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BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

In the Matter of Interoute Telecommunications,) Case No. TM-99-408  
Inc. and American International Telephone, )  
Inc., Application for Approval of Transfer of )  
Control of Authorized Carrier )

ORDER APPROVING TRANSFER OF ASSETS

On March 24, 1999, Interoute Telecommunications, Inc. (Interoute) and its affiliate, American International Telephone, Inc. (AIT) (referred to jointly as Applicants) filed a joint application for approval of transfer of control. On April 14, 1999, Applicants filed an amended application for approval of transfer of control (Amended Application).

The Amended Application states that Interoute is entering the interexchange telecommunications market, including the provision of both residential and business services. (Interoute is currently not authorized to do business in Missouri.) Interoute also provides interstate and international telecommunications as a non-dominant common carrier pursuant to the authority of the Federal Communications Commission (FCC). AIT was authorized by the Missouri Public Service Commission (Commission) in Case No. TA-96-448 to operate as a reseller of interexchange telephone services within the state of Missouri. AIT also provides interstate and international telecommunications as a non-dominant common carrier pursuant to the authority of the FCC.

4 CSR 240-2.060(E) states: "All applications shall . . . include the following: . . . A clear and concise statement of the relief requested." There was no clear and concise statement of the relief requested in the Amended Application. The last paragraph in the body of the Amended Application labeled "CONCLUSION" stated only: "For the reasons stated in this Application, Interoute and AIT respectfully submit that the public interest, convenience and necessity would be furthered by grant of this Application." In the first paragraph of the Amended Application, Applicants state that they ". . . hereby respectfully request the Missouri Public Service Commission's . . . approval, pursuant to . . . [Section 392.300, RSMo], to effectuate *nunc pro tunc* a transfer of control of a certificated interexchange carrier, AIT, to Interoute." This order assumes that this is the relief the Applicants are seeking.

Applicants state that approval of the transfer will permit Interoute and AIT to realize significant economic and marketing efficiencies which will enhance their ability to continue providing high quality, low cost telecommunications services, and to compete more effectively in the long distance marketplace. The Amended Application states that under the proposed transfer, Interoute intends to acquire all of the outstanding shares of AIT in three phases, two of which happened before the Amended Application was filed.

**The first phase:** On September 10, 1998, Interoute, AIT and one H. Bruce Bronson, Jr. (Bronson) entered into an agreement whereby Interoute agreed to acquire AIT by purchasing all outstanding shares of AIT. The agreement called for an immediate sale of 26% of the

shares of AIT to Interoute which happened the same day as the agreement was signed. These shares were owned by "certain other shareholders of AIT," unidentified in the Amended Application, and Bronson, identified as an officer and director of AIT who resigned therefrom 15 days after the agreement was signed. It is not clear from the Amended Application what class of stock this was, but it was apparently common stock, judging by what the Amended Application states happened in the second phase.

**The second phase:** On December 17, 1998, shareholders of AIT, who owned about 46% of the common stock and all of the preferred stock, together with one Randall S. Appel, who remains unidentified in the Amended Application, entered into an agreement with Interoute whereby the shareholders would receive cash for their stocks. The Amended Application is vague as to whether this ever actually happened. The Amended Application states that "[t]he second phase transaction was consummated effective January 12, 1999, when the additional shares of AIT were transferred to Interoute." This order assumes that this sentence means that the AIT shareholders got their money.

**The third phase:** The Amended Application states that "[a]s the final phase of the overall transaction, Interoute intends to purchase the remaining 28% [of the] stock of AIT at a future date."

Applicants expect that for the near future, both Interoute and AIT will continue operating their respective telecommunications businesses under their current names (in the state or states where they are so currently authorized). Thus, Applicants argue, the

transfer will neither disrupt service nor cause inconvenience or confusion to the customers of AIT.

On April 22, 1999, the Staff of the Missouri Public Service Commission (Staff) filed its memorandum. Staff recommended ". . . that the Commission approve the transfer of assets from American International Telephone, Inc. to Interoute Telecommunications, Inc. as proposed." Staff states that the Applicants assert, pursuant to 4 CSR 240-2.060(5)(G), that the proposed transfer will have no impact on the tax revenues of the political subdivision in which any structure, facility or equipment of the Applicants is located. Staff also states that the Applicants assert, pursuant to 4 CSR 240-2.060(5)(H), that AIT will be holding the certificate of service authority and providing service to Missouri customers, the tariff under which service will be provided is AIT's and Interoute has no pending or final judgments or decisions against it from any state or federal agency which involve customer service or rates.

