

ORDER NO. 11 328

ENTERED AUG 25 2011

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1517

In the Matter of

AMERICAN FIBER NETWORK INC.

Request for Waiver of OAR 860-033-0006.

ORDER

DISPOSITION: APPLICATION APPROVED

On April 13, 2010, American Fiber Network Inc. (American Fiber) filed a request with the Public Utility Commission of Oregon (Commission) to waive the assessed late report fee, the late penalty, and the interest on the unpaid surcharge fees for Residential Service Protection Fund (RSPF) surcharge reports and remittances submitted to the Commission after the deadlines in 2008 and 2009. A full description of the filing, its procedural history, and Staff's recommendation are contained in the Staff Report, attached as Appendix A and incorporated by reference.

At its Public Meeting on August 23, 2011, the Commission adopted Staff's recommendations to order retribution from American Fiber for its first infraction from the third quarter of 2008 in the amount of \$104.78 and to waive the late reporting fees, late payment penalties, and interest charges that were assessed for American Fiber's remaining violations.

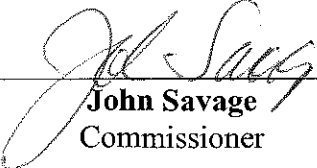
ORDER

IT IS ORDERED that:

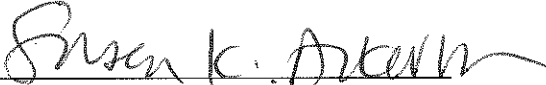
1. For its first violation for the third quarter 2008, \$101.02 is assessed against American Fiber Network Inc. and is due and payable by 5:00 p.m. on the 10th day after the service date of this order to the Oregon Public Utility Commission, Residential Service Protection Fund, PO Box 2153, Salem OR 97308-2153

- American Fiber Network Inc.'s request for waiver of RSPF late reporting fees, late payment penalties and interest charges assessed for its remaining violations in the amount of \$519.82 is allowed effective August 23, 2011.

Made, entered, and effective AUG 25 2011.



John Savage
Commissioner



Susan K. Ackerman
Commissioner



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ITEM NO. CA5

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: August 23, 2011**

REGULAR _____ CONSENT X EFFECTIVE DATE August 23, 2011

DATE: July 26, 2011

TO: Public Utility Commission

FROM: Jon Cray

THROUGH: Rick Willis  and David Poston 

SUBJECT: RESIDENTIAL SERVICE PROTECTION FUND (RSPF):
(Docket No. UM 1517) American Fiber Network, Inc. Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8).

STAFF RECOMMENDATION:

Staff recommends the Commission, as authorized by OAR 860-033-0006(9), waive the assessed RSPF late report fee, the late payment penalty and the interest on the unpaid surcharge fees to American Fiber Network, Inc., effective August 23, 2011.¹

DISCUSSION:

¹ The 2009-2011 and 2011-2013 Legislature approved funding for the Commission to create a Compliance Specialist position to ensure that all telecommunications providers and all cellular, wireless and other radio common carriers accurately collect, report and remit all RSPF surcharges to which the State is entitled pursuant to chapter 290, Oregon Laws 1987. Since the position was filled in December 2009, the Compliance Specialist, in accordance with OAR 860-033-0008, conducted an extensive audit of all telecommunications providers' and all cellular, wireless and other radio common carriers' RSPF surcharge remittance reports that were submitted no later than three years after the due date. In addition, the Compliance Specialist monitors all companies' ongoing compliance. American Fiber Network is one of five companies that filed a waiver request in response to the Compliance Specialist's findings. See RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) Ztar Mobile, Inc. Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8), RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) Thomson Reuters Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8) on behalf of Allied Wireless Communications Corporation, RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) ATL Communications, Inc. Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8), RESIDENTIAL SERVICE PROTECTION FUND (RSPF): (Docket No. UM 1517) United Telephone Company of the Northwest f.k.a. Embarq d.b.a. CenturyLink Request for Waiver of Oregon Administrative Rule (OAR) 860-033-0006(6), 860-033-0006(7) and 860-033-0006(8). Therefore, for consistency purposes, Staff adopted the approach of accepting payment for the first infraction if the telecommunications provider or cellular, wireless or radio common carrier provided evidence showing that it submitted the RSPF Remittance Report and surcharge fees late due to circumstances beyond its control. American Fiber Network, Inc. did not submit payment for its first infraction (emphasis added).

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On February 5, 2010, Staff sent an electronic mail requesting payment from American Fiber Network for noncompliance with OAR 860-033-0006(4), which states that "Each telecommunications provider must submit to the Commission the RSPF Remittance Report and surcharge fees on or before the 21st calendar day after the close of each month or quarter..." Staff assessed a late report fee, late payment penalty and an interest charge for a total of \$624.60 to American Fiber Network in accordance with OAR 860-001-0050. Specific amounts for each assessed charge are not included in order to protect the confidentiality of American Fiber Networks' business trade secrets. American Fiber Network was delinquent in filing the RSPF Remittance Report and corresponding surcharges for the following periods in 2008 and 2009:

<u>Remittance Period</u>	<u>Deadline</u>	<u>Date Received</u>
3 rd Quarter 2008	October 21, 2008	October 31, 2008
4 th Quarter 2008	January 21, 2009	February 2, 2009
1 st Quarter 2009	April 21, 2009	May 1, 2009
2 nd Quarter 2009	July 21, 2009	July 29, 2009
3 rd Quarter 2009	October 21, 2009	November 2, 2009
4 th Quarter 2009	January 21, 2010	February 2, 2010

Pursuant to OAR 860-033-0006(9), "...The Commission may waive the late report fee, the late payment penalty and the interest on the unpaid surcharge fees, or any combination thereof, if the telecommunications provider files a written waiver request and provides evidence showing that the telecommunications provider submitted the Remittance Report and surcharge fees late due to circumstances beyond its control." American Fiber Network filed a letter with the Commission on April 8, 2010, seeking abatement of the assessed charges for inadvertently scheduling the due date as the last day of the month based on other Oregon taxes. American Fiber Network claims that if it had been notified by the Commission immediately after its first infraction, it would have corrected its calendar to observe the correct deadlines. It asks the Commission to consider its request to waive five out of six overdue RSPF remittance reports and surcharge fees because it mailed all RSPF filings prior to the last calendar day of the month. See Attachment A.

American Fiber Network asserts that it did not realize the RSPF remittance form and surcharge fees are due on the 21st calendar day after the close of each monthly or quarterly billing despite using the report that denotes the latter. However, Staff agrees and acknowledges that American Fiber Network would, in all probability, have amended its schedule had it been advised of its initial noncompliance because it submitted all its RSPF Remittance Reports and surcharge fees prior to the last calendar day of the month. For instance, the Emergency Communications 9-1-1 tax is due to the Oregon

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Department of Revenue the last calendar day of the month following a quarterly billing cycle.

PROPOSED COMMISSION MOTION:

The Commission order retribution from American Fiber Network for its first infraction (i.e., third quarter 2008), in which the total amount for the late report fee, late payment penalty and interest charge is \$104.78. I also move that the Commission, in accordance with OAR 860-033-0006(9), waive the RSPF late reporting fees, late payment penalties and interest charges that were assessed to American Fiber Network for its remaining violations in the amount of \$519.82, effective August 23, 2011.

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