

**THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

Before Commissioners: Mark Sievers, Chairman
Ward Loyd
Thomas E. Wright

In the Matter of the Cancellation of the Certificate)
of Convenience and Authority Previously Granted) Docket No. 12-AFIT-590-CCS
to American Fiber Network, Inc.) Telecom CLEC

ORDER CANCELLING CERTIFICATE

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined its files and records, and being duly advised in the premises, the Commission finds and concludes as follows:

1. On October 14, 2010, Birch Telecom of Kansas, Inc. d/b/a Birch Communications filed a letter with the Commission dated October 13, 2010, stating that on or after December 1, 2010, Birch Communications would purchase the assets and customer base of American Fiber Network, Inc. d/b/a AFN (AFN). Birch Communications' letter further indicated that upon completion of the transaction, AFN was to surrender its certificate authorization and withdraw its tariffs by a separate filing with the Commission. However, no request for certificate cancellation was forthcoming from AFN.

2. On April 9, 2012, the Commission Staff (Staff) filed its Report and Recommendation dated April 3, 2012 recommending cancellation of AFN's Certificate of Convenience and Authority (Certificate) issued February 21, 2000, in Docket No. 00-AFIT-396-COC, authorizing AFN to provide switched local exchange and exchange access services within the State of Kansas. Staff opines that inasmuch as communications from Birch Communications indicates the transaction between Birch Communications and AFN referenced in paragraph 1 above was completed and AFN no longer serves intrastate telecommunications customers in

Kansas, that AFN's Certificate to provide competitive local exchange services within the State of Kansas should be cancelled. Staff indicates that AFN is current regarding Kansas Universal Service Fund payments, as well as Commission assessments and Annual Report filings. Staff further states that it has no concern with cancellation of AFN's Certificate and so recommends.

3. The Commission adopts Staff's recommendation of April 3, 2012, as stated in its Report and Recommendation, which is attached hereto and made a part hereof by reference, and finds that AFN's Certificate issued February 21, 2000, in Docket No. 00-AFIT-396-COC, including all associated tariffs, should be cancelled.

IT IS, THEREFORE, BY THE COMMISSION ORDERED THAT:

A. The Certificate of Convenience and Authority issued to American Fiber Network, Inc. on February 21, 2000, in Docket No. 00-AFIT-396-COC, authorizing AFN to provide switched local exchange and exchange access services within the State of Kansas, including all tariffs associated therewith, is hereby cancelled.


B. Any party may file a petition for reconsideration of this order within fifteen (15) days of the date this order is served. If service is by mail, service is complete upon mailing and three (3) days may be added to the above time frame. K.S.A. 66-118b; K.S.A. 2011 Supp. 77-529.

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further order, or orders, as it may deem necessary.

BY THE COMMISSION IT IS SO ORDERED.

Sievers, Chmn.; Loyd, Comm.; Wright, Comm.

Dated: APR 17 2012


ORDER MAILED APR 17 2012
Patrice Petersen-Klein
Executive Director

oan

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Mark Sievers, Chairman
Ward Loyd, Commissioner
Thomas E. Wright, Commissioner

Sam Brownback, Governor

REPORT AND RECOMMENDATION
UTILITIES DIVISION

TO: Chairman Sievers
Commissioner Loyd
Commissioner Wright

FROM: Kelly Mabon

DATE: April 3, 2012

DATE SUBMITTED TO EXECUTIVE DIRECTOR: 4/5/12

DATE SUBMITTED TO LEGAL: 4/5/12

DATE SUBMITTED TO COMMISSIONERS: 4/10/12

RE: Docket No. 12-AFIT-590-CCS (CLEC)
In the Matter of the Cancellation of the Certificate of Convenience and Authority
Previously Granted to American Fiber Network, Inc. d/b/a AFN

BACKGROUND:

On October 14, 2010, the Commission received a letter stating that on December 1, 2010, Birch Telecom of Kansas, Inc. d/b/a Birch Communications would purchase the assets and customer base of American Fiber Network, Inc. d/b/a AFN (AFN). Upon completion of the transaction, AFN was to surrender its authorization and withdraw its tariffs in a separate filing. Because AFN does not serve any telecommunications customers in Kansas, the Company respectfully requests to cease its Certificate to provide switched local exchange and exchange access services within the state of Kansas. Staff recommends approval of this request.

AFN was provided a Certificate to provide switched local exchange and exchange access services in Docket No. 00-AFIT-396-COC on February 21, 2000.

ANALYSIS:

AFN is current with regard to Kansas Universal Service Fund payments. The Company is current with regard to Commission assessments and Annual Report filings. Staff has no concern with the cancellation of this Certificate.

RECOMMENDATION:

Staff recommends the Commission approve Applicant's request to cancel the Certificate of Convenience and Authority to provide competitive local exchange services within the state of Kansas.

cc: Patrice Petersen-Klein, Executive Director
Jeff McClanahan, Utilities Director
Christine Aarnes, Chief of Telecommunications

PLEASE FORWARD THE ATTACHED DOCUMENT (S) ISSUED IN THE ABOVE-REFERENCED DOCKET TO THE FOLLOWING:

NAME AND ADDRESS	NO. CERT. COPIES	NO. PLAIN COPIES
DOUGLAS BETHELL, PRESIDENT/CEO AMERICAN FIBER NETWORK, INC. D/B/A AFN 4885 RIVERSIDE DR STE 304 MACON, GA 31210-1148		
OTTO NEWTON, LITIGATION COUNSEL 1500 SW ARROWHEAD ROAD TOPEKA, KS 66604 ***Hand Delivered***		

ORDER MAILED APR 17 2012

The Docket Room hereby certified that on this _____ day of _____, 20_____, it caused a true and correct copy of the attached ORDER to be deposited in the United States Mail, postage prepaid, and addressed to the above persons.