

DECISION MEMORANDUM

**TO: COMMISSIONER REDFORD
COMMISSIONER SMITH
COMMISSIONER KEMPTON
COMMISSION SECRETARY
COMMISSION STAFF
LEGAL**

FROM: NEIL PRICE

DATE: NOVEMBER 16, 2007

**SUBJECT: APPLICATION OF AMERICAN FIBER SYSTEMS, INC. TO TRANSFER
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY NO. 427
FROM IDACOMM, INC. TO AMERICAN FIBER SYSTEMS, INC.; CASE
NO. AFS -T-07-01.**

On October 11, 2007, American Fiber Systems, Inc. filed an Application seeking the Commission's authorization for the transfer of Certificate of Public Convenience and Necessity No. 427 held by Idacomm, Inc. ("Idacomm") to American Fiber Systems, Inc. ("AFS"). On November 8, 2007, AFS filed a Revised Application containing a revised signature page and a revised Schedule of General Regulations for Exchange Services Applying to Local Exchange Services and Facilities containing price lists and customer billing information.

THE APPLICATION

AFS is a Delaware corporation and lists its principal place of business as Rochester, New York. The Company is registered with the Idaho Secretary of State as a general business corporation and lists CT Corporation System, 1111 West Jefferson, Suite 530, Boise, Idaho 83702, as its Idaho registered agent for service.

On March 15, 2004, Idacomm submitted an Application for a Certificate of Public Convenience and Necessity. Case No. IZ2-T-04-01. On May 11, 2004, the Commission issued Order No. 29494 approving Idacomm's Application. On February 23, 2007, AFS acquired Idacomm by purchasing 100% of its capital stock from Idacomm's parent company, Idacorp Inc. On January 1, 2008, AFS intends to "merge its wholly owned subsidiary Idacomm into itself with AFS to be the surviving entity." AFS states that the transfer of Idacomm's Certificate is a necessary component of this planned merger.

Currently, AFS operates as a fiber-based telecommunications provider. The Company provides “fiber connectivity for data, internet access and voice services to wire line carriers, internet service providers and large enterprise customers.” It operates networks in Kansas, Ohio, Minnesota, Missouri, Tennessee and Utah and, through its affiliate, “provides facilities-based and resold local telecommunications services to enterprise and small business customers.” AFS acknowledges its obligation to comply with Commission rules regarding local exchange services in Idaho. The Company states that it will not charge customer deposits for its Idaho customers and therefore requests a waiver of Commission Rule 106, IDAPA 31.41.01.106, governing interest on deposits made by customers.

STAFF COMMENTS

Staff has reviewed AFS’s Application, including the Company’s revised price lists and customer billing information. Staff believes that AFS is compliant with the requirements of Procedural Order No. 26665 and IDAPA 31.01.01.111 and 112 (Rules 111 and 112). Staff believes the Company possesses the requisite financial, managerial, and technical qualifications necessary to effectively operate as a telecommunications provider within the State of Idaho and recommends the approval of AFS’s Application.

COMMISSION DECISION

Does the Commission wish to approve the transfer of CPCN No. 427 from Idacomm, Inc. to American Fiber Systems, Inc.?

Inasmuch as American Fiber Systems, Inc. does not charge customer deposits, does the Commission wish to waive Commission Rule 106, IDAPA 31.41.01.106?



Neil Price

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