

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MERGER OF GTE MOBILNET OF KENTUCKY B)	
INCORPORATED INTO GTE MOBILNET OF)	CASE NO. 96-566
KENTUCKY INCORPORATED)	

O R D E R

On November 21, 1996, GTE Mobilnet of Kentucky B Incorporated ("GTE Mobilnet B") and GTE Mobilnet of Kentucky Incorporated ("GTE Mobilnet") (hereinafter collectively referred to as "Joint Applicants"), by counsel, filed with the Commission a document entitled Notice of Merger and Request for Order. The Commission treats the document as a joint application seeking approval of the merger of GTE Mobilnet B into GTE Mobilnet.

GTE Mobilnet, formerly known as Contel Cellular of Louisville, Inc. and Contel Cellular of Kentucky, Inc., is a Washington corporation. GTE Mobilnet B, formerly known as Contel Cellular of Kentucky B, Inc., is a Delaware corporation. GTE Mobilnet B is also a wholly-owned subsidiary of GTE Mobilnet.

Joint Applicants state that as a result of the merger, all of the assets of GTE Mobilnet B that are used to provide cellular service in Kentucky Rural Service Area No. 2, including the Certificate of Public Convenience and Necessity, will be owned by GTE Mobilnet. They further state that no new securities or evidences of indebtedness will be issued.

Since ownership and control will remain with the same party, Joint Applicants do not believe Commission approval is required. They request that the Commission confirm that no approval is required or, in the alternative, grant its approval under KRS 278.020.

FINDINGS

KRS 278.020 has two subsections, (4) and (5), that require Commission approval prior to the acquisition or transfer of ownership or control of utilities. KRS 278.020(6) provides several exemptions from the requirement of Commission approval of acquisitions found in KRS 278.020(5). Specifically, (6)(b) of KRS 278.020 states:

Subsection (5) of this section shall not apply to any acquisition of control of any . . . [u]tility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, such utility, including any entity created at the direction of such utility for purposes of corporate reorganization

Since the proposed transaction is merely a corporate reorganization, the Commission finds that KRS 278.020(6)(b) applies and that approval is not necessary pursuant to KRS 278.020(5). However, Commission approval is needed under subsection (4) of KRS 278.020.

KRS 278.020(4) applies to entities that acquire ownership or control of a utility as well as entities that transfer ownership or control. There are no exemptions from the requirements of subsection (4).

Joint Applicants submit that the proposed merger will not be an acquisition or transfer of ownership or control requiring the Commission's prior approval under KRS

278.020(4) because GTE Mobilnet already owns and controls GTE Mobilnet B as its sole shareholder. This proposition is not accepted by the Commission. Each subsidiary corporation and partnership must be treated as a separate entity by the Commission to be consistent with the application of general corporation law.

Pursuant to KRS 278.020(4), the Commission must grant its approval of the transfer if the acquirer has the financial, technical, and managerial abilities to provide reasonable service. The Commission has previously determined, in Case No. 92-463,¹ that GTE Mobilnet and GTE Mobilnet B possess the financial, technical, and managerial abilities to provide reasonable service in Kentucky. Moreover, the Commission finds that the reorganization is for a proper purpose and is consistent with the public interest.

IT IS THEREFORE ORDERED that:


1. The proposed transaction is hereby approved.
2. GTE Mobilnet shall notify the Commission in writing within 10 days of the date of closing of the proposed transaction or, in the alternative, shall notify the Commission if the proposed transaction does not occur.
3. GTE Mobilnet shall file, within 10 days of the date of this Order, an adoption notice pursuant to 807 KAR 5:011, Section 11.

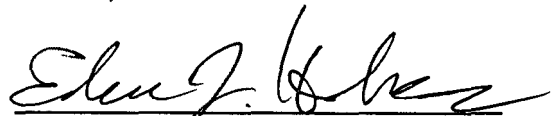
¹ Case No. 92-463, In the Matter of Reorganization of Contel Cellular of Louisville, Inc., Central Kentucky Cellular Telephone Company, Louisville Cellular Telephone Company, Bluegrass Cellular Telephone Company, Contel Cellular of Louisville II, Inc., Contel Cellular of Lexington, Inc., Cumberland Cellular Telephone Company, Inc., Contel Cellular of Kentucky, Inc. and Contel Cellular of Kentucky B, Inc., Order dated December 14, 1992.

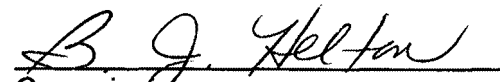
4. Within 10 days of the date of closing, GTE Mobilnet shall file in its own name the tariff of GTE Mobilnet B adopted by GTE Mobilnet, or such other tariff as it proposes to put into effect in lieu thereof.

Done at Frankfort, Kentucky, this 16th day of January, 1997.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director