

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF AUTOMATED)
COMMUNICATIONS, INC. AND PHOENIX NETWORK,)
INC. FOR APPROVAL OF THE TRANSFER OF) CASE NO. 96-163
ASSETS OF AUTOMATED COMMUNICATIONS, INC.)
TO PHOENIX NETWORK, INC.)

O R D E R

On June 3, 1996, Automated Communications, Inc. d/b/a AC America, Inc. ("Automated Communications") and Phoenix Network, Inc. ("Phoenix") (hereinafter "Joint Applicants") filed an application pursuant to KRS 278.020(4) and KRS 278.020(5) for approval of a transfer of all assets of Automated Communications to Phoenix.

Automated Communications was authorized to resell telecommunications services in Kentucky in Case No. 92-459.¹ Phoenix is also a reseller of telecommunications services in Kentucky, having been authorized by the Commission to provide service in Case No. 91-409.² Both are utilities as defined in KRS 278.010(3)(e), and are therefore subject to the jurisdiction of the Commission pursuant to KRS 278.040.

¹ Case No. 92-459, Application of Automated Communications, Inc. for a Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Within the Commonwealth of Kentucky, Order dated March 11, 1993.

² Case No. 91-409, Application of Phoenix Network, Inc. for a Certificate of Public Convenience and Necessity as a Nondominant Carrier to Offer Competitive Intrastate InterLATA Services, Order dated August 21, 1992.

On May 13, 1996, Joint Applicants filed copies of relevant pages of the 10-K and 10-KA forms filed by Phoenix with the Securities and Exchange Commission listing its current executive officers and their qualifications. On the same date, Joint Applicants filed recent consolidated balance sheets and consolidated statements of operations of Phoenix and its subsidiaries.

Also on May 13, 1996, the parties submitted their Agreement and Plan of Merger ("Agreement"), which indicates that the parties planned to merge Automated Communications with and into Phoenix Network Acquisition Corporation, a wholly-owned subsidiary of Phoenix. The Agreement, at 2, states that the closing date was January 16, 1996. In addition, the Adoption Notice filed by the parties on May 13, 1996, in conformity with 807 KAR 5:011, Section 10, states that the business of Automated Communications was taken over by Phoenix on January 16, 1996.

Pursuant to KRS 278.020(4), all persons are required to obtain Commission approval prior to the acquisition or transfer of ownership or control, "by sale of assets . . . or otherwise," of a utility under the jurisdiction of the Commission. KRS 278.020(5) states that no one shall acquire "control, either directly or indirectly," of any utility furnishing service in Kentucky without prior Commission approval. KRS 278.020(4) and (5) therefore apply to the transfer of Automated Communications to Phoenix, and Joint Applicants' failure to have obtained Commission approval prior to closing the transaction appears to have violated the statutes.

On June 10, 1996, Phoenix submitted a letter requesting full and expeditious settlement with the Commission regarding any and all actions that could be brought by

the Commission arising out of the transaction at issue. They apologize for the violation, explain that they believed the statute was not violated if customer billing did not change prior to receipt of Commission approval, and offer to pay a penalty of \$100 in full settlement of this matter.

Phoenix is an authorized carrier in Kentucky and has already been found by the Commission to possess the financial, technical, and managerial abilities to provide reasonable service. See Case No. 91-409. The documents concerning Phoenix's officers and finances filed by Joint Applicants herein support this finding. Furthermore, the information filed by the parties indicates that, except for the legal infirmity caused by the failure to obtain prior Commission approval, this transfer was made "in accordance with law, for a proper purpose and consistent with the public interest." KRS 278.020(5). Consequently, it does not appear that the transfer had any adverse impact on Kentucky customers. In short, the transfer would have been approved pursuant to the appropriate statutory standards had the Commission received the application in a timely fashion. Given all applicable circumstances, it appears that the proposal of settlement is a reasonable and cost-effective manner of resolving this matter.

IT IS THEREFORE ORDERED that:

1. The terms offered in settlement, as described in this Order, are hereby accepted by the Commission in full settlement of any and all actions it could bring against Phoenix and Automated Communications as a result of the transaction described in this Order.

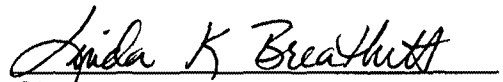
2. Within 10 days of the date of this Order, Joint Applicants shall pay a penalty of \$100. This payment shall be in the form of a cashier's or certified check made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to: Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, Post Office Box 615, Frankfort, Kentucky 40602.


3. Within 10 days of the date of this Order, in accordance with 807 KAR 5:011, Phoenix shall file in its own name the tariff of Automated Communications.

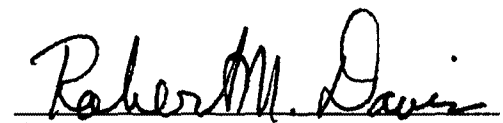
4. This case is hereby dismissed.

Done at Frankfort, Kentucky, this 27th day of June, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director