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# BEFORE THE PUBLIC SERVICE COMMISSION

## OF THE STATE OF MISSOURI

In the Matter of the Application of American     )  
Fiber Network, Inc. for a Certificate of         )  
Service Authority to Provide Basic Local         )     Case No. TA-2000-305  
and Interexchange Telecommunications Services   )  
within the State of Missouri                     )

### ORDER GRANTING CERTIFICATE TO PROVIDE BASIC LOCAL AND EXCHANGE ACCESS TELECOMMUNICATIONS SERVICES

#### Procedural History

American Fiber Network, Inc. (AFN) applied to the Missouri Public Service Commission on October 29, 1999, for a certificate of service authority to provide basic local and local exchange telecommunications services in Missouri under Sections 392.420 - .440, RSMo 1994<sup>1</sup>, and Sections 392.410 and .450, RSMo Supp. 1999. AFN asked the Commission to classify it as a competitive company and waive certain statutes and rules as authorized by Sections 392.361 and 392.420. AFN is a Delaware corporation with principal offices located at 9401 Indian Creek Parkway, Suite 140, Overland Park, Kansas 66210. On the same day, AFN filed its motion for a protective order, which was granted on November 10, 1999.

The Commission issued a notice and schedule of applicants on November 9, 1999, directing interested parties wishing to intervene in the interexchange portion of AFN's application to do so by November 24,

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<sup>1</sup> All statutory references are to Revised Statutes of Missouri 1994 unless otherwise indicated.

1999, and directing interested parties wishing to intervene in the basic local portion of AFN's application to do so by December 9, 1999. On November 24, 1999, Southwestern Bell Telephone Company (SWBT) filed an application to intervene which was granted on December 17, 1999. The order granting intervention also directed the parties to file a procedural schedule which was then filed on January 14, 2000. No other entity applied to intervene.

The parties filed a Stipulation and Agreement (Agreement), which is included with this order as Attachment 1, on February 25, 2000. The Agreement stated that the Office of the Public Counsel, while not a signatory to the Agreement, had been contacted with regard to its filing and had offered no objection. Public Counsel did not request a hearing. The Agreement will be treated as unanimous. Commission Rule 4 CSR 240-2.115(1) states in part: "If no party requests a hearing, the commission will treat the stipulation and agreement as a unanimous stipulation and agreement."

The Staff of the Commission filed Suggestions in Support of the Stipulation and Agreement on February 28, 2000. In the Agreement, the parties waived their rights to present testimony, cross-examine witnesses, present oral argument or briefs, and to seek rehearing or judicial review. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has requested a hearing in this case, the Commission may grant the relief requested based on the verified application.

## Discussion

AFN seeks certification to provide basic local and exchange access telecommunications services in portions of Missouri that are currently served by SWBT, GTE Midwest Incorporated (GTE) and Sprint Missouri, Inc. d/b/a Sprint (Sprint). AFN is not asking for certification in any area that is served by a small incumbent local exchange carrier (ILEC). AFN proposes to provide service in the exchanges currently served by SWBT, GTE and Sprint. AFN is requesting that its basic local services be classified as competitive and that the application of certain statutes and regulatory rules be waived.

### **A. Requirements of 4 CSR 240-2.060(4)**

Commission Rule 4 CSR 240-2.060(4) requires a foreign corporation applying for certification to provide telecommunications services to include in its application a certificate from the Secretary of State showing that it is authorized to do business in Missouri, a description of the types of service it intends to provide, a description of the exchanges where it will offer service, and a proposed tariff with a 45-day effective date. AFN has provided all the required documentation except for the proposed tariff. The company requested a temporary waiver of 4 CSR 240-2.060(4)(H) until it has entered into an interconnection agreement with the underlying local exchange carrier and that agreement has been approved by the Commission. The company agreed to submit to the Commission for approval a proposed tariff with a minimum 45-day effective date once it is party to the appropriate interconnection agreement. The Agreement provides that AFN will file the tariff in this case and give notice of the tariff filing to all the parties. Along with that filing

AFN has agreed to provide a written disclosure of all interconnection agreements it has entered into which affect its Missouri service areas. The Commission has found that holding open the certificate case until a tariff is filed may result in the case being left open without activity for an extended period. Therefore, this case will be closed and when AFN files the required tariff it will be assigned a new case number. AFN will be directed to provide the notice and disclosures required by the Agreement when it files its proposed tariff.

