

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**July 10, 2006**

<b>IN RE:</b>	)	
	)	
<b>PETITION AND REQUEST FOR EXPEDITED</b>	)	<b>DOCKET NO.</b>
<b>TREATMENT OF USCARRIER TELECOM, LLC</b>	)	<b>06-00116</b>

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**ORDER APPROVING TRANSFER OF AUTHORITY**

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This matter came before Chairman Ron Jones, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on May 30, 2006 for consideration of the *Petition and Request for Expedited Treatment* (“*Petition*”) filed on April 24, 2006 by USCarrier Telecom, LLC (“USCarrier” or “Petitioner”).

**The *Petition***

USCarrier is a Georgia corporation which maintains its principal place of business in Atlanta, Georgia. USCarrier is currently owned by twenty Member Companies, none of which are certificated telecommunications providers in Tennessee. USCarrier is a “carrier’s carrier” and its network customers include competitive local exchange and wireless carriers, local Internet service providers, local municipalities, state government agencies and incumbent local exchange carriers. USCarrier provides wholesale broadband transport services to other telecommunications carriers. In Tennessee, USCarrier has installed synchronous optical network (SONET), dense wavelength division multiplexing (DWDM) and other transport multiplexing equipment.

USCarrier holds certificates to provide interexchange or competitive local exchange services in five states in the southeastern United States, including Tennessee. In Tennessee, USCarrier is

authorized to provide resold and facilities-based interexchange services pursuant to Authority Order granted in Docket No. 01-00512 on September 13, 2001. USCarrier is also authorized by the Federal Communications Commission (“FCC”) to provide interstate and international services as a non-dominant carrier pursuant to FCC File No. ITC-214-19980224-00140.

USCarrier Telecom Holdings, LLC (“Holdings”) will be formed in Georgia and is expected to own 100% of the stock of USCarrier. Holdings will be a Georgia limited liability company with a business address at 180 Interstate North Parkway, Suite 200, Atlanta, Georgia 30339.

American Fiber Systems Holding Corporation (“AFSHC”) is a Delaware corporation which maintains its principal place of business in Rochester, New York. American Fiber Systems, Inc. (“AFS”), a wholly owned subsidiary of AFSHC, provides “dark” fiber metropolitan infrastructure and transport services and is dedicated to designing, building, operating and maintaining high-capacity, high-bandwidth fiber-optic networks, constructed on full-spectrum fiber and connected to points of communications within major metropolitan areas. In Tennessee, AFS is authorized to provide facilities based and resold local exchange and inter-exchange telecommunications services pursuant to Authority Order in Docket No. 00-00988 on January 24, 2001.

The *Petition* filed on April 24, 2006, informed the Authority of the request for approval of a proposed indirect and pro forma transfer of control of USCarrier. The Petitioner requested the Authority grant approval as expeditiously as possible to allow Petitioner to complete the proposed reorganization at the earliest possible date in order to facilitate business and financial plans of USCarrier.

The Petitioner emphasizes that the transaction or transfer of control is *pro forma* in nature because it will not result in a change in the ultimate control of USCarrier. According to the *Petition*, currently twenty local independent telephone companies (the “Member Companies”) own 100% of the stock or membership units (the “Units”) of USCarrier; immediately following the proposed

reorganization, by virtue of the proposed membership interests in Holdings, the current Member Companies will hold approximately 90% of the interest in USCarrier and an additional entity, AFSHC, will hold approximately 10% of the interest in USCarrier. Therefore, control of USCarrier will remain in the Member Companies subsequent to the reorganization. The proposed indirect and pro forma transfer of control will not involve an assignment of any certification of USCarrier and there will be no change in any services or rates as a result of the reorganization.

Subsequent to the proposed reorganization, USCarrier will retain its authority under all federal and state certifications. A new entity, Holdings, will be formed in Georgia and will own 100% of the stock of USCarrier. Holdings will be authorized to issue two classes of Units: Class A and Class B. Class A Units will be the equivalent of common stock and will hold all voting rights; Class B will be the equivalent of preferred stock and will have no voting rights. Holdings will have the authority to issue up to 500 million Class A Units and four million Class B Units and will be initially issued as follows: (i) 20 million Class A Units will be issued to the Member Companies in exchange for the current Units; (ii) an aggregate of up to 40 million Class A Units will be issued to Member Companies who convert their fiber leases to indefeasible rights of use and their equipment leases to prepaid leases; and (iii) an aggregate of up to 40 million Class A Units will be issued to investors, including AFSHC. Immediately following the proposed reorganization, AFSHC will hold approximately ten percent interest in Holdings. Holdings and USCarrier will both be managed by a Management Committee, comprised of seven members, one of whom will be appointed by AFSHC and the others by Class A Member Companies holding the greatest number of Class A Units.

The *Petition* asserts that as part of the proposed reorganization, USCarrier will not pledge any of its Tennessee assets as collateral for any secured debt. However, USCarrier will continue to grant a previously existing blanket lien to its lender. The *Petition* certifies that USCarrier does not propose to

change the name under which USCarrier currently offers service in the State of Tennessee. USCarrier will continue its operations with no change in the rates, terms, or conditions of service.

Currently, USCarrier has no Tennessee customers, but the *Petition* conveys that to the extent USCarrier has Tennessee customers in the future, the proposed reorganization or transaction will serve the public interest by enabling USCarrier and its members to improve the operational and costs efficiencies of USCarrier's business. The *Petition* states the proposed reorganization will enhance USCarrier's operational ability by providing USCarrier with greater flexibility in financing its business, and the reorganization will place USCarrier in a better position to offer a broad array of high quality services. In addition, the *Petition* certifies that the proposed reorganization will serve the public interest by promoting competition and should allow the provision of innovative, high-quality telecommunications services to the public.

#### **May 30, 2006 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) provides:

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 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. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on May 30, 2006, the voting panel assigned to this docket considered the indirect transfer of authority requested in the *Petition*. The

panel found that Tenn. Code Ann. § 65-4-113 (2004) applies to this transaction. Thereafter, based upon the evidentiary and administrative record as a whole and relying on the legal standard set forth in Tenn. Code Ann. § 65-4-113 (2004), the panel determined that the transfer furthers the public interest and voted unanimously to grant approval of the *Petition*.

**IT IS THEREFORE ORDERED THAT:**

1. The indirect transfer of authority of USCarrier Telecom, LLC as described in the *Petition* and discussed herein is approved.

2. Because this transaction is an indirect transfer of authority, USCarrier Telecom, LLC will retain its certificate of public convenience and necessity.



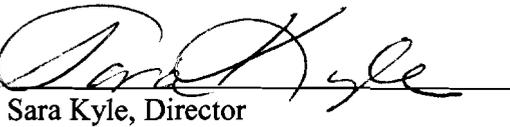
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Ron Jones, Chairman



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Pat Miller, Director



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Sara Kyle, Director