

# BEFORE THE PUBLIC SERVICE COMMISSION

## OF THE STATE OF MISSOURI

In the Matter of the Application of	)	
American Fiber Systems, Inc. for a	)	
Certificate of Service Authority to	)	<b>Case No. TA-2001-258</b>
Provide Non-Switched Local Exchange	)	Tariff File No. 200100568
and Interexchange Telecommunications	)	
Services in the State of Missouri and	)	
for Competitive Classification	)	

### ORDER APPROVING INTEREXCHANGE AND NONSWITCHED LOCAL EXCHANGE CERTIFICATES OF SERVICE AUTHORITY AND ORDER APPROVING TARIFF

American Fiber Systems, Inc. (AFS) applied to the Missouri Public Service Commission (Commission) on October 19, 2000, for certificates of service authority to provide intrastate interexchange and nonswitched local exchange telecommunications services in Missouri under Sections 392.410-.450, RSMo 1994, and RSMo Supp. 1999.<sup>[1]</sup> AFS asked the Commission to classify it as a competitive company and to waive certain statutes and rules as authorized by Sections 392.361 and 392.420. AFS is a Delaware corporation with its principal office located at 100 Meridian Centre, Suite 250, Rochester, New York 14618.

The Commission issued a Notice of Applications for Intrastate Certificates of Service Authority and Opportunity to Intervene on October 31, 2000, directing parties wishing to intervene to file their requests by November 15, 2000. The requirement for a hearing is met when the opportunity for hearing has been provided and no proper party has requested the opportunity to present evidence. State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission, 776 S.W.2d 494, 496 (Mo. App. 1989). Since no one has asked permission to intervene or requested a hearing, the Commission may grant the relief requested based on the application.

AFS filed a proposed tariff in conjunction with its application and filed substitute sheets on November 15, 2000. The tariff's effective date is December 3, 2000. AFS's tariff describes the rates, rules, and regulations it intends to use, identifies AFS as a competitive company, and lists the waivers requested. AFS intends to provide interexchange and nonswitched local exchange telecommunications services including private line services.

In its memorandum filed on November 20, 2000, the Staff of the Commission (Staff) stated that AFS's proposed services are similar to existing IXC offerings. Staff recommended that the Commission grant AFS a certificate of interexchange service authority, and a certificate of service authority for local exchange telecommunications services on condition that this authority be restricted to providing dedicated private line services. Staff recommended that the Commission grant AFS competitive status, and waiver of the statutes and rules listed in the Notice. Staff recommended that the Commission approve the proposed tariff as amended to become effective on December 3, 2000.

The Commission finds that competition in the intrastate interexchange and nonswitched local exchange telecommunications markets is in the public interest and AFS should be granted certificates of service authority. The Commission finds that the services AFS proposes to offer are competitive and AFS should be classified as a competitive company. The Commission finds that waiving the statutes and Commission rules set out in the ordered paragraph below is reasonable and not detrimental to the public interest.

The Commission finds that AFS's proposed tariff details the services, equipment, and pricing it proposes to offer, and is similar to tariffs approved for other Missouri certificated interexchange and nonswitched local exchange carriers. The Commission finds that the proposed tariff filed on October 19, 2000, shall be approved as amended to become effective on December 3, 2000.

**IT IS THEREFORE ORDERED:**

1. That American Fiber Systems, Inc. is granted a certificate of service authority to provide intrastate interexchange telecommunications services in the state of Missouri, subject to the conditions of certification set out above.

2. That American Fiber Systems, Inc. is granted a certificate of service authority to provide nonswitched local exchange telecommunications services in the state of Missouri limited to providing dedicated private line services, subject to all applicable statutes and Commission rules except as specified in this order.

3. That American Fiber Systems, Inc. is classified as a competitive telecommunications company. Application of the following statutes and regulatory rules shall be waived:

**Statutes**

392.210.2 - uniform system of accounts  
392.240.1 - rates-rentals-service & physical connections  
392.270 - valuation of property (ratemaking)  
392.280 - depreciation accounts  
392.290 - issuance of securities  
392.300.2 - acquisition of stock  
392.310 - stock and debt issuance  
392.320 - stock dividend payment  
392.340 - reorganization(s)  
392.330, RSMo Supp. 1999 - issuance of securities,  
debts and notes

**Commission Rules**

4 CSR 240-10.020 - depreciation fund income  
4 CSR 240-30.010(2)(C) - posting of tariffs  
4 CSR 240-30.040 - uniform system of accounts  
4 CSR 240-33.030 - minimum charges  
4 CSR 240-35 - reporting of bypass and  
customer-specific arrangements

4. That the tariff filed by American Fiber Systems, Inc. on October 19, 2000, under tariff number 200100468, is approved as amended to become effective on December 3, 2000. The tariff approved is:

**Missouri P.S.C. Tariff No. 1**

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5. That this order shall become effective on December 3, 2000.
6. That this case may be closed on December 4, 2000.

**BY THE COMMISSION**

**Dale Hardy Roberts**  
**Secretary/Chief Regulatory Law Judge**

( S E A L )

Lewis Mills, Deputy Chief Regulatory Law  
Judge, by delegation of authority pursuant  
to Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 28th day of November, 2000.

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[1] All further statutory references are to the Revised Statutes of Missouri  
1994 unless otherwise indicated.