

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF GEARHEART)	
COMMUNICATIONS, INC. D/B/A COALFIELDS)	
TELEPHONE COMPANY FOR AN ORDER)	
AND CERTIFICATE OF PUBLIC CONVENIENCE)	CASE NO. 2006-00407
AND NECESSITY AUTHORIZING APPLICANT)	
TO BORROW \$4,000,000 TO REFINANCE)	
EXISTING INDEBTEDNESS)	

O R D E R

On September 11, 2006, Gearheart Communications, Inc. d/b/a Coalfields Telephone Company ("Coalfields") filed an application for authorization to borrow \$4 million. The interest rate of the loan will be 6.7 percent. The proceeds will be used to refinance and discharge the indebtedness to the Rural Telephone Finance Cooperative ("RTFC") and the Rural Telephone Bank ("RTB") in the amount of \$2,970,554 and the short-term line of credit advances from the RTFC in the amount of \$1 million. The remaining \$29,446 in proceeds will be used to pay legal fees and other costs associated with the financing. The average interest rate of the total RTFC and RTB loans is 7.24 percent.

This case is complicated by the passage of House Bill 337 in the 2006 session of the Kentucky General Assembly. Prior to enactment of House Bill 337, all assumptions of liability by telephone companies required the pre-approval of the Commission pursuant to KRS 278.300. With passage of House Bill 337, however, a distinction has been drawn between financing used for basic service and financing used for non-basic

service.¹ Under current law, “nonbasic services are exempt from action or review by the commission under . . . KRS 278.300. . . .”² Basic service, however, remains subject to KRS 278.300.

The Commission, of course, must give effect to the plain and ordinary meaning of both KRS 278.300 and KRS 278.554(4).³ Any construction which avoids a conflict between the two statutes while giving effect to both is preferred.⁴ In cases such as this, where it is impractical or impossible to accurately allocate the debt proposed to be assumed and where at least some of the debt is clearly to be used by the telephone company to aid in the provision of basic service, KRS 278.300 should apply. In other words, only in cases where the proposed assumption of debt may be specifically and completely allocated to the provision of non-basic service will KRS 278.544(4)’s exemption from review under KRS 278.300 apply. Coalfields’s responses to the Commission’s data requests confirm that that is not the case here.

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds that the \$4 million of new debt is for a lawful purpose within Coalfields’s corporate purposes, is necessary and appropriate for and consistent with the proper performance of its service to the public, is reasonably necessary and

¹ See KRS 278.544(4).

² Id.

³ See KRS 446.080.

⁴ See Commonwealth v. Phon, 17 S.W.3d 106, 108 (Ky. 2000) (“statutes should be construed in such a way that they do not become meaningless or ineffectual”).

appropriate for such purposes, and will be used to facilitate the provision of basic service. Accordingly, the application should be approved.

IT IS THEREFORE ORDERED that:

1. Coalfields is authorized to borrow \$4 million in new debt as described in the application.
2. The proceeds shall be used to refinance existing debt, as set forth herein.
3. Coalfields shall agree only to such terms and prices that are consistent with parameters set out in its application.
4. The proceeds from the transactions authorized herein shall be used only for the lawful purpose set out in the application.

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 20th day of October, 2006.

By the Commission

ATTEST:


Executive Director