

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE INVESTIGATION INTO THE MERGER )  
OF ONECOMM CORPORATION, N.A. AND ) CASE NO. 97-395  
POWERFONE, INC. )

O R D E R

This case is established for the sole purpose of considering the proposed resolution of issues raised by the December 31, 1996 merger, without the Commission's prior approval, of OneComm Corporation, N.A ("OneComm") and PowerFone, Inc. ("PowerFone"), a jurisdictional utility.

On July 21, 1997, Nextel West Corp. ("Nextel West"), by and through its attorney, filed a letter informing the Commission of the aforementioned merger. According to the letter, OneComm, the surviving corporation, subsequently changed its name to Nextel West Corp. In its letter, to which exhibits are attached, Nextel West states, inter alia, that it is "the successor through internal corporate reorganization to PowerFone."

The Commission has previously determined, in Case No. 96-344,<sup>1</sup> that PowerFone possessed the financial, technical, and managerial abilities to provide reasonable service in Kentucky. A certified copy of OneComm's articles of incorporation and all then-existing amendments thereto were filed with the Commission in Case No. 96-344.

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<sup>1</sup> Case No. 96-344, Application of PowerFone, Inc., a Wholly-Owned Subsidiary of Nextel Communications, Inc. for Operating Authority and Issuance of Certificate of Public Convenience and Necessity to Provide Commercial Mobile Radio Services/Specialized Mobile Radio Services, Order dated November 7, 1997.

Nextel West's letter includes a copy of its tariff and adoption notice wherein Nextel West adopted, ratified, and made its own PowerFone's tariffed rates, rules and regulations for furnishing commercial mobile radio services/specialized mobile radio services in Kentucky. A certified copy of the amendment to OneComm's articles of incorporation reflecting the name change to Nextel West is attached to Nextel West's letter as Exhibit B.

Pursuant to KRS 278.020(4), all 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 jurisdictional utility. Furthermore, KRS 278.020(5) prohibits any entity from acquiring control of any jurisdictional utility without the Commission's prior approval.

The Commission finds that, although KRS 278.020(5) did not apply to the merger because of an exemption found in KRS 278.020(6)(b), KRS 278.020(4) was, and is, applicable. Commission approval of the merger is, therefore, necessary.

In response to the informal requests<sup>2</sup> of Commission staff for additional information concerning the December 31, 1996 merger, Nextel West, on August 14, 1997, filed with the Commission a letter seeking Commission acceptance of its offer to make a voluntary payment of \$500 to resolve the issues raised by the merger. In the letter, Nextel West also seeks acceptance of Nextel West's adoption notice and tariff.

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<sup>2</sup> In a telephone conversation on or around July 21, 1997, Staff counsel and counsel for Nextel West discussed the issues raised by the December 31, 1996 merger.

As support for its requests, Nextel West states that its failure to give prior notice to the Commission of the December 31, 1996 was "inadvertent rather than willful." It further states that the merger was transparent to PowerFone's Kentucky customers because, after the merger, the system was controlled by the same management, service was provided from the same facilities and by the same operating personnel as before the merger, and business decisions affecting service in Kentucky continued to be made by the same personnel. Moreover, Nextel West states, Kentucky customers received the same services under the same terms and conditions as they did prior to the transaction.

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, finds that Nextel West has -- excepting only the requirement of obtaining the Commission's prior approval -- satisfied the requirements of KRS 278.020(4). The merger should, therefore, be approved and Nextel West's tariff and adoption notice should be accepted as filed on July 21, 1997.

The Commission further finds that Nextel West's offer to make a voluntary payment of \$500 to resolve the issues raised in this proceeding is lawful and should be accepted as a reasonable resolution of this matter.

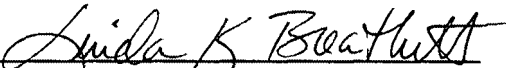
IT IS THEREFORE ORDERED that:

1. The merger of PowerFone into OneComm, which subsequently changed its name to Nextel West, is hereby approved.
2. Nextel West's tariff and adoption notice are hereby approved as filed on July 21, 1997.
3. Nextel West's settlement offer is hereby accepted.

4. Within 10 days of the date of this Order, Nextel West shall pay to the Commonwealth of Kentucky the sum of Five Hundred Dollars (\$500). This payment shall be in the form of a cashier's or certified check made payable to "Treasurer, Commonwealth of Kentucky" and shall be mailed or delivered to: Office of General Counsel, Public Service Commission, 730 Schenkel Lane, Post Office Box 615, Frankfort, Kentucky 40602.

Done at Frankfort, Kentucky, this 29th day of September, 1997.


PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director