

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CHARTER NETWORK)	
COMPANY TO EXECUTE A PROMISSORY)	
NOTE TO LITEL COMMUNICATIONS, INC.)	CASE NO. 90-094
IN AN AMOUNT NOT TO EXCEED)	
\$18,750,000)	

O R D E R

On June 11, 1990, the Commission denied Charter Network Company's ("Charter") application seeking permission to execute a promissory note to its parent, LiTel Communications, Inc. ("LCI"), in the amount of \$18,750,000. While the Commission agreed with Charter's observations that the company was subject to relaxed regulation as a non-dominant carrier, as described in Administrative Case No. 273,¹ the Commission was concerned that the transaction described in the application was not in compliance with KRS 278.300.

In response to an interrogatory dated May 17, 1990, Charter supplied answers to questions concerning the financing. Based upon these replies, the Commission issued its Order denying the application.

On June 28, 1990, Charter filed a petition for rehearing, which set forth three arguments as the basis for its appeal. The

¹ Administrative Case No. 273, An Inquiry Into Inter- and IntraLATA Intrastate Competition In Toll and Related Services Markets In Kentucky.

first argument invokes the findings in Administrative Case No. 273 and the Commission's acknowledgement in Case No. 90-016² that Charter is indeed a non-dominant carrier, that its exit from the marketplace would not disadvantage its subscribers, and that any difficulties which might arise from the financing would be the burden of Charter's stockholders. The Commission is fully aware of the criteria set forth in previous decisions and in Administrative Case No. 273 and it reiterates that these determinations are not at the core of its previous decision. The previous decision was based solely on the concern that the financing was not in compliance with KRS 278.300.

The second argument propounded by Charter is that without approval of the application to complete the financing, the company would be forced to withdraw its services from Kentucky. Charter also reiterates previous claims of benefits accruing to Kentucky ratepayers as a result of such financing. The Commission wishes to make it clear that it is not its responsibility to ensure the existence and success of companies in a competitive marketplace. Moreover, the Commission finds that Charter's argument is not relevant to the Commission's findings.

The third argument set forth by Charter is that in a similar financing application by an affiliate in Ohio, the Ohio Public Utilities Commission found that the purpose to which the proceeds

² Case No. 90-016, The Joint Application of LiTel Communications Corporation and Charter Network Company For Authority to Enter Into the \$25 Million Revolving Credit Facility, to Execute Cross Guarantees, and For Authority to Execute Related Documentation.

from the note are to be applied appears to be reasonably required for the applicant's lawful capital purposes. Charter correctly points out that the findings of the Ohio Commission are not binding on this Commission. Also, from the wording set forth above, it appears that the affiliate may have been receiving tangible benefits in the form of construction funds.

As can be seen from the preceding discussion, the Commission rejects Charter's arguments that this case should be judged in light of Administrative Case No. 273 findings. The Commission, however, can do no less than what is required of it by statute. With respect to KRS 278.300, the Commission must consider that the statute was written and last revised well before the divestiture of AT&T and the subsequent changes in the telecommunications industry from a regulated monopoly industry to an increasingly competitive industry. Because of this, the Commission recognizes that some reasonable interpretation of the statute, on a case-by-case basis, may have to be made within the context of each case.

Therefore, the Commission in this case finds that it may reasonably be concluded that the financing is within the corporate purposes of the utility and is reasonable and necessary.

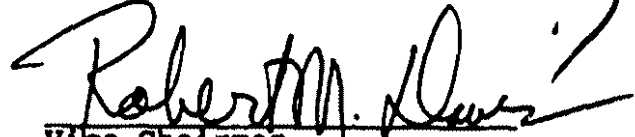
Having reconsidered the evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that the petition for rehearing of Charter to execute a promissory note to LCI in the amount of \$18,750,000 is granted and that the proposed financing contained in Charter's application is approved.

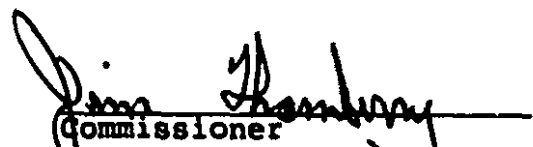
Nothing herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 18th day of July, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director