

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
August 10, 2000**

CASE NO: TM-2000-748

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Enclosed find a certified copy of an ORDER in the above-numbered case(s).

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive, flowing style.

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

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 10th
day of August, 2000.

In the Matter of the Joint Application of)	
Miller Telephone Company and Townes)	
Telecommunications, Inc., for an Order)	
Authorizing Townes Telecommunications,)	<u>Case No. TM-2000-748</u>
Inc., to Purchase or Acquire, Take or Hold)	
All of the Issued and Outstanding Stock of)	
Miller Telephone Company)	

**ORDER GRANTING STAFF'S MOTION TO COMPEL ANSWERS TO
DATA REQUESTS AND ORDER DENYING MOTION TO EXPEDITE**

On May 11, 2000, Miller Telephone Company (Miller) and Townes Telecommunications, Inc. (Townes) filed a Joint Application seeking the Commission's authorization to permit Townes to acquire all of the capital stock of Miller. Miller and Townes filed an Amended Joint Application on May 31. Miller is a Missouri corporation and provides telecommunications service to one exchange located in Lawrence County, Missouri. Miller is subject to the jurisdiction of the Commission. Townes is a Texas corporation engaged in the business of owning and operating telecommunications companies in several states, including the Missouri companies of MoKan Dial, Inc. and Choctaw Telephone Company, Inc.

On May 11, along with their Joint Application, Miller and Townes filed a Motion to Expedite. That motion indicated that Miller and Townes were anxious to complete their transaction and asked that the Commission expedite its consideration of the application so that the transfer of the

stock could take place by June 30, 2000. On June 2, Staff filed a response to the request for expedited ruling. Staff pointed out that the Motion to Expedite was not properly served on Staff and thus Staff was not aware of the motion until June 2. Staff also argued that the Motion to Expedite did not comply with 4 CSR 240-2.080(17) in that it failed to set out with particularity the harm that will be avoided or the benefit that will accrue if the Commission acts by the requested date. Staff requested that the Commission overrule the Motion to Expedite. On June 7, the Commission ordered Staff to further respond to the Motion to Expedite by indicating when Staff would be able to prepare a recommendation. Staff responded to that order on June 14 and indicated that Staff had served data requests on Miller and Townes and stated that if Miller and Townes promptly responded to those data requests, then Staff could file a recommendation by July 31. On June 19, Miller and Townes filed a response to Staff's response. Miller and Townes indicated that they sought expedited treatment of their application in order to avoid a lengthy delay in approval as Townes had experienced when the Commission took nine months to approve its application to purchase Choctaw Telephone Company in Case No. TM-99-79. Miller and Townes did not indicate that the requested completion date of June 30 had any significance other than as an indication of their desire for quick action on their Joint Application.

On June 16, Staff filed a Motion to Compel Answers to Data Requests. Miller and Townes responded to that Motion on June 26 by arguing, in part, that Staff's Motion to Compel should be denied because Staff had

failed to comply with 4 CSR 240-2.090(8) which states that no discovery motions will be entertained by the Commission until counsel for the moving party has in good faith conferred with opposing counsel regarding the matter in dispute and a telephone conference has been arranged with the presiding officer and opposing counsel. Staff withdrew its Motion to Compel on June 27 and a telephone conference with the presiding officer was held on July 6. The telephone conference did not result in resolution of the dispute and on July 6, Staff filed a new Motion to Compel Answers to Data Requests. Miller and Townes filed a response to the Motion to Compel on July 14.

Staff seeks an order compelling Townes to answer the following data requests:

(No. 3801) Please provide the following financial statements as of December 31, 1999 for Miller Telephone Company and for Townes Telecommunications, Inc. both on a stand-alone basis and on a consolidated basis:

1. Balance Sheet
2. Income Statement, and
3. Statement of Cash Flow.

(No. 3802) Please provide 5-year projected financial statements for Townes Telecommunications, Inc. on a consolidated basis and Miller Telephone Company (Balance Sheet, Income Statement and Statement of Cash Flow).

(No. 3803) Please provide the Bond Indentures of Townes Telecommunications Inc. and/all loan documents that encumber the consolidated assets of Townes Telecommunications Inc.

Staff alleges that Townes has refused to answer each of these data requests as they relate to Townes.

