

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 26th day of
April, 2007.

Staff of the Public Service Commission)
of the State of Missouri,)
)
Complainant,)
)
v.)
)
American Fiber Network, Inc.,)
)
Respondent.)

Case No. TC-2007-0345

**ORDER GRANTING STAFF LEAVE TO DISMISS COMPLAINT WITH
PREJUDICE**

Issue Date: April 26, 2007

Effective Date: May 6, 2007

The Staff of the Missouri Public Service Commission filed its complaint against American Fiber Network, Inc. ("AFN") on March 22, 2007, alleging that even though Staff previously had numerous conversations with AFN about it, AFN had failed to file a series of quarterly Quality of Service Reports in violation of Commission Rule 4 CSR 240-3.550(5). Staff sought authorization to bring a penalty action against AFN in circuit court to recover "the maximum statutory forfeiture allowed by section 386.570 RSMo. for each separate, distinct, and continuing violation."

On April 4, 2007, AFN filed Quality of Service Reports for the first, second, third, and fourth quarters of 2006, which, according to Staff, are in compliance with all the

requirements of 4 CSR 240-3.550(5) except for being filed late.¹ On April 18, 2007, Staff moved for leave to dismiss its complaint against AFN with prejudice, explaining that, in its view, “because AFN has [now] submitted its 2006 reports in compliance with 4 CSR 240-3.550(5), a penalty action in this case is inappropriate.”

While not condoning violations of 4 CSR 240-3.550(5), the Commission agrees with its Staff that under the circumstances present here, a penalty action is not appropriate. Therefore, Staff’s motion will be granted.

IT IS ORDERED THAT:

1. Staff’s motion for leave to dismiss the complaint it filed against American Fiber Network, Inc. in Case No. TC-2007-0345 with prejudice is granted.
2. This order shall become effective on May 6, 2007.

BY THE COMMISSION



Colleen M. Dale
Secretary

(S E A L)

Davis, Chm., Murray, Gaw and Appling, CC., concur
Clayton, C., dissents

Lane, Regulatory Law Judge

¹ 4 CSR 240-3.550(5)(A) requires the reports to be filed with the Commission “no later than forty-five (45) days following the end of each quarter.”