## **B. Basic Local Service Certification**

Section 392.455, RSMo Supp. 1999, sets out the requirements for granting certificates to provide basic local telecommunications service to new entrants. A new entrant must: (1) possess sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service; (2) demonstrate that the services it proposes to offer satisfy the minimum standards established by the Commission; (3) set forth the geographic area in which it proposes to offer service and demonstrate that such area follows exchange boundaries of the ILEC and is no smaller than an exchange; and (4) offer basic local telecommunications service as a separate and distinct service. In addition, the Commission must give due consideration to equitable access for all Missourians to affordable telecommunications services, regardless of where they live or their income.

AFN submitted as Exhibit C to its application certain financial documentation. Exhibit B to the application lists the names and qualifications of AFN's management team. The parties agreed that AFN

possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service.

AFN has agreed to provide services that will meet the minimum basic local service standards required by the Commission, including quality of service and billing standards. The parties agreed that AFN proposes to offer basic local services that satisfy the minimum standards established by the Commission.

AFN wishes to be certificated to offer services in all the exchanges presently served by SWBT, GTE and Sprint as described in their basic local tariffs. The parties agreed that AFN has sufficiently identified the geographic area in which it proposes to offer basic local service and that the area follows ILEC exchange boundaries and is no smaller than an exchange.

AFN has agreed to offer basic local telecommunications service as a separate and distinct service and to provide equitable access, as determined by the Commission, for all Missourians within the geographic area in which it will offer basic local services in compliance with Section 392.455(5), RSMo Supp. 1999.

### **C. Competitive Classification**

The Commission may classify a telecommunications provider as a competitive company if the Commission determines it is subject to sufficient competition to justify a lesser degree of regulation. Section 392.361.2. In making that determination, the Commission may consider such factors as market share, financial resources and name recognition, among others. In the matter of the investigation for the

purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri, 30 Mo. P.S.C. (N.S.) 16 (1989); In the matter of Southwestern Bell Telephone Company's application for classification of certain services as transitionally competitive, 1 Mo. P.S.C. 3d 479, 484 (1992). In addition, the Commission may classify a telecommunications company as a competitive telecommunications company only upon a finding that all telecommunications services offered by such company are competitive telecommunications services pursuant to Section 392.361.3. The Commission has found that whether a service is competitive is a subject for case-by-case examination and that different criteria may be given greater weight depending upon the service being considered. *Id.* at 487.

The parties have agreed that AFN should be classified as a competitive telecommunications company. The parties have also agreed that AFN's switched exchange access services may be classified as a competitive service, conditioned upon certain limitations on AFN's ability to charge for its access services. AFN has agreed that, unless otherwise ordered by the Commission, its originating and terminating access rates will be no greater than the lowest Commission-approved corresponding access rates in effect for the large ILEC within whose service area(s) AFN seeks to operate. The parties have agreed that the grant of service authority and competitive classification to AFN should be expressly conditioned on the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access services rates above the maximum switched

access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

The parties agreed that waiver of the following statutes is appropriate: Sections 392.210.2, 392.270, 392.280, 392.290.1, 392.300.2, 392.310, 392.320, 392.330, RSMo Supp. 1999, and 392.340. The parties also agreed that application of these Commission rules could be waived: 4 CSR 240-10.020, 4 CSR 240-30.040 and 4 CSR 240-35.

### Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact:

- A. The Commission finds that competition in the basic local exchange telecommunications market is in the public interest.
- B. The Commission finds that AFN has met the requirements of 4 CSR 240-2.060(4) for applicants for certificates of service authority to provide telecommunications services with the exception of the filing of a tariff with a 45-day effective date.
- C. The Commission finds that AFN has demonstrated good cause to support a temporary waiver of the tariff filing requirement and the waiver shall be granted.
- D. The Commission finds that the local exchange services market is competitive and that granting AFN a certificate of

service authority to provide local exchange telecommunications services is in the public interest. AFN's certificate shall become effective when its tariff becomes effective.

E. The Commission finds that AFN meets the statutory requirements for provision of basic local telecommunications services and has agreed to abide by those requirements in the future. The Commission determines that granting AFN a certificate of service authority to provide basic local exchange telecommunications services is in the public interest. AFN's certificate shall become effective when its tariff becomes effective.

F. The Commission finds that AFN is a competitive company and should be granted waiver of the statutes and rules set out in the ordered paragraph below.

