

**BEFORE THE TENNESSEE REGULATORY AUTHORITY AT**

**NASHVILLE, TENNESSEE**

**April 10, 2006**

**IN RE:**

**APPLICATION OF MOBILEPRO CORP. AND  
AMERICAN FIBER NETWORK, INC. TO COMPLETE A  
TRANSFER OF CONTROL OF AMERICAN FIBER  
NETWORK, INC.**

**DOCKET NO.  
05-00252**

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Chairman Ron Jones, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on November 7, 2005 for consideration of the *Joint Application* ("Joint Application") filed on September 13, 2005 by Mobilepro Corp. ("Mobilepro") and American Fiber Network, Inc. ("AFN") (together, the "Applicants"). The Applicants request TRA approval of a transfer of authority of AFN to Mobilepro pursuant to Tenn. Code Ann. § 65-4-113 (2004).

**The Joint Application**

Mobilepro is a Delaware corporation that offers telecommunications services through three wholly-owned subsidiaries. CloseCall America, Inc. provides resold local and interexchange telecommunications services in approximately nine states. Affinity Telecom, Inc. provides local and interexchange telecommunications services in Michigan and Ohio. Davel Communications, Inc. provides payphone services in 45 states.

AFN is a Delaware corporation and is wholly-owned by Douglas Bethell. AFN currently provides resold local exchange service, resold long distance operator services, voicemail and other standard voice features, and DS1 services. AFN also provides interexchange service nationwide and holds competitive local authority in selected markets. AFN was authorized to provide resold local and interexchange long distance telecommunication services in Tennessee by Authority Order in Docket No. 05-00124 on August 24, 2005.

On September 13, 2005, the Applicants filed the *Joint Application* requesting TRA approval for the transfer of authority of AFN to Mobilepro. As a result of an Agreement and Plan of Merger (“Agreement”) entered into by the Applicants, AFN will merge with and into AFN Acquisition Corporation (“AFNAC”), a newly created, wholly-owned subsidiary of Mobilepro. Under the Agreement, AFNAC will change its name to American Fiber Network, Inc., which will survive the merger as a direct, wholly-owned subsidiary of Mobilepro. According to the *Joint Application*, the proposed transaction is a combination stock and cash transaction where AFN will continue as a going concern.

The Applicants maintain that Mobilepro is financially, managerially, and technically qualified to acquire AFN. The *Joint Application* states that the transaction will enhance the ability of AFN and Mobilepro to expand their respective operations both in terms of service area coverage and through the ability of each entity to offer customers an expanded line of products and services. According to the Applicants, they have been granted streamlined approval of the proposed transfer from the Federal Communications Commission (“FCC”). The Applicants assert that the proposed transaction will not cause any service interruptions or

have any impact on AFN's day-to day operations, and it will not affect the rates, terms, or conditions under which AFN provides service in Tennessee.

**The November 7, 2005 Authority Conference**

Tenn. Code Ann. § 65-4-113 (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services. Tenn. Code Ann. § 65-4-113(a) (2004) reads as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity ["CCN"] issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon petition for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. . . .


At the regularly scheduled Authority Conference held on November 7, 2005, the panel found that although AFN will retain its CCN, approval of the transaction proposed by Mobilepro and AFN is required by Tenn. Code Ann. § 65-4-113 (2004) because the merger will result in the indirect transfer of the CCN to the new parent, Mobilepro. The panel also noted that the FCC has approved the transaction and found that the proposed transfer furthers the public interest because it will not reduce the number of providers in Tennessee. In addition, the panel found that the transfer will allow AFN to compete more effectively in the

marketplace. Therefore, the panel voted unanimously to approve the transaction pursuant to a finding of compliance with Tenn. Code Ann. § 65-4-113 (2004).

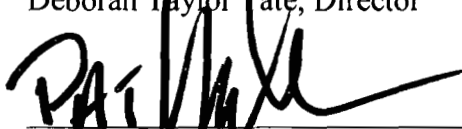
**IT IS THEREFORE ORDERED THAT:**

1. The indirect transfer of control of American Fiber Network, Inc. to Mobilepro Corp. as described in the *Joint Application* and discussed herein is approved.

2. Because this transaction is an indirect transfer of authority, American Fiber Network, Inc. will become a direct, wholly owned subsidiary of Mobilepro Corp. and will retain its certificate of public convenience and necessity.

  
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Ron Jones, Chairman

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Deborah Taylor Tate, Director<sup>1</sup>  
  
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Pat Miller, Director

<sup>1</sup> Director Tate voted in agreement with the other directors but resigned her position as director before the issuance of this order