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BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application for Approval *Nunc Pro Tunc* of a Transfer of Assets From Communications Network Corporation, a/k/a Conetco, to WorldCom Network Services, Inc., d/b/a WilTel Network Services.

Case No. TM-97-123

REPORT AND ORDER

Issue Date: July 18, 1997

Effective Date: July 29, 1997

Additionally, the Commission noted that WilTel is a wholly owned subsidiary of WorldCom, Inc. d/b/a LDDS WorldCom (WorldCom).[2] The Commission pointed out that an operating subsidiary of the parent company had been involved in at least two prior asset sale transactions which were consummated prior to the subsidiary's application for Commission approval, and thus WilTel could be considered to have been put on notice that failure to comply with Section 392.300 might result in the imposition of the penalties described in Section 392.360.

On May 22 the show-cause hearing was held as scheduled. Prior to the hearing WilTel prefiled the testimony of Mark E. Argenbright, Senior Manager of Regulatory Analysis for WorldCom, Inc., the parent company of WilTel. This witness was also present at the hearing and responded to questions from the bench.

Findings of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, finds as follows:

In its prefiled testimony and at the show-cause hearing, WilTel explained that the bankruptcy court filing was intended to be essentially a collections matter; however, it eventually evolved into a transfer proceeding, which entailed the transfer of Conetco's 1+ long distance service customer base (1+ customer base) to WilTel. WilTel is minimally involved in providing service directly to the public, but instead functions

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[2] WorldCom, Inc. d/b/a LDDS WorldCom subsequently changed its name to WorldCom, Inc. in Case No. TO-97-331. The history of WorldCom's certification in the State of Missouri is traced through various name change and merger transactions in the Commission's order acknowledging the change in name, which was issued on April 9, 1997.

primarily as a "carriers' carrier." WilTel's relationship with Conetco was twofold:

(1) Conetco was permitted to presubscribe its retail customers to the WilTel network, which allowed WilTel to bill Conetco for the usage attributed to Conetco's retail customers. A lockbox arrangement was established for the receipt of payments from Conetco's subscribers.

(2) Conetco obtained direct interconnection to the WilTel network, which allowed Conetco to dramatically escalate its usage of the network. Conetco issued and activated debit cards, which could be used to make calls over WilTel's facilities.

Conetco failed to pay for its use of WilTel's network, and within four months Conetco's account fell into arrears in excess of $48 million. The debt to WilTel eventually exceeded $94 million.

WilTel further explained that at the time the involuntary bankruptcy petition was filed on July 1, 1996, the purpose of the filing was to request the appointment of a trustee to institute sound financial controls and ensure the responsible management necessary to preserve Conetco's customer base. WilTel did not ask the bankruptcy court to require the transfer of Conetco's 1+ customer base until July 29, 1996. However, WorldCom's Regulatory Affairs Department was not involved in the bankruptcy matter, and witness Argenbright did not learn of the situation until after August 6, 1996, when the bankruptcy court issued the order which authorized the transfer of assets. Thereafter, WilTel sought to obtain from Conetco the information necessary to secure the requisite regulatory approvals, but Conetco did not cooperate in furnishing that information, even though the bankruptcy court order was entered by consent and required the cooperation of Conetco. WilTel's effort to obtain information from Conetco was also hampered because many of Conetco's records had been seized by the District Attorney for Manhattan pursuant to a search warrant executed at Conetco's New York headquarters on July 8.

Eventually WilTel decided to file applications for approval of the transfer of assets with each state that requires such approval. WilTel also pointed out that as an alternative to the transfer of assets, the bankruptcy court could have lifted the automatic stay to permit WilTel to terminate its telecommunications service agreements with Conetco. However, termination of these agreements would have adversely affected Conetco's end users presubscribed to the WilTel network. As a practical matter, WilTel's continuation of service to these customers helped to preserve Conetco's only significant asset, since termination of service to these customers would have required the customers to switch to another vendor of long distance telephone service, thereby destroying the value of the customer base. As a result of WilTel's acquisition of the 1+ customer base from Conetco, WilTel was able to provide the 333 customers located in the State of Missouri with uninterrupted service.

The Commission finds that exigent circumstances surrounded the transfer of assets from Conetco to WilTel. The Commission also finds that although WilTel did not file its application for approval of the transfer of assets until after the transaction had been consummated, WilTel made reasonable efforts to file its application with this Commission in as timely a fashion as possible under the circumstances. In addition, the Commission finds that WilTel's actions in acquiring Conetco's customer base not only helped to preserve the value of an important asset of Conetco, but allowed Conetco's Missouri customers to receive uninterrupted service.

Thus, Conetco's Missouri customers were able to avoid the inconvenience that a disruption in service would cause.

Conclusions of Law

The Missouri Public Service Commission has reached the following conclusions of law:

WorldCom Network Services, Inc. d/b/a WilTel Network Services is a Delaware corporation which is a facilities-based provider of interexchange services in 48 states, and was certificated to provide intrastate interexchange telecommunications service in Missouri on January 3, 1992 in Case No. TA-92-68. It is a wholly owned subsidiary of WorldCom, Inc., which is also authorized to provide interexchange services in 48 states, including Missouri. Conetco Corporation d/b/a Communications Network Corporation was certificated to provide intrastate interexchange telecommunications services in Missouri on January 9, 1996 in Case No. TA-96-158. WilTel, WorldCom, and Conetco are telecommunications companies and public utilities as defined in Section 386.020(42) and (51), RSMo Supp. 1996, and as such are subject to the jurisdiction of the Commission pursuant to Chapters 386 and 392 of the Missouri Revised Statutes.

Section 392.360 permits the imposition of a penalty upon any telecommunications company which violates any provision of Sections 392.190 to 392.530. Section 392.300 requires telecommunications companies to obtain Commission approval prior to a transfer of assets or merger. Thus a penalty may be imposed under Section 392.360 for a violation of 392.300.

The Commission has found that exigent circumstances surrounded WilTel's acquisition of the assets of Conetco, and that WilTel's efforts to comply with Section 392.300 were reasonable. Thus the Commission concludes that the imposition of penalties against WilTel is not warranted in this case.

IT IS THEREFORE ORDERED:

1. That WorldCom Network Services, Inc. d/b/a WilTel Network Services has appeared before the Missouri Public Service Commission and has shown cause why it should not be subject to the penalty provisions of Section 392.360 for the failure to comply with the requirements of Section 392.300.

2. That this case is therefore closed.

3. That this Report And Order shall become effective on July 29, 1997.

BY THE COMMISSION

Cecil I Wright

Cecil I. Wright
Executive Secretary

(S E A L)

Zobrist, Chm., Crumpton, Drainer,
Murray and Lumpe, CC., concur and
certify compliance with the
provisions of Section 536.080,
RSMo 1994.

Dated at Jefferson City, Missouri,
on this 18th day of July, 1997.