

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Application of)
AMERICAN FIBER SYSTEMS, INC., for)
a Certificate of Convenience and Necessity)
to Provide Switched and Dedicated)
Facilities-Based and Resold Local)
Exchange, Facilities-Based Interexchange)
and Private Line Services within the State of)
Utah)

DOCKET NO. 00-2353-01

REPORT AND ORDER

ISSUED: February 23, 2001

SYNOPSIS

By this Report and Order, the Public Service Commission of Utah (Commission) grants the request of AMERICAN FIBER SYSTEMS, INC. (Applicant), for a Certificate of Public Convenience and Necessity (Certificate) authorizing Applicant to provide local exchange services within the service territory of Qwest Corporation within the State of Utah. The Commission, having considered the record in this proceeding and the applicable law, hereby makes, adopts, and enters the following Report and Order.

By the Commission:

PROCEDURAL HISTORY

AMERICAN FIBER SYSTEMS, INC. (Applicant), filed its Application for Authority to Provide Local Exchange Service on October 30, 2000, pursuant to Utah Code Annotated § 54-8b-1.1 *et. seq.*, and Title 63, Chapter 46b of the Utah Administrative Procedures Act. Qwest Communications, Inc. (Qwest), the Incumbent Local Exchange Carrier (ILEC), has been notified of the Application. Since there appears to be no meritorious opposition, and Applicant has made out its *prima facie* case in support of the application, there appears to be no reason to convene an evidentiary hearing on the matter. Accordingly, the Administrative Law Judge, having been fully advised in the premises, enters the following Report, containing proposed Findings of Fact, Conclusions of Law, and the Order based thereon.

FINDINGS OF FACT

- Applicant is a Delaware-domiciled corporation qualified to do business in Utah.
- Applicant has requested that the Commission grant a Certificate of Public Convenience and Necessity authorizing it to provide local exchange service throughout the State of Utah.
- Applicant is proposing to provide facilities-based and resold service.
- Applicant will utilize its managerial and technical expertise to support its Utah operations.
- Applicant has sufficient technical resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
- Applicant has sufficient managerial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.
- Applicant has a secure and sufficient source of funding for its Utah operations that will enable it to meet projected capital and operating expenses and to implement its business plans.
- Applicant has sufficient financial resources and abilities to provide the public telecommunications services for which it has applied for a Certificate.

- In its provision of intrastate services, Applicant will be subject to competition from Qwest and other certified local exchange providers.
- Applicant's service offerings will provide customers with a wider range of choices in meeting their telecommunications needs and will support the development of competition.
- The issuance of a Certificate to Applicant to provide public telecommunications services is in the public interest.
- The reporting requirements in Exhibit B attached hereto are in the public interest and should be binding upon Applicant until modified by the Commission.
- Applicant has applied for exemptions from the requirements of various procedures of the Utah Code and the Commission's Rules and Regulations.
- The grant of exemptions from the provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B, is in the public interest.

CONCLUSIONS OF LAW

1. It is in the public interest to convert this matter to an informal proceeding, pursuant to § 63-46b-4(3), U.C.A. 1953, as amended.
2. Applicant meets each of the statutory requirements (§§ 54-8b-2.1, *et. seq.*, U.C.A. 1953, as amended) for issuance of a Certificate as a telecommunications corporation.
3. Applicant meets each of the statutory requirements (§§ 54-8b-2.1, *et. seq.*, U.C.A. 1953, as amended) for authorization to provide the public telecommunications services for which it seeks a Certificate.
4. The issuance of a Certificate to Applicant to provide the telecommunications services for which it has applied is in accord with the legislative policy declarations set forth in Utah Code § 54-8b-1.1.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

- This matter be, and it is, converted to an informal proceeding pursuant to § 63-46b-4(3), U.C.A. 1953, as amended.
- The Commission hereby grants to AMERICAN FIBER SYSTEMS, INC., the Certificate that is attached hereto as Exhibit A and by this reference made a part of this Report and Order.
- AMERICAN FIBER SYSTEMS, INC., shall provide reports to the Commission and to the Division of Public Utilities, Utah Department of Commerce, as set forth in Exhibit B and by this reference made part of this Report and Order.
- AMERICAN FIBER SYSTEMS, INC., is exempt from certain provisions of the Utah Code and the Commission's Rules and Regulations, as set forth in Exhibit B.
- Inasmuch as AMERICAN FIBER SYSTEMS, INC., proposes neither to take customer deposits, nor to furnish prepaid services, the Commission's normal performance bond requirement be, and it is, waived.

DATED at Salt Lake City, Utah, this 23rd day of February, 2001.

