

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REGULATION OF CONVENTIONAL TWO-WAY
MOBILE TELEPHONE SERVICES

) ADMINISTRATIVE
) CASE NO. 325

O R D E R

The Commission initiated this proceeding to determine whether the current regulatory scheme applicable to two-way mobile radio telephone ("two-way mobile") service is reasonable. If sufficient evidence was presented to demonstrate that changes to the current regulatory scheme are needed, the Commission would then determine the extent to which changes could be made in conformity with the governing statutes and regulation, and consistent with the public interest.

The basis for initiating this proceeding was the finding by the Commission that for some years competition has existed in the market place for two-way mobile services. This competition exists not only between providers of two-way mobile service but also between two-way mobile service and cellular telephone service. In recognition of this competition, the Commission has not limited entry to the market by new service providers. Although new providers must obtain a Certificate of Convenience and Necessity pursuant to KRS 278.020, any resulting duplication of facilities has been presumed to be beneficial, rather than wasteful, because two-way mobile service requires neither a substantial financial

investment in facilities nor the construction of lines or wires. In addition, the entry of new service providers will create a competitive market place which will ensure that customer rates are reasonable and not excessive.

Under current regulation, providers of two-way mobile service are required to comply with all applicable provisions of KRS Chapter 278. The Commission's intent in this proceeding was to determine if a relaxation of the current regulatory requirements would result in greater competition and, ultimately, lower prices and improve service for customers. The Commission sought relevant information on this subject from all providers of two-way mobile service. Although the Commission's information request was served on 43 telecommunications utilities, only South Central Bell Telephone Company ("SCB") and GTE South Incorporated ("GTE") filed responses.

SCB's response stated that two-way mobile was a public utility service as defined by KRS 278.010(3)(e), and that there could be no deregulation absent a statutory amendment. However, SCB cited the competitive nature of two-way mobile service as sufficient justification for the Commission to follow a relaxed form of regulation. While GTE asserted that the Commission already had the authority to deregulate two-way mobile service, GTE recommended that a relaxed standard of regulation be followed.

Based on the evidence of record and being advised, the Commission hereby finds that providers of two-way mobile service are utilities as defined by KRS 278.010(3)(e). This statute defines "utility" as any person owning, controlling, operating, or

managing facilities used 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." Providers of two-way mobile service fall squarely within this statutory definition of "utility." A review of KRS Chapter 278 fails to reveal the existence of any authority for the Commission to deregulate utilities based on such factors as the existence of direct competition in the industry or what is in the best interest of the public. Consequently, the Commission's only available option would be to relax the current level of regulation for two-way mobile service.

The Commission takes administrative notice of the fact that it has for many years followed a relaxed regulatory scheme for two-way mobile service. In particular, tariffs have been routinely accepted, rather than suspended and investigated, due to the presence of competition in the market place. Further, the traditional cost-of-service principles that are routinely applied to establish rates for traditional, noncompetitive service offerings are not adhered to for pricing competitive two-way mobile service.

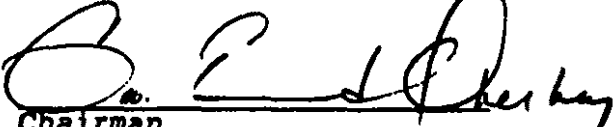
The Commission further finds that the current level of regulation for two-way mobile service providers has not been a barrier to the entry of new service providers, nor has it restricted or reduced competition in the market place. The fact that only two providers of two-way mobile service responded to the Commission's request for information is a strong indication that the current level of regulation is neither unduly restrictive nor

burdensome. Consequently, the Commission will maintain its current level of regulation for two-way mobile service and terminate this proceeding.

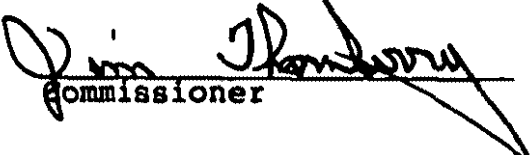
IT IS THEREFORE ORDERED that this administrative proceeding be and it hereby is terminated.

Done at Frankfort, Kentucky, this 25th day of April, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director