

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-2401
of American Fiber Network, Inc.)
of Overland Park, Kansas,)
seeking authority for an amend-) MOTION GRANTED
ment to its Certificate of) APPLICATION GRANTED
Public Convenience and Neces-)
sity to include local exchange)
telecommunications services)
within the state of Nebraska.) Entered: August 7,
2001

BY THE NEBRASKA PUBLIC SERVICE COMMISSION:

By its application filed October 5, 2000, American Fiber Network, Inc. (AFN) of Overland Park, Kansas, seeks to amend its Certificate of Public Convenience and Necessity to include local exchange telecommunication services within the state of Nebraska. Notice of the application appeared in The Daily Record on October 6, 2000. The following parties filed petitions of formal intervention: Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Henderson Cooperative Telephone Company and Wauneta Telephone Company; (collectively referred to hereafter as "the Intervenors"). On July 19, 2001, AFN filed with the Commission two additional documents. They included a copy of a stipulation agreement in which the intervenors withdrew their objection to this application and a motion in which AFN requested this Commission to approve this Application without a hearing by Modified Procedure. In consideration of the motion and the intervenors withdrawal of their objection, this application will be processed via modified procedure.

The applicant is a Delaware Corporation that is authorized by the Secretary of State to transact business in the state of Nebraska as a foreign corporation. In addition, AFN was granted authority to operate as a resale common carrier of intrastate telecommunications services on February 29, 2000, pursuant to Application No. C-2205.

The applicant currently provides local and/or interexchange service in the following states: Alabama, Arizona, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Massachusetts, Montana, Missouri, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Texas, Utah, Virginia, Washington and Wisconsin. The applicant has pending application in 10 other states.

The applicant's management team has more than 20 years experience in telecommunications. The applicant has never been the subject to any formal complaint of other investigations involving the business operations of the company or any of its, officers, directors, principals, shareholders, members or managers. At no time has the applicant been refused certification in any state, nor has it had a permit, license or certificate revoked by any state.

The applicant originally sought authority to provide resold local exchange telecommunications services throughout the state of Nebraska. However, by the terms of the settlement entered into between the applicant and the intervenors, the requested authority has been modified. As a result, the applicant currently seeks authority throughout the state of Nebraska in territories presently served by carriers other than Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Henderson Cooperative Telephone Company and Wauneta Telephone Company.

O P I N I O N A N D F I N D I N G S

The Commission considers this application for authority in light of the following criteria and standards established in the Commission's telecommunications rules:

- (a) Whether the applicant has provided the information required by the Commission;

- (b) Whether the applicant has provided a performance bond, if required;
- (c) Whether the applicant possesses adequate financial resources to provide the proposed service;
- (d) Whether the applicant possesses adequate technical competence and resources to provide the proposed service;
- (e) Whether the applicant possesses adequate managerial competence to provide the proposed service; and
- (f) Whether granting the applicant a certificate preserves and advances universal service, protects the public safety and welfare, ensures the continued quality of telecommunications services and safeguards the rights of consumers, pursuant to Section 253(b) of the Act.

Applicant has demonstrated that it meets the standards of financial, technical and managerial competence and all other criteria necessary to provide local exchange service in the proposed territories. No evidence was submitted or testimony elicited to suggest that the applicant is not qualified to provide its proposed services in light of the criteria this Commission must consider.

This order does not terminate, waive or in any manner diminish the exemptions and protections created by the Federal Telecommunications Act of 1996 for rural carriers, as defined by the Federal Act. This order does not address the issue of the rural local exchange carriers' exemption under the Federal Act. Rural exemptions may be terminated, suspended or modified only as provided in Section 251(f) of the Federal Act.

For the above reasons, the Commission is of the opinion and finds that Application No. C-2401 should be granted by Modified Procedure.

O R D E R

IT IS THEREFORE ORDERED by the Commission that the motion in Application No. C-2401, requesting the Commission to approve this application though Modified Procedure is hereby granted.

IT IS FURTHER ORDERED that Application No. C-2401 be, and it is hereby, granted and American Fiber Network, Inc. is authorized to provide local exchange telecommunication services throughout the state of Nebraska in territories presently served by carriers other than Arapahoe Telephone Company; Benkelman Telephone Company, Inc.; Cozad Telephone Company; Henderson Cooperative Telephone Company and Wauneta Telephone Company.

IT IS FURTHER ORDERED that the applicant comply with Section 251(f)(1)(B) of the Telecommunications Act of 1996 and that the applicant submit any bona fide request(s) for interconnection, services, or network elements from a rural telephone company to the Commission for its approval.

IT IS FURTHER ORDERED that applicant is obligated to abide by the same laws, rules and regulations, both federal and state (including any laws, rules or regulations regarding universal service, restrictions on joint marketing and quality of service), applicable to other local exchange carriers, except obligations imposed on incumbent local exchange carriers pursuant to Section 251(c) of the Act.

IT IS FURTHER ORDERED that, to the extent the applicant provides access line service as referenced in the Telecommunications Relay System Act, Neb. Rev. Stat. §§ 86-1302 - 86-1306 (Relay Act) and defined in Neb. Admin. R. & Reg. tit. 291, ch. 5, § 001.01B, the applicant shall collect from its subscribers a surcharge (Relay Surcharge) pursuant to the Relay Act and the Commission's annual orders establishing the amount of the relay surcharge, and shall remit to the Commission the proceeds from the relay surcharge, as provided by the Relay Act.

IT IS FURTHER ORDERED that the applicant comply with all necessary statutes and Commission rules and regulations as they pertain to the Nebraska Universal Service Fund.

IT IS FINALLY ORDERED that this order be, and it is hereby, made the Commission's official Certificate of Public Convenience and Necessity to the applicant to provide local exchange service within the authorized territories in Nebraska.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of August, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director