

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a Session of the Public Service
Commission held at its office
in Jefferson City on the 25th
day of June, 1998.

In the Matter of the Sale of the Stock)	
of Payphones of America, Inc. to PhoneTel)	<u>Case No. TM-96-222</u>
Technologies, Inc., Private Pay Phone)	
Providers.)	

ORDER APPROVING STOCK SALE

On January 12, 1996, Payphones of America (POA) and PhoneTel Technologies, Inc. (PhoneTel) filed an application seeking approval of the Missouri Public Service Commission (Commission) for the sale of stock of POA to PhoneTel and the transfer of assets from POA to PhoneTel. POA and PhoneTel are both certificated to provide private pay telephone service in Missouri.

POA and PhoneTel have entered into a Share Purchase Agreement, under which all of the outstanding shares of POA will be transferred to PhoneTel. In return for the stock transfer, the shareholders of POA will receive compensation based upon a formula contained in the Share Purchase Agreement. The transfer of stock will give PhoneTel ownership and control of POA's Missouri payphone properties. The payphone properties and equipment being acquired by PhoneTel will be managed by its wholly owned subsidiary, World Communications, Inc., which maintains its offices at 11656 Lilburn Park Road, St. Louis, Missouri 63146. All customer inquiries and complaints will be handled by World Communications. Applicants also seek a waiver of the provisions of 4 CSR 240-2(4) [sic].

Applicants apparently intended to refer to 4 CSR 240-2.060(4)¹ relating to applications to merge, stating their belief that the rule was not intended to apply to private payphone providers. In addition, applicants state that there will be no effect on the tax revenues of any political subdivision in which the facilities of the company are located.

The Staff of the Commission (Staff) filed its recommendation on September 2, 1997. Staff states that applicants wish to sell all of POA's stock to PhoneTel and transfer assets between them. Staff indicates that POA and PhoneTel were certificated as private payphone providers in Case Nos. TO-92-106 and TA-90-222, respectively, will retain their certificates after the sale of stock and each will continue doing business under their present names. Staff also indicates that customer information available at payphone sites remains the same except for a change to the mailing address on the tent card which was completed by December 31, 1996.

In addition, Staff states that it does not believe a waiver is necessary, as the Commission's current rule on mergers, 4 CSR 240-2.060(6) was in effect at the time the application was filed. The current version of the rule provides that competitive telecommunications companies are not required to comply with subsections (6)A to (6)E of this rule. Rather, the existing rule requires a company to file a pleading regarding the status of affected certificates and tariffs indicating whether the remaining company has any pending or final judgments against it from any state or federal agency, and indicating

¹ The Commission's current rule on mergers is found at 4 CSR 240-2.060(6), which became effective on November 30, 1995. It is likely that applicant was unaware of the change and intended to refer to 4 CSR 240-2.060(4), which was the citation for the old version of the Commission's rule on mergers.

what impact, if any, the merger or consolidation will have on tax revenues. Staff believes that POA and PhoneTel have complied with these requirements. Staff has no objections to the proposed transfer of POA's assets to PhoneTel, and does not object to the issuance of a Commission order approving the transaction.

An Order Approving Stock Sale and Transfer of Assets was placed on the Commission's agenda on November 11, 1997, and was later withdrawn. Concerns were raised regarding whether only a portion or all of the assets of POA were to be transferred to PhoneTel, and if the latter, whether it would be appropriate for POA to retain its certificate. On January 29, 1998, the Commission issued an Order Directing the Filing of Additional Information. The order directed POA and PhoneTel to file a pleading no later than February 17, indicating which assets would be transferred by POA to PhoneTel and which assets, if any, would remain with POA.

Applicants filed their response on February 10. Applicants state that the reference in their application to "a transfer of assets" was inadvertent and incorrect, and that no assets will be transferred between the two companies. Rather, PhoneTel will control the assets of POA through ownership of the stock that will be transferred pursuant to the proposed transaction.

Upon review of the verified application and Staff's recommendation, the Commission finds that the proposed sale of stock is not detrimental to the public interest. The Commission's approval of the sale of stock and transfer of assets is prospective only, and is effective as of the effective date of the Commission's order. The Commission notes that although the ownership of POA will be transferred

to PhoneTel as part of the sale of stock, both POA and PhoneTel intend to retain their respective certificates and continue operating under their own names, and thus the proposed transaction will be transparent to customers.

The Commission also notes that applicants have requested waiver of a Commission rule relating to mergers, even though the proposed transaction involves a sale of stock. However, the requirements of the Commission's rule on the sale and transfer of assets, 4 CSR 240-2.060(5), are very similar to the Commission's rule on mergers. The Commission finds that applicants have substantially complied with the provisions of 4 CSR 240-2.060(5), and therefore no waiver is necessary.

IT IS THEREFORE ORDERED:

1. That the sale of the stock of Payphones of America to PhoneTel Technologies, Inc. is approved.

2. That Payphones of America and PhoneTel Technologies, Inc. are authorized to take any and all actions necessary to effectuate the transaction contemplated by the joint application and this order.

3. That PhoneTel Technologies, Inc. shall file a pleading with the Missouri Public Service Commission notifying the Commission of the consummation of the proposed transaction, within 10 days after the completion of the transaction.

4. That this order shall become effective on July 7, 1998.

BY THE COMMISSION

Dale Hardy Roberts

Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

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

Harper, Regulatory Law Judge