

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF U.S. DIGITAL NETWORK )  
LIMITED PARTNERSHIP FOR A CERTIFICATE ) CASE NO. 93-479  
TO RESELL TELECOMMUNICATIONS )

O R D E R

On December 27, 1993, U.S. Digital Network Limited Partnership ("U.S. Digital"), a Virginia limited partnership, applied for a Certificate of Public Convenience and Necessity to resell intrastate long-distance telecommunications services within Kentucky. It proposes to resell tariffed services of facilities-based carriers certified by this Commission. U.S. Digital has not requested authority to provide operator-assisted telecommunications services.

U.S. Digital does not own or operate, nor does it intend to construct, any telecommunications transmission facilities within Kentucky. All intrastate telecommunications transmission services will be provided by an underlying carrier certified by this Commission.

Following the filing of its application, U.S. Digital discovered that, in violation of KRS 278.020(1) and 278.160(2), it previously had provided such services in Kentucky without Commission approval and had charged unauthorized rates for such services. U.S. Digital informed the Commission of its discovery.

On March 31, 1994, U.S. Digital and Commission Staff executed a Settlement Agreement on issues presented by U.S. Digital's earlier actions and presented it to the Commission for its approval. The Settlement Agreement requires U.S. Digital to return all amounts improperly collected within 60 days,<sup>3</sup> to cease billing and collecting charges for intrastate services provided within Kentucky pending approval of its application for a certificate, and to pay a penalty of \$100. It further requires U.S. Digital to file monthly reports on these refunds.

Having considered the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. U.S. Digital has the financial, managerial, and technical ability to provide utility service.

2. The public convenience and necessity require the provision of U.S. Digital's proposed telecommunication services.<sup>4</sup>

3. U.S. Digital should be authorized to resell intrastate long-distance telecommunications services within the Commonwealth of Kentucky.

4. U.S. Digital's rates for the proposed services are fair, just, and reasonable and should be approved.

5. The Settlement Agreement, appended hereto, is in accordance with the law, results in a reasonable resolution of the

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<sup>3</sup> U.S. Digital estimates that approximately \$275.51 in unlawful charges were billed and collected.

<sup>4</sup> See Re InterLATA Toll Competition, 122 PUR4th 565, 589 (Ky. PSC) (May 6, 1991).

issues raised by U.S. Digital's collection of unauthorized rates, and is in the public interest.

IT IS THEREFORE ORDERED that:

1. U.S. Digital is granted authority to resell intrastate long-distance telecommunications services within the Commonwealth of Kentucky on and after the date of this Order.

2. U.S. Digital's authority to provide service is strictly limited to those services described in its application.

3. U.S. Digital shall provide intraLATA services in accordance with the restrictions and conditions of service set forth in the Commission's Order of May 6, 1991 in Administrative Case No. 323.<sup>5</sup>

4. U.S. Digital's rates for its proposed services are approved.

5. Within 30 days of the date of this Order, U.S. Digital shall file tariff sheets which contain its approved rates and conform to the restrictions and conditions of service contained herein.

6. The Settlement Agreement, appended hereto, is incorporated in this Order as if fully set forth herein.

7. The terms and conditions set forth in the Settlement Agreement are adopted and approved.

8. A penalty in the amount of \$100 is assessed against U.S. Digital.

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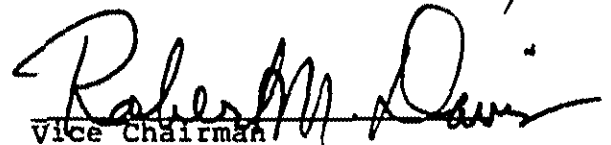
<sup>5</sup> Id. at 590.

9. U.S. Digital shall pay the assessed penalty within 20 days of the date of this Order by certified or cashier's check made payable to "Treasurer, Commonwealth of Kentucky." This check shall be delivered to Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky, 40602.

Done at Frankfort, Kentucky, this 22nd day of April, 1994.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 93-479 DATED APRIL 22, 1994.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF U.S. DIGITAL	)	
NETWORK LIMITED PARTNERSHIP FOR A	)	CASE NO. 93-479
CERTIFICATE TO RESELL	)	
TELECOMMUNICATIONS SERVICE	)	

**SETTLEMENT AGREEMENT RELATING TO  
U.S. DIGITAL NETWORK LIMITED PARTNERSHIP'S  
ALLEGED VIOLATION OF KRS 278.020 AND  
KRS 278.160**

**WHEREAS**, on February 28, 1994, U.S. Digital Network Limited Partnership ("Applicant") disclosed to the Commission that it had provided telecommunications services within the Commonwealth of Kentucky prior to receiving a Certificate of Public Convenience and Necessity and had charged fees for such services which were not on file with the Public Service Commission; and

**WHEREAS**, Applicant and Commission Staff have reached an agreement to resolve all outstanding issues related to Applicant's provision of telecommunications services within the Commonwealth prior to receiving a Certificate of Public Convenience and Necessity; and

**WHEREAS**, Applicant agrees to pay a penalty of One Hundred Dollars (\$100.00) and to make refunds or credits to all customers in accordance with paragraphs 2 and 3 of this Agreement,

**NOW, THEREFORE**, be it resolved that:

1. Applicant shall pay a penalty in the amount of One Hundred Dollars (\$100.00) to be paid in full within ten (10) days

of an order approving this Settlement Agreement. A certified check for the full amount of the penalty 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. Upon the issuance of an Order by the Commission approving and adopting this Settlement Agreement, Applicant shall commence making refund payments or credits to all customers for all charges billed by Applicant for intrastate telecommunications services from December 1, 1993 until such time as Applicant is authorized to provide intrastate services. Within sixty (60) days of the date of such Order approving and adopting this Settlement Agreement, Applicant shall complete the crediting and refunding.

3. Within thirty (30) days from the date of such Order accepting this Settlement Agreement, Applicant shall submit a verified statement listing the names, addresses, amounts paid, and method of payment for customers entitled to and receiving a refund or credit. Thereafter, Applicant shall provide monthly reports to the Commission in performing its obligations under this Settlement Agreement.

4. This Settlement Agreement is submitted for purposes of resolving any violations of KRS Chapter 278 which may have resulted from Applicant's provision of telecommunications services within the Commonwealth of Kentucky prior to obtaining a Certificate of Public Convenience and Necessity and is not deemed binding upon the signatories with respect to any other issue in this proceeding.


This Settlement Agreement is not to be offered or relied upon in respect of any other issues in any other proceeding involving this or any other utility.

5. If this Commission issues an Order approving and adopting this Settlement Agreement in its entirety, Applicant agrees that it shall neither apply for rehearing on such Order nor initiate an action for review of such Order in Franklin Circuit Court.

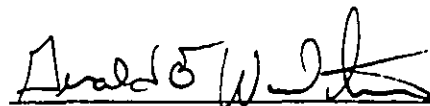
6. If the Settlement Agreement is not approved and adopted in its entirety, Applicant reserves the right to withdraw from it and request a hearing on all matters involved herein. In such event, the terms of this Settlement Agreement shall not be deemed binding upon the signatories, nor shall such Agreement be admitted into evidence or referred to or relied on in any manner by any signatory.

7. The signatories agree that the foregoing Settlement Agreement is reasonable and in the public interest, and urge this Commission to adopt this Settlement Agreement in its entirety.

**AGREED TO:**

  
\_\_\_\_\_  
Honorable James G. Campbell  
Counsel for U.S. Digital Network  
Limited Partnership

March 28, 1993  
Date

  
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Honorable Gerald E. Wuetcher  
Counsel for Commission Staff

3/30/94  
Date