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September 30, 1999

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FILED

SEP 30 1999

Mr. Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Missouri Public
Service Commission

RE: Case No. ^MTA-2000-146 - Feist Long Distance, Inc., Telecom Resources, Inc., d/b/a
TRINetwork, Inc., and Advanced Communications Group, Inc.

Dear Mr. Roberts:

Enclosed for filing in the above-captioned case are an original and fourteen (14) conformed copies of **STAFF'S MOTION TO DISMISS APPLICATION**.

This filing has been mailed or hand-delivered this date to all counsel of record.

Thank you for your attention to this matter.

Sincerely yours,

Cliff E. Snodgrass
Senior Counsel
(573) 751-3966
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CES/wf
Enclosure
cc: Counsel of Record

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Application of Feist)
Long Distance, Inc., Telecom Resources,)
Inc. d/b/a TRINetwork, Inc., and)
Advanced Communications Group, Inc.)
for Approval of Transfers of Control.)

FILED
SEP 30 1999
Missouri Public
Service Commission
TM
Case No. TA-2000-146

STAFF'S MOTION TO DISMISS APPLICATION

COMES NOW the Staff of the Missouri Public Service Commission (Staff), by and through one of its attorneys, and for Staff's Motion to Dismiss the Application for Approval of Transfer of Control, in lieu of a Staff Recommendation, states the following:

1. On August 16, 1999, Feist Long Distance Service Inc. ("Feist"), Telecom Resources, Inc. d/b/a TRINetwork ("TRI"), and Advanced Communications Group, Inc. ("ACG") filed an Application with the Missouri Public Service Commission ("Commission"). The Application states that Feist, which is certified to provide intrastate interexchange and local telecommunications services, was organized and is existing under the laws of Kansas, but is authorized to do business in the State of Missouri. The Application states that TRI, which is certified to provide intrastate interexchange telecommunications services, was organized and is existing under the laws of Texas, but is authorized to do business in the State of Missouri. The Application states that ACG, which is certified to provide resold intrastate interexchange and/or competitive local exchange telecommunications services, was organized and is existing under the laws of Delaware, but is authorized to do business in the State of Missouri. The Application states that Feist and TRI are wholly owned subsidiaries of ACG.

2. The Application states that Ionex Telecommunications, LLC ("Ionex"), is a privately held limited liability Delaware company that is majority owned and controlled by Gilbert Global Equity Partners, L.P., a private equity investment partnership. The Application initially indicated that the transfer of control of Feist and TRI would be accomplished by the purchase of all outstanding shares of stock of Feist and TRI by two holding company subsidiaries of Ionex. Pursuant to a notification from Ionex, filed on September 28, 1999, the proposed purchase of the outstanding shares of Feist and TRI will now be made directly by Ionex, which has since become Ionex Telecommunications, Inc., a Delaware corporation.
3. The Application states that approval of the stock purchase transaction is sought under the provisions of Mo. Rev. Stat. Section 392.300, but no distinction is made between Subsection 1 and Subsection 2 of that statute.

Section 1 of 392.300.1 RSMo 1994, states, in relevant part, that:

No telecommunications company shall hereafter sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, facilities or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such line or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do.
(Emphasis added).

Section 2 of 392.300.2 RSMo 1994, states, in relevant part, that:

Except where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic or foreign, other than a telecommunications company, shall, without the consent of the commission, purchase or acquire, take or hold more than ten percent of the total capital stock issued by any telecommunications company organized or existing under or by

virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any telecommunications company may, without the consent of the commission, acquire and hold the remainder of the capital stock of such telecommunications company, or any portion thereof. (Emphasis added).

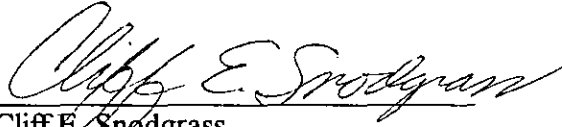
4. Section 300.300.1 RSMo 1994 does not apply to this transaction because Ionex is buying the stock of Feist and TRI. Ionex is not acquiring "...the franchise, facilities or system" of Feist and TRI as is required under the statute to create commission jurisdiction. All that is occurring is a change in ownership of Feist and TRI from ACG to Ionex. In essence, there is merely a change in the parent companies of these two regulated companies. In addition, Ionex is not "merging or consolidating" the regulated companies' "franchise, line or system with any other corporation, person or public utility" as mentioned in the jurisdictional language of the statute. No merger or consolidation is taking place. The regulated entities continue to perform under their original corporate identity and through their "franchise, facilities or system."
5. With respect to Section 392.300.2 RSMo 1994, in *Public Service Commission v. Union Pacific Railroad Company*, 197 S.W. 39 (Mo. banc 1917), the Commission sought to enjoin Union Pacific from issuing bonds without first applying to it for authority. Union Pacific was incorporated under the laws of the State of Utah. In ruling against the Commission, the Court explained that the words "organized and existing or hereafter incorporated, under or by virtue of the laws of the state of Missouri" in Section 57 of the Public Service Commission Act of 1913, applied to domestic corporations and not to foreign corporations.

6. Section 392.300.2 RSMO 1994 does not apply to this transaction because Feist and TRI are not "organized or existing under or by virtue of the laws of this state." Feist is a foreign corporation organized and existing under the laws of Kansas and TRI is a Texas corporation. Clearly, this sale of stock does not involve the acquisition of ownership of companies organized and existing under the laws of Missouri.

WHEREFORE, the Staff requests that the Commission enter an Order that Sections 392.300.1 and 392.300.2 RSMo 1994 do not grant the Commission jurisdiction over this transaction, and therefore the Application should be dismissed.

Respectfully submitted,

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Certificate of Service

I hereby certify that copies of the foregoing have been mailed or hand-delivered to all counsel of record as shown on the attached service list this 30th day of September, 1999.

