

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the matter of the application of)
Phoenix Network, Inc., for a certificate)
of service to provide intrastate interLATA)
telecommunications services.)

CASE NO. TA-92-217

APPEARANCES: Donald C. Otto, Jr., Attorney at Law, Hendren and Andrae, 235 East High Street, Post Office Box 1069, Jefferson City, Missouri 65102, for Phoenix Network, Inc.

Randy Bakewell, Assistant Public Counsel, Office of Public Counsel, Post Office Box 7800, Jefferson City, Missouri 65102, for the Office of Public Counsel and the public.

Mary Ann Young, General Counsel, Missouri Public Service Commission, Post Office Box 360, Jefferson City, Missouri 65102, for the staff of the Missouri Public Service Commission.

HEARING

EXAMINER: Michael F. Pfaff

REPORT AND ORDER

On March 6, 1992, Phoenix Network, Inc. (Applicant or Company) applied for a certificate of service authority under Chapter 392, RSMo, (Supp. 1990)¹ to provide competitive intrastate interexchange telecommunication services in the state of Missouri. Company also applied for the waiver of certain statutes and Commission rules, listed infra. The Commission issued its Order and Notice on, April 7, 1992, setting an intervention deadline of May 7, 1992. On April 9, 1992, the Office of Public Counsel requested a hearing. Public Counsel subsequently withdrew its request for hearing on April 20, 1992. There were no other motions for hearing and no one requested intervention. On July 9, 1992, the Staff of the Missouri Public Service Commission filed its memorandum recommending approval of Company's application.

¹All statutory citations, unless otherwise indicated, are to RSMo Supp. 1991.

FINDINGS OF FACT

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

Pursuant to Section 392.440, RSMo, Applicant requests authority to provide intrastate interexchange telecommunication services in the state of Missouri. Pursuant to Section 392.361, RSMo., Applicant also requests that the Commission classify it as a competitive telecommunications company and waive compliance with the statutes and Commission regulations referenced below.

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered such an opportunity. In this case, notice was sent by the Executive Secretary of the Commission to any persons or entities known to the Telecommunications Department of the Public Service Commission to be rendering identical or similar services within the service area proposed by this application, as well as to each telephone company rendering local exchange service in Missouri. Interested persons or entities were directed to intervene on or before May 7, 1992. Since no proper party or governmental entity filed an application to intervene and there are no outstanding requests for a hearing, the Commission determines that an oral hearing is not necessary and the Applicant may submit evidence in support of its application by verified statement. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission finds that Applicant is a foreign corporation authorized to do business in the state of Missouri, with its principal office or place of business located at One Maritime Plaza, Suite 2525, San Francisco, California 94111. The Commission further finds that Applicant has filed current financial information and a brief description of the type of service it proposes to

provide, and has agreed to comply with all applicable rules and regulations of the Commission and any terms and conditions which the Commission may impose.

Based upon the verified statements of Applicant and the recommendations of Staff, the Commission finds that Applicant is qualified to perform the service proposed. Pursuant to Sections 392.440 and 392.530, RSMo, the Commission will assume that additional competition in the intraLATA and interLATA toll markets is in the public interest. The Commission does not deem it necessary to determine a public need for each reseller's services as the market would eliminate any reseller for which there is no public need. Consequently, pursuant to Section 392.440, RSMo, the Commission finds that it is in the public interest to grant Applicant a certificate of service authority to provide intrastate interexchange telecommunication services.

By its recommendation filed herein, Staff states that Applicant's proposed services are the same as those classified as competitive in Case No. TO-88-142, *In re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri* (September 15, 1989). Staff therefore recommends that the Commission grant Applicant competitive status.

Based upon the verified statement of Applicant and Staff's recommendation, the Commission finds that all of the services Applicant proposes to offer are competitive and that Applicant should, therefore, be classified as a competitive company. The Commission further finds that the waiver of the following statutory and regulatory requirements is, pursuant to Section 392.361(5), reasonable and not detrimental to the public interest.

