

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

COMMISSION JURISDICTION OVER ONE-WAY) ADMINISTRATIVE
RADIO PAGING SERVICES) CASE NO. 322

O R D E R

The Commission has asserted regulatory authority over one-way paging services, as well as two-way conventional mobile telephone services, since at least 1969.¹ This Commission's review of prior orders reveals only that jurisdiction has been based on the language of KRS 278.010(3)(e) which reads:

"Utility" means any person except a city who owns, controls or operates or manages any facility used or to be used for or in connection with:

. . .

The transmission or conveyance over wire, in air or otherwise, of any message by telephone or telegraph for the public, for compensation; . . . (Emphasis supplied)

The application of this statutory language to one-way radio paging services has never been articulated or explained.

¹ See, e.g., Order in Case No. 5254, Application of Terry Clymer d/b/a Mayfield Answering Service, May 1, 1970, wherein the applicant was authorized to provide "miscellaneous common carrier mobile telephone service." Such proposed service included one-way paging and two-way mobile telephone service.

Apparently, jurisdiction has simply been assumed,² perhaps due to the fact that paging and mobile telephone systems are typically interconnected with land line telephone companies. That paging and mobile telephone services clearly involve telecommunications and are often provided by the same companies may have been factors that precipitated the original assumption of authority. However, one-way paging is sometimes provided by companies that provide no two-way services. Also, radio paging has been provided by telephone answering services, which are unregulated.

Apparently, the issue of jurisdiction has never been contested, or argued before the Commission. Also, we are unable to locate previous findings of fact that would convince us that the matter has been fully considered by the Commission. We have considered, *sua sponte*, the following question: Does the Commission have subject matter jurisdiction over the provision of one-way radio-paging service? We conclude that persons providing only radio paging services are not "utilities" within the meaning of KRS 278.010(3)(e). Our authority having been limited to the regulation of utilities, KRS 278.040(2), we hereby disclaim any authority over radio paging services.

² See, e.g., final Order in Case No. 8201, Application of Digital Paging Systems, Inc., June 29, 1981, at p. 3, ("The record herein establishes that applicant is a Kentucky corporation duly authorized and intending to conduct the business of providing interconnected radio telephone and paging service . . . which would constitute it a "non-energy utility" within the meaning of KRS 278.010(5)(b). . . thereby requiring an exercise of jurisdiction by this Commission.").

DISCUSSION

Subscribers to radio paging services are furnished a portable radio receiver that is activated by a radio signal. A person desiring to reach the subscriber may dial a telephone number belonging to the paging company. This causes a radio signal to be broadcast, activating the pager. Some pagers provide only a tone, which notifies the subscriber that a message is waiting. In such a case, the subscriber may have to phone the paging company in order to hear the message. Other paging services include tone and voice, digital display, and alphanumeric display. Such services provide for the transmission, to the subscriber, of voice messages or visible messages, such as phone numbers. However, one-way paging devices do not permit two-way communication. The paging unit is incapable of originating and transmitting a message.³ Within this factual context, we consider whether radio paging involves "the transmission of messages by telephone or telegraph."

Giving the words "telephone" and "telegraph" their ordinary meanings, we conclude that the essence of both is their two-way communication capability. The content (i.e. voice or data) is

³ The Commission is aware of the provision by American Paging Inc. of Ky., of "talk-back" paging services, which permit the user of the paging unit to relay a brief return message after being paged. We are not aware that these "talk-back" pagers are capable of originating a transmission, or sustaining a two-way conversation.

unimportant -- the possibility for two-way communication is dispositive.⁴ We find that one-way paging does not involve the transmission of a message by telephone or telegraph.⁵ The paging company does not itself transmit telephone messages. Ample case authority convinces us that the General Assembly did not intend that the Commission regulate radio paging.

In the case of Ill. Consol. Tel. Co. v. Il. Commerce Com'm., Il., 447 N.E.2d 295, 44 ALR 4th 205 (1983), the Illinois Supreme Court inquired into "whether persons that provide one-way radio paging own or operate equipment used 'for or in' connection with . . . the transmission of telegraph or telephone messages." The Court held that they did not. Id. at 296.

