March 27, 1995

DOCKET NO. P-1621, 1466/PA-93-1184

ORDER CLARIFYING PROVISION OF FEBRUARY 25, 1994, ORDER

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
Dee Knaak	Commissioner

In the Matter of a Request by Kantel Communications, Inc. for Authority to Transfer Assets to Peoples Telephone Company, Inc.

ISSUE DATE: March 27, 1995

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PROCEDURAL HISTORY

In November, 1993, Kantel Communications, Inc. (Kantel or the Company) and Peoples Telephone Company (Peoples) filed a joint request for Commission approval of Kantel's sale and transfer of assets to Peoples.

During its investigation of the proposed asset transfer, the Department of Public Service (the Department) discovered that Kantel had been charging excessive rates for its "inmate-only" store and forward service.

On February 25, 1994, the Commission issued an Order approving the joint petition subject to resolution of the Department's investigation and recommendation.

On August 15, 1994, the Commission issued its ORDER REQUIRING REFUND AND REFERRING MATTER TO OFFICE OF THE ATTORNEY GENERAL. In that Order the Commission determined that Kantel had charged rates which were in violation of the Commission's Orders setting rate caps and requirements for inmate-only store and forward service. The Commission ordered Kantel to pay a $16,600 refund for its overcharges. The Commission also referred the matter to the Office of Attorney General (OAG) for civil penalty proceedings pursuant to Minn. Stat. § 237.461. In referring the matter to the OAG, the Commission declared that Kantel had knowingly and intentionally violated the Commission's Order requirements.

On January 25, 1995, the Commission issued its ORDER DENYING RECONSIDERATION AND ALLOWING ADJUSTMENT OF REFUND. In that Order the Commission denied Kantel's requests for reconsideration of the refund and referral decisions. The Commission agreed with the Company that the refund requirement should be lowered by $591.

On February 2, 1995, the OAG filed a petition for clarification of the Commission's February 25, 1994, Order. The OAG explained that it was in disagreement with Kantel regarding the meaning of the following provision of the February 25 Order:

> The joint petition for the sale of assets from Kantel Communications, Inc. to Peoples Telephone Company, Inc., d/b/a PTC Telephone Company is approved, subject to a final resolution of the Department's investigation and recommendation involving customer overcharges by Kantel Communications, Inc.

The OAG requested the Commission to clarify the provision of the February 25, 1994, Order.

On March 7, 1995, the OAG's petition came before the Commission for consideration.

FINDINGS AND CONCLUSIONS

I. POSITIONS OF THE PARTIES

A. OAG

The OAG interpreted the relevant passage in the February 25, 1994, Order to mean that the Commission's approval of the asset sale will not be final until the penalty action referred to the OAG is resolved.

The OAG also noted that it may be necessary to satisfy any judgment against Kantel through a levy on the assets being transferred to Peoples. For this reason, the OAG argued, conditioning approval of the sale upon full resolution of any penalty proceedings is necessary.

B. Kantel

Kantel interpreted the Order provision to mean that the Commission's approval of the asset transfer was conditioned upon the Company's payment of the refund.

Kantel noted that the language in the February 25, 1994, Order passage referred to final resolution of the Department investigation and recommendation, not to resolution of penalty proceedings under Minn. Stat. § 237.461. According to Kantel, the OAG is therefore seeking reformation or reconsideration of the Commission's Order, not clarification. A request for reconsideration is untimely under the 20-day deadline of the Commission's rules governing practice and procedure.

Kantel argued that the Commission's August 15, 1994, Order requiring a refund and referring the matter to the OAG completed the Commission's action in this matter. Any further action to resolve this matter is in the hands of the OAG or the district court, not the Commission. The Commission's action in the August 15, 1994, Order therefore satisfied the "final resolution" provision of the February 25, 1994, Order.

II. COMMISSION ACTION

A. Timeliness of the OAG Petition

Under Minn. Stat. § 216A.05, subds. 1 and 5 (1994), the Commission may make determinations upon its own motion to the same extent as it may upon petition. In this instance the Commission may upon its own motion choose to clarify its February 25, 1994, Order, without regard to the timeliness of any petition for clarification. The Commission finds that issues raised by the OAG require clarification. The Commission upon its own motion will clarify what is meant by "final resolution of the Department's investigation and recommendation" in the February 25, 1994, Order.

B. Final Resolution of the Investigation

At the time the February 25, 1994, Order was issued, the Department had commenced an investigation of possible overcharges levied by Kantel. The Department had not issued any conclusions or recommendations.

In the February 25, 1994, Order, the Commission meant to condition approval of the sale and transfer of assets upon resolution of the ongoing overcharge investigation. It is unreasonable to assume that the Commission would limit the concept of "resolution" to anything less than full disposition of any issues associated with overcharges, whatever direction the disposition might take. The Commission therefore disagrees with Kantel that the Commission would condition approval of the sale upon the payment of required refunds, but not upon the payment of any penalties assessed.

The Commission will therefore clarify its February 25, 1994, Order by stating that approval of the sale and transfer of assets from Kantel to Peoples is conditioned upon the full resolution of issues stemming from the Department's investigation of Kantel's overcharges. "Resolution" includes the payment of refunds, and the payment of any penalties arising from OAG penalty proceedings or from district court action.

ORDER

1. The Commission clarifies its February 25, 1994, Order by stating that approval of the sale and transfer of assets from Kantel to Peoples is conditioned upon the full resolution of issues stemming from the Department's investigation of Kantel's overcharges. "Resolution" includes the payment of refunds, and the payment of any penalties arising from OAG penalty proceedings or from district court action.

2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)