

OPEN MEETING ITEM



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COMMISSIONERS
GARY PIERCE - Chairman
BOB STUMP
SANDRA D. KENNEDY
PAUL NEWMAN
BRENDA BURNS

ORIGINAL



ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

DOCKETED

AZ CORP COMMISSION
DOCKET CONTROL

DATE: JUNE 2, 2011

DOCKET NO.: T-03815A-10-0520

JUN 2 2011

TO ALL PARTIES:

DOCKETED BY

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

AMERICAN FIBER NETWORK, INC.
(CANCEL CC&N)

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:

JUNE 13, 2011

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:

JUNE 21, 2011 and JUNE 22, 2011

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.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347
www.azcc.gov

This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 GARY PIERCE, Chairman
4 BOB STUMP
5 SANDRA D. KENNEDY
6 PAUL NEWMAN
7 BRENDA BURNS

8 IN THE MATTER OF THE APPLICATION
9 OF AMERICAN FIBER NETWORK, INC. FOR
10 THE CANCELLATION OF ITS CERTIFICATES
11 OF CONVENIENCE AND NECESSITY FOR
12 TELECOMMUNICATIONS SERVICES.

DOCKET NO. T-03815A-10-0520

DECISION NO. _____

ORDER

13 Open Meeting
14 June 21 and 22, 2011
15 Phoenix, Arizona

16 **BY THE COMMISSION:**

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

19 **FINDINGS OF FACT**

20 1. American Fiber Network, Inc. ("AFNI" or "Company") has a Certificate of
21 Convenience and Necessity ("CC&N") to provide resold interexchange telecommunications services
22 in Arizona pursuant to Decision No. 62718 (June 30, 2000); a CC&N to provide resold local
23 exchange telecommunications services in Arizona pursuant to Decision No. 63837 (June 28, 2001);
24 and a CC&N to provide facilities-based local exchange and switched access telecommunications
25 services in Arizona pursuant to Decision No. 70512 (September 30, 2008).

26 2. On December 30, 2010, the Company filed with the Commission an application for
27 cancellation of its three CC&Ns ("Application").

28 3. On February 16, 2011, AFNI filed an Affidavit of Publication indicating that the
Company had published notice of the Application on January 7, 2011, in the *Arizona Capitol Times*.

4. On March 21, 2011, the Commission's Utilities Division Staff ("Staff") filed its Staff
Report recommending approval of the Application.

5. In its Application, AFNI states that on December 17, 2010, the Company completed a

1 transfer of the majority of its customers in states other than Arizona to another telecommunications
2 provider. AFNI is ceasing business and will discontinue services to its Arizona customers and
3 requests cancellations of its CC&Ns and its existing Arizona tariffs.

4 6. AFNI indicates that, at the time of the Application, it provided service to a total of 19
5 Arizona customers. Customers were advised by correspondence dated December 15, 2010, of the
6 Company's intention to discontinue service as of February 20, 2011.

7 7. AFNI notes that it did not collect customer deposits and any amounts owed to
8 customers for payment of service beyond February 20, 2011, will be refunded. In the Company's
9 correspondence to its customers, AFNI provided a link to the Commission's website providing a list
10 of alternate providers.

11 8. Based on the above, we find that AFNI has complied with the provisions for
12 cancellation of service pursuant to the Arizona Administrative Code ("A.A.C.") R14-2-1107.

13 9. The Staff Report states the Commission's Consumer Services Section of the
14 Commission's Utilities Division reported that there were no customer complaints, inquiries or
15 opinions against the Company from January 1, 2008, through January 11, 2011.

16 10. According to Staff, the Commission's Corporations Division reports that AFNI is not
17 in good standing because its last Annual Report contained errors and was returned to the Company,
18 but AFNI did not return a corrected Annual Report.

19 11. The Commission's Compliance Section noted that there are three compliance
20 delinquencies relating to the Company's failure: 1) to file conforming tariffs for its facilities-based
21 services, 2) to file a \$100,000 performance bond for those services, and 3) to renew a \$25,000
22 performance bond required for its resold local exchange services.

23 12. Staff recommends approval of AFNI's Application and cancellation of the Company's
24 CC&Ns and its Arizona tariffs.

25 13. Staff's recommendation is reasonable and should be adopted.

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CONCLUSIONS OF LAW

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

4 2. The Commission has jurisdiction over the Company and the subject matter of the
5 Application.

6 3. The cancellation of the Company's CC&Ns is in the public interest.

7 4. Pursuant to A.R.S. § 40-282, the Commission may issue decisions regarding
8 Certificates of Convenience and Necessity for certain telecommunication services without a hearing.

9 5. The requirements of A.A.C. R14-2-1107 have been met.

10 6. Staff's recommendation is reasonable and should be adopted.

11 **ORDER**

12 IT IS THEREFORE ORDERED that the Application of American Fiber Network, Inc. for the
13 cancellation of its Certificate of Convenience and Necessity to provide resold interexchange
14 telecommunications services in Arizona authorized in Decision No. 62718 (June 30, 2000), is hereby
15 granted.

16 IT IS FURTHER ORDERED that the Application of American Fiber Network, Inc. for the
17 cancellation of its Certificate of Convenience and Necessity to provide resold local exchange
18 telecommunications services in Arizona authorized in Decision No. 63837 (June 28, 2001), is hereby
19 granted.

20 IT IS FURTHER ORDERED that the Application of American Fiber Network, Inc. for the
21 cancellation of its Certificate of Convenience and Necessity to provide facilities-based local
22 exchange and switched access telecommunications services in Arizona authorized in Decision No.
23 70512 (September 30, 2008), is hereby granted.

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IT IS FURTHER ORDERED that American Fiber Network, Inc.'s tariffs on file with the Commission are hereby cancelled.

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, ERNEST G. JOHNSON
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 _____, 2011.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: AMERICAN FIBER NETWORK, INC.

2 DOCKET NO.: T-03815A-10-0520

3

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

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

13 Steven M. Olea, Director
14 Utilities Division
15 ARIZONA CORPORATION COMMISSION
16 1200 West Washington Street
17 Phoenix, AZ 85007

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