Staff argues that the information that will be obtained from these data requests is necessary to determine whether or not the proposed sale

of stock is detrimental to the public interest. Staff states that the requested information will be used to form the portion of the Staff recommendation that Townes either has or does not have the capability to finance Miller Telephone in a manner that is not detrimental to the public interest. Staff asks the Commission to issue an order compelling Townes to provide an answer to Data Requests Nos. 3801, 3802 and 3803 no later than ten days after entry of the order to compel. Staff suggests that it would be able to file a recommendation regarding the Joint Application within five business days after Townes has provided complete and responsive answers to the data requests.

In their response to Staff's motion to compel, Miller and Townes argue that the data requests, as they relate to Townes, are objectionable because the information requested is not relevant to the Commission's determination and because the information requested was not likely to lead to the discovery of admissible evidence. Specifically, Miller and Townes argue that the financial condition of the purchaser is not relevant when the purchaser is seeking only to purchase the stock of the company and will not be changing the operation of the company.

Section 392.300.2 provides that:

Except where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic or foreign, other than a telecommunications company, shall without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by virtue of the laws of this state, ...

Miller and Townes, as well as Staff, suggest that when examining a sale of stock under this statute, the Commission's standard of review is to

determine that the transaction is not a detriment to the public. Staff argues that in order to make an informed recommendation regarding whether or not this proposed sale of stock is detrimental to the public, it must have information about the financial status of the purchaser. Miller and Townes argue that the financial status of the purchaser, Townes, is irrelevant because all it will do is purchase the stock of Miller. All of the assets of Miller will still be owned and operated by Miller. Miller and Townes suggest that Staff's inquiries into the finances of Townes constitutes an attempt to regulate the finances of Townes and that such regulation would be in excess of the Commission's authority.

As both Miller and Townes and Staff agree, the Commission has an obligation to determine whether or not the sale of the stock of Miller to Townes will be detrimental to the public. However, Miller and Townes suggest that the Commission must make that determination while remaining ignorant about the financial condition of Townes. The Commission should not make its decision from a position of ignorance.

The financial condition of Townes is relevant to the determination the Commission must make. For example, if Townes were in precarious financial condition it might be tempted to divert income from Miller to pay its other obligations, while allowing service to Miller's customers to deteriorate. Knowledge about such a situation would be vitally important to the Commission's determination about whether the sale of the Miller stock to Townes would be detrimental to the public. Yet Miller and Townes would deny that information to the Commission.

Certainly, the Commission does not have the authority to regulate the finances of the owners of the stock of a regulated company. But Staff is not seeking such authority. Staff is merely seeking to obtain relevant information about the finances of the prospective purchaser of a regulated company. If Townes wishes, that information can be provided in confidence pursuant to the previously issued protective order.

Staff's Motion to Compel Answers to Data Requests will be sustained. Because of the delay occasioned by this discovery dispute Miller and Townes' Motion to Expedite must also be denied. Staff will, however, be held to its pledge to provide its recommendation five business days after Townes has provided complete and responsive answers to its data requests.

IT IS THEREFORE ORDERED:

1. That Staff's Motion to Compel Answers to Data Requests is granted.

2. That Townes Telecommunications, Inc. shall provide answers to Staff Data Requests Nos. 3801, 3802 and 3803 no later than August 22, 2000.

3. That the Motion to Expedite filed by Miller Telephone Company and Townes Telecommunications, Inc. is denied.

4. That Staff shall file its recommendations regarding the Joint Application filed by Miller Telephone Company and Townes Telecommunications, Inc., no later than five business days following the submission of complete and responsive answers by Townes Telecommunications, Inc. to Staff Data Requests Nos. 3801, 3802 and 3803.

5. That this order shall become effective on August 22, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Drainer, and Simmons, CC., concur

Murray, C., dissents

Schemenauer, C., absent

Woodruff, Regulatory Law Judge

Alt/Sec'y: Woodruff/Boyer
Date Circulated 8-7 CASE NO. TM-2000-748
Lumpke, Chair AS ps
Draeger, Vice Chair AS ps 4
Murray, Commissioner CM NO
Schemenauer, Commissioner AS
Simmons, Commissioner AS
Agenda Date 8-10
Action taken: 3-1 AS
Must Vote Not Later Than _____

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 10th day of Aug. 2000.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