G. The Commission finds that AFN's certification and competitive status should be expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access services rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.



## Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

The Commission has the authority to grant certificates of service authority to provide telecommunications service within the state of Missouri. AFN has requested certification under Sections 392.420 - .440, and Sections 392.410 and .450, RSMo Supp. 1999, which permit the Commission to grant a certificate of service authority where it is in the public interest. Sections 392.361 and .420 authorize the Commission to modify or suspend the application of its rules and certain statutory provisions for companies classified as competitive or transitionally competitive.

The federal Telecommunications Act of 1996 and Section 392.455, RSMo Supp. 1999, were designed to institute competition in the basic local exchange telecommunications market in order to benefit all telecommunications consumers. See Section 392.185, RSMo Supp. 1999.

The Commission has the legal authority to accept a Stipulation and Agreement as offered by the parties as a resolution of the issues raised in this case, pursuant to Section 536.060, RSMo Supp. 1999. Based upon the Commission's review of the applicable law and Agreement of the parties, and upon its findings of fact, the Commission concludes that the Agreement should be approved.

### **IT IS THEREFORE ORDERED:**

1. That the Stipulation and Agreement of the parties, filed on February 25, 2000, is approved.
2. That American Fiber Network, Inc. is granted a certificate of service authority to provide local exchange telecommunications services

in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

3. That American Fiber Network, Inc. is granted a certificate of service authority to provide basic local telecommunications services in the state of Missouri, subject to the conditions of certification set out above and to all applicable statutes and Commission rules except as specified in this order. The certificate of service authority shall become effective when the company's tariff becomes effective.

4. That American Fiber Network, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

Statutes

392.210.2	- uniform system of accounts
392.270	- valuation of property (ratemaking)
392.280	- depreciation accounts
392.290.1	- issuance of securities
392.300.2	- acquisition of stock
392.310	- stock and debt issuance
392.320	- stock dividend payment
392.340	- reorganization(s)
392.330, RSMo Supp. 1999	- issuance of securities, debts and notes

Commission Rules

4 CSR 240-10.020	- depreciation fund income
4 CSR 240-30.040	- uniform system of accounts
4 CSR 240-35	- reporting of bypass and customer-specific arrangements

5. That the request for waiver of 4 CSR 240-2.060(4)(H), which requires the filing of a 45-day tariff, is granted.

6. That American Fiber Network, Inc. shall file tariff sheets with a minimum 45-day effective date reflecting the rates, rules, regulations and the services it will offer within thirty (30) days after the effective date of a Commission order approving an interconnection agreement that will allow AFN to provide services. The tariff shall include a listing of the statutes and Commission rules waived above.

7. That American Fiber Network, Inc. shall give notice of the filing of the tariffs described above to all parties or participants in this case. In addition, American Fiber Network, Inc. shall file a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of Missouri service areas for which it does not have an interconnection agreement, and an explanation of why no interconnection agreement is necessary for those areas.

8. That American Fiber Network, Inc.'s certification and competitive status are expressly conditioned upon the continued applicability of Section 392.200, RSMo Supp. 1999, and on the requirement that any increases in switched access service rates above the maximum switched access service rates set forth in the agreement must be cost-justified pursuant to Sections 392.220, RSMo Supp. 1999, and 392.230, rather than Sections 392.500 and 392.510.

9. That this order shall become effective on March 13, 2000.

10. That this case may be closed on March 14, 2000.

BY THE COMMISSION

A handwritten signature in dark ink, appearing to read "Dale Hardy Roberts". The signature is written in a cursive, somewhat stylized script.

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Bill Hopkins, Senior Regulatory Law Judge,  
by delegation of authority pursuant to  
4 CSR 240-2.120(1) (November 30, 1995) and  
Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 3rd day of March, 2000.

BEFORE THE PUBLIC SERVICE COMMISSION  
STATE OF MISSOURI

FILED

FEB 25 2000

Missouri Public  
Service Commission

In the Matter of the Application )  
of American Fiber Network, Inc. for )  
a Certificate of Authority to )  
Provide Basic Local and ) Case No. TA-2000-305  
Interexchange Telecommunications )  
Services within the )  
State of Missouri. )

STIPULATION AND AGREEMENT

American Fiber Network, Inc. (hereinafter "AFN") initiated this proceeding on October 29, 1999, by filing an Application requesting a certificate of service authority to provide basic local exchange and interexchange services in exchanges currently served by Southwestern Bell Telephone Company, GTE, and Sprint. Southwestern Bell Telephone Company (SWB) applied to intervene in this matter and its application was granted. GTE and Sprint did not seek and have not been granted intervention in this proceeding.

