

STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

At a Session of the Public Service  
Commission held at its office  
in Jefferson City on the 12th  
day of April, 1994.

In the matter of the joint application of       )  
Prime-Link Communications Corp., and LDDS       )  
of Missouri, Inc., d/b/a LDDS Communications   )  
to sell assets.                                       )  
Case No. TM-94-154

ORDER APPROVING SALE

On November 12, 1993, LDDS of Missouri, Inc. d/b/a LDDS Communications (LDDS) filed a joint application on behalf of LDDS and Prime-Link Communications Corp. (Prime-Link) requesting permission for a sale of Prime-Link's assets to LDDS. LDDS was certificated to provide intrastate interexchange telecommunication services within the state of Missouri on August 26, 1986, in Case No. TO-84-223. Prime-Link was certificated to provide intrastate interexchange telecommunication services within the state of Missouri on June 29, 1990, in Case No. TA-90-281. Both companies are Missouri corporations and are classified as competitive telecommunications companies.

The transaction described in the joint application would allow LDDS to acquire Prime-Link's customer base, accounts receivable, and dialing equipment. The application states that LDDS would notify customers and the Commission at least ten days before transferring them to LDDS's tariff. Prime-Link would file an application to cancel its certificate and tariff on the effective date of the transfer of customers to LDDS's tariff. The Application gives no effective date for the sale of assets. LDDS states that the transfer of customers would not adversely affect the provision of services to the public and the sale of assets would not be detrimental to the public interest.

The Staff of the Commission filed its Memorandum on March 17, 1994, recommending approval of the sale of assets. In its memorandum Staff discussed several aspects of the transaction that are problematical. First is the untimeliness of the application which was filed approximately seven months after the sale. The Telecommunications Department Staff discovered that the sale of assets actually took place in April of 1993. Prime-Link customers received a notice in April, 1993, stating that they would be incorporated into LDDS's network and billing systems within 90 to 120 days. Staff included a copy of that notice with its memorandum. Section 392.300, RSMo Supp. 1993, requires telecommunications companies to obtain Commission approval before entering into arrangements for sale of assets or mergers. Transactions embarked upon without Commission approval are deemed void. Staff states that LDDS did not move to comply with this statute until Staff contacted the company's legal counsel about the sale. Staff states that LDDS has other applications pending for the purchase of telecommunications companies, including another that has been filed after the fact. Staff requests that LDDS be placed on notice that future applications involving purchases should be filed on a timely basis if LDDS wishes to avoid incurring penalties.

A second issue is that of discrimination in billing between customers. Staff has concluded that LDDS intends to continue serving Prime-Link's former customers under Prime-Link's tariff while serving LDDS customers under LDDS's tariff. The two groups are being billed at different rates. Staff's recommendation that the sale of assets be approved is conditioned on the companies' cancelling Prime-Link's tariff and serving all customers according to LDDS's tariff.

Finally, the Staff received two customer complaints because of the transfer of customers and because LDDS charged former Prime-Link

customers a PIC (primary interexchange carrier) charge for the change of carriers. The joint application states that Prime-Link's customers "will not incur any service charges in connection with Prime-Link's discontinuation of service" and LDDS agreed with Staff that the Prime-Link customers should not have been billed the PIC charge. Staff's recommendation that the sale of assets be approved is conditioned on LDDS reimbursing customers who were billed the PIC charge.

Having reviewed LDDS's application and Staff's memorandum, the Commission finds that the sale of assets is not detrimental to the public interest and the application should be approved. However, the Commission also finds that LDDS has failed to comply with Section 392.300, RSMo Supp. 1993, which reads in part as follows:

1. No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do. Every such sale, assignment, lease, transfer, mortgage, disposition, encumbrance, merger or consolidation made other than in accordance with the order of the commission authorizing the same shall be void.

Failure to comply with this section may result in the penalties described in Section 392.260, RSMo Supp., including forfeiture to the state of Missouri of an amount not to exceed the sum of five thousand dollars for each offense.

The Commission is also of the opinion that LDDS may be in violation of Section 392.200, RSMo Supp. 1993, which prohibits discrimination among customers. This statute provides that telecommunications companies act unlawfully if they "charge, demand,

collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to telecommunications . . . than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to telecommunications under the same or substantially the same circumstances and conditions." LDDS may also have violated Section 392.220.2 which requires a telecommunications company to charge for its services only the amount specified in its tariff and requires that tariffed charges be "regularly and uniformly extended to all persons and corporations under like circumstances for a like or substantially similar service." The Commission finds that an investigation of LDDS by Staff would be appropriate to determine whether the company acted in good faith in proceeding with the purchase of Prime-Link's assets without Commission authorization, whether the company has engaged in discrimination in rates, or in charging rates other than its approved tariffed rates, and whether the company has acted in violation of any other provision of Chapter 386 or Sections 392.190 to 392.530, or any order or decision, direction or requirement of the Commission. Staff should either file a report concerning its investigation or a complaint against LDDS.

The Commission will grant the consent and authority requested in the companies' application. The Commission believes that Prime-Link's tariff and certificate of service authority should be cancelled simultaneously with the approval of the sale of assets.

**IT IS THEREFORE ORDERED:**

1. That the Prime-Link Communications Corp. is authorized to sell the assets described in this order to LDDS of Missouri, Inc., d/b/a LDDS Communications.

2. That Prime-Link Communications Corp.'s tariff is cancelled as of the effective date of this Order.

3. That the certificate of service authority of Prime-Link Communications Corp. is cancelled as of the effective date of this Order.

4. That within thirty (30) days of the effective date of this Order LDDS of Missouri, Inc., d/b/a LDDS Communications shall reimburse all customers who were billed for a PIC charge in relation to the acquisition of Prime-Link Communications Corp.

5. That the Staff of the Commission shall conduct an investigation to determine whether a complaint should be filed against LDDS of Missouri, Inc., d/b/a LDDS Communications for failure to comply with provisions of Chapters 386 or 392 RSMo or Commission order or direction, and Staff shall either file a complaint or make a report to the Commission on its findings within sixty (60) days of the effective date of this Order.

6. That this Order shall be effective on April 22, 1994.

BY THE COMMISSION



David L. Rauch  
Executive Secretary

(S E A L)

Mueller, Chm., McClure, Perkins,  
Kincheloe and Crumpton, CC., Concur.