

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 8th
day of March, 1996.

In the matter of the merger of World)
Communications, Inc. and PhoneTel II,)
Inc., private pay phone providers.) CASE NO. TM-96-209

ORDER APPROVING MERGER

On January 3, 1996, World Communications, Inc. (World) and PhoneTel II, Inc. (PhoneTel) filed an application seeking approval of the Missouri Public Service Commission (Commission) for the merger and transfer of assets between World and PhoneTel, with PhoneTel as the surviving entity. World holds a certificate to provide private pay telephone service in Missouri. PhoneTel, a Missouri corporation, is a wholly owned subsidiary of PhoneTel Technologies, Inc. (PhoneTel Tech), an Ohio corporation. PhoneTel Tech also holds a certificate to provide private pay telephone service in Missouri.

All three companies are involved under the terms of the merger agreement. In return for the transfer of World's assets to PhoneTel, the shareholders of World received stock in PhoneTel Tech. Under the terms of the merger agreement, PhoneTel is the surviving corporation; however, PhoneTel has changed its name to World Communications, Inc. The surviving corporation will maintain its offices at 11656 Lilburn Park Road, St. Louis, Missouri 63146, under the name of World Communications, Inc., thus the information currently on World's Missouri pay phones will allow all customer inquiries to be directed to the same location. In addition, the surviving corporation will continue under the direction of the individuals who have been the top management of World since its certification in

Missouri. Applicants also seek a waiver of the provisions of 4 CSR 240-2 (4)[sic] [Applicants apparently intended to refer to 4 CSR 240-2.060(4)] relating to applications to merge, stating their belief that the rule was not intended to apply to private pay phone providers.

The Staff of the Missouri Public Service Commission (Staff) filed its recommendation on January 31, 1996. Staff details the particulars of the proposed transaction, and states that the merger will be transparent to the public because all customer information, dialing information, and operations under PhoneTel (using the name World Communications, Inc.) will be the same as offered by World, and the name and business address of PhoneTel will be identical to that which is currently used by World in St. Louis at the existing World location, with the same personnel. Staff also states that upon completion of the proposed merger, PhoneTel will become a subsidiary of PhoneTel Tech, while PhoneTel Tech will retain its current certificate and provide services as PhoneTel Tech. In addition, Staff explains that 4 CSR 240-2(4) [sic] was revised in October of 1995, and is now codified at 4 CSR 240-2.060(6), thus, Staff feels that the waiver sought by Applicants should be for the revised 4 CSR 240-2.060(6). Staff states that it has reviewed the merger and transfer of assets, and has no objections to the transaction. Staff also states that it has no objections to the granting of a waiver of the provisions of 4 CSR 240-2.060(6) as they relate to this merger.

Upon review of the verified application and Staff's recommendation, the Commission finds that the proposed merger is not detrimental to the public interest. This is especially so since the surviving corporation will do business in the same location and have the same management and name as the corporation which transferred its assets and merged into the surviving entity. While the Commission has no

objection to approving the merger, the Commission does have several concerns regarding the posture of the case. It is clear from a reading of the application as a whole that the proposed transfer of assets and merger had already taken place on September 22, 1995, prior to the filing of this application on January 3, 1996. In numbered paragraph 10 of the application and in the "wherefore" clause Applicants make clear that the relief requested in this proceeding is the ratification of the merger. It is at best questionable whether the Commission has the statutory authority to ratify a transaction which was completed prior to the filing of an application with the Commission. This question is currently being litigated in a case involving MCImetro Access Transmission Services, Inc. in Case No. TM-96-62. Thus, the Commission must emphasize that its approval of the merger in this docket is prospective only, and is effective as of the effective date of the Commission's order.

The Commission is also concerned that the surviving entity, PhoneTel, does not possess a certificate of service authority to provide private pay telephone service in the state of Missouri. The Commission is of the opinion that PhoneTel is required to either apply for a certificate pursuant to 4 CSR 240-2.060(3), or have the certificate of World transferred to PhoneTel. Although Applicants do not request transfer of World's certificate, the Commission believes that its approval of the merger cannot effectively take place without the transfer of the certificate. Thus, the Commission will transfer the certificate of World to PhoneTel in its order.

In addition, the Commission has some concerns about the fact that "...PhoneTel has changed its name to World Communications, Inc." Application at 3. It is not clear from the record whether PhoneTel is doing business under the fictitious name of "World Communications, Inc."

or whether World transferred the right to use its name to PhoneTel under the merger agreement, and it is under this name which PhoneTel incorporated with the Missouri Secretary of State subsequent to the merger. The Commission finds that it is reasonable to require PhoneTel to file with the Commission a certified copy of its Certificate of Incorporation from the Missouri Secretary of State, so that the Commission will have a record of the name under which PhoneTel is doing business in the state of Missouri. The Commission notes that this is a general requirement for issuance of a certificate of service authority to provide private pay telephone service in Missouri, per 4 CSR 240-2.060(3)(A)2. If PhoneTel is using World Communications as a fictitious name, it should also file with the Commission a certified copy of the registration of fictitious name with the Missouri Secretary of State, per 4 CSR 240-2.060(3)(A)5. Therefore, the Commission will order PhoneTel to file a certified copy of its Certificate of Incorporation and any registration of fictitious name, if applicable, with the Commission within ten days of the effective date of this order.

Finally, the Commission finds that it is unnecessary to grant Applicants' request for the waiver of 4 CSR 240-2(4) [sic]. The Commission's current rule on mergers, 4 CSR 240-2.060(6), was in effect at the time the application was filed on January 3, 1996. Current rule 4 CSR 240-2.060(6)(H) provides that competitive telecommunications companies are not required to comply with subsections (6)(A)-(E) of this rule. These subsections include the bulk of the specific waiver requests listed in the application. While Applicants also sought waiver of the requirement for a statement of the impact of the merger on local tax revenues, Applicants did in fact comply with this requirement in their application. The Commission notes that the requirement regarding local tax revenues, found at 4 CSR 240-2.060(6)(G), may not be waived, as its requirements are

statutory in nature, and are contained in Section 392.300.1, RSMo 1994. The Commission is of the opinion that Applicants have substantially complied with the provisions of 4 CSR 240-2.060(6), and therefore no waiver is necessary.

IT IS THEREFORE ORDERED:

1. That the merger and transfer of assets between World Communications, Inc. and PhoneTel II, Inc. (now known as World Communications, Inc.), with PhoneTel II, Inc. as the surviving corporation, is hereby approved effective as of the effective date of this order.

2. That the certificate of service authority to provide private pay telephone service held by World Communications, Inc. is hereby transferred to PhoneTel II, Inc. (now known as World Communications, Inc.) effective simultaneously with the effective date of this order.

3. That PhoneTel II, Inc. (now known as World Communications, Inc.) shall file with the Commission a certified copy of its Certificate of Incorporation from the Missouri Secretary of State within ten (10) days from the effective date of this order, and shall file at the same time a certified copy of the registration of fictitious name with the Missouri Secretary of State if applicable.

4. That this Order shall become effective on March 19, 1996.

BY THE COMMISSION



David L. Rauch
Executive Secretary

(S E A L)

Zobrist, Chm., McClure, Kincheloe,
Crumpton, and Drainer, CC., Concur.