN FIBER NETWORK, INC.

2 DOCKET NO.: T-03815A-06-0747

3

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