COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PHOENIX NETWORK, INC. SETTLEMENT OFFER FOR THE ACQUISITION OF TELE-TREND COMMUNICATIONS, INC. IN VIOLATION OF KRS 278.020 (4) AND (5)	))))	CASE NO. 97-043

O R D E R

On November 3, 1994, in Case No. 94-206,[1] Tele-Trend Communications, Inc. ("Tele-Trend"), later acquired by Phoenix Network, Inc. ("Phoenix"), was granted authority to provide intrastate, long-distance telecommunications services within the Commonwealth of Kentucky. Tele-Trend was also ordered to file tariff sheets in accordance with 807 KAR 5:011. By letters dated December 20, 1994 and January 27, 1995, the Commission notified Tele-Trend that it failed to file its tariff sheets and therefore failed to comply with the Commission's November 3, 1994 Order.

On August 26, 1996, the Commission entered an Order in Case No. 96-405 requiring Tele-Trend to show cause why it should not be subject to the penalties of KRS 278.990 for failing to comply with KRS 278.140.[2] The Commission also ordered Tele-Trend to file its reported gross earnings from intrastate business for the 1995 calendar year.

---

1 Case No. 94-206, The Application of Tele-Trend Communications, Inc. for an Order Granting a Certificate of Convenience and Necessity of Applicant to Provide Telecommunications Service, Order dated November 3, 1994.

2 Case No. 96-405, Tele-Trend Communications Inc., Failure to Comply With KRS 278.140, Order dated September 30, 1996.

On September 24, 1996, Phoenix filed a response to the Commission's August 26, 1996 Order in Case No. 96-405. The letter advised the Commission that in July of 1995, Phoenix and Tele-Trend entered into an Asset Purchase Agreement in which Phoenix acquired Tele-Trend. Phoenix enclosed the 1995 Kentucky report of Tele-Trend's gross receipts from intrastate business. Accordingly, on September 30, 1996, the Commission dismissed the proceeding against Tele-Trend.

Subsequently, Commission Staff informally contacted Phoenix regarding statements in its September 24, 1996 letter. In the letter, Phoenix asserts that relocation of its office and major shifts in staff led to its failure to file reports and notices on behalf of Tele-Trend. Phoenix further asserts that it intends to comply with all Commission orders and that Tele-Trend's customers have received the same rates and services under the same terms and conditions as they did prior to the acquisition.

On December 9, 1996, Phoenix filed an explanation of its unintentional violation of KRS 278.020(4) and (5) and made a voluntary payment of Five Hundred Dollars ($500.00) to settle all issues raised by the unauthorized transfer. Phoenix alleges it believed all regulatory requirements for the transfer had been satisfied. Finally, Phoenix requests that it be permitted to adopt Tele-Trend's Kentucky tariff that it filed as an exhibit to its December 9, 1996 letter.

Phoenix and Tele-Trend were required to obtain Commission approval prior to the transfer.[3] KRS 278.020(4) states, inter alia, that:

> No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission . . . without prior approval by the commission. [Emphasis added.]

The Commission, having reviewed Phoenix's filings and having been otherwise sufficiently advised, hereby finds that a violation of KRS 278.020(4) and (5) did occur, and that the proposed settlement is reasonable.

IT IS THEREFORE ORDERED that:

1. The transfer of Tele-Trend to Phoenix is approved.

2. Phoenix's settlement offer is accepted.

3. The tariff of Tele-Trend furnished by Phoenix on December 9, 1996 is approved for Phoenix.

4. Within 10 days of the date of this Order, Phoenix shall furnish a copy of its tariff, in its own name, signed by an officer of the company with the addition of a customer bill format or description as required by 807 KAR 5:006(3).

---

[3] In Administrative Case No. 359, Exemptions for Interchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones, Order dated June 21, 1996, and effective August 1, 1996, the Commission exempted long-distance telecommunication carriers from the statutory requirement that transfers receive prior Commission approval. However, the transaction at issue here predates Administrative Case No. 359 by more than a year.

Done at Frankfort, Kentucky, this 29th day of April, 1997.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director