

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

February 19, 2008

IN RE:)
)
JOINT PETITION OF AMERICAN FIBER SYSTEMS, INC.,) **DOCKET NO.**
USCARRIER TELECOM, LLC AND USCARRIER) **07-00277**
TELECOM HOLDINGS, LLC FOR APPROVAL OF AN)
INDIRECT TRANSFER OF CONTROL)

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Chairman Eddie Roberson, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the “Authority” or “TRA”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on January 28, 2008 for consideration of the *Joint Petition and Request for Expedited Treatment (“Joint Petition”)* filed by American Fiber Systems, Inc. (“AFS”), USCarrier Telecom, LLC (“USC”) and USCarrier Telecom Holdings, LLC (“USCTH”) (collectively “Petitioners”) on December 26, 2007.

AFS, a Delaware Corporation, provides dark fiber metropolitan infrastructure and transport services and is dedicated to designing, building, operating and maintaining high-capacity, high-bandwidth fiber-optic networks, constructed on full-spectrum fiber and connected to points of communications within major metropolitan areas in Kansas, Minnesota, Missouri, Ohio, Tennessee and Utah. In Tennessee, AFS is authorized to provide facilities-based and resold local exchange and inter-exchange telecommunications services.¹

¹ See *In re: Application of American Fiber Systems, Inc. for a Certificate of Public Convenience and Necessity to Provide Facilities-Based and Resold Local Exchange and Interexchange Telecommunications Services throughout the State of Tennessee*, Docket No. 00-00988, Revised Initial Order Granting Certificate of Public Convenience and Necessity (January 24, 2001).

USC is a Georgia limited liability company and a subsidiary of USCTH. USC operates as a “carrier’s carrier.” Its network customers include competitive local exchange and wireless carriers, local internet service providers, local municipalities, state government agencies, and incumbent local exchange carriers. USC holds certification to provide interexchange or competitive local exchange services in five states in the Southeastern United States, including Tennessee.²

USCTH is a Georgia limited liability company which holds 99% of the stock in USC but holds no certification to provide telecommunications services from any state or federal regulatory agency.

The Joint Petition

According to the *Joint Petition*, AFS will acquire 55% ownership of USCTH, resulting in AFS gaining direct control of USCTH and indirect control of USC. The Petitioners stated that although AFS will be the majority owner of USCTH, it will not have control of the day-to-day operations of USCTH and USC because of governance and voting agreements contained within the governing documents of USCTH. Regardless, certain major decisions require a supermajority approval of the members and therefore AFS’s approval.

The transfer will not result in any change in rates, terms or conditions of service and will be transparent to USC customers in Tennessee.

Findings and Conclusions

The Petitioners request approval pursuant to Tenn. Code Ann. § 65-4-113 (2004). The Authority finds that the proposed transaction should be considered pursuant to Tenn. Code Ann. § 65-4-112 (2004) because control of a Tennessee-certificated entity is being transferred to another Tennessee-certificated entity.

² See *In re: Application of USCarrier Telecom, LLC for a Certificate of Public Convenience and Necessity to Provide Interexchange Telecommunications Services within the State of Tennessee*, Docket No. 01-00512, *Initial Order Granting Certificate of Public Convenience and Necessity* (September 13, 2001).

Tenn. Code Ann. § 65-4-112(a) (2004) states:


No lease of its property, rights, or franchises, by any such public utility, and no merger or consolidation of its property, rights and franchises by any such public utility with the property, rights and franchises of other such public utility of like character shall be valid until approved by the authority, even though power to take such action has been conferred on such public utility by the state of Tennessee or by any political subdivision of the state.

At the regularly scheduled Authority Conference held on January 28, 2008, the voting panel assigned to this docket considered the *Joint Petition* and voted unanimously to approve the transfer of authority pursuant to Tenn. Code Ann. § 65-4-112 (2004) contingent upon Federal Communications Commission approval, after finding that USC will continue to offer services with no change in rates, terms or conditions and the transfer will be transparent to customers.

IT IS THEREFORE ORDERED THAT:

1. The transfer of authority of USCarrier Telecom, LLC to American Fiber Systems, Inc. as described in the *Joint Petition and Request for Expedited Treatment* and discussed herein is approved pursuant to Tenn. Code Ann. § 65-4-112 (2004), contingent upon approval by the Federal Communications Commission.

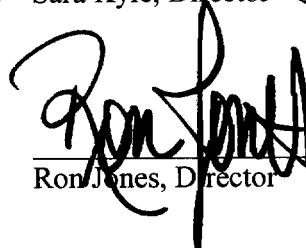
2. The Petitioners shall file with the Authority any documentation from the Federal Communications Commission regarding subsequent action on the transfer.



Eddie Roberson, Chairman



Sara Kyle, Director



Ron Jones, Director