A. STANDARDS AND CRITERIA

1. The parties employed the following standards and criteria, which are intended to meet the requirements of existing law, particularly Sections 392.450 and 392.455, RSMo. Cum Supp. 1997 regarding applications for certificates of local exchange service authority to provide or resell basic local telecommunications service, in negotiating the provisions of this Stipulation and Agreement.

2. For purposes of this Stipulation and Agreement, the parties agree that applications for local exchange service authority in exchanges served by a "large" local exchange company (LEC) <sup>1</sup> should be processed in a manner similar to that in which

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<sup>1</sup>Large LEC's are defined as LECs who serve 100,000 or more access lines. Section 386.020 RSMo. Supp. 1999. In Missouri, the current large LECs are SWB, GTE and Sprint.

applications for interexchange and local exchange authority are currently handled.

3. In determining whether AFN's application for certificate of service authority should be granted, the Commission should consider AFN's technical, financial and managerial resources and abilities to provide basic local telecommunications service. AFN must demonstrate that the basic local services it proposes to offer satisfy the minimum standards established by the Commission, including but not limited to the applicant agreeing to file and maintain basic local service tariff(s) with the Commission in the same manner and form as the Commission requires of incumbent local exchange telecommunications companies with which the applicant seeks to compete. Further, AFN agrees to meet the minimum basic local service standards, including quality of service and billing standards, as the Commission requires of the incumbent local exchange telecommunications companies with which the applicant seeks to compete. Notwithstanding the provisions of Section 392.500 RSMo. (1994), as a condition of certification and competitive classification, AFN agrees that, unless otherwise ordered by the Commission, the applicant's originating and terminating access rates will be no greater than the lowest Commission approved corresponding access rates in effect for the large incumbent LECs within whose service area(s) applicant seeks authority to provide service. Further, AFN agrees to offer basic local telecommunications service as a separate and distinct service and must sufficiently identify the geographic service area in which

it proposes to offer basic local service. Such area must follow exchange boundaries of the incumbent local exchange telecommunications companies and must be no smaller than an exchange. Finally, AFN agrees to provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services. See Section 392.455 RSMo. (1999 Supp.)

4. AFN has submitted its application without tariffs and seeks a temporary waiver of 4 CSR 240-2.060(4)(H)<sup>2</sup> AFN agrees to file its initial tariff(s) in the certification docket and serve all parties with written notice at the time the initial tariff(s) are submitted to afford them an opportunity to participate in the tariff approval process. Copies of the tariff(s) will be provided by AFN to such parties immediately upon request. Any service authority granted in this proceeding shall be regarded as conditional and shall not be exercised until such time as tariff(s) for services have become effective. When filing its initial basic local tariff(s); AFN shall also file and serve a written disclosure of all interconnection agreements which affect its Missouri service areas, all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local

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<sup>2</sup>Good cause for failure to file proposed tariffs with the application must be shown. The lack of an approved interconnection agreement (47 USC 252) constitutes good cause. At the time of the filing of its application, AFN did not have an approved interconnection agreement.

exchange carrier, and its explanation of why such an interconnection agreement is unnecessary for such areas.

5. AFN has, pursuant to Section 392.420 RSMo. requested that the Commission waive the application of any or all of the following statutory provisions and rules to basic local telecommunications services, and all parties agree that the Commission should grant such request provided that Section 392.200 RSMo. Supp 1999 should continue to apply to all of AFN's services:

STATUTORY PROVISIONS

392.210.2  
392.270  
392.280  
392.290.1  
392.300.2  
392.310  
392.320  
392.330  
392.340

COMMISSION RULES

4 CSR 240-10.020  
4 CSR 240-30.040  
4 CSR 240-35

6. AFN has, pursuant to Section 392.420 RSMo., requested that the Commission waive the application of any or all of the following statutory provisions and rules to interexchange telecommunications services as they relate to the regulation of AFN's new services should be granted:

STATUTORY PROVISIONS

392.240 (1)



COMMISSION RULES

4 CSR 240-30.010 (2) (C)  
4 CSR 240-32.030 (1) (B) & (C), (2)  
4 CSR 240-32.050 (3) - (6)  
4 CSR 240-32.070 (4)  
4 CSR 240-33.030  
4 CSR 240-33.040 (5)

7. In negotiating the remaining provisions of this Stipulation and Agreement, the parties have employed the foregoing standards and criteria, which are intended to meet the requirements of existing law and Sections 392.450 and 342.455, RSMo. Supp 1999, regarding applications for certificates of service authority to provide basis local telecommunications services.

