

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

-----  
In the Matter of the Transfer of Control of )  
American Fiber Network, Inc. to New ) DOCKET NO. 10-2306-01  
Earthshell Corporation ) ORDER  
-----

ISSUED: May 11, 2010

By The Commission:

This matter is before the Commission on the joint application of American Fiber Network, Inc. (AFN) and New Earthshell Corporation (NEC) for approval of a transfer of control of AFN to NEC. The parties submitted their application on or about March 12, 2010.

YA Global held a security interest in AFN common stock. After events of default occurred, YA Global elected to conduct a secured party sale of the AFN common stock. At a public auction, NEC made the highest bid. NEC has entered into a purchase and sale agreement with YA Global Investments, L.P. to purchase all issued and outstanding shares of common stock of AFN. YA Global will transfer all right, title and interest in AFN common stock to NEC, through which AFN will become a wholly-owned subsidiary of NEC.

The parties have affirmed that the transaction will be transparent to AFN's customers in Utah. It will not affect the rates, terms, or conditions under which AFN provides service in Utah and will not disrupt AFN's Utah customers' service. The parties do expect, however, that the transfer will improve business operations. NEC states that AFN will benefit from the highly qualified and experienced management and financial resources provided by it. AFN will have access to significant additional resources which will benefit its customers.

DOCKET NO. 10-2306-01

- 2 -

The Division of Public Utilities submitted its recommendation on April 28, 2010 recommending approval of the transfer of control.

The Commission finds it is in the public's best interest that this transaction be approved because it will allow AFN to continue to provide service and coverage to its Utah customers.

ORDER

Therefore, it is ordered that the joint application for approval of a transfer of control of AFN to NEC is approved.

Pursuant to Sections 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of Sections 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

DATED at Salt Lake City, Utah, this 11<sup>th</sup> day of May 2010.

/s/ Ruben H. Arredondo  
Administrative Law Judge

DOCKET NO. 10-2306-01

- 3 -

Approved and confirmed this 11<sup>th</sup> day of May 2010, as the Report and Order of  
the Public Service Commission of Utah.

/s/ Ted Boyer, Chairman

/s/ Ric Campbell, Commissioner

/s/ Ron Allen, Commissioner

Attest:

/s/ Julie Orchard  
Commission Secretary  
G#66657