Staff concludes that the public interest will be served by the overall increase in economic marketing and administrative efficiencies resulting from the transfer.

The statute under which the Amended Application was filed, i.e., Section 392.300, RSMo, states, in part: "No telecommunications company shall . . . sell . . . [or] transfer . . . the whole or any part of its franchise, facilities or system . . . without having first secured from the [public service] commission an order authorizing it. . . . Every such sale . . . [or] transfer . . . made other than in

accordance with the order of the commission authorizing the same *shall be void.*" (Emphasis added.)

Citing this statute, the Commission has earlier held that the law

. . . 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. . . . [Violators] should be placed on notice that future applications involving purchases should be filed on a timely basis if [a violator] wishes to avoid incurring penalties. In the matter of the joint application of Tel-Central of Jefferson City, Inc. and LDDS of Missouri, Inc., d/b/a LDDS Communications to sell assets, Case No. TM-94-156.

Applicants cite no cases or statutes giving the Commission authority to issue a *nunc pro tunc* order because there are none to cite. In fact, the Commission has earlier ruled adversely on an application to approve an order *nunc pro tunc*:

The Commission is an administrative body created by statute and has only such powers as are expressly conferred by statute and reasonably incidental thereto. State ex rel. Harline v. Public Service Commission, 343 S.W.2d 177, 181(5) (Mo. App. 1960). Pursuant to Section 392.300 RSMo 1994, the Commission's approval can only be effective on and after the effective date of this order; the Commission does not have statutory authority to grant retroactive approval of the acquisition. In the Matter of the Application of Premiere Communications, Inc. for Approval of the Acquisition of Assets of National Collegiate, Inc., Case No. TM-99-83.

The Commission declines to legitimize the void sale and unlawful transfer here, but will grant prospective permission.

The Commission has reviewed the Amended Application and the Staff's memorandum and finds that approval of the remaining phase of the transfer is not detrimental to the public interest and the authority requested should be granted. Interoute should notify the

Commission of the completion of the sale. The Commission emphasizes that this approval is prospective only.

The Commission also finds that Applicants have failed to comply with and have violated Section 392.300, RSMo. Failure to comply with any of the Sections from 392.190 through 392.530, RSMo, may result in the penalties set out in Section 392.360, RSMo. The Commission further finds that an investigation of Applicants by Staff would be appropriate to determine whether the Applicants acted in good faith in transferring the stock from AIT to Interoute absent Commission authorization, and whether the Applicants have violated any other provision of Sections 392.190 to 392.530, RSMo, or have failed, omitted, or neglected to obey, observe or comply with any order or decision or any direction or requirement of the Commission. Staff should file a report with the results of its investigation or file a complaint against one or both of the Applicants.

**IT IS THEREFORE ORDERED:**

1. That the request for *nunc pro tunc* approval is denied.
2. That the Amended Application for approval of transfer filed on April 14, 1999 by Interoute Telecommunications, Inc. and American International Telephone, Inc. is prospectively approved and that they are authorized to take any and all actions necessary to effect the transfer authorized by this order.
3. That Interoute Telecommunications, Inc. shall report to the Commission within ten (10) business days of the completion of the approved transfer that such has been accomplished.

4. That the Staff of the Commission shall either file a report with the results of its investigation into any possible wrongdoing by either Interoute Telecommunications, Inc. or American International Telephone, Inc. or both or file a complaint against Interoute Telecommunications, Inc. or American International Telephone, Inc. or both, within sixty (60) days of the effective date of this order.

5. That this order shall become effective on May 14, 1999.

**BY THE COMMISSION**



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

( S E A L )

Bill Hopkins, Senior Regulatory Law  
Judge, by delegation of authority  
pursuant to 4 CSR 240-2.120(1)  
(November 30, 1995) and  
Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,  
on this 4th day of May, 1999.

RECEIVED

MAY 04 1999

COMMISSION COUNSEL  
PUBLIC SERVICE COMMISSION