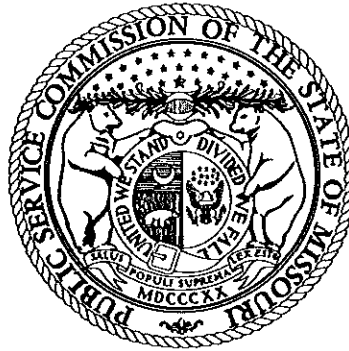


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**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**



In the Matter of the Application of Townes )  
Telecommunications, Inc. for an Order )  
Authorizing Townes Telecommunications, Inc. )  
to Purchase or Acquire, Take or Hold, All )  
of the Issued and Outstanding Capital Stock )  
of Choctaw Telephone Company, Inc. )  
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Case No. TM-99-79

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**REPORT AND ORDER**

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**Issue Date: April 20, 1999**

**Effective Date: April 30, 1999**

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Commission issued its Order and Notice requiring any interested party wishing to intervene in this case to file an application no later than October 5.

On December 15, Staff filed its Motion to Reject Application stating that Townes had failed to provide adequate responses to Staff Data Request (DR) Nos. 7, 9, and 13. Staff further stated that these DRs elicit the same information as requested in other similar telecommunications company sales transactions. Staff requested the Commission reject the application or that certain conditions be added to the Commission's order approving the sale. On December 18, Townes filed its Motion for Approval of Application, Motion to Strike Motion to Reject Application, Suggestions in Support requesting that the Commission strike the Motion to Reject Application as untimely and approve Townes' application to acquire all of Choctaw's outstanding stock.

A prehearing conference was held on February 9, 1999. On February 26, Staff requested on behalf of the parties that a short hearing be set for oral arguments on the issues. The Commission ordered oral arguments be heard on March 22.

### **Discussion**

Townes argued that the only issue raised in its application was the approval for the sale of all outstanding capital stock from Choctaw to Townes pursuant to Section 392.300, RSMo (1994). The Commission may grant Townes' application if it determines that the sale of the stock from Choctaw to Townes would not be detrimental to the public interest.

Initially, in its Motion to Reject Application, Staff indicated that Townes had failed to respond to Staff's DR Nos. 7, 9 and 13 adequately and Staff considered the responses to those DRs to be nonresponsive. By the time oral arguments were held, Staff indicated that the information requested from Townes and Choctaw had been provided except that Townes continued to refuse Staff's request to examine the Townes' books and records.

Staff is concerned about Townes' ability under the statute to pledge Choctaw's stock without approval of the Commission. Section 392.300.2, RSMo. (1994). Given this statutory authority, Staff believes that it should determine the financial stability of the parent company before it determines whether this sale would be detrimental to the public interest. Because of its concerns about the corporate structure that will result if the Commission approves the sale of Choctaw's stock to Townes, Staff requested that any approval of the sale be conditioned on the following two requirements:

- 1) That Choctaw will maintain a capital structure containing no more than 60 percent debt; and
- 2) That Townes and Choctaw must seek approval prior to Townes' pledging of the stock of Choctaw as security for a loan to another nonregulated entity.

At oral argument, Staff also requested that Townes be directed to notify the Commission of the location of Townes' books and records so that those books and records will be available for review by the Commission and Staff pursuant to Section 386.320.3, RSMo (1994). Townes

responded during oral argument that the books and records for the regulated entity, Choctaw, are still available in the same location as previously located, in Choctaw's office in Halltown, Missouri.

Staff has noted its concern that it will be unable to examine the records of the parent company should Townes or Choctaw pledge Choctaw's stock as collateral for a loan to an entity that is not regulated by this Commission. Staff is concerned that such transactions may place the financial stability of Choctaw in jeopardy.

It is Townes' position that if Townes pledges the stock of Choctaw as collateral, and if foreclosure against Townes occurred, only the ownership of Choctaw's stock would be affected, not the assets of the company. Both parties agree that if Townes or Choctaw wish to pledge the assets of Choctaw as collateral, they must seek approval from the Commission before doing so. While the Commission appreciates the concern that the Staff has regarding this issue, Staff does not need to examine the books and records of Townes at this time. When Townes or Choctaw files a new application seeking approval for a transaction other than the pledge of stock, it will be appropriate to examine Townes' books and records at that time. Therefore, Staff's Motion to Reject Application based upon Townes' nonresponsive answers to DR Nos. 7, 9 and 13 will be denied.

Townes' application states various reasons why the acquisition of the stock of Choctaw by Townes will not be detrimental to the public interest. Staff indicated that it was not able to determine whether

there would be a detriment to the public interest because it could not access the books and records of Townes to determine if Townes was financially stable. Other than inability to examine Townes' books, Staff gave no reason why the sale of stock from Choctaw to Townes would be detrimental to the public interest.

### **Findings of Fact**

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

The Commission finds that the sale of Choctaw stock to Townes is not detrimental to the public interest and the application of Townes for approval to purchase or acquire, take or hold, all of the issued and outstanding capital stock of Choctaw will be approved. As agreed by Townes, should Choctaw or Townes wish to use or pledge the underlying assets of Choctaw as security for a loan, then Choctaw and Townes would be required to obtain approval from this Commission in advance and make its books and records available.

### **Conclusions of Law**

The Missouri Public Service Commission has arrived at the following conclusions of law.

Section 392.300.2 requires that all telecommunications companies who wish to purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company must obtain the consent of the Commission for such a sale. Commission

approval is not required where a telecommunications company wishes to transfer or hold stock for the purpose of collateral security. Section 392.300.2.

4 CSR 240-2.060(9) requires applicants seeking authority to acquire stock of a public utility to provide the following to the Commission:

(A) A statement of the offer to purchase stock of the public utility or a copy of any agreement entered with shareholders to purchase stock;

(B) A certified copy of the resolution of the directors of applicant authorizing the acquisition of the stock; and

(C) Reasons why the proposed acquisition of the stock of the public utility is not detrimental to the public interest.

These requirements have been met.

The Missouri Public Service Commission is an agency of limited jurisdiction and has only such powers as are conferred upon it by statute. State ex rel. Kansas City Power & Light Co. v. Buzard, 350 Mo. 763, 168 S.W.2d 1044, 1046 (Banc 1943); Inter-City Beverage v. Kansas City Power and Light, 899 S.W. 2d, 875, 877 (Mo. App. W.D. 1994. The Commission is not authorized by statute to require a company to seek approval from the Commission where stock shall be transferred or held for the purpose of collateral security. The Commission may not lawfully issue a conditional order where the conditions set are specifically excluded from Commission authority under the statute. Section 392.300.2. Therefore, no condition should be placed on the Commission's approval of

this application to purchase or acquire, take or hold, all of the issued and outstanding capital stock of Choctaw.

**IT IS THEREFORE ORDERED:**

1. That the Staff of the Commission's Motion to Reject Application filed on December 15, 1998 is denied.

2. That the application of Townes Telecommunications, Inc. for an order authorizing Townes Telecommunications, Inc. to purchase or acquire, take or hold, all of the issued and outstanding capital stock of Choctaw Telephone Company, Inc. is approved.

3. That nothing in this order shall be considered a finding by the Commission of the value for ratemaking purposes of the [properties, transactions, expenditures, etc.] herein involved.

4. That the Commission reserves the right to consider any ratemaking treatment to be afforded the [properties, transactions, expenditures, etc.] herein involved in a later proceeding.

5. That this Report and Order shall become effective on April 30, 1999.



6. That this case may be closed after May 3, 1999.

BY THE COMMISSION



Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge

( S E A L )

Lumpe, Ch., Murray, Schemenauer  
and Drainer, CC., concur and certify  
compliance with the provisions of  
Section 536.080, RSMo 1994.  
Crumpton, C., absent

Dated at Jefferson City, Missouri,  
on this 20th day of April, 1999

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COMMISSIONER OF  
PUBLIC SERVICE COMMISSION