STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY
October 19, 1999

CASE NO: TM-2000-146

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Enclosed find certified copy of an ORDER in the above-numbered case(s).

Sincerely,

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

Uncertified Copy:

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

At a Session of the Public Service Commission held at its office in Jefferson City on the 19th day of October, 1999.

In the Matter of the Joint Application of Feist Long Distance Service, Inc., Telecom Resources, Inc. d/b/a TRINetwork, Inc., and Advanced Communications Group, Inc., for Approval of Transfers of Control.	)))))	**Case No. TM-2000-146**

ORDER DISMISSING APPLICATION FOR LACK OF JURISDICTION

Advanced Communications Group, Inc. (ACG) and ACG's wholly owned Missouri operating subsidiaries, Feist Long Distance Service, Inc. and Telecom Resources, Inc. d/b/a TRINetwork, Inc. (ACG Subsidiaries), filed a Joint Application with the Commission on August 16, 1999, for Commission approval of a plan to transfer control of the ACG Subsidiaries to Ionex Telecommunications, L.L.C. (Ionex). The transfer of control would be accomplished by the purchase of all outstanding shares of the ACG Subsidiaries by Ionex. In order that the planned transfer of control not be delayed, ACG and ACG Subsidiaries requested that the Commission approve their application effective no later than October 31, 1999. So that the Application could be considered expeditiously, the Commission issued an Order on August 18, directing the Staff of the Commission (Staff) to file its recommendations regarding approval or rejection of the Application no later than October 1, 1999.

On September 30, Staff filed a Motion to Dismiss Application. Staff's motion asserts that the application of ACG and ACG Subsidiaries is unnecessary because the Commission lacks jurisdiction over the transaction for which approval is sought. On October 8, ACG and ACG Subsidiaries filed a Concurrence in Staff's Motion to Dismiss Application.

The Application seeks Commission approval of the proposed stock purchase pursuant to Section 392.300, RSMo 1994. That section consists of two subsections. Section 392.300.1 provides, in relevant part, as follows:

> 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.

Staff's motion argues that this provision does not apply to the transaction proposed by ACG and ACG Subsidiaries because Ionex is simply acquiring the stock of the subsidiaries. It is neither acquiring the "franchise, facilities or system" of the subsidiaries, nor is it "merging" or "consolidating" the "line or system, or franchises" of the subsidiaries, as would be required to create jurisdiction in the Commission under Section 392.300.1.

The other subsection, Section 392.300.2, RSMo 1994, provides, in relevant part, as follows:

> 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, …

Staff's motion points out that this provision does not provide the Commission with jurisdiction over the proposed transaction because neither of the corporations to be acquired is "organized or existing under or by virtue of the laws of this state."

Upon review of Staff's Motion, the Commission concludes that it does not have jurisdiction to consider the transactions for which ACG and ACG Subsidiaries seek approval. The second subsection of Section 392.300 clearly does not apply because the subsidiaries to be acquired are not Missouri corporations and therefore are not "organized or existing under or by virtue of the laws of this state." *See* Public Service Commission v. Union Pacific Railroad Company, 197 S.W. 39 (Mo. banc 1917). Furthermore, Ionex is a telecommunications company and by its clear terms Section 392.300.2 applies only to the acquisition of capital stock by a corporation other than a telecommunications company.

The argument for the Commission's lack of jurisdiction under the first subsection of Section 392.300 is less clear. The authority granted to the Commission under Section 392.300.1 is quite broad. However, in balance it appears that the transaction in this case will not result in the direct or indirect merger or consolidation of any of the companies involved. After the transaction is complete, the ACG Subsidiaries will continue to provide service to their respective customers under existing service arrangement and pursuant to their respective authorizations. All that is really changing is the identity of the owner of those corporations. Under the circumstances of this application, it appears that the Commission does not have jurisdiction over Ionex's purchase of all shares of stock of the ACG Subsidiaries.

It should be emphasized that the limit on the Commission's jurisdiction recognized in this case is very narrow and is limited to sales of stock. The Commission will continue to assert jurisdiction over the merger of foreign telecommunications companies holding certificates to provide service in Missouri if the transaction falls within the Commission's jurisdiction as established by Section 392.300, RSMo 1994.

IT IS THEREFORE ORDERED:

1. That the Staff of the Public Service Commission's Motion to Dismiss Application is granted.

2. That the Joint Application of Advanced Communications Group, Inc., Feist Long Distance Service, Inc. and Telecom Resources, Inc. d/b/a TRINetwork, Inc. is dismissed.

3. That this order shall become effective on October 29, 1999.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Lumpe, Ch., Crumpton, Murray,
and Drainer, CC., concur
Schemenauer, C., absent

Woodruff, Regulatory Law Judge

ALJ/Sec'y: Woodruff / Borgo

10-15 Date Circulated

TO-2000-146 CASE NO.

Lumpe, Chair

Crumpton, Commissioner

Murray, Commissioner

Schemenauer, Commissioner

Drainer, Vice-Chair

10-19 Agenda Date

Action taken: 4-0 AS

Must Vote Not Later Than ______

STATE OF MISSOURI
OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City,

Missouri, this 19th day of October, 1999.

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge