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July 6, 2000

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Secretary/Chief Regulatory Law Judge

DANA K. JOYCE
General Counsel

FILED³

JUL 06 2000

**Missouri Public
Service Commission**

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

RE: Case No. TM-2000-748

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and eight (8) conformed copies of **STAFF'S MOTION TO COMPEL ANSWERS TO DATA REQUESTS**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Robert V. Franson
Assistant General Counsel
(573) 751-6651
(573) 751-9285 (Fax)

RF/dkf
Enclosure
cc: Counsel of Record

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED³

JUL 06 2000

Missouri Public
Service Commission

In the Matter of Joint Application of)
Miller Telephone Company and Townes)
Communication Inc., for an Order)
Authorizing Townes Telecommunications,)
Inc., to Purchase or Acquire, Take or Hold)
All of the Issued and Outstanding Stock of)
Miller Telephone Company)

Case No. TM-2000-748

STAFF'S MOTION TO COMPEL ANSWERS TO DATA REQUESTS

COMES NOW the Staff ("Staff") of the Missouri Public Service Commission ("Commission"), pursuant to 4 CSR 240-2.090(1), and for its Motion to Compel Answers to Data Requests, respectfully states as to the Missouri Public Service Commission (Commission) as follows:

1. On May 11, 2000, Miller Telephone Company (Miller Telephone) and Townes Telecommunications, Inc., (Townes) filed a joint application with the Commission requesting that the Commission authorize Townes to purchase all of the issued and outstanding stock of Miller Telephone.

2. On June 2, 2000, Staff submitted three data requests to Miller Telephone and Townes in order to fulfill Staff's responsibility in this docket to assess the capability of the acquiring entity to provide financing for the acquired entity at a level equivalent to the existing owner. The data requests submitted were Data Request Nos. 3801, 3802, and 3803, which read as follows:

(No. 3801) Please provide the following financial statements as of December 31, 1999 for Miller Telephone Company and for Townes Telecommunications, Inc. both on a stand-alone basis and on a consolidated basis:

1. Balance Sheet
2. Income Statement and;
3. Statement of Cash Flow.

(No. 3802) Please provide 5-year projected financial statements for Townes Telecommunications, Inc. on a consolidated basis and Miller Telephone Company (Balance Sheet, Income Statement and Statement of Cash Flow).

(No. 3803) Please provide the Bond Indenture of Townes Telecommunications Inc and/all loan documents that encumber the consolidated assets of Townes Telecommunications Inc.

Copies of the data requests are attached hereto as Exhibit A.

3. Townes, pursuant to 4 CSR 240-2.090(2), communicated in writing to Staff its objections within ten days after the Company's receipt of such requests. In a June 2, 2000 letter to Staff's counsel (attached hereto as Exhibit B), Townes timely indicated its objections to the above-noted data requests. The letter states that each of the data requests, as it relates to Townes, is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The letter notes that the standard for review of this case is not detrimental to the public interest and cites the Commission order in Case No. TM-99-79. . 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. This order is attached hereto as Exhibit C

4. Counsel for Staff has communicated with Counsel for Townes by telephone to resolve this issue and a telephone conference was held with Regulatory Law Judge Woodruff on this matter on July 6, 2000, pursuant to 4 CSR 240.2.090(8). This matter remains unresolved and Staff still needs the information requested in Data Requests 3801, 3802 and 3803.

5. The Staff does not dispute that the standard for review in this case is the "not detrimental to the public interest" standard. The Staff has consistently examined the managerial,

technical, and financial aspects of a merger and sale to determine if a detriment will be created if the merger and or sale are approved. The disputed data requests are consistently used to elicit the information in other similar sale transaction cases to examine the financial capability of the acquiring company to finance the regulated entity. If the acquiring entity lacks the financial capability to finance the existing regulated enterprise consistent with its historical experience, then the Staff would be required to notify the Commission of this fact as a detriment of the purchase proposal. The information requested will be used to determine whether Townes Communication Inc. has the capability to reasonably finance Miller Telephone consistent with the financial capability of its present owner, Robert Prince. The requested information will be used to form the portion of the Staff recommendation that Townes either has or does not have the capability to finance Miller Telephone in manner that is not detrimental to the public interest. The information is relevant and can reasonably be calculated to lead to discovery of admissible evidence since the information is critical to the answer of the question of whether Townes has the ability to be reasonably expected to finance Miller Telephone in a manner that is not detrimental to the public interest. Staff will be unable to provide a recommendation to the Commission regarding the capability of Townes to finance Miller Telephone without this information. The Commission requires competitive local exchange companies to provide evidence of their financial capabilities before a certificate is approved. Miller Telephone is an incumbent local exchange company. In effect, Townes Communications Inc. is asserting that the Commission should lower its standard for approving the change in ownership of incumbent local exchange companies below the standard require to operate a competitive local exchange company.

