

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

March 3, 2009

IN RE:

**PETITION FOR APPROVAL OF THE RESALE
AGREEMENT BETWEEN UNITED TELEPHONE
SOUTHEAST LLC D/B/A EMBARQ AND
AMERICAN FIBER NETWORK, INC.**

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**DOCKET NO.
09-00008**

ORDER APPROVING THE RESALE AGREEMENT

This matter came before Chairman Eddie Roberson, Director Sara Kyle and Director Mary W. Freeman of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on February 23, 2009 to consider, pursuant to 47 U.S.C. § 252, the Petition for approval of the Resale Agreement negotiated between United Telephone Southeast LLC d/b/a Embarq ("Embarq") and American Fiber Network, Inc. filed on January 15, 2009.

Based upon a review of the agreement, the record in this matter, and the standards for review set forth in 47 U.S.C. § 252, the Directors unanimously granted the Petition and made the following findings and conclusions:

- 1) The Authority has jurisdiction over public utilities pursuant to Tenn. Code Ann. § 65-4-104 (2004).
- 2) The agreement is in the public interest as it provides consumers with alternative sources of telecommunications services within Embarq's service area.
- 3) The agreement is not discriminatory to telecommunications service providers that are not parties thereto.

4) 47 U.S.C. § 252(e)(2)(A) provides that a state commission may reject a negotiated agreement only if it “discriminates against a telecommunications carrier not a party to the agreement” or if the implementation of the agreement “is not consistent with the public interest, convenience or necessity.” Unlike arbitrated agreements, a state commission may not reject a negotiated agreement on the grounds that the agreement fails to meet the requirements of 47 U.S.C. §§ 251 or 252(d).¹ Thus, although the Authority finds that neither ground for rejection of a negotiated agreement exists, this finding should not be construed to mean that the agreement is consistent with §§ 251 or 252(d) or, for that matter, previous Authority decisions.

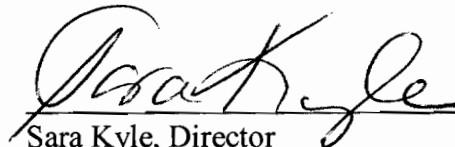
5) No person or entity has sought to intervene in this docket.

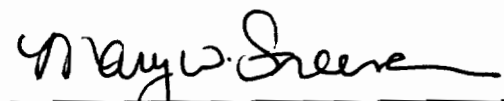
6) The agreement is reviewable by the Authority pursuant to 47 U.S.C. § 252 and Tenn. Code Ann. § 65-4-104 (2004).

IT IS THEREFORE ORDERED THAT:

The Petition is granted, and the Resale Agreement negotiated between United Telephone Southeast LLC d/b/a Embarq and American Fiber Network, Inc. is approved and is subject to the review of the Authority as provided herein.


Eddie Roberson, Chairman


Sara Kyle, Director


Mary W. Freeman, Director

¹ See 47 U.S.C. § 252(e)(2)(B).