

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Application of American Fiber       )  
Systems, Inc. for Approval to Cancel its Certificate of       )  
Service Authority and Withdrawal of Tariff(s)       )       **File No. TD-2013-0465**

**STAFF'S RECOMMENDATION TO CANCEL  
CERTIFICATE OF SERVICE AUTHORITY**

**COMES NOW** Staff of the Missouri Public Service Commission ("Staff"), by and through the undersigned counsel, and recommends the Missouri Public Service Commission ("Commission") cancel the certificate of service authority and tariff of American Fiber Systems, Inc. ("AFS"). For its Recommendation, Staff states as follows:

1. On April 23, 2013,<sup>1</sup> Zayo Group, LLC ("Zayo"), successor in interest to AFS, filed an *Application For The Cancellation Of Certificate Of Service Authority And Withdrawal Of Tariff(s)* ("*Application*"), requesting the cancellation of AFS' certificate to provide services in Missouri. The Commission granted AFS a certificate of service authority to provide intrastate interexchange telecommunications, nonswitched local exchange telecommunications services, limited to providing dedicated private line services, and approved tariff number 200100468 to become effective on December 3, 2000. (See Attachment A).

2. On April 25, the Commission issued its *Order Directing Filing*, directing any interested party to file an objection or request a hearing no later than May 6, and Staff to file a recommendation on the *Application* no later than May 10. No objections or requests were filed.

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<sup>1</sup> All references are to calendar year 2013, unless otherwise specified.

3. On December 31, 2012, Zayo and AFS filed a Notice and advised the Commission of planned intra-company transactions to transfer the assets and customers of AFS to Zayo. See BNIR-2013-0364. The notification stated the intra-company transactions "...will be accomplished through (a) the roll-up of AFS into Zayo through a series of *pro forma* mergers, with Zayo as the surviving entity, and/or (b) the pro forma assignment of the assets and customers of AFS to Zayo followed by the series of pro forma mergers described in (a)."<sup>2</sup>

4. On March 22, Zayo notified the Commission that the transactions described in the December 2012 Notice were completed March 12.

5. Neither Zayo or AFS filed an application with the Commission under Rules 4 CSR 240-3.520 or 4 CSR 240-3.525 to merge or transfer the assets of AFS to Zayo, although the December 2012 Notice provided much, but not all, of the information required under either of the rules.

6. Pursuant to Section 392.240, RSMo (Supp. 2012) the Commission

...is authorized, in connection with the issuance or modification of a certificate of interexchange or local exchange service authority...to entertain a petition to suspend or modify the application of its rules...if such waiver or modification is otherwise consistent with the other provisions of sections 392.361 to 392.520 and the purposes of this chapter.

7. The December 2012 Notice states in regard to the public interest:

The Parties submit that the *pro-forma* intra-company transactions described herein are in the public interest. The *Pro Forma* Transactions will simplify the Company's existing corporate structure and thereby reduce its reporting and accounting burdens and provide other operational efficiencies. As a result of the efficiencies and focus, the

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<sup>2</sup> Notification of Zayo Group, LLC and American Fiber Systems, Inc. Regarding Certain Pro Forma Intra-Company Transactions, Non-Case Related Submission No. BNIR-2013-0364, p. 1, December 31, 2012.

Company will become a stronger competitor to the ultimate benefit of consumers.

Furthermore, the *Pro Forma* Transactions will be virtually transparent to customers and will not result in any change in their services. Since all affected customers are already familiar with and are receiving invoices including the “Zayo” brand, the *Pro Forma* Transactions will not result in customer confusion. Moreover, the rates, terms and conditions of their services will not change as a result of these purely intra-company transactions.

