

OPEN MEETING ITEM

COMMISSIONERS
BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH



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ARIZONA CORPORATION COMMISSION

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

DATE: JANUARY 11, 2013

DOCKET NO.: T-03980A-12-0460

TO ALL PARTIES:

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

AMERICAN FIBER SYSTEMS, INC.
(CANCEL CC&N/RESELLER/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 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 22, 2013

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 30, 2013 AND JANUARY 31, 2013

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.

Arizona Corporation Commission

DOCKETED

JAN 11 2013

DOCKETED BY *JM*

Jodi A. Jerich
JODI JERICH
EXECUTIVE DIRECTOR

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP- Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF
AMERICAN FIBER SYSTEMS, INC. FOR
APPROVAL TO CANCEL ITS CERTIFICATE OF
CONVENIENCE AND NECESSITY.

DOCKET NO. T-03980A-12-0460
DECISION NO. _____

ORDER

Open Meeting
January 30 and 31, 2013
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 August 6, 2001, in Decision No. 63936, the Commission granted American Fiber Systems, Inc. (“AFS” or “Company”) a Certificate of Convenience and Necessity (“CC&N”) to provide competitive facilities-based and resold local exchange, interexchange and exchange access telecommunications services in Arizona.

2. AFS is a Delaware corporation and a wholly-owned subsidiary of Zayo Group, LLC (“Zayo”), and its principal place of business is 400 Centennial Parkway, Suite 200, Louisville, Colorado, 80027.

3. On November 8, 2012, AFS filed with the Commission an application requesting cancellation of its CC&N and any approved tariff(s). The application also requests authority to cancel the performance bond required by Decision No. 63936.

4. On December 21, 2012, the Commission’s Utilities Division (“Staff”) filed a Staff Report recommending that the Company’s application be granted.

1 5. On December 27, 2012, AFS docketed a filing indicating that this application
2 constitutes part of an internal reorganization which is the subject of a separate docket,¹ which may be
3 scheduled to be heard by the Commission at its next regularly scheduled Open Meeting, and that AFS
4 therefore desires that the Commission consider this application as soon as possible.

5 6. The application states that AFS does not currently provide, and has never provided,
6 telecommunications services in Arizona, and that the Company has no intention of doing so in the
7 future. The application requests a waiver of any requirement to provide prior written notice or
8 publication of notice of cancellation of its CC&N.

9 7. On July 26, 2012, the Commission's Utilities Division Staff ("Staff") filed a Staff
10 Report in this matter recommending approval of AFS's application in its entirety. According to the
11 Staff Report, AFS has never provided telecommunication services in Arizona. Staff recommends that
12 the CC&N be cancelled, the performance bond requirement be cancelled, and that the notice and
13 publication requirements pursuant to A.A.C R14-2-1107 be waived.

14 8. AFS is in good standing with the Commission's Corporations Division.

15 9. AFS has no customers receiving service in Arizona, and has no outstanding
16 obligations to any Arizona customers in the form of deposits or prepayments for services.

17 10. According to the Commission's Compliance Section, AFS does not have any
18 compliance delinquencies.

19 11. According to the Commission's Consumer Services Section, zero complaints,
20 inquiries, or opinions were filed against AFS for the time period January 1, 2009 through December
21 4, 2012.

22 12. Because AFS does not serve any customers or have any active operations in Arizona,
23 the cancellation of its CC&N and tariff(s) are reasonable and in the public interest.

24 13. Because AFS has never served customers in Arizona and is not holding customer
25 deposits related to the provision of service, requiring AFS to comply with the provisions of A.A.C.
26 R14-2-1107² would serve no practical purpose. AFS should therefore be granted a waiver of the

27 ¹ See Docket No. T-20783A-12-0463 *et al.*

28 ² A.A.C. R14-2-1107 requires a telecommunication company providing competitive telecommunication service in Arizona to file an application for authorization with the Commission before it discontinues service. The rule also requires

1 notice and publication requirements of A.A.C R14-2-1107.

2 14. In conjunction with the cancellation of AFS's CC&N, AFS should be granted
3 authority to cancel the performance bond required by Decision No. 63936.

4 15. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

5 **CONCLUSIONS OF LAW**

6 1. AFS is a public service corporation within the meaning of Article XV of the Arizona
7 Constitution and A.R.S. §§ 40-281 and 40-282.

8 2. The Commission has jurisdiction over AFS and the subject matter of the application to
9 cancel the Company's CC&N.

10 3. The cancellation of AFS's CC&N and tariff(s) is in the public interest.

11 4. For the reasons stated herein, AFS should be granted a waiver of the notice and
12 publication requirements of A.A.C R14-2-1107.

13 5. In conjunction with the cancellation of its CC&N, AFS should be authorized to cancel
14 the performance bond required by Decision No. 63936.

15 6. Staff's recommendations are reasonable and should be adopted.

16 **ORDER**

17 IT IS THEREFORE ORDERED that the application of American Fiber Systems, Inc. for the
18 cancellation of its Certificate of Convenience and Necessity to provide resold long distance, resold
19 and facilities-based local exchange and access telecommunications services in Arizona is hereby
20 granted and American Fiber Systems, Inc.'s Certificates of Convenience and Necessity and tariff(s)
21 are hereby cancelled.

22 IT IS FURTHER ORDERED that in conjunction with the cancellation of its Certificate of
23 Convenience and Necessity, American Fiber Systems, Inc. is hereby authorized to cancel the
24 performance bond required by Decision No. 63936.

25
26 the telecommunication company to verify that its affected customers have been notified of the proposed discontinuance of
27 service, to plan for the refund of any deposits collected, to file with the Commission a list of alternate utilities providing
28 the same or similar service with the affected geographic area, and to publish legal notice of the application to discontinue
service. In Decision No. 67404 (November 2, 2004) the Commission stated that it would render A.A.C. R14-2-1107
meaningless and would run afoul of the rule's intent and plain language to exempt an applicant from the requirement of
the rule simply because the applicant is no longer providing service in Arizona.

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IT IS FURTHER ORDERED that American Fiber Systems, Inc. is hereby granted a waiver of the notice requirements contained in A.A.C. R14-2-1107.

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, JODI JERICH, 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 _____, 2013.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: AMERICAN FIBER SYSTEMS, INC.

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