8. Based upon its verified Application, as amended by this Stipulation and Agreement, AFN asserts and no other party makes a contrary assertion, that there is sufficient evidence from which the Commission should find and conclude that AFN:

A. possesses sufficient technical, financial and managerial resources and abilities to provide basic local telecommunications service, including exchange access service:

B. proposes and agrees to offer basic local services that will satisfy the minimum standards established by the Commission;

C. has sufficiently identified the geographic area in which it proposes to offer basic local service and such area follows exchange boundaries of the incumbent local exchange telecommunications companies in the same areas, and such area is no smaller than an exchange;

D. will offer basic local telecommunications services as a separate and distinct service;

E. has agreed to provide equitable access as determined by the Commission for all Missourians within the geographic area in which it proposes to offer basic local service, regardless of where they live or their income, to affordable telecommunications services; and

F. has sought authority which will serve the public interest.

9. AFN asserts and no party opposes, that AFN's Application and request for authority to provide basic local exchange and interexchange telecommunications service as a facility and non-facility based provider and on a resale basis should be granted. All services authorized herein should be classified as competitive telecommunications services, provided that the requirements of Section 392.200 RSMo Supp 1999 continue to apply, and AFN shall remain classified as a competitive telecommunications company. AFN asserts, and no party opposes, that such services will be subject to sufficient competition by the services of the incumbent LECs to justify a lesser degree of regulation of AFN's services consistent with the protection of ratepayers and the promotion of the public interest. Such classification should become effective upon the tariffs for the services becoming effective. Such authority should be conditional, not to be exercised until such time as tariffs for those services have been filed (together with the written disclosure as stipulated above) and have become effective. The

Commission's Order should state the foregoing conditions substantially as follows:

"The service authority and service classification herein granted are subject to the requirements of Section 392.200 and are conditional and shall not be exercised until such time as tariffs for services have become effective."

The parties agree that the applicant's switched exchange access services may be classified as competitive services. The parties further agree that the applicant's switched exchange access services are subject to Section 392.200. The parties recognize the pendency of Case No. TO-99-596 regarding access rates to be charged by competitive local exchange telecommunication companies. Unless otherwise determined by the Commission in Case No. TO-99-596 any increases in switched access service rates above the maximum switched access service rates as set forth in paragraph 2 herein shall be cost-justified and be made pursuant to 392.220 and 392.230 and not 392.500 and 392.510. The Commission's order should state the foregoing conditions substantially as follows:

"The service authority and service classification for switched exchange access granted herein is expressly conditioned on the continued applicability of Section 392.200 and the requirement that any increases in switched access service rates above the maximum switched access service rates set forth herein shall be cost-justified and be made pursuant to Sections 392.220 and 392.230 and not Sections 392.500 and 392.510."

10. AFN's request for a temporary waiver of 4 CSR 240-2.060(4)(H), which requires applications to include a proposed tariff with a 45-day effective date, is not opposed by the parties and should be granted because, at the time of the filing of the application, AFN did not yet have an approved interconnection agreement with the large incumbent LEC. AFN agrees that within thirty (30) days of an order approving an interconnection agreement with an underlying carrier, AFN will submit tariffs in this docket, with a minimum 45-day proposed effective date, to the Commission for its approval, together with the written disclosure as stipulated above. AFN shall serve notice to all parties and participants in this docket of the filing of its tariffs at the time they are filed with the Commission, and serve them with the aforesaid written disclosure and shall upon request immediately provide any party with a copy of those tariffs. The Commission's order should state these obligations as conditions to the waiver of 4 CSR 240-2.060(4)(H), substantially as follows:

"Applicant's request for temporary waiver of 4 CSR 240-2.060(4)(H) is hereby granted for good cause in that applicant did not yet have an approved interconnection agreement with the incumbent local exchange carriers within whose service area it seeks authority to provide service; provided, when applicant submits its tariffs in this docket to the Commission such tariffs shall have a minimum of a 45-day effective date and the applicant shall serve written notice upon the parties hereto of

such submittal, and shall provide copies of such tariffs to such parties immediately upon request. When filing its initial basic local tariff in this docket, the applicant shall also file and serve upon the parties hereto a written disclosure of: all interconnection agreements which affect its Missouri service areas; all portions of its Missouri service areas for which it does not have an interconnection agreement with the incumbent local exchange carrier; and its explanation of why such an interconnection agreement is unnecessary for any such areas."

