

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF AMERICAN TELEPHONE)
NETWORK, INC. FOR APPROVAL OF THE) CASE NO. 95-101
TRANSFER OF ASSETS TO MIDCOM)
COMMUNICATIONS, INC.)

O R D E R

On March 16, 1995, MIDCOM Communications, Inc. ("MIDCOM") and American Telephone Network, Inc. ("American Telephone"), (hereinafter referred to as "Joint Applicants") filed an application ("Joint Application") pursuant to KRS 278.020(4) and KRS 278.020(5) for Commission approval of the transfer of substantially all of American Telephone's assets, specifically, long-distance customer base, specified assets including switches and carrier identification code, and certain operating assets, to MIDCOM. Joint Applicants have also filed copies of their Customer Base Purchase and Sale Agreement of September 30, 1994, and Amendment and Modification of Customer Base Purchase and Sale Agreement of January 3, 1995 ["Agreement," Exhibit 3 to Joint Application]. The Agreement provides, inter alia, that MIDCOM will assume certain liabilities of American Telephone [Agreement, at 4] while American Telephone will execute a covenant not to compete [Agreement, at 3]. Subsequent to the transaction, the transferred assets will be operated as MIDCOM Network Division [Joint Application, at 3].

MIDCOM is a Washington corporation that provides domestic and international telecommunications services. MIDCOM is authorized to

provide intrastate telecommunications services in Kentucky pursuant to the Commission's Order dated October 8, 1992, in Case No. 92-138.¹ MIDCOM's articles of incorporation were filed with the Commission in Case No. 92-138.

American Telephone is a Florida corporation authorized to provide intrastate telecommunications services in Kentucky pursuant to the Commission's Order dated September 29, 1992, in Case No. 92-199.² American Telephone's articles of incorporation were filed with the Commission in Case No. 92-199.

Joint Applicants submit that the proposed transaction will have no adverse effect on American Telephone's Kentucky customers. In addition, Joint Applicants state that all American Telephone customers will be sent appropriate and timely notice of the proposed transfer and that the transferred assets will be managed after the transaction by a team of managers consisting of existing MIDCOM and some American Telephone personnel. The combined managerial, technical, and financial expertise of the management team will, Joint Applicants assert, provide high quality service to customers. On April 28, 1995, MIDCOM filed an Adoption notice wherein it adopted, ratified, and made its own American Telephone's

¹ Case No. 92-138, Application of Mid-Com Communications, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services Within the State of Kentucky.

² Case No. 92-199, Application of American Telephone Network, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services Within the State of Kentucky.

tariffed rates, rules, classifications and regulations for furnishing long distance services in Kentucky.

Pursuant to KRS 278.020(4), persons under the jurisdiction of the Commission are required to obtain Commission approval prior to the acquisition or transfer of ownership or control of a utility. KRS 278.020(5) prohibits any entity from acquiring control of any utility under the jurisdiction of the Commission without prior approval.

The Commission finds that KRS 278.020(4) and (5) are applicable to the proposed transaction as described by Joint Applicants. Therefore, Commission approval is necessary.

The Commission finds that the proposed transaction is consistent with the public interest and that it will take place in accordance with law and for a proper purpose. The Commission has previously determined, in Case No. 92-138, that MIDCOM possesses the financial, technical, and managerial abilities to provide reasonable service in Kentucky.

American Telephone initially requested that its certification and tariff not be cancelled, since it planned to continue to do business in Kentucky [Joint Application, at 3]. Consequently, on April 7, 1995, the Commission ordered Joint Applicants to provide all revisions to American Telephone's tariff that would be necessary to reflect the precise services to be offered by American Telephone subsequent to the proposed transfer. In its response, dated April 28, 1995, American Telephone stated that it will not seek to offer any utility services in Kentucky for a period of six

to eight months. American Telephone requested that it be placed on inactive status for the time being and stated that it will notify the Commission and submit a new tariff for Commission approval prior to offering service to the public. Accordingly, the Commission finds that American Telephone's name should be removed from the Commission's list of active utilities until such time as American Telephone files a new tariff, together with a request for authorization to provide services in Kentucky.

IT IS THEREFORE ORDERED that:

1. The proposed transaction as described by the Joint Applicants is hereby approved.

2. Joint Applicants shall notify the Commission within 10 days of the date of closing of the proposed transaction or, in the alternative, shall notify the Commission if the proposed transaction does not occur.

3. Within 10 days of the date of the consummation of the proposed transaction, MIDCOM shall file in its own name the tariff of American Telephone adopted by MIDCOM, or such other tariff as it proposes to put into effect in lieu thereof.


4. American Telephone's name shall be removed from the Commission's list of active utilities.


5. American Telephone shall not offer utility service in Kentucky until it has filed with the Commission its new tariff,

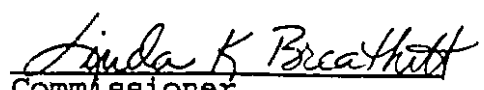
together with a request for authorization to operate in this Commonwealth, and has received approval for same.

Done at Frankfort, Kentucky, this 12th day of May, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director