

STATE OF MISSOURI
PUBLIC SERVICE COMMISSION
JEFFERSON CITY

December 22, 1992

CASE NO. TA-92-301

Donald C. Otto, Jr., Attorney at Law, Hendren and Andrae, P.O. Box 1069,
235 East High Street, Jefferson City, MO 65102

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

Sincerely,

Brent Stewart

Brent Stewart
Executive Secretary

Uncertified Copy:

Office of the Public Counsel, P.O. Box 7800, Jefferson City, MO 65102
Jeffrey L. Bailey, Senior Vice President, Phoenix Network, Inc., One
Maritime Plaza, Suite 2525, San Francisco, CA 94111

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the matter of the application of)
Phoenix Network, Inc., d/b/a Office Depot)
Communications, for a certificate of) CASE NO. TA-92-301
service to provide intrastate interLATA)
telecommunications services.)

APPEARANCES: Donald C. Otto, Jr., Hendren and Andrae, Attorneys at Law, 235
East High Street, P.O. Box 1069, Jefferson City, Missouri 65102
for Phoenix Network, Inc., d/b/a Office Depot Communications.

HEARING

EXAMINER: Dale Hardy Roberts

REPORT AND ORDER

On June 9, 1992, Phoenix Network, Inc., d/b/a Office Depot Communications (Applicant or Company) applied for a certificate of service authority under Chapter 392, RSMo (Supp. 1991) to provide competitive intrastate interexchange telecommunication services in the state of Missouri. Company also applied for the waiver of certain statutes and Commission rules, listed infra. The Commission issued its Order and Notice on June 19, 1992, setting an intervention deadline of July 20, 1992. On June 30, 1992, the Office of Public Counsel requested a hearing. Public Counsel subsequently withdrew its request for hearing. There were no other motions for hearing and no one requested intervention. On November 20, 1992, the Staff of the Missouri Public Service Commission filed its memorandum recommending approval of Company's application.

The Commission previously granted Applicant a certificate of service authority to provide intrastate interexchange telecommunications services on August 15, 1992. Applicant now intends to also market telecommunication services in "Office Depot" stores nationwide and requests a second certificate be granted to Applicant, specifically doing business as Office Depot Communications. Office Depot stores are retail outlets specializing in office supplies and equipment. Office Depot is proposing to become a non-facilities based long distance carrier

in the state of Missouri utilizing AT&T, MCI and Sprint transmission facilities to provide "1+" and telephone calling card services. Office Depot will not offer "0+" or "00+" operator assisted services.

Findings Of Fact

The Missouri Public Service Commission, having considered all of the competent and substantial evidence upon the whole record, makes the following findings of fact.

Pursuant to Section 392.440, Applicant requests authority to provide intrastate interexchange telecommunication services in the state of Missouri. Pursuant to Section 392.361, Applicant also requests that the Commission classify it as a competitive telecommunications company and waive compliance with the statutes and Commission regulations referenced below.

The requirement of a hearing has been fulfilled when all those having a desire to be heard are offered such an opportunity. In this case, notice was sent by the Commission. Interested persons or entities were directed to intervene on or before July 20, 1992. Since no proper party or governmental entity filed an application to intervene and there are no outstanding requests for a hearing, the Commission determines that an oral hearing is not necessary and the Applicant may submit evidence in support of its application by verified statement. *State ex rel. Rex Deffenderfer Enterprises, Inc. v. Public Service Commission*, 776 S.W.2d 494, 496 (Mo. App. 1989).

The Commission finds that Applicant is a foreign corporation authorized to do business in the state of Missouri, with its principal office or place of business located at One Maritime Plaza, Suite 2525, San Francisco, California 94111. The Commission further finds that Applicant has filed current financial information and a brief description of the type of service it proposes to provide, and has agreed to comply with all applicable rules and regulations of the Commission and any terms and conditions which the Commission may impose.

Based upon the verified statements of Applicant and the recommendations of Staff, the Commission finds that Applicant is qualified to perform the service proposed. Pursuant to Sections 392.440 and 392.530, the Commission will assume that additional competition in the intraLATA and interLATA toll markets is in the public interest. The Commission does not deem it necessary to determine a public need for each reseller's services as the market would eliminate any reseller for which there is no public need. Consequently, pursuant to Section 392.440, the Commission finds that it is in the public interest to grant Applicant a certificate of service authority to provide intrastate interexchange telecommunication services.

By its recommendation filed herein, Staff states that Applicant's proposed services are the same as those classified as competitive in Case No. TO-88-142, *In re the investigation for the purpose of determining the classification of the services provided by interexchange telecommunications companies within the State of Missouri*, Mo. P.S.C. (N.S.) 16 (September 1989). Staff therefore recommends that the Commission grant Applicant competitive status.

Based upon the verified statement of Applicant and Staff's recommendation, the Commission finds that all of the services Applicant proposes to offer are competitive and that Applicant should, therefore, be classified as a competitive company. The Commission further finds that the waiver of the following statutory and regulatory requirements is, pursuant to Section 392.361(5), reasonable and not detrimental to the public interest.