11. AFN's request for waiver of the applications of the following rules and statutory provisions to basic local telecommunications services as they relate to the regulation of AFN's new services should be granted:

STATUTORY PROVISIONS

392.210.2  
392.270  
392.280  
392.290.1  
392.300.2  
392.310  
392.320  
392.330  
392.340

COMMISSION RULES

4 CSR 240-10.020  
4 CSR 240-30.040  
4 CSR 240-35

12. AFN's request for waiver of the applications of the following rules and statutory provisions to interexchange telecommunications services as they relate to the regulation of AFN's new services should be granted:

STATUTORY PROVISIONS

392.240 (1)

COMMISSION RULES

4 CSR 240-30.010 (2) (C)  
4 CSR 240-32.030 (1) (B) & (C), (2)  
4 CSR 240-32.050 (3) - (6)  
4 CSR 240-32.070 (4)  
4 CSR 240-33.030  
4 CSR 240-33.040 (5)

13. This Stipulation and Agreement has resulted from extensive negotiations among the signatories and the terms hereof are interdependent. In the event the Commission does not adopt this Stipulation in total, then this Stipulation and Agreement shall be void and no signatory shall be bound by any of the agreements or provisions hereof. The Stipulations herein are specific to the resolution of this proceeding and are made without prejudice to the rights of the signatories to take other positions in other proceedings.

14. In the event the Commission accepts the specific terms of this Stipulation and Agreement, the parties and participants waive, with respect to the issues resolved herein: their respective rights pursuant to Section 536.080.1, RSMo. 1994, to present testimony, to

cross-examine witnesses, and to present oral argument or written briefs; their respective rights to the reading of the transcript by the Commission pursuant to Section 536.080.2, RSMo. 1994; and their respective rights to seek rehearing pursuant to Section 386.500 RSMo. 1994 and to seek judicial review pursuant to Section 386.510, RSMo. 1994. The parties agree to cooperate with the Applicant and with each other in presenting this Stipulation and Agreement for approval to the Commission and shall take no action, direct or indirect, in opposition to the request for approval of the AFN application made herein.

15. The Staff may submit a Staff Recommendation concerning matters not addressed in this Stipulation. In addition, if requested by the Commission, the Staff shall have the right to submit to the Commission a memorandum explaining its rationale for entering into this Stipulation and Agreement. Each party of record and participant herein shall be served with a copy of any memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's memorandum, a responsive memorandum which shall also be served on all parties and participants. All memoranda submitted by the parties shall be considered privileged in the same manner as settlement discussions under the Commission's rules, shall be maintained on a confidential basis by all parties and participants, and shall not become a part of the record of this proceeding or bind or prejudice the party submitting such memorandum in any future proceeding whether or not the Commission approves this Stipulation and Agreement. The

contents of any memorandum provided by any party are its own and are not acquiesced in or otherwise adopted by the other signatories to the Stipulation and Agreement, whether or not the Commission approves and adopts this Stipulation and Agreement.

The Staff shall also have the right to provide, at any agenda meeting at which this Stipulation and Agreement is noticed to be considered by the Commission, whatever oral explanation the Commission requests, provided that the Staff shall, to the extent reasonably practicable, provide the other parties and participants with advance notice of when the Staff shall respond to the Commission's request for such explanation once such explanation is requested from the Staff. Staff's oral explanation shall be subject to public disclosure.

16. AFN will comply with all applicable Commission rules and regulations except those which are specifically waived by the Commission.

17. The Office of Public Counsel, while not a signatory to this Stipulation and Agreement, has been contacted regarding this filing and has offered no objection.

**WHEREFORE**, the signatories respectfully request the Commission to issue its Order approving the terms of this Stipulation and Agreement and issue its Order granting authority and classification as requested by AFN, subject to the conditions described above, as expeditiously as possible.



Respectfully submitted,

Richard S. Brownlee III

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