Finally, all of Zayo's subsidiaries, including AFS, have the same corporate officers. Therefore, there will be no change in the managerial qualifications of the telecommunications provider serving the customers affected by the *Pro Forma* Transactions, nor will there be a change in the management policies of the Company as a result of the *Pro Forma* Transactions.<sup>3</sup>

8. Based on the information provided by Zayo, AFS is no longer providing services in Missouri. As such, Staff recommends the Commission cancel AFS’ certificate of service authority and associated tariff, and waive Rules 4 CSR 240-3.520 and 4 CSR 240-3.525 to merge or transfer the assets of AFS to Zayo.

9. The Commission has the authority to cancel a telecommunications certificate pursuant to Section 392.410.5, RSMo 2000, which provides “[a]ny certificate of service authority may be altered or modified by the commission after notice and hearing, upon its own motion or upon application of the person or company affected.”

10. The Commission need not hold a hearing if, after proper notice and opportunity to intervene, no party requests such a hearing. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494 (Mo. App. W.D. 1989).

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<sup>3</sup> Notification of Zayo Group, LLC and American Fiber Systems, Inc. Regarding Certain *Pro Forma* Intra-Company Transactions, Non-Case Related Submission No. BNIR-2013-0364, pp. 3-4, December 31, 2012.

11. Both Zayo and AFS are current on the filing of annual reports and the remittance of assessments to the Commission.

12. Staff is not aware of any other case before the Commission that a decision in this matter will affect or be affected by.

**WHEREFORE**, Staff recommends that the Commission cancel the certificate of service authority and associated tariff of American Fiber Systems, Inc., to provide intrastate interexchange telecommunications services and nonswitched local exchange telecommunications services, limited to providing dedicated private line services, and waive Rules 4 CSR 240-3.520 and 4 CSR 240-3.525 to merge or transfer the assets of AFS to Zayo.

Respectfully submitted,

**/s/Jennifer Hernandez**

Jennifer Hernandez  
Senior Staff Counsel  
Missouri Bar No. 59814

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Missouri Public Service Commission  
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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on this **10<sup>th</sup> day of May, 2013** by electronic mail to: Mark W. Comley, counsel for Zayo Group, LLC and American Fiber Systems, Inc. at [comleym@ncrpc.com](mailto:comleym@ncrpc.com); and the Office of the Public Counsel at [opcservice@ded.mo.gov](mailto:opcservice@ded.mo.gov).

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION  
JEFFERSON CITY  
November 28, 2000**

**CASE NO: TA-2001-258**

**Office of the Public Counsel**  
P.O. Box 7800  
Jefferson City, MO 65102

**General Counsel**  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

**Mary Ann (Garr) Young**  
William D. Steinmeier  
2031 Tower Drive  
PO Box 104595  
Jefferson City, MO 65110-4595

**Enclosed find certified copy of an ORDER in the above-numbered case(s).**

**Sincerely,**

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, slightly slanted style.

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

**BEFORE THE PUBLIC SERVICE COMMISSION**  
**OF THE STATE OF MISSOURI**

In the Matter of the Application of	)	
American Fiber Systems, Inc. for a	)	
Certificate of Service Authority to	)	<b><u>Case No. TA-2001-258</u></b>
Provide Non-Switched Local Exchange	)	Tariff File No. 200100568
and Interexchange Telecommunications	)	
Services in the State of Missouri and	)	
for Competitive Classification	)	

**ORDER APPROVING INTEREXCHANGE AND NONSWITCHED LOCAL EXCHANGE**  
**CERTIFICATES OF SERVICE AUTHORITY AND ORDER APPROVING TARIFF**

American Fiber Systems, Inc. (AFS) applied to the Missouri Public Service Commission (Commission) on October 19, 2000, for certificates of service authority to provide intrastate interexchange and nonswitched local exchange telecommunications services in Missouri under Sections 392.410-.450, RSMo 1994, and RSMo Supp. 1999.<sup>1</sup> AFS asked the Commission to classify it as a competitive company and to waive certain statutes and rules as authorized by Sections 392.361 and 392.420. AFS is a Delaware corporation with its principal office located at 100 Meridian Centre, Suite 250, Rochester, New York 14618.