The Ill. Consol. Tel. court began its analysis by affirming an earlier holding⁶ that the operative language in the Illinois

⁴ See, e.g., Jones v. Cumberland Teleph. and Teleg. Co., Ky., 130 S.W. 994, 995 (1910) (telephone company places persons in direct communication with each other, and enable(s) them to talk one to the other), see also, People v. Gervasi, Il., 434 N.E.2d 1112 (1982) (capacity for two-way communication by voice essential to concept of telephone), Re Advanced Mobile Phone Service, Az. C.C., 56 PUR 4th 175 (1983) (distinguishing characteristic of telephone communication, as opposed to paging or telegraph, is two-way voice transmission), Re Anserphone of Kansas City, Inc., Mo. P.S.C., 87 PUR 3d 164, (1970) (The two-way nature of telephone communication has long been recognized), citing Jones v. Cumberland Teleph. and Teleg.

⁵ One-way radio paging is essentially a signalling service, provided through a brief radio broadcast. We recognize that our role in telecommunications regulation does not include jurisdiction over the entire telecommunications field, or over all types of signalling.

⁶ Illinois-Indiana Cable Television Association v. Ill. Commerce Com'm., 302 N.E.2d 334 (1973).

Public Utilities Act⁷ was not "messages" but "telephone." The court found that giving the terms telephone and telephone service their plain and commonly ascribed meanings, one-way paging was not telephone service. Id. at 447 N.E.2d 297. The court further found that the fact that a radio paging service may facilitate communication by telephone did not make the paging service itself a public utility. Id. at 298. We agree with the analysis of the Illinois Supreme Court, and find that such analysis is also applicable to our enabling statute.

Other courts⁸ and state utility commissions⁹ have used the same reasoning in rethinking jurisdiction over radio paging. This Commission feels strongly that this interpretation of our jurisdictional reach is the correct one, and will facilitate

⁷ Ill. Rev. Stat. 1979, ch 111 2/3, par. 10.3(b) read: "'Public utility' means every corporation, company, association . . . that owns, controls, operates or manages . . . for public use, any plant, equipment or property used or to be used for or in connection with . . . b. the transmission of telegraph or telephone messages between points within this State; . . ."

⁸ See, e.g., Radio Relay Corp. v. Public Utilities Com., Oh., 341 N.E.2d 826 (1976) (radio paging services not telephone companies within meaning of state statute). See also, Houser Comm. v. Ill. Com. Com., Il., 458 N.E.2d 919 (1983). See generally Annot., 44 ALR4th 216 (1986).

⁹ See, e.g., Re Anserphone of Kansas City, 87 PUR3d at 165 (radio paging service does not afford telephonic communication). See also Re Page America of Utah, Inc., Ut. P.S.C., 57 PUR4th 717 (1985) vacated and remanded sub nom., Williams v. Public Service Com'n of Utah, Ut., 720 P.2d 773 (1986).

increased competition and flexibility in the provision of radio paging services within the Commonwealth.¹⁰

Based upon the foregoing analysis, the Commission hereby finds that:

1. One-way radio paging services do not fall within the meaning of KRS 278.010(3)(e); and

2. The Commission lacks jurisdiction over persons providing only one-way radio paging services.

IT IS THEREFORE ORDERED that:

1. Persons providing only one-way radio paging services are no longer regulated by the Commission;

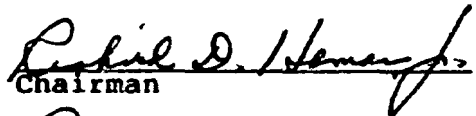
2. One-way services provided by jurisdictional Radio Common Carriers and other utilities hereby be exempted from the tariffing requirements of KRS Chapter 278; and


3. Tariff changes needed to reflect this Order be filed within 30 days. Utilities shall file revised tariff pages to delete references to one-way service, where references to one-way and two-way service exist on the same pages.

¹⁰ Further, we anticipate reexamining our proper role in the regulation of conventional two-way mobile telephone services, in the near future.

Done at Frankfort, Kentucky, this 12th day of May, 1988.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Executive Director