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February 25, 2000

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Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P.O. Box 360
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FILED²
FEB 25 2000
Missouri Public
Service Commission

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

Dear Mr. Roberts:

Enclosed please find an original plus 14 copies of the executed Stipulation and Agreement filed on behalf of American Fiber Network, Inc. in the above-captioned matter.

If you should have any questions concerning the enclosed materials, please do not hesitate to contact me. Thank you.

Very truly yours,

HENDREN AND ANDRAE, L.L.C.

Richard S. Brownlee, III

Richard S. Brownlee, III

By Patricia D. Perkins

RSB/s
Enclosures
cc: Office of Public Counsel
General Counsel
Anthony Conroy
Rob Heath

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) ¹ should be processed in a manner similar to that in which

¹Large 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)² 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

²Good 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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