

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF DANBURY	)	
CELLULAR TELEPHONE CO. AND SOUTH	)	
CENTRAL KENTUCKY CELLULAR CORP. FOR	)	
APPROVAL OF THE TRANSFER OF	)	CASE NO.
JURISDICTIONAL ASSETS AND LIABILITIES	)	91-244
OF SOUTH CENTRAL KENTUCKY CELLULAR CORP.	)	
TO DANBURY CELLULAR TELEPHONE CO. AND OF	)	
RELATED FINANCING TRANSACTIONS	)	

O R D E R

On July 19, 1991, Danbury Cellular Telephone Co. ("Danbury") and South Central Kentucky Cellular Corp. ("South Central") filed a joint application pursuant to KRS 278.020(4), 278.020(5), and 278.300, for all necessary approvals of the transfer of jurisdictional assets and liabilities of South Central to Danbury, and of related financing transactions. On September 10, 1991, Danbury filed a commitment letter as Confidential Exhibit 8 which eliminates Danbury's request for Commission approval of transfer financing pursuant to KRS 278.300. Danbury also requests approval of its proposed post-transfer tariff and accompanying price list.

Danbury is a Connecticut corporation, wholly-owned by ACC Corporation ("ACC"), which holds a non-wireline license from the Federal Communications Commission ("FCC") for rural service area Kentucky 6 - Madison ("RSA 6"). On June 3, 1991, the Commission

granted Danbury authority to construct cellular facilities and provide cellular service in RSA 6.<sup>1</sup>

South Central is a Delaware corporation which holds a non-wireline license from the FCC for rural service area Kentucky 5 - Barren ("RSA 5"). On August 2, 1991, the Commission granted South Central authority to construct cellular facilities and provide cellular service in RSA 5.<sup>2</sup>

On May 8, 1991, Danbury and South Central entered into a purchase agreement wherein South Central will sell and Danbury will purchase all tangible and intangible assets necessary for the construction and operation of the non-wireline cellular system in RSA 5, including the FCC permit and any other licenses or authorizations granted by this Commission. The application of Danbury and South Central for consent to assignment of the FCC permit to Danbury was granted by the FCC on August 7, 1991 and has been filed in the record as Exhibit 8. A copy of the purchase

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<sup>1</sup> Case No. 90-391, The Application of Danbury Cellular Telephone Co. for Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public in the Kentucky Rural Service Area which includes Madison, Rockcastle, Laurel, Garrard, Boyle, Lincoln, Casey, and Pulaski Counties, Kentucky, For Approval of Financing, And for Establishment of Initial Rates.

<sup>2</sup> Case No. 91-183, The Application of South Central Kentucky Cellular Corp. for Issuance of a Certificate of Public Convenience and Necessity to Provide Domestic Public Cellular Radio Telecommunications Service to the Public in Kentucky Rural Service Area No. 5 which includes Adair, Barren, Clinton, Cumberland, Hart, McCreary, Metcalfe, Monroe, Russell, and Wayne Counties, Kentucky, And any Other Necessary Approval, And Establishment of Initial Rates.

agreement between Danbury and South Central and related financing information was filed as Confidential Exhibits 1, 3, and 6 pursuant to the August 6, 1991 Order of this Commission. Funds for financing the purchase by Danbury and for construction and operation of the system will be provided through a loan from ACC, the parent company of Danbury, as reflected in a commitment letter filed with the Commission on September 10, 1991 as Confidential Exhibit 8. The loan will be provided under terms which exempt the transaction from the provisions of KRS 278.300(1). Therefore, pursuant to KRS 278.300(8), the financing transaction is excluded and Commission approval is unnecessary.

Danbury will assume the obligations of South Central with respect to debts, leases, and contracts necessary for the construction and operation of RSA 5. The proposed transfer will be transparent insofar as there will be no change in services or customers in RSA 5. South Central will transfer to Danbury the right to use the name "South Central Kentucky Cellular Corp." and the assumed name "Cellular One/South Central Kentucky Cellular Corp." Following the proposed transfer, RSA 5 will become a part of Danbury. The technical and managerial capabilities of Danbury have been demonstrated in this application and in Case No. 90-391.

Pursuant to KRS 278.020(4), persons under the jurisdiction of the Commission are required to receive Commission approval prior to the acquisition or transfer of ownership or control of a utility. KRS 278.020(5) prohibits any entity from acquiring control of any utility under the jurisdiction of the Commission without prior approval.

The Commission finds that Danbury has the financial, technical, and managerial abilities to provide reasonable service to the public in RSA 5 and that the acquisition by Danbury from South Central is for a proper purpose and consistent with the public interest. The proposed acquisition, as described in the joint application, is consistent with the requirements of KRS 278.020(4) and (5) and should be approved.

Included in the joint application is Danbury's proposed tariff setting forth rates and rules under which service is to be provided subsequent to the transfer. The proposed tariff was filed under the name "Danbury Cellular Telephone Co. d/b/a Cellular One/South Central Kentucky Cellular Corp." and includes both RSA 5 and RSA 6 in the definition of service area. However, Danbury's application relates only to RSA 5 and states "that Danbury will use the assumed name 'Cellular One/South Central Kentucky Cellular Corp.'" with respect to RSA 5. Further, the Commission takes administrative notice that Danbury has an effective tariff on file governing the service provided in RSA 6. Danbury should, therefore, revise its tariff to reflect only the service area to which it applies and the name under which service will be provided.

Section 3.7 D, original page 15, of the proposed tariff provides for a late payment penalty of 1.5 percent per month. This provision of the tariff should be clarified to indicate that the late payment penalty will be applied only once to each delinquent monthly billing.

Subject to the previously discussed exceptions, Danbury's proposed tariff is consistent with the Commission's regulations and should be approved.

IT IS THEREFORE ORDERED that:

1. The proposed transfer be and is hereby approved.
2. Within 30 days of the closing of the proposed transfer, Danbury shall give notice to the Commission of the closing.
3. Danbury's proposed tariff setting rates and rules of service be and hereby is approved subject to the preceding revisions and amendments discussed in this Order.
4. Within 30 days from the date of this Order, Danbury shall file its tariff sheets in accordance with 807 KAR 5:011.

Done at Frankfort, Kentucky, this 19th day of September, 1991..

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

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Commissioner

ATTEST:

  
Executive Director