



PUBLIC NOTICE

Federal Communications Commission
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DA 03-3736

Released: November 20, 2003

DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF AFN COMMUNICATIONS, LLC BY CITYNET FIBER NETWORK, LLC

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-239

On November 13, 2003, AFN Communications, LLC (AFN) and Citynet Fiber Network, LLC (Citynet) (collectively "Applicants") filed an application, pursuant to sections 63.03 and 63.04 of the Commission's rules,¹ requesting approval for Citynet to acquire certain domestic telecommunications assets of AFN, as well as the customer base served by those assets.

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction would result in the transferee having a market share in the interstate, interexchange market of less than 10 percent; the transferee would provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and neither of the applicants is dominant with respect to any service.²

AFN, a limited liability company, is wholly-owned by its sole member, AFN, LLC. AFN is a facilities-based network services provider specializing in high capacity point-to-point interexchange services to carriers, Internet service providers, and large corporate, governmental and institutional customers in the Eastern and Midwestern United States. The AFN Optical NetworkSM has an initial footprint of approximately 8,000 route miles and currently provides private line service ranging from DS-3 to OC-48 and optical wave service ranging from 2.5 Gbps to 10 Gbps.

¹ 47 C.F.R. §§ 63.03, 63.04; *see* 47 U.S.C. § 214.

² 47 C.F.R. § 63.03(b)(2)(i); *see* 47 C.F.R. § 63.03(b)(3) ("For purposes of (b)(1) and (2) of this paragraph, the terms 'applicant,' 'carrier,' 'party,' and 'transferee' (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended."); Letter from Martin L. Stern, Counsel to AFN, and Kathy L. Cooper, Counsel to Citynet, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-239 at 3 (filed Nov. 20, 2003).

Citynet, a private limited liability company, is a wholly-owned direct subsidiary of Citynet, LLC. Citynet provides wholesale telecommunications services to other carriers including its various affiliates. Affiliates of Citynet are authorized or in the process of being authorized to provide local exchange and/or interexchange telecommunications services in the following jurisdictions: Arizona, the District of Columbia, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and West Virginia.

Pursuant to an Asset Sale and Purchase Agreement signed on November 13, 2003, Citynet has agreed to purchase substantially all of the assets of AFN, LLC and its subsidiaries, including the fiber network facilities of AFN and its interest in fiber, conduit, and related equipment and facilities, such as optronics, racks, and cabinets. The assets are located in the Eastern and Midwestern United States, including portions of Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia. The Applicants seek approval to transfer these assets, as well as the customer base served by the assets from AFN to Citynet.

Applicants assert that the proposed transaction will serve the public interest in that Citynet will obtain assets and customers that will expand the company's client base and service areas, thereby making Citynet a more viable competitor and invigorating competition in all of its markets. The Applicants add that the transaction will not adversely impact existing AFN customers and will be virtually transparent to them. Because there is negligible overlap between the networks of the Applicants, and where an overlap exists, the Applicants do not offer competing services, the Applicants assert that the proposed transaction will have no adverse effect on competition in any relevant market.

GENERAL INFORMATION

The acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any acquisition of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days and reply comments within 21 days** of this notice.³ Unless otherwise notified by the Commission, applicants are permitted to transfer on the 31st day after the date of this notice.⁴ Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to

³ See 47 C.F.R. § 63.03(a).

⁴ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

<<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893;
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov;
- (3) Christi Shewman, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail: Christi.Shewman@fcc.gov;
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C124, Washington, D.C. 20554; e-mail: Julie.Veach@fcc.gov;
- (5) Christopher Killion, Office of General Counsel, 445 12th Street, S.W., Room 8-C740, Washington, D.C. 20554; e-mail: Christopher.Killion@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson at (202) 418-1394 or Christi Shewman at (202) 418-1686.

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