6. Case No. TM-99-79 is not relevant to the question of answering the disputed data requests. In fact, the order states: "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." The Staff is not requesting to examine Townes' books and records. The Commission decided in Case No. TM-99-79 that the Staff did not need to examine the books and records of an acquiring company in the context of a stock purchase case. The Commission did not find that the acquiring company was relieved of the obligation to respond to data requests related to its capability to finance the regulated entity if the stock purchase was approved. The Commission has not relieved its Staff of the responsibility to examine the issue of the financial capability of the acquiring company in the context of the purchase of an incumbent local exchange company.

7. The materials requested in the subject data requests are relevant to Staff's ability to discharge its the responsibility to examine the issue of the financial capability of the acquiring company in the context of the purchase of an incumbent local exchange company.

8. As an alternative to granting the Motion to Compel, the Commission could resolve this matter pursuant to Section 386.450 RSMo 1994. The Commission could, on its own initiative, order Townes, which has its principal office in Arkansas to provide this information within this state.

WHEREFORE, for the reasons stated above, the Staff respectfully requests that the Commission issue an Order compelling Townes to provide an answer to Data Requests No 3801, 3802, and 3803 no later than ten days after entry of the Commission's Order to compel answers. The date for Staff's recommendation should be five business days after Townes has provided complete and responsive answers.

Respectfully submitted,

DANA K. JOYCE
General Counsel

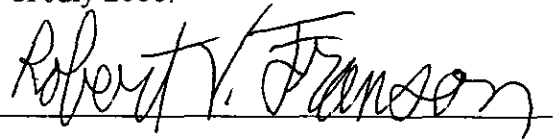


Robert V. Franson
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Missouri Bar No. 34643

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rfranson@mail.state.mo.us (e-mail)

Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 6th day of July 2000.



Requested From: Mr. W. R. England, III
Date Requested: June 2, 2000
Information Requested: Please provide the following financial statements as of December 31, 1999 for Miller Telephone Company and for Townes Telecommunications, Inc both on a stand alone basis and on a consolidated basis:

1. Balance Sheet;
2. Income Statement and;
3. Statement of Cash Flow.

Requested By: David P. Broadwater, Financial Analyst

Information Provided: _____

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. TM-2000-748 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in Miller Telephone Company's office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to Miller Telephone Company and its employees, contractors, agents or others employed by or acting in its behalf.

Signed by: _____

Date Response Received: _____

EXHIBIT A

Prepared by: _____

DATA INFORMATION REQUEST
MILLER TELEPHONE CO. / TOWNES TELECOMMUNICATIONS, INC
CASE NUMBER TM-2000-748

No. 3802

Requested From: Mr. W. R. England, III
Date Requested: June 2, 2000
Information Requested: Please provide 5-year projected financial statements for Townes Telecommunications, Inc on a consolidated basis and Miller Telephone Company (Balance Sheet, Income Statement and Statement of Cash Flow).

Requested By: David P. Broadwater, Financial Analyst

Information Provided: _____

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. TM-2000-748 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in Miller Telephone Company's office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to Miller Telephone Company and its employees, contractors, agents or others employed by or acting in its behalf.

Signed by: _____

Date Response Received: _____

Prepared by: _____

DATA INFORMATION REQUEST
MILLER TELEPHONE CO. / TOWNES TELECOMMUNICATIONS, INC
CASE NUMBER TM-2000-748

No. 3803

Requested From: Mr. W. R. England, III
Date Requested: June 2, 2000
Information Requested: Please provide the Bond Indenture of Townes Telecommunications Inc and/or all loan documents that encumber the consolidated assets of Townes Telecommunications Inc.

Requested By: David P. Broadwater, Financial Analyst

Information Provided:

The attached information provided to the Missouri Public Service Commission Staff in response to the above data information request is accurate and complete, and contains no material misrepresentations or omissions, based upon present facts of which the undersigned has knowledge, information or belief. The undersigned agrees to immediately inform the Missouri Public Service Commission Staff if, during the pendency of Case No. TM-2000-748 before the Commission, any matters are discovered which would materially affect the accuracy or completeness of the attached information.

If these data are voluminous, please (1) identify the relevant documents and their location (2) make arrangements with requestor to have documents available for inspection in Miller Telephone Company's office, or other location mutually agreeable. Where identification of a document is requested, briefly describe the document (e.g. book, letter, memorandum, report) and state the following information as applicable for the particular document: name, title, number, author, date of publication and publisher, addresses, date written, and the name and address of the person(s) having possession of the document. As used in this data request the term "document(s)" includes publication of any format, workpapers, letters, memoranda, notes, reports, analyses, computer analyses, test results, studies or data, recordings, transcriptions and printed, typed or written materials of every kind in your possession, custody or control or within your knowledge. The pronoun "you" or "your" refers to Miller Telephone Company and its employees, contractors, agents or others employed by or acting in its behalf.

