

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PHOENIX NETWORK CORPORATION)	
)	
_____)	CASE NO.
)	89-356
ALLEGED VIOLATION OF)	
KRS 278.020 AND KRS 278.160)	

O R D E R

On December 13, 1989, the Commission issued a Show Cause Order regarding the alleged violation of KRS 278.020 and KRS 278.160 by Phoenix Network Corporation ("Phoenix"). On December 21, 1989, Phoenix filed a proposal which provides that Phoenix will pay a \$1,000 penalty and offered two alternatives for instituting refunds for services provided between December 16, 1986 and October 10, 1989, without a filed tariff and without a Certificate of Public Convenience and Necessity to operate within Kentucky. The proposal was offered to the Commission as an alternative to the formal hearing established in the Show Cause Order. Phoenix states in its filing that as of December 15, 1986 Phoenix acquired certain assets of Virtual Network, a telecommunications company then in bankruptcy, pursuant to the order of the Bankruptcy Court. However, Phoenix did not acquire the accounts receivable of Virtual Network.

The two alternatives for instituting refunds differ in the method for calculating the amount to be refunded. Under

Alternative A, Phoenix would calculate the percentage of total long distance charges to Kentucky customers attributable to intrastate services using the billing records for the 12 months ending December 31, 1989. The calculated percentage will then be applied to the total charges to Kentucky residents who were customers of Phoenix during the period from December 15, 1986 through October 10, 1989. Under Alternative B, Phoenix would calculate the exact amount received by it for services from December 15, 1986 through October 10, 1989 and refund those calculated amounts to the respective customers.

The Commission finds that Phoenix's proposal offers a reasonable alternative to the hearing scheduled in the Show Cause Order.

The Commission also finds that Phoenix violated KRS 278.020 and KRS 278.160 and that pursuant to KRS 278.990 a penalty should be imposed. The Commission finds that the \$1,000 penalty proposed by Phoenix is reasonable. The Commission further finds that, although Phoenix prefers the implementation of Alternative A because of the cost in implementing Alternative B, the latter plan should be used. Alternative B, by affording an exact determination of the amount to be refunded, is the more reasonable and just method.

IT IS THEREFORE ORDERED that:

1. Phoenix shall pay a fine in the amount of \$1,000, to be paid in full within 30 days of the date of this Order. A certified check for the full amount of the fine shall be made payable to the Kentucky State Treasurer and delivered to the

Office of General Counsel of the Commission, 730 Schenkel Lane, Frankfort, Kentucky 40601.

2. Phoenix shall make refund payments to all Kentucky resident customers of the actual charges collected by Phoenix for intrastate telecommunications service from December 16, 1986 through the date of this Order.

3. No later than October 1, 1990, Phoenix shall examine its records and shall provide to the Commission a list of all Kentucky resident customers, including name and address, who received intrastate telecommunications services from December 16, 1986 through October 10, 1989, and the amount billed by Phoenix in respect of such services for such period. Within 30 days after it provides such list to the Commission, Phoenix shall issue checks in the names of the account customers for such amounts and transmit such checks by United States Mail to the last known address of such customer.

4. Beginning February 1, 1990, Phoenix Network shall make monthly reports to the Commission on its progress in performing its obligations under this Order.

5. Within 60 days after Phoenix provides the refund list to the Commission, Phoenix shall provide a report to the Commission of the names of the customers receiving refunds and the amounts of the refunds paid.

6. Phoenix shall hold all funds which it is ordered to refund, but is unable to do so, for a period of 7 years from the

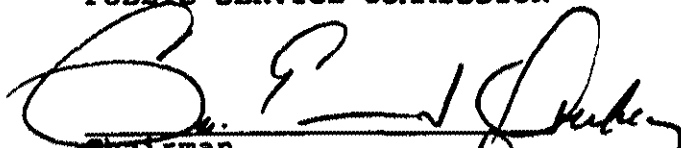
date of this Order providing for the refund, after which time the amount remained unclaimed shall be presumed abandoned and subject to escheat in accordance with KRS Chapter 393.

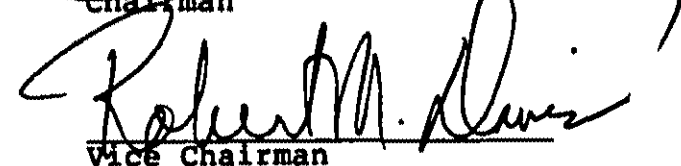
7. During the 7 year period if Phoenix has any lawful claim for refund, it shall, in compliance with this Order, provide said refund and report the same to this Commission within 20 days of making the refund.

8. The hearing in this case scheduled for January 11, 1990 shall be and hereby is cancelled.

Done at Frankfort, Kentucky, this 5th day of January, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:

Executive Director