

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

December 18, 2007

IN RE:)
)
APPLICATION OF MOBILEPRO CORPORATION,) DOCKET NO.
AMERICAN FIBER NETWORK, INC. AND UNITED) 07-00234
SYSTEMS ACCESS, INC FOR APPROVAL TO)
COMPLETE A TRANSFER OF CONTROL OF)
AMERICAN FIBER NETWORK, INC.)

ORDER APPROVING TRANSFER OF AUTHORITY

This matter came before Chairman Eddie Roberson, Director Pat Miller and Director Sara Kyle of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on November 6, 2007 for consideration of the October 8, 2007 *Application* of MobilePro Corp. ("MobilePro"), American Fiber Network, Inc. ("AFN") and United Systems Access, Inc. ("USAI") (collectively, "Applicants") for approval to transfer the authority of AFN to USAI.

MobilePro offers telecommunications services through four wholly-owned subsidiaries: Affinity Telecom, Inc., AFN, CloseCall America, Inc., and Davel Communications, Inc. AFN is a wholly-owned subsidiary of MobilePro and provides resold and facilities-based local exchange and long distance services, voicemail and other standard voice features. AFN is authorized to provide resold local and long distance¹ and facilities-based services² in Tennessee and currently has approximately 1,315 customers. USAI provides competitive local and/or long distance

¹ See *In re: Application of American Fiber Network, Inc. for Authority to Provide Resell Telecommunications Services in Tennessee*, Docket No. 05-0124, *Order Granting Authority to Resell Local and Interexchange Long Distance Telecommunication Services in Tennessee* (August 24, 2005).

² See *In re: Petition of American Fiber Network, Inc. for Amended Authority to Provide Facilities-Based Competing Local Telecommunications Services*, Docket No. 07-00150, *Order Granting Amended Authority to Provide Facilities-Based Competing Local Telecommunications Services* (September 10, 2007).

telecommunications services in several states through its subsidiary, United Systems Access Telecom, Inc.

The Application

The Applicants request approval of a transaction whereby, pursuant to an agreement and plan of merger dated June 30, 2007, USAI will purchase 100% of the stock of AFN from MobilePro. MobilePro will receive a combination of cash and USAI stock for the purchase, and AFN will become a wholly-owned subsidiary of USAI.

Following the transaction, AFN's customers will continue to receive services under the same rates, terms and conditions as currently provided, and there will be no service interruptions or impact on AFN's day-to-day operations. The Applicants state that the transaction will result in substantial operational and financial benefits to the combined companies which will enhance the ability of the entities to expand their respective product and service offerings and service areas for the benefit of their customers in Tennessee.

Findings and Conclusions

The Petitioners request approval to consummate the transfer of authority pursuant to Tenn. Code Ann. § 65-4-114 (2004) and the TRA Rules. The Authority finds that the proposed transaction should be considered pursuant to Tenn. Code Ann. § 65-4-113 (2004) because control of a Tennessee-certificated entity is being transferred to a non-certificated entity.

Tenn. Code Ann. § 65-4-113(a) (2004) requires a public utility to obtain TRA approval to transfer its authority to provide utility services and provides as follows:

No public utility, as defined in § 65-4-101, shall transfer all or any part of its authority to provide utility services, derived from its certificate of public convenience and necessity issued by the authority, to any individual, partnership, corporation or other entity without first obtaining the approval of the authority.

Tenn. Code Ann. § 65-4-113(b) (2004) provides the standards by which the TRA shall consider an application for transfer of authority, in pertinent part, as follows:

Upon application for approval of the transfer of authority to provide utility services, the authority shall take into consideration all relevant factors, including, but not limited to, the suitability, the financial responsibility, and capability of the proposed

transferee to perform efficiently the utility services to be transferred and the benefit to the consuming public to be gained from the transfer. The authority shall approve the transfer after consideration of all relevant factors and upon finding that such transfer furthers the public interest.

At the regularly scheduled Authority Conference held on November 6, 2007, the voting panel assigned to this docket considered the transfer of authority requested in the *Application* and voted unanimously to approve the transfer of authority pursuant to Tenn. Code Ann. § 65-4-113 (2004) contingent upon Federal Communications Commission approval.

IT IS THEREFORE ORDERED THAT:

1. The transfer of authority of American Fiber Network, Inc. to United Systems Access, Inc. as described in the *Application* and discussed herein is approved contingent upon approval being received from the Federal Communications Commission.

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



Eddie Roberson, Chairman

* * *

Pat Miller, Director³



Sara Kyle, Director

³ Director Miller voted in agreement with the other directors but resigned his position as Director before the issuance of this order.