

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY**

March 14, 2000

CASE NO: TM-2000-419

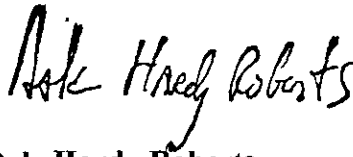
Office of the Public Counsel
P. O. Box 7800
Jefferson City, MO 65102

General Counsel
Missouri Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

Mark W. Comley
Newman, Comley & Ruth P.C.
601 Monroe Street, Suite 301
P.O. Box 537
Jefferson City, MO 65102-0537

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

Sincerely,

A handwritten signature in black ink that reads "Dale Hardy Roberts". The signature is written in a cursive style with a large initial "D" and "H".

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

OF THE STATE OF MISSOURI

Application for Approval *Nunc Pro Tunc* of)
a Transfer of Assets from USTel, Inc., and) Case No. TM-2000-419
Arcada, Inc. to OneStar Long Distance, Inc.)

ORDER APPROVING TRANSFER OF ASSETS

On January 12, 2000, OneStar Long Distance, Inc. (OneStar) filed with the Missouri Public Service Commission (Commission) an application for approval *nunc pro tunc* of a transfer of assets from USTel, Inc. (USTel) and Arcada, Inc. (Arcada) (Sellers) to OneStar. The application states that it is being filed pursuant to Section 392.300, RSMo 1994¹.

OneStar stated that it is doing business as OneStar Long Distance. However, OneStar did not produce a fictitious name certificate which demonstrated that. To the contrary, the certificate of good standing from the secretary of state filed by OneStar with its application shows that it is doing business as "OneStar Long Distance, Inc." OneStar is an Indiana corporation, authorized to do business in Missouri.

OneStar also stated that it is a nationwide provider of telecommunications services and is authorized to provide resold long distance services in Missouri under certification granted under case

number TA-98-50. OneStar stated that it also provides interstate and international telecommunications as a non-dominant common carrier pursuant to the authority of the Federal Communications Commission.

OneStar stated that USTel is a Minnesota corporation and that Arcada is a wholly owned subsidiary of USTel, both headquartered in the state of Washington. OneStar stated that, on its information and belief, Sellers were certificated by the Commission to provide intrastate interexchange telecommunications services in Missouri in case number TA-96-97. OneStar stated that Sellers each filed a bankruptcy petition in Washington on March 10, 1999. Eventually, OneStar stated, Sellers sold most of their assets, including their long distance customers, to OneStar, and this agreement was approved by the bankruptcy court on July 13, 1999. OneStar stated that the deal was eventually closed on August 12, 1999.

OneStar stated that it did not have an opportunity to seek the Commission's prior approval of the transfer of assets. OneStar stated that it regrets that it was unable to seek prior Commission approval and respectfully requests that the Commission permit it to cure this deficiency *nunc pro tunc*. OneStar stated that the approval *nunc pro tunc* of the transfer of assets from Sellers to OneStar is in the public interest. OneStar stated that its acquisition of Sellers' customer base avoided any unnecessary interruption in the telecommunications service provided to Sellers' former customers in Missouri. OneStar argues, that, from the perspective of affected

¹ All references herein to Sections of the Revised Statutes of Missouri (RSMo), unless otherwise specified, are to the revision of 1994.

customers, the transfer will be largely transparent, leaving the quality of service that the customers expect unaltered. In addition, OneStar stated, the transfer will allow it to realize significant economies of scale, thereby making it possible for OneStar to introduce new products and services.

On March 8, 2000, the Staff of the Commission (Staff) filed its memorandum. Staff recommended that the Commission issue an order to approve prospectively the transfer of Sellers' Dial 1+ customer base to OneStar.

The statute under which the Application was filed, i.e., Section 392.300 RSMo, states, in part: "No telecommunications company shall... sell...[or] transfer...the whole or any part of its franchise, facilities or system...without having first secured from the [public service] commission an order authorizing it.... Every such sale...[or] transfer...made other than in accordance with the order of the commission authorizing the same shall be void." (Emphasis added.)

Citing this statute in a prior case, the Commission has held that the law

...requires telecommunications companies to obtain Commission approval before entering into arrangements for sale of assets or mergers. Transactions embarked upon without Commission approval are deemed void.... [Violators] should be placed on notice that future applications involving purchases should be filed on a timely basis if [a violator] wishes to avoid incurring penalties. In the matter of the joint application of Tel-Central of Jefferson City, Inc. and LDDS of Missouri, Inc., d/b/a LDDS Communications to sell assets, Case No. TM-94-156.

Commission Rule 4 CSR 240-2.060(1)(D) states, in part: "All applications shall...include the following information:...[r]eference to the statutory provision or other authority under which relief is

requested...." OneStar cites no cases, statutes or other authority giving the Commission authority to issue a *nunc pro tunc* order as required by Commission Rule 4 CSR 240-2.060(1)(D), because there are none to cite.

In fact, the Commission has earlier ruled adversely on an application to approve an order *nunc pro tunc*:

The Commission is an administrative body created by statute and has only such powers as are expressly conferred by statute and reasonably incidental thereto. State ex rel. Harline v. Public Service Commission, 343 S.W.2d 177, 181(5) (Mo. App. 1960). Pursuant to Section 392.300 RSMo 1994, the Commission's approval can only be effective on and after the effective date of this order; the Commission does not have statutory authority to grant retroactive approval of the acquisition. In the Matter of the Application of Premiere Communications, Inc. for Approval of the Acquisition of Assets of National Collegiate, Inc., Case No. TM-99-83.

The Commission declines to legitimize the void sale and unlawful transfer here.

The Commission notes that OneStar stated in its application that it will amend its tariff as necessary to incorporate the services, rates, terms and conditions previously offered by Sellers. The Commission has reviewed the application and the Staff's memorandum and finds that approval of the remaining phase of the transfer, i.e., the amending of OneStar's tariffs, is not detrimental to the public interest and the authority requested should be granted. The Commission emphasizes that this approval is prospective only.

IT IS THEREFORE ORDERED:

1. That the request for *nunc pro tunc* approval of the transfer of assets from USTel, Inc. and Arcada, Inc. to OneStar Long Distance, Inc. is denied.
2. That the application for approval of transfer filed on January 12, 2000, by OneStar Long Distance, Inc. is prospectively approved and that it is authorized to take any and all actions necessary to effect the transfer authorized by this order, including but not limited to the amending of its tariffs.
3. That OneStar Long Distance, Inc. shall report to the Commission within ten (10) business days of the completion of the approved transfer that such has been accomplished.
4. That this order shall become effective on March 24, 2000.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Bill Hopkins, Senior Regulatory Law Judge,
by delegation of authority pursuant to
4 CSR 240-2.120(1) (November 30, 1995)
and Section 386.240, RSMo 1994.

Dated at Jefferson City, Missouri,
on this 14th day of March, 2000.

FYI: To Be Issued By Del.) ion

At/Sec'y:

Hopkins/Bayer

3-10

Date Circulated

3-15

Return by 3 p.m.

10am

TM-2000-419
CASE NO.

Lumpke, Chair

Crumpton, Commissioner

Murray, Commissioner

Schemenauer, Commissioner

Drainer, Vice-Chair

**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 14th day of March 2000.

Dale Hardy Roberts

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**