Pursuant to Section 392.470, RSMo, the Commission determines that certain regulatory requirements should be imposed upon resellers authorized to provide telecommunication services in Missouri. Since the Applicant proposes to operate as a reseller of telecommunication services in this state, the Commission

finds that the following regulatory requirements should be imposed upon Applicant as reasonable and necessary conditions of certification:

- (1) Applicant is required to comply with reasonable requests by the Staff for financial and operating data to allow the Staff to monitor the intraLATA toll market pursuant to Section 386.320.3, RSMo.
- (2) Applicant is required to file tariffs containing rules and regulations applicable to customers, a description of the services provided and a list of rates associated with the services pursuant to Section 392.220, RSMo, and 4 CSR 240-30.010.
- (3) Applicant's tariff filing must also contain a preliminary section which states that Company is a competitive carrier and identifies the statutory and rule waivers herein granted.
- (4) Applicant is precluded from unjustly discriminating between and among its customers pursuant to Section 392.200, RSMo and Section 392.400, RSMo.
- (5) Applicant is required by Sections 386.570, RSMo 1986, and 392.360, RSMo to comply with all applicable rules of the Commission except those which have specifically been waived by this Report and Order.
- (6) Applicant is required to file a Missouri-specific annual report pursuant to Section 392.210, RSMo, and Section 392.390.1, RSMo.
- (7) Applicant is required, until the Commission orders otherwise, to submit to the Staff on a confidential basis, quarterly reports showing its percentage of interstate use and intrastate interLATA and intraLATA use pursuant to Section 392.390.3, RSMo.

(8) Pursuant to Section 392.390.3, RSMo, Applicant is required to comply with the jurisdictional reporting requirements as set out in each local exchange company's access services tariff.

Finally, the Commission finds that Applicant should file appropriate tariffs within thirty (30) days of the effective date of this Report and Order. The certificate to be granted herein will become effective only upon approval by the Commission of these tariffs.

Conclusions of Law

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

Applicant proposes to provide service to the public as a competitive intrastate interexchange telecommunications company subject to the Commission's jurisdiction pursuant to Chapters 386 and 392, RSMo.

Based upon the verified application of Applicant and the recommendation of its Staff, the Commission has found that Applicant has complied with the Commission's standards pertaining to applications requesting authority to provide intrastate interexchange telecommunication services and is qualified to perform said services. The Commission concludes that additional competition in the intrastate interexchange market is in the public interest and a certificate of service authority should be granted. The Commission also has found that all the services Applicant proposes to offer are competitive and that waiving the statutes and Commission rules set out below is reasonable and not detrimental to the public interest. Therefore, the Commission concludes that Applicant should be classified as a competitive company pursuant to Section 392.361, RSMo.

IT IS THEREFORE ORDERED:

1. That Phoenix Network, Inc. be granted hereby a certificate of service authority to provide intrastate interexchange telecommunication services in Missouri. This certificate of service authority is subject to the conditions

of certification set out herein and shall not become effective until the Commission approves Applicant's tariffs.

2. That Phoenix Network, Inc. be classified hereby as a competitive telecommunications company for which the effect of the following statutory and regulatory requirements shall be waived:

Statutes

- 392.240(1) - ratemaking
- 392.270 - valuation of property (ratemaking)
- 392.280 - depreciation accounts
- 392.290 - issuance of securities
- 392.310 - stock and debt issuance
- 392.320 - stock dividend payment
- 392.330 - issuance of securities, debt and notes
- 392.340 - reorganization(s)

Commission Rules

- 4 CSR 240-10.020 - depreciation fund income
- 4 CSR 240-30.010(2)(C) - rate schedules
- 4 CSR 240-30.060(5)(B) through (O) - records re: ratemaking
- 4 CSR 240-32.030(1)(B) - exchange boundary maps
- 4 CSR 240-32.030(1)(C) - record keeping
- 4 CSR 240-32.030(2) - in-state record keeping
- 4 CSR 240-32.050(3) - local office record keeping
- 4 CSR 240-32.050(4) - telephone directories
- 4 CSR 240-32.050(5) - call intercept
- 4 CSR 240-32.050(6) - telephone number changes
- 4 CSR 240-32.070(4) - public coin telephone
- 4 CSR 240-33.030 - minimum charges rule

3. That Phoenix Network, Inc. shall file tariffs, as described by this order, within thirty (30) days of the effective date of this Report and Order; that said tariffs shall, by index or preface, identify Company as a competitive company and identify each statute or regulation waived by this order.

4. That Phoenix Network, Inc. shall file its PIU reports as discussed herein within thirty (30) days of the effective date of this Report and Order.

5. That Phoenix Network, Inc. shall file with the Commission Staff a report showing its percentage of intrastate intraLATA use. Said report shall be filed within thirty (30) days of the effective date of this Report and Order and on a confidential basis, unless the Commission orders otherwise.

6. That this order shall become effective on July 28, 1992.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

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

Dated at Jefferson City, Missouri,
on this 15th day of July, 1992.