

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

September 10, 2007

IN RE:

APPLICATION OF AMERICAN FIBER NETWORK, INC.
FOR AMENDED AUTHORITY TO PROVIDE FACILITIES-
BASED COMPETING LOCAL TELECOMMUNICATIONS
SERVICES

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DOCKET NO.
07-00150

ORDER GRANTING AMENDED AUTHORITY TO PROVIDE FACILITIES-BASED
COMPETING LOCAL TELECOMMUNICATIONS SERVICES

This matter came before the Hearing Officer of the Tennessee Regulatory Authority (the "Authority" or "TRA") at a hearing held on July 31, 2007, to consider the *Application for Amended Authority to Provide Facilities-Based Competing Local Telecommunications Services* (the "*Application*") filed by American Fiber Network, Inc. ("AFN" or "Applicant") on June 8, 2007 and supplemented on July 9, 2007.

Background

AFN was previously granted authority to provide operator services and/or resell telecommunications services in Tennessee on September 11, 2001 in Docket No. 00-00091.¹ On July 18, 2003, AFN requested that the Authority cancel its authority, indicating that it was no longer providing services within Tennessee and did not foresee any new business. The Authority granted the request and cancelled AFN's authority on August 4, 2003.² Subsequently, three

¹ See *In re: Application of American Fiber Network for Authority to Provide Resale Telecommunication Services in Tennessee* (Docket No. 00-00091).

² *Id.*

interconnection agreements between BellSouth Telecommunications, Inc.³ and AFN were filed requesting Authority approval in Docket Nos. 04-00122, 05-00031 and 05-00127.⁴ As AFN was not certificated in Tennessee, these agreements were withdrawn on May 20, 2005.

AFN reapplied for authority to resell local and interexchange telecommunications services in Tennessee in Docket No. 05-00124. The application was granted by the Authority on August 8, 2005.⁵ On September 13, 2005, the Authority received an application from AFN and Mobilepro Corp. ("Mobilepro") requesting approval for a merger and transfer of authority of AFN to Mobilepro. The application was subsequently approved by the Authority at a regularly scheduled Authority Conference held on November 7, 2005.⁶ Mobilepro is a Delaware corporation that offers telecommunication services through three wholly-owned subsidiaries: AFN, CloseCall America, Inc. and Davel Communications.

Legal Standard for Granting Certificate of Public Convenience and Necessity

AFN's *Application* was made pursuant to, and was considered in light of, the criteria for granting a Certificate of Public Convenience and Necessity ("CCN") as set forth in Tenn. Code Ann. § 65-4-201 (2006), which provides, in pertinent part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation,

³ On December 29, 2006, BellSouth Telecommunications, Inc. merged with and into AT&T, Inc., thereafter retaining the AT&T, Inc. identity, and will be herein referred to as AT&T, Inc.

⁴ See *In re: Petition for Approval of the Interconnection Agreement between BellSouth and American Fiber Network, Inc.* (Docket No. 04-00122), *See In re: Petition for Approval of the Amendment to the Interconnection Agreement between BellSouth and American Fiber Network, Inc.* (Docket No. 05-00031), and *See In re: Petition for Approval of Amendment to the Interconnection Agreement between BellSouth and American Fiber Network, Inc.* (Docket No. 05-00127).

⁵ See *In re: Application of American Fiber Network, Inc. for Authority to Provide Resell Telecommunication Services in Tennessee* (Docket No. 05-00124).

⁶ See *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).

and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

* * *

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

* * *

Furthermore, pursuant to Tenn. Code Ann. § 65-5-112 (2004), a competing telecommunications provider is required to file with the Authority: (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

The July 31, 2007 Hearing

Pursuant to Tenn. Code Ann. § 65-4-204 (2004), public notice of the Hearing in this matter was issued by the Hearing Officer on July 18, 2007. No persons sought intervention prior to or during the Hearing. At the Hearing held on July 31, 2007, Mr. Robert Heath, Executive Vice President of AFN participated in the Hearing and was subject to examination by the Hearing Officer. During the Hearing, Mr. Heath corrected the company's address for the record and elaborated on AFN's business plans in Tennessee. He also stated that AFN does not intend to build facilities in Tennessee, but will utilize arrangements currently existing for Unbundled

Network Elements ("UNE"), and affirmed that AFN will comply with the public interest obligations and responsibilities mandated in TRA Rule 1220-4-8-.04(3)(b) and (c). Upon AFN's conclusion of the presentation of its proof, the Hearing Officer granted AFN's *Application* based upon the following findings of fact and conclusions of law:

I. AFN's Qualifications

1. AFN is a corporation organized under the laws of the State of Delaware in 1991 and was issued a certificate to transact business in Tennessee on October 11, 1999.

2. The complete street address of the registered agent for AFN, CT Corporation System, is 800 S. Gay Street, Suite 2021, Knoxville, Tennessee 37929. The complete street address of AFN's corporate office is 9401 Indian Creek Parkway, Suite 140, Overland Park, Kansas 66210. The telephone number is (913) 338-2658.

3. The *Application* and supporting documentary information existing in the record indicate that AFN has the requisite technical and managerial ability to provide competitive access services and transport telecommunications services within the State of Tennessee. Specifically, AFN's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. AFN has the necessary capital and financial ability to provide the services it proposes to offer.

5. AFN has represented that it will adhere to all applicable statutes, policies, rules and orders of the Authority.

II. Proposed Services

Since obtaining certification in Docket No. 05-00124, AFN has been offering resold local and long distance services in Tennessee. AFN now anticipates offering a broad variety of local

exchange services, primarily to residential and small business customers. Initially, AFN intends to offer services in areas currently served by AT&T, but may subsequently expand its offerings into areas served by other Local Exchange Carriers ("LECs") that are open to competition. AFN will provide these services utilizing a combination of UNE arrangements and commercial agreements. AFN provided the Authority with a Notice of Filing dated June 8, 2007, which was directed to all eighteen Incumbent Local Exchange Carriers ("ILECs") in Tennessee.

III. Permitting Competition to Serve the Public Convenience and Necessity

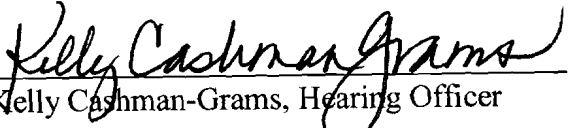
Upon review of the *Application* and the record in this matter, the Hearing Officer finds that approval of AFN's *Application* would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and fostering the development of an efficient, technologically advanced statewide system of telecommunications services.

IV. Small and Minority-Owned Telecommunications Business Participation Plan and Business Assistance Program

AFN has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-112 (2004) and the Authority's Rules.

IT IS THEREFORE ORDERED THAT:

1. The *Application for Amended Authority to Provide Facilities-Based Competing Local Telecommunications Services* filed by American Fiber Network, Inc., is approved.
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a petition for reconsideration within fifteen (15) days from the date of this Order.


Kelly Cashman-Grams, Hearing Officer