Pursuant to Section 392.470, the Commission determines that certain regulatory requirements should be imposed upon resellers authorized to provide telecommunication services in Missouri. Since the Applicant proposes to operate as a reseller of telecommunication services in this state, the Commission finds

that the following regulatory requirements should be imposed upon Applicant as reasonable and necessary conditions of certification:

- (1) Applicant is required to comply with reasonable requests by the Staff for financial and operating data to allow the Staff to monitor the intraLATA toll market pursuant to Section 386.320.3.
- (2) Applicant is required to file tariffs containing rules and regulations applicable to customers, a description of the services provided and a list of rates associated with the services pursuant to Section 392.200 and 4 CSR 240-30.010.
- (3) Applicant's tariff filing must also contain a preliminary section which states that Company is a competitive carrier and identifies the statutory and rule waivers herein granted.
- (4) Applicant is precluded from unjustly discriminating between and among its customers pursuant to Section 392.200 and Section 392.400.
- (5) Applicant is required by Sections 386.570, RSMo 1986, and 392.360, to comply with all applicable rules of the Commission except those which have specifically been waived by this Report and Order.
- (6) Applicant is required to file a Missouri-specific annual report pursuant to Section 392.210 and Section 392.390.1.
- (7) Applicant is required, until the Commission orders otherwise, to submit to the Staff on a confidential basis, quarterly reports showing its percentage of interstate use and intrastate interLATA and intraLATA use pursuant to Section 392.390.3.
- (8) Pursuant to Section 392.390.3, Applicant is required to comply with the jurisdictional reporting requirements as set out in each local exchange company's access services tariff.

Finally, the Commission finds that Applicant should file appropriate tariffs within thirty (30) days of the effective date of this Report and Order. The certificate to be granted herein will become effective only upon approval by the Commission of these tariffs.

Conclusions of Law

The Missouri Public Service Commission has arrived at the following conclusions of law.

Applicant proposes to provide service to the public as a competitive intrastate interexchange telecommunications company subject to the Commission's jurisdiction pursuant to Chapters 386 and 392.

Based upon the verified application of Applicant and the recommendation of its Staff, the Commission has found that Applicant has complied with the Commission's standards pertaining to applications requesting authority to provide intrastate interexchange telecommunication services and is qualified to perform said services. The Commission concludes that additional competition in the intrastate interexchange market is in the public interest and a certificate of service authority should be granted. The Commission also has found that all the services Applicant proposes to offer are competitive and that waiving the statutes and Commission rules set out below is reasonable and not detrimental to the public interest. Therefore, the Commission concludes that Applicant should be classified as a competitive company pursuant to Section 392.361.

IT IS THEREFORE ORDERED:

1. That Phoenix Network, Inc., d/b/a Office Depot Communications be granted hereby a certificate of service authority to provide intrastate interexchange telecommunication services in Missouri. This certificate of service authority is subject to the conditions of certification set out herein and shall not become effective until the Commission approves Applicant's tariffs.

2. That Phoenix Network, Inc., d/b/a Office Depot Communications be classified hereby as a competitive telecommunications company for which the effect of the following statutory and regulatory requirements shall be waived:

Statutes

392.240(1) - ratemaking
392.270 - valuation of property (ratemaking)
392.280 - depreciation accounts
392.290 - issuance of securities
392.310 - stock and debt issuance
392.320 - stock dividend payment
392.330 - issuance of securities, debt and notes
392.340 - reorganization(s)

Commission Rules

4 CSR 240-10.020 - depreciation fund income
4 CSR 240-30.010(2)(C) - rate schedules
4 CSR 240-30.060(5)(B) through (O) - records re: ratemaking
4 CSR 240-32.030(1)(B) - exchange boundary maps
4 CSR 240-32.030(1)(C) - record keeping
4 CSR 240-32.030(2) - in-state record keeping
4 CSR 240-32.050(3) - local office record keeping
4 CSR 240-32.050(4) - telephone directories
4 CSR 240-32.050(5) - call intercept
4 CSR 240-32.050(6) - telephone number changes
4 CSR 240-32.070(4) - public coin telephone
4 CSR 240-33.030 - minimum charges rule

3. That Phoenix Network, Inc., d/b/a Office Depot Communications shall file tariffs, as described by this order, within thirty (30) days of the effective date of this Report and Order; that said tariffs shall, by index or preface, identify Company as a competitive company and identify each statute or regulation waived by this order.

4. That Phoenix Network, Inc., d/b/a Office Depot Communications shall file its PIU reports as discussed herein within thirty (30) days of the effective date of this Report and Order.

5. That Phoenix Network, Inc., d/b/a Office Depot Communications shall file with the Commission Staff a report showing its percentage of intrastate intraLATA use. Said report shall be filed within thirty (30) days of

the effective date of this Report and Order and on a confidential basis, unless the Commission orders otherwise.

6. That this Report and Order shall become effective on January 5, 1993.

BY THE COMMISSION

Brent Stewart

Brent Stewart
Executive Secretary

(S E A L)

McClure, Chm., Mueller, Rauch,
Parkins and Kincheloe, CC., Concur.

Dated at Jefferson City, Missouri,
on this 22nd day of December, 1992.

Roberts / Menang

CASE NO. T4-927301

Kell
Chairman

AG
Commissioner

DLR
Commissioner

PER
Commissioner

PRK
Commissioner

3:1584c

5-OAS 12/22/92

C. 12/15/92

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 22nd day of December, 1992

Brent Stewart

Brent Stewart
Executive Secretary