

ORIGINAL  
OPEN MEETING ITEM



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



BRIAN C. McNEIL  
Executive Director

22

ARIZONA CORPORATION COMMISSION

DATE: DECEMBER 30, 2008

DOCKET NO: T-03815A-06-0747

TO ALL PARTIES:

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

AMERICAN FIBER NETWORK, INC.  
(EXTENSION OF TIME DEADLINE CONTAINED  
IN DECISION NO. 70512)

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 thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JANUARY 6, 2009

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 Open Meeting to be held on:

JANUARY 13, 2009 and JANUARY 14, 2009

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.

RECEIVED

7008 DEC 30 P 2: 01

AZ CORP COMMISSION  
DOCKET CONTROL

  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

Arizona Corporation Commission  
**DOCKETED**  
DEC 30 2008

DOCKETED BY **NR**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

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

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

DOCKET NO. T-03815A-06-0747

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

**ORDER EXTENDING TIME  
DEADLINE CONTAINED IN  
DECISION NO. 70512**

Open Meeting  
January 13 and 14, 2009  
Phoenix, Arizona

**BY THE COMMISSION:**

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

**FINDINGS OF FACT**

1. On September 30, 2008, the Arizona Corporation Commission ("Commission") granted to American Fiber Network, Inc. ("AFN" or "Company") a Certificate of Convenience and Necessity ("CC&N") to provide competitive facilities-based local exchange and switched access telecommunications services in Decision No. 70512 ("Decision").

2. Pursuant to the Decision, AFN was required to file the following compliance item:

IT IS FURTHER ORDERED that American Fiber Network, Inc. shall provide a performance bond(s) or irrevocable sight draft letter(s) of credit for its facilities-based local exchange telecommunications services in the amount of \$100,000, for a combined performance bond(s) or irrevocable sight draft letter(s) of credit of \$125,000.

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

1           3.       Given the September 30, 2008, date of the Decision, this compliance item would have  
2 been due from AFN on or about October 30, 2008.

3           4.       On November 5, 2008, AFN filed a Request for Extension ("Motion") requesting an  
4 extension until December 15, 2008 for filing of the performance bond or irrevocable sight draft letter  
5 of credit. According to AFN's Motion, the Company has been "unable to secure said bond or letter of  
6 credit due in part to the upheaval in the financial markets, which is causing our need to change bond  
7 companies. The notification of our need to change bond companies was received late last week." As  
8 such, AFN is unable to comply with the above-stated terms of the Decision.

9           5.       On December 9, 2008, the Commission's Utilities Division Staff ("Staff") filed a Staff  
10 Report recommending approval of the Company's Motion.

11          6.       In the Staff Report, Staff stated that they contacted Mr. Robert Heath, Executive Vice  
12 President for AFN, regarding the Motion on December 4, 2008. Mr. Heath related to Staff that the  
13 Company has had difficulty locating a new bonding agency and, as such, AFN would not be able to  
14 meet the Company's originally requested deadline extension of December 15, 2008. Mr. Heath  
15 discussed with Staff the possibility of extending the deadline further.

16          7.       Staff concluded that given the uncertainty in the financial markets and the Company's  
17 ongoing efforts to comply with the Decision, it is reasonable to allow AFN additional time to file the  
18 performance bond or irrevocable sight draft letter of credit.

19          8.       Staff recommends that the Commission grant AFN's Motion and extend the deadline  
20 for filing of a performance bond or irrevocable sight draft letter of credit until February 2, 2009.<sup>1</sup>

21          9.       Although AFN's Motion was filed six days after the deadline specified in the  
22 Decision, the Company was notified that it must obtain a new bonding agency shortly before the  
23 deadline and AFN acted promptly to notify the Commission of situation and request the extension.

24          10.       Given the condition of the financial markets and that AFN is in the process of finding  
25 a new bonding agency, it is reasonable to allow the Company additional time to comply with the  
26 requirements of the Decision.

27 <sup>1</sup> The Staff Report recommended that the Company file its performance bond or irrevocable sight draft letter of credit by  
28 January 31, 2009, which is a Saturday. Therefore, we require that AFN file its performance bond or irrevocable sight draft  
letter of credit by the following Monday, February 2, 2009.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**ORDER**

IT IS THEREFORE ORDERED that American Fiber Network, Inc.'s Request for Extension for time to comply with Decision No. 70512, is granted, extending the compliance deadline for filing the performance bond or irrevocable sight draft letter of credit until February 2, 2009.

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

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN \_\_\_\_\_ COMMISSIONER

COMMISSIONER \_\_\_\_\_ COMMISSIONER \_\_\_\_\_ COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
BRIAN C. McNEIL  
EXECUTIVE DIRECTOR

DISSENT \_\_\_\_\_

DISSENT \_\_\_\_\_

1 SERVICE LIST FOR: AMERICAN FIBER NETWORK, INC.

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

3

4 Robert E. Heath  
5 AMERICAN FIBER NETWORK, INC.  
6 9401 Indian Creek Parkway, Suite 280  
7 Overland Park, Kansas 66210

8 Janice Alward, Chief Counsel  
9 Legal Division  
10 ARIZONA CORPORATION COMMISSION  
11 1200 West Washington Street  
12 Phoenix, AZ 85007

13 Ernest G. Johnson, Director  
14 Utilities Division  
15 ARIZONA CORPORATION COMMISSION  
16 1200 West Washington  
17 Phoenix, AZ 85007

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34