COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF THE BRANDENBURG TELEPHONE COMPANY AND BRANDENBURG COMMUNICATIONS CORPORATION FOR APPROVAL OF HOLDING COMPANY	))))	CASE NO. 91-260

O R D E R

INTRODUCTION

On June 29, 1991, Brandenburg Telephone Company ("Brandenburg Telephone") and Brandenburg Communications Company ("Holding Company") filed a petition seeking Commission approval to establish a holding company for Brandenburg Telephone. More specifically, the parties petitioned the Commission to approve a plan and agreement of share exchange between Brandenburg Telephone and Holding Company, to approve the articles of share exchange between Brandenburg Telephone and the Holding Company, and to approve any other actions contemplated by the petition for which Commission approval is required.

Brandenburg Telephone is a local exchange carrier ("LEC") providing utility service within the state of Kentucky and is subject to the regulation of this Commission. The Holding Company is a non-regulated, non-utility company registered to do business in Kentucky. Brandenburg Telephone has recently become a partner in certain cellular telephone ventures operating under the name of Bluegrass Cellular. Cellular telephone service in the state of Kentucky is a regulated utility service.

On October 9, 1991, the Commission issued an Order seeking further information regarding the creation of the Holding Company. BTC filed its responses to the Commission interrogatories on November 8, 1991.

The petition states that the purpose of establishing the Holding Company is to facilitate the separation of Brandenburg Telephone's competitive cellular operations from its local exchange and other non-competitive services. This separation is desirable due to the differing regulatory treatment afforded these lines of business. Additionally, establishment of the Holding Company will allow Brandenburg Telephone to be more flexible in responding to emerging competition in several telecommunications markets.

The creation of the Holding Company will require that each share of Brandenburg Telephone stock be converted to one share of the Holding Company stock, at which time the Holding Company will be the sole owner and holder of all issued and outstanding shares of Brandenburg Telephone. Former Brandenburg Telephone stockholders will in turn receive a like number of the Holding Company shares.

DISCUSSION

The Commission agrees that telephone utilities in Kentucky are facing heightened competitive pressures in some areas and should be allowed to position themselves to address changing telecommunications markets. However, the Commission is concerned about protecting the monopoly ratepayer against cross-subsidization of a utility's competitive ventures. The Commission's concerns relate to several areas.

The first concern is that expenses and other costs which support both competitive and non-competitive activities are properly allocated between such activities. Proper allocation will become more critical as companies further diversify. Secondly, the Commission is concerned that transactions between affiliates are accomplished in accordance with established rules. The third concern is that resources accumulated as the result of non-competitive activities will be used to finance expansion and supply working capital for competitive ventures. For these reasons, among others, the Commission must have access to the records of non-utility holding companies.

The Commission Order dated October 9, 1991 made several inquiries relative to these concerns. In general, Brandenburg Telephone responded that procedures established in Administrative Case No. 321[1] adequately addressed the separation of these costs. The company also stated that there would be no costs of the Holding Company to be allocated between cellular and other activities.

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1 Administrative Case No. 321, Separation of Costs of Regulated Telephone Service From Costs of Non-Regulated Service.

With regard to the issue of cost allocations established in Administrative Case No. 321, the manuals approved in that case only address allocations of regulated and non-regulated activities to the regulated and non-regulated accounts of a company. These guidelines do not provide a plan to separate costs between the books of a telephone company and those of its cellular subsidiary. To this extent the cost allocation manuals do not fulfill the need for some scheme to allocate regulated costs between regulated competitive and non-competitive activities.

The Commission is aware that the allocation between competitive and non-competitive activities is not a problem in the absence of common costs, which according to Brandenburg Telephone is the situation in their case. From the record established the Commission is unable to discern that there will be no need for some form of allocations. For instance, it appears that the Holding Company has a president whose expenses must be allocated to subsidiaries. Because the Holding Company is a corporation which issues stock, it appears that there may be meetings of a board of directors, possible stock transfer costs, and stock record maintenance as well as possible office space requirements.

While the Commission realizes that these costs are relatively minor in nature, it is concerned that each subsidiary receive its rightful share of the Holding Company expenses. Also, although Brandenburg Telephone has stated that there are presently no employees of Brandenburg Telephone who perform activities for both the telephone company and the cellular operations, this situation may arise in the future. It is apparent that costs of this nature be appropriately allocated.

Guidelines for transactions between affiliated companies in the telecommunications industry are set forth in the Federal Communications Commission's ("FCC"), "Code of Federal Regulations," Uniform System of Accounts for Telecommunications Companies, Part 32, as revised October 1, 1989. The Commission expects that every telecommunications company subject to these regulations will strictly adhere to them in dealings with affiliates.

As the telecommunications industry moves from monopoly to competition, the danger of diversion of financial assets of the monopoly to the more competitive operations, to the detriment of the captive ratepayers, becomes increasingly likely. The Commission will not allow this to happen. In particular the erosion of retained earnings through inappropriate dividend policies and the financing of operating deficits of competitive ventures by non-competitive services should not be undertaken by any telephone company in the state. Any action or diversion by the board of directors of the Holding Company, including an unwillingness to provide adequate capital to Brandenburg Telephone that in any way impairs Brandenburg Telephone's ability to provide adequate, efficient and reasonable service will be in direct violation of KRS 278.030.

Further, over time, the Holding Company may further diversify into other ventures, perhaps including nonregulated ones. This diversification could result in the need for the Holding Company to seek additional financial resources. It is possible that obtaining these resources could require Brandenburg Telephone and its cellular affiliate to guarantee the debt of the Holding Company. Brandenburg Telephone and the Holding Company should be aware that guaranteeing of credit of its affiliates by Brandenburg Telephone is subject to Commission approval under KRS 278.300 and such approval should be obtained prior to entering into any guarantee agreements.

At the present time, the Commission will not require Brandenburg Telephone to provide special reports or other types of information regarding competitive operations. However, approval of this petition does not sanction any allocations, affiliated transactions or contracts entered into as a result of diversification. All such activities will still remain subject to complete review in either rate adjustment cases, audits, or other proceedings.

FINDINGS

The Commission, after consideration of the evidence of record and being otherwise sufficiently advised, finds that:

1. Brandenburg Telephone's and the Holding Company's petition to establish a holding company should be approved.

2. Detailed allocation procedures for any present common expenses as mentioned in this Order or any future common expenses should be submitted to the Commission.

3. All affiliated transactions should adhere to the affiliated transaction guidelines as promulgated by the FCC in its Part 32 requirements.

4. Brandenburg Telephone's regulated operations should not subsidize competitive ventures and operating deficits of its cellular affiliate should not be financed from telephone company earnings.

5. The Commission should be afforded access to the books and records of the Holding Company.

IT IS THEREFORE ORDERED that:

1. Brandenburg Telephone's and the Holding Company's petition to establish a holding company is approved.

2. The Holding Company shall, within 90 days of the date of this Order, submit detailed procedures for allocating any common costs which might arise between its normal telephone operations and its cellular or other competitive operations.

3. Brandenburg Telephone's regulated operations shall not subsidize competitive ventures and operating deficits of competitive affiliated operations shall not be financed by earnings generated from non-competitive operations.

4. FCC rules and regulations governing affiliated transactions shall be followed in all intercompany transactions.

5. Brandenburg Telephone shall file copies of final documents relative to the establishment of the Holding Company within 30 days of the closing of the transaction.

6. When requested, access to the books and records of the Holding Company shall be provided to the Commission.

Done at Frankfort, Kentucky, this 22nd day of January, 1992.

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director