

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF PC CELLULAR OF)
KENTUCKY, L.P. FOR ISSUANCE OF)
A CERTIFICATE OF PUBLIC CONVENIENCE) CASE NO. 91-310
AND NECESSITY, APPROVAL OF FINANCING,)
AND ESTABLISHMENT OF INITIAL RATES)

O R D E R

On August 30, 1991, PC Cellular of Kentucky, L.P. ("PC Cellular") filed an application seeking a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications system in Rural Service Area No. 1 ("RSA No. 1"). PC Cellular also requested approval of financing and establishment of initial rates and tariffs for RSA No. 1. RSA No. 1 includes Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, McCracken, and Marshall counties in Kentucky.

PC Cellular initially proposed to construct two cellular telecommunications towers: one in Benton, Marshall County, Kentucky, referred to as the Benton cell site; and the other in Mayfield, Graves County, Kentucky, referred to as the Mayfield cell site. A third cell site is to be located on an existing radio tower in Paducah, McCracken County, Kentucky.

PC Cellular amended its application on September 16, 1991 to delete the proposed Benton cell site and to construct in its place a tower in Draffenville, Marshall County, Kentucky. This site is referred to as the Draffenville cell site.

The proposed Mayfield cell site consists of a 475 foot guyed tower to be constructed in a residential neighborhood at 410 Fairfield Street, Mayfield, Kentucky. After PC Cellular notified residents within 500 feet of the proposed tower, numerous protest letters and requests for intervention were received by the Commission. Due to the public opposition to this location, PC Cellular notified the Commission on December 12, 1991 that it intended to abandon this location and would propose an alternate one in the near future.

PC Cellular requested authority to construct the Draffenville cell site, consisting of a 475 foot guyed antenna tower to be located west of the Purchase Parkway, 1.2 miles southwest of Draffenville in Marshall County, Kentucky. The site coordinates for this tower are North Latitude 36° 44' 3", West Longitude 88° 39' 52". PC Cellular has submitted applications to the Federal Aviation Administration ("FAA") and the Kentucky Airport Zoning Commission ("KAZC") regarding the construction of the Draffenville cell site. Both applications are still pending.

The Paducah cell site will be located on an existing tower owned by Forbis Communications located at Star Hill Road, Paducah, McCracken County, Kentucky. Since the installation of this antenna will not require the construction of a tower, no Certificate of Public Convenience and Necessity is required.

The construction and operation of the proposed cell sites and the RSA No. 1 cellular system generally will be financed by a loan from NovAtel Finance Inc. ("NovAtel"), a Delaware business company. The NovAtel loan will consist of: a line of credit up to

\$1,235,545 to be used for the purchase of equipment and services from NovAtel; a line of credit up to \$1,696,570 to be used for the purchase of other capital assets; and a line of credit up to \$1,057,885 for working capital. The Commission finds that the proposed financing is for a lawful object within the corporate purpose of PC Cellular, is consistent with the proper performance by PC Cellular of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.

On December 4, 1991, PC Cellular filed its proposed tariff for service in RSA No. 1. After review, the Commission finds that the rates proposed by PC Cellular should be approved as the fair, just and reasonable rates to be charged. Further, the proposed rules governing service should be approved with the following exceptions:

1. In Section IV.B, Original Sheets 9 and 10, add the following language:

Acceptance by the Commission of the liability provisions contained in this tariff does not constitute its determination that the limitation of liability imposed by the company should be upheld in a court of law, but the recognition that, as it is the duty of the courts to adjudicate negligence claims and rights to recover damages therefor, so it is the duty of the courts to determine the validity of the exculpatory provisions of this tariff.

2. Section IV.E, Original Sheet 14. A revised tariff sheet should be provided showing that interest will be paid on deposits in accordance with KRS 278.460 and the Commission's Order in Case

No. 89-057.¹ Also, the tariff should be clarified to show that monthly recurring charges may be billed in advance, as stated in Section IV.F.6, but that estimated usage charges will not be billed in advance.

3. Revise Section IV.F.3, Original Sheet 15, to show that late payment charge will be assessed only once to each delinquent monthly bill. Any payment received will first be applied to the bill for services rendered. Additional penalty charges in subsequent bills will not be assessed on unpaid penalty charges.

4. Section IV.R.3. 807 KAR 5:006, Section 11, provides that service may be discontinued without notice only where a dangerous condition is found to exist. The tariff should be revised to comply with the notice requirements of the above-cited regulation.

5. Section V.A.2, Original Sheet 25. KRS 278.180 requires 30 days notice to the Commission of any change in rates. The tariff should be revised to comply with the statute.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, hereby finds that PC Cellular should be granted a Certificate of Public Convenience and Necessity to operate a cellular telecommunications system in RSA No. 1 and to construct the Draffenville cell site.

¹ Case No. 89-057, Investigation Into the Customer Deposit Policy of Kentucky Power Company.

IT IS THEREFORE ORDERED that:

1. PC Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to operate a cellular telecommunications system in RSA No. 1.

2. PC Cellular be and it hereby is granted a Certificate of Public Convenience and Necessity to construct a 475 foot guyed cellular telecommunications tower 1.2 miles southwest of Draffenville, Kentucky at North Latitude 36° 44' 3", West Longitude 88° 39' 52".

3. PC Cellular be and it hereby is granted authority to obtain financing for the proposed cellular system from NovAtel in accordance with the terms specified in the application.

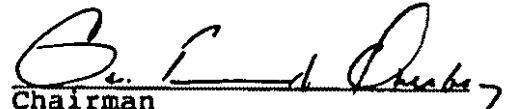
4. The rates proposed by PC Cellular are hereby approved for services rendered on and after the date of this Order.

5. Within 30 days of the date of this Order, PC Cellular shall file its tariff sheets pursuant to 807 KAR 5:011, setting out the rates approved herein and all rules governing the provision of service in accordance with the Commission's Orders and administrative regulations.

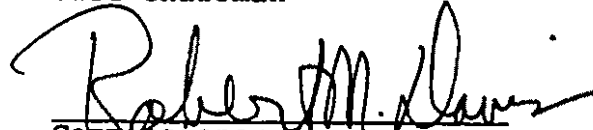
Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

Done at Frankfort, Kentucky, this 24th day of January, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director