/s/ A. Robert Thurman
Administrative Law Judge

Approved and Confirmed this 23rd day of February, 2001, as the Report and Order of the Public Service Commission of Utah.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT A

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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CERTIFICATE

ISSUED: February 23, 2001

By the Commission:

The Public Service Commission of Utah, pursuant to the Utah Code Ann. §§ 54-8b-2.1, *et. seq.*, hereby issues a Certificate of Public Convenience and Necessity authorizing AMERICAN FIBER SYSTEMS, INC. (Grantee), to provide local and interexchange services and other public telecommunications services, including facilities-based as well as resold services, within the service territory of Qwest Corporation within the State of Utah.

DATED at Salt Lake City, Utah, this 23rd day of February, 2001.

/s/ Stephen F. Mecham, Chairman

/s/ Constance B. White, Commissioner

/s/ Clark D. Jones, Commissioner

Attest:

/s/ Julie Orchard
Commission Secretary

EXHIBIT B

I. Annual Report

AMERICAN FIBER SYSTEMS, INC., shall file an Annual Report, which shall be subject to a Protective Order issued by the Commission, on or before March 31 of each year, unless said grantee requests and obtains an extension. The Annual Report shall contain the following:

A. Annual Revenues from operations attributable to the State of Utah by major service categories. Such information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts.

Both Total Utah and Intrastate Utah revenues shall be reported according to at least the following classes of service:

- (1) private line and special access,
- (2) business local exchange,
- (3) residential local exchange,
- (4) measured interexchange, and
- (5) vertical services.

Business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible.

B. Annual Expenses and Estimated Taxes attributed to operations in the State of Utah.

C. Year End Balances by Account for Property, Plant, Equipment, Annual Depreciation, and Accumulated Depreciation for telecommunications investment in Utah. The Actual Depreciation Rates which were applied in developing annual and accumulated depreciation figures shall also be shown.

D. Financial Statements maintained in accordance with generally accepted accounting principles in the ordinary course of business. These financial statements shall at a minimum include an income statement, balance sheet and statement of cash flows.

E. List of Services offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served.

F. Number of Access Lines in Service by geographic area, segregated between business and residential customers.

G. Number of Messages and Minutes of Services for measured services billed to end users.

H. List of Officers and Responsible Contact Personnel updated annually.

I. Chart of Accounts. In addition to the foregoing, said grantee will provide its chart of accounts as existing and updated (no less than annually). Said Grantee will also work with the Division in good faith to develop a method of estimating intrastate expenses and investments.

II. Applicable Statutory Provisions and Exemptions from Statutes and Waiver of Regulations.

AMERICAN FIBER SYSTEMS, INC., shall be exempted from the following statutory provisions and regulations:

A. Exemptions from Title 54

54-3-8, 54-3-19 -- Prohibitions of discrimination

54-7-12 -- Rate increases or decreases

54-4-21 -- Establishment of property values

54-4-24 -- Depreciation rates

54-4-26 -- Approval of expenditures

B. Waivers of Regulations

R746-340-2(D) -- Uniform System of Accounts (47 C.F.R. 32)

R746-340-2(E)(1) -- Tariff filings required

R746-340-2(E)(2) -- Exchange Maps

R746-341 -- Lifeline⁽¹⁾

R746-344 -- Rate case filing requirements

R746-401 -- Reporting of construction, acquisition and disposition of assets

R746-405 -- Tariff formats

R746-600 -- Accounting for post-retirement benefits

III. Obligations with Respect to Provision of Services.

To the extent Applicant functions as a non-facilities based reseller of local exchange telecommunication service, AMERICAN FIBER SYSTEMS, INC., agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

A. AMERICAN FIBER SYSTEMS, INC.'s obligation to furnish service to customers is dependent upon the availability of suitable facilities on the networks of its underlying carriers (e.g., Qwest Communications, Inc.). AMERICAN FIBER SYSTEMS, INC., will provide a map identifying the areas within the state of Utah where it is offering service through resale. The map will be updated no less frequently than annually.

B. AMERICAN FIBER SYSTEMS, INC., will only be responsible for the operation and maintenance of services that it provides.

IV. Modification

It is anticipated that to the extent such requirements impact competitive entry or impact effective competition that they will be subject to the rule-making requirements of the Utah Code Ann. § 54-8b-2.2 and that the provisions set forth herein shall be superseded by any such rule adopted by the Commission.

1. ¹ This regulation would be waived only until the Commission establishes Lifeline rules that may include AMERICAN FIBER SYSTEMS, INC., or until it begins to provide residential local exchange service.