BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2005-123-C - ORDER NO. 2005-350

JUNE 29, 2005

IN RE: Application of Dial Tone & More, Inc. for a Certificate of Public Convenience and Necessity to Provide Intrastate Resold Telecommunications Services.	))))	ORDER APPOINTING HEARING EXAMINER

This matter comes before the Public Service Commission of South Carolina (the Commission) on Motion of the Commission Staff to appoint F. David Butler, Esquire, Senior Counsel, as a "hearing examiner" for a hearing regarding Dial Tone & More, Inc.'s Application in this Docket. Mr. Butler would hear the evidence in the case without the presence of the Commission. We grant the Motion.

S.C. Code Ann. Section 58-9-1020 (1976) allows the Commission to employ a special agent or examiner in a telecommunications hearing. This person may administer oaths, examine witnesses, and receive evidence in any locality which the Commission may designate. The examiner may not be used in a telephone rate proceeding under the statute. We would note that the present proceeding is not a telephone rate proceeding.

Further, 26 S.C. Code Ann. Regs.103-865(A) (1976) states that when evidence is to be taken in a formal proceeding before the Commission, any Commissioner or any hearing examiner designated by the Commission may preside at the hearing. The presiding officer has the duty to conduct full, fair, and impartial hearings under Section B of the Regulation. Section C of the Regulation requires that the presiding officer mail to

the parties of record a proposed Order when a majority of the Commissioners do not hear a formal proceeding or read the record thereof. The proposed Order shall contain a statement of facts relied upon in formulating such Order and each issue of fact or law necessary to it. The Regulation then describes a mechanism for the parties to take exception to the proposed Order, and ultimately states, among other things, that the Commission will issue the final Order in the case, based upon the record, the proposed Order, and other materials and any oral arguments that may take place. We believe that this Regulation describes the appropriate procedure for Mr. Butler to employ as a hearing examiner in the present case.

Mr. Butler is a Senior Counsel to the Commission and has been employed in a legal position with the Commission since 1991. We believe that Mr. Butler has the ability and knowledge to properly carry out the hearing examiner's role in this case, and we therefore grant the Motion appointing him as hearing officer in this case.

In accordance with the preceding paragraphs, we make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. S.C. Code Ann. Section 58-9-1020 (1976) allows the Commission to employ a special agent or examiner in non-rate telecommunications hearings.

2. The present proceeding is not a telephone rate proceeding.

3. 26 S.C. Code Ann. Regs. 103-865 (1976) allows a hearing examiner designated by the Commission to preside at a hearing. This Regulation sets out the duties and procedures to be employed by that examiner. These should be employed in the present case.

4. Mr. Butler has been employed by the Commission in a legal position since 1991 and has the ability and knowledge to act as a hearing examiner in the present case.

5. Mr. Butler should be appointed as the hearing examiner in this case.

ORDER

The Commission hereby appoints F. David Butler as the hearing examiner in the present case. Mr. Butler shall follow all applicable statutes and regulations that may pertain to his appointment. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
G. O'Neal Hamilton, Vice Chairman

(SEAL)