Signed by: _____

Date Response Received: _____

Prepared by: _____

RF

LAW OFFICES

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June 12, 2000

Mr. Robert Franson
Assistant General Counsel
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Re: Joint Application of Miller Telephone Company and Townes Telecommunications, Inc., Case No. TM-2000-748

Dear Robert:

Set out below are the objections of Townes Telecommunications, Inc., to certain of the Data Requests propounded by the Staff to Miller and Townes on June 2, 2000. These objections are made in accordance with the Commission's rule of Practice and Procedure 4CSR 240-2.090(2).

Data Request No. 3801

Townes Telecommunications, Inc., objects to the request to provide financial statements as of December 31, 1999, both on a stand alone basis and on a consolidated basis on the grounds that the information sought is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The standard for reviewing this request to purchase the outstanding capital stock of Miller Telephone Company is that the sale of the stock would not be detrimental to the public interest. § 392.300.2, RSMo 1994. Thus, the information sought is not relevant to the proceeding. *See, 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 Stock of Choctaw Telephone Company, Inc., MoPSC Case No. TM-99-79.*

The information sought for Miller Telephone Company will be provided in a timely manner.

Data Request No. 3802

Townes Telecommunications, Inc., objects to the request to provide 5-year projected financial statements for Townes Telecommunications, Inc., on the grounds that the information sought is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. The standard for reviewing this request to purchase the outstanding

capital stock of Miller Telephone Company is that the sale of the stock would not be detrimental to the public interest. § 392.300.2, RSMo 1994. Thus, the information sought is not relevant to the proceeding. *See, 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 Stock of Choctaw Telephone Company, Inc., MoPSC Case No. TM-99-79.*

The information sought for Miller Telephone Company will be provided to the extent that it is available.

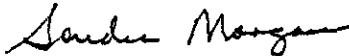
Data Request No. 3803

Townes Telecommunications, Inc., objects to the request to provide the Bond Indenture of Townes Telecommunications, Inc., and/or all loan documents that encumber the consolidated assets of Townes Telecommunications, Inc., on the grounds that the information sought is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of admissible evidence. Townes Telecommunications, Inc., does not intend to encumber the assets of Miller Telephone Company as a result of this transaction and understands that prior Commission approval is necessary before the assets could be encumbered. The standard for reviewing this request to purchase the outstanding capital stock of Miller Telephone Company is that the sale of the stock would not be detrimental to the public interest. § 392.300.2, RSMo 1994. Thus, the information sought is not relevant to the proceeding. *See, 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 Stock of Choctaw Telephone Company, Inc., MoPSC Case No. TM-99-79.*

We will be happy to discuss these matters further with you or other members of the Staff. If you have any questions regarding any of these matters, please do not hesitate to call.

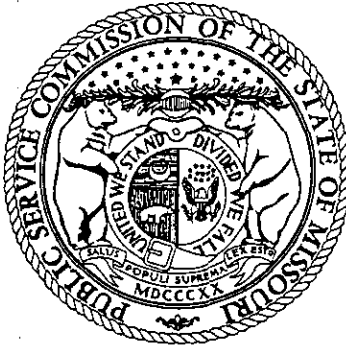
Sincerely,

BRYDON, SWEARENGEN & ENGLAND P.C.

By: 
Sondra B. Morgan

cc: Mr. David Beatty
Mr. Robert Prince

**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.)
)

Case No. TM-99-79

REPORT AND ORDER

Issue Date: April 20, 1999

Effective Date: April 30, 1999

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) Case No. TM-99-79
Acquire, Take or Hold, All of the Issued and)
Outstanding Stock of Choctaw Telephone Company, Inc.)

APPEARANCES

Craig S. Johnson, Attorney at Law, Andereck, Evans, Milne, Peace & Baumhoer, 305 East McCarty Street, Suite 301, Post Office Box 1438, Jefferson City, Missouri 65101, for Townes Telecommunications, Inc.

Penny G. Baker, Deputy General Counsel, Post Office Box 360, Jefferson City, Missouri, for Staff of the Missouri Public Service Commission.

REGULATORY LAW JUDGE: Shelly A. Register.

REPORT AND ORDER

Procedural History

On August 26, 1998, Townes Telecommunications, Inc. (Townes) filed its Application requesting the Commission's approval to acquire ownership of all outstanding stock of Choctaw Telephone Company, Inc. (Choctaw), a regulated telecommunications company in the state of Missouri. Townes filed a Motion for Protective Order on August 27 requesting that a standard protective order be issued. On September 1, the Commission issued its Order Granting Protective Order. On September 3, the

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

Service List for
Case No. TM-2000-748
June 16, 2000

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Jefferson City, MO 65102

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Jefferson City, MO 65102-0456