The Commission issued a Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene on October 31, 2000, directing parties wishing to intervene to file their requests by November 15, 2000. The requirement for a hearing is met

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

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 asked permission to intervene or requested a hearing, the Commission may grant the relief requested based on the application.

AFS filed a proposed tariff in conjunction with its application and filed substitute sheets on November 15, 2000. The tariff's effective date is December 3, 2000. AFS's tariff describes the rates, rules, and regulations it intends to use, identifies AFS as a competitive company, and lists the waivers requested. AFS intends to provide interexchange and nonswitched local exchange telecommunications services including private line services.

In its memorandum filed on November 20, 2000, the Staff of the Commission (Staff) stated that AFS's proposed services are similar to existing IXC offerings. Staff recommended that the Commission grant AFS a certificate of interexchange service authority, and a certificate of service authority for local exchange telecommunications services on condition that this authority be restricted to providing dedicated private line services. Staff recommended that the Commission grant AFS competitive status, and waiver of the statutes and rules listed in the Notice. Staff recommended that the Commission approve the proposed tariff as amended to become effective on December 3, 2000.

The Commission finds that competition in the intrastate interexchange and nonswitched local exchange telecommunications

markets is in the public interest and AFS should be granted certificates of service authority. The Commission finds that the services AFS proposes to offer are competitive and AFS should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraph below is reasonable and not detrimental to the public interest.

The Commission finds that AFS's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange and nonswitched local exchange carriers. The Commission finds that the proposed tariff filed on October 19, 2000, shall be approved as amended to become effective on December 3, 2000.

**IT IS THEREFORE ORDERED:**

1. That American Fiber Systems, Inc. is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above.

2. That American Fiber Systems, Inc. is granted a certificate of service authority to provide nonswitched local exchange telecommunications services in the state of Missouri limited to providing dedicated private line services, subject to all applicable statutes and Commission rules except as specified in this order.

3. That American Fiber Systems, 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  
392.240.1 - rates-rentals-service & physical connections  
392.270 - valuation of property (ratemaking)  
392.280 - depreciation accounts  
392.290 - 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 240-30.010(2)(C) - posting of tariffs  
4 CSR 240-30.040 - uniform system of accounts  
4 CSR 240-33.030 - minimum charges  
4 CSR 240-35 - reporting of bypass and  
customer-specific arrangements

4. That the tariff filed by American Fiber Systems, Inc. on October 19, 2000, under tariff number 200100468, is approved as amended to become effective on December 3, 2000. The tariff approved is:

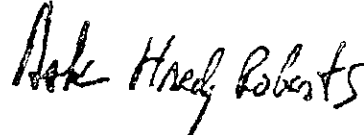
#### Missouri P.S.C. Tariff No. 1

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5. That this order shall become effective on December 3, 2000.

6. That this case may be closed on December 4, 2000.

**BY THE COMMISSION**

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

( S E A L )

Lewis Mills, Deputy Chief Regulatory Law  
Judge, by delegation of authority pursuant  
to Section 386.240, RSMo 1994.

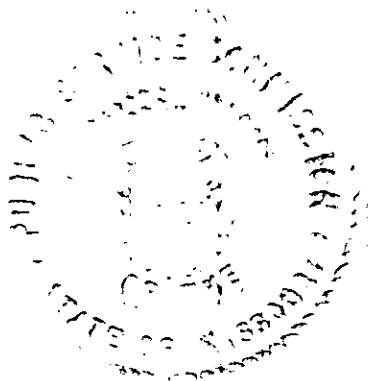
Dated at Jefferson City, Missouri,  
on this 28th day of November, 2000.

**STATE OF MISSOURI**

**OFFICE OF THE PUBLIC SERVICE COMMISSION**

I have compared the preceding copy with the original on file in this office and  
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,  
Missouri, this 28<sup>th</sup> day of Nov. 2000.



A handwritten signature in cursive script that reads "Dale Hardy Roberts".

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