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State of Utah
Department of Commerce
Division of Public Utilities

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MEMORANDUM

To: Public Service Commission

From: Division of Public Utilities
Philip Powlick, Director
Bill Duncan, Telecommunications / Water Manager
Ron Slusher, Utility Technical Consultant

Date: April 28, 2010

Re: In the Matter of the Transfer of Control of American Fiber Network, Inc to New Earthshell Corporation, Docket No. 10-2306-01.

RECOMMENDATION (Approve):

The Division has reviewed the joint application and believes that the transfer of control is in the public interest. As a result of the acquisition, AFN should be in a better position to provide expanded and advanced telecommunications services because of improved financial stability and access to the technical and managerial abilities of the acquiring Company.

EXPLANATION:

On March 12, 2010, New Earthshell Corporation (“NEC”) and American Fiber Network, Inc. (“AFN”) notified the Commission of a transaction which will result in a transfer of control of AFN to NEC. AFN holds a Certificate of Public Convenience and Necessity to provide local and long distance services in the state of Utah. Their certificate was granted on June 01, 2000 in docket number 00-2306-01.

NEC is a privately held Delaware corporation with offices located at 101 Hudson Street, Suite 3700, Jersey City, NJ 07302. NEC is not authorized to provide competitive local or long distance telecommunication services within any jurisdiction of the United States.

AFN is a Delaware corporation with offices located at 9401 Indian Creek Pkwy, St. 280, Overland Park, KS 66210. AFN is a wholly-owned subsidiary of MobilePro Corp (“MobilePro”).

The companies have stated that MobilePro and the Secured Party entered into certain financing arrangements evidenced by, among other documents, instruments and agreements, a secured convertible debenture (collectively, the "Financing Documents"). The obligations of MobilePro to the Secured Party under the Financing Documents are secured by AFN Common Stock. Events of default have occurred and are continuing under the Financing Documents and the Secured Party elected to conduct a secured party sale of the AFN Common Stock in accordance with Article 9 of the Uniform Commercial Code (the "UCC"). The Secured Party held a public auction at which NEC made the highest and best bid. NEC and the Secured Party have entered into the Sale Agreement pursuant to which the Secured Party will, in accordance with Article 9 of the UCC, transfer to NEC all of MobilePro's right, title and interest in and to the AFN Common Stock. As a result, upon the closing of the Sale Agreement, AFN will become a wholly owned subsidiary of NEC. MobilePro pledged the AFN Common Stock to the Secured Party to secure its obligations under the Financing Documents. AFN currently provides resold and facilities-based local exchange service, resold and facilities-based long distance services, voicemail, and other standard voice features, and DS1 services. In Utah, AFN is authorized to provide local and long distance services.

The transaction has been structured such that it will be transparent to AFN's customers in Utah. Following the closing, AFN will continue as a going concern. The transaction will not affect the rates, terms or conditions under which AFN provides service in Utah, and will not cause disruption in the services received by AFN customers in Utah.

The Applicants state that although the transaction will not change the services provided to AFN's customers, the Applicants expect that the transaction will improve their business operations. Specifically, AFN will benefit from the highly qualified and experienced management and financial resources provided by NEC. Furthermore, the Applicants submit that the transaction will provide AFN access to significant additional resources which will benefit its customers.

The Applicants submit that the transfer of control described herein will serve the public interest. AFN will continue to provide local and long distance telecommunications services to the citizens of Utah as it has to this date. NEC has experience in the operations and finances involving successful entities. AFN's operations will remain customer service oriented. The Applicants believe the transaction will enhance the ability of AFN to expand its respective operations both in terms of service area coverage and offerings to customers of more products and services.

cc: Robert E. Heath, EVP, American Fiber Network, Inc.
Douglas C. Bethell, President, American Fiber Network, Inc.
Tammy Martin, General Counsel, MobilePro Corporation
Troy Rillo, Senior Managing Director, Yorkville Advisors, LLC.
Michael Ginsberg, Assistant Attorney General, State of Utah