

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

* * * * *

In the Matter of:

THE SALE AND DETARIFFING OF)	ADMINISTRATIVE
EMBEDDED CUSTOMER PREMISES)	CASE NO. 269
EQUIPMENT)	

O R D E R

Introduction

This Order concerns the deregulation and detariffing of embedded mobile telephone and paging equipment. Such action is the result of various decisions made by the Federal Communications Commission ("FCC") with which this Commission must concur.

Discussion

Mobile Telephone Equipment

On April 28, 1983, the FCC released a Notice of Proposed Rulemaking ("NPRM") in CC Docket No. 83-372, Deregulation of Mobile Customer Premises Equipment ("Mobile Telephone Inquiry"), proposing to deregulate mobile telephone equipment. The FCC suggested that deregulation of mobile telephone equipment would be consistent with the deregulation of customer premises equipment initiated in CC Docket No. 81-893, Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services ("Second Computer Inquiry"), and would encourage the development of competition in the mobile telephone equipment market.

Subsequently, on November 7, 1983, the FCC released an Order in the Mobile Telephone Inquiry that deregulated mobile telephone equipment on a bifurcated basis and preempted state regulation of mobile telephone equipment. New mobile telephone equipment was deregulated effective January 1, 1984, and defined to include mobile telephone equipment "acquired by a carrier or manufactured by an affiliated entity after January 1, 1984...."¹ Embedded mobile telephone equipment was not deregulated, pending development of a detariffing plan.²

Concurrent with the deregulation Order in the Mobile Telephone Inquiry, the FCC issued a further NPRM requesting comment on whether the procedures outlined in the Second Computer Inquiry should apply to the detariffing of embedded mobile telephone equipment.³

On December 29, 1983, the FCC released another Order in the Mobile Telephone Inquiry that addressed an emergency petition filed by the American Telephone and Telegraph Company ("AT&T") and

¹ CC Docket No. 83-372, Mobile Telephone Inquiry, Federal Register, December 6, 1983, page 54620, at paragraph 9.

² Embedded mobile telephone equipment was defined to include "existing in-place equipment or inventory which is tariffed or otherwise subject to the jurisdictional separations process'..." Ibid.

³ CC Docket No. 81-893, Second Computer Inquiry, Federal Register, June 29, 1983, pages 29891-29917. In this NPRM, the FCC outlined procedures for detariffing embedded customer premises equipment and ordered that embedded customer premises equipment be detariffed no later than December 31, 1987.

required AT&T to transfer to AT&T Information Systems embedded mobile telephone equipment.⁴

Subsequently, on June 29, 1984, the FCC released an Order in the Second Computer Inquiry establishing requirements for the detariffing of embedded mobile telephone equipment. The Order established a transition plan involving AT&T in which state commissions have no role. In the case of independent telephone companies and radio common carriers, the Order specified that embedded mobile telephone equipment "owned by the Independent telephone companies or the radio common carriers shall be removed from tariff regulation not later than January 1, 1985...,"⁵ and that "state commissions shall have authority to establish the rules under which the installed mobile CPE [customer premises equipment] owned by the Independent telephone companies or the radio common carriers shall be valued for purposes of its removal from regulated service."⁶

⁴ CC Docket 83-372, Mobile Telephone Inquiry, Federal Register, January 6, 1984, pages 882-886.

⁵ CC Docket 81-893, Second Computer Inquiry, Federal Register, July 6, 1984, page 27754, Summary. As indicated at footnote 3, the FCC had proposed that embedded customer premises equipment be detariffed no later than December 31, 1987. However, in the case of embedded mobile telephone equipment, the FCC concluded that sufficient competition exists in the mobile telephone equipment market to justify an earlier detariffing date. Ibid., pages 27759-27760, at paragraphs 27-30.

⁶ Ibid., page 27754, Summary, and pages 27760-27761, at paragraphs 32-34.

Thus, since the FCC concluded that the establishment of valuation standards for embedded mobile telephone equipment owned by independent telephone companies and radio common carriers should be within the jurisdiction of state commissions, in this matter the Commission has at its option the valuation standards of net book value, adjusted net book value (net book value less deferred taxes), or economic value.

Although the FCC Order regarding the detariffing of embedded mobile telephone equipment was issued several months ago, the only telephone company under this Commission's jurisdiction that has commented regarding the valuation method it prefers this Commission adopt in the detariffing process is General Telephone Company of Kentucky ("General"). General filed comments on January 2, 1985, requesting that the Commission use a market valuation standard with regard to detariffing this embedded equipment. General, however, provided no substantiation of its proposed market value of this equipment and in the Commission's opinion did not meet its burden of proof. Again, no other telephone company or radio common carrier chose to file comments with this Commission.

The Commission is of the opinion that the use of a form of book value as a valuation standard in this instance fairly balances the interest of ratepayers, investors and the public,

thus satisfying the equity principles of the Democratic Central Committee.⁷ Therefore, the Commission has determined that a valuation method based on book value is the most appropriate method and should be used in detariffing embedded mobile telephone equipment by the independent telephone companies and radio common carriers subject to the jurisdiction of the Commission.

Furthermore, the Commission is of the opinion that the appropriate valuation standard is adjusted net book value or net book value less applicable accumulated deferred and investment tax credits. Although it can be argued that the general body of ratepayers should receive the benefit of these deferred tax credits when the asset is removed from regulated service, a decision by this Commission requiring such treatment could result in income tax problems with the Internal Revenue Service that would far outweigh the value of these deferred tax credits in the case of mobile telephone equipment. Therefore, the Commission herein establishes adjusted net book value as defined above as the appropriate valuation standard for the removal or deregulation of embedded mobile telephone equipment effective January 1, 1985. The FCC utilized this valuation standard in the instance of AT&T's deregulation of embedded mobile telephone equipment.

⁷ Democratic Central Committee v. Washington Metropolitan Area Transit Commission, 485 F. 2d 786 (D.C. Cir. 1973).

Finally, in the cases where separate subsidiaries are not established to provide embedded mobile telephone equipment, this Commission will adopt the FCC's accounting guidelines for the sale and lease of embedded mobile telephone equipment after detariffing.⁸

Paging Equipment

Also, in the deregulation Order in the Mobile Telephone Inquiry, the FCC addressed the issue of whether paging equipment had been deregulated as part of its action in the Second Computer Inquiry. The FCC affirmed that paging equipment had been deregulated. However, as a result of apparent uncertainty among radio common carriers, the FCC indicated that it would not impose sanctions on those radio common carriers who had not detariffed new paging equipment and modified its definition of embedded paging equipment to allow some new paging equipment to be classified as embedded paging equipment.

The FCC had intended that new paging equipment be deregulated effective January 1, 1983, concurrent with the deregulation of other customer premises equipment. Embedded paging equipment was not deregulated, pending development of a

⁸ CC Docket No. 81-893, Second Computer Inquiry, Federal Register, November 26, 1984, pages 46378-46383. This Order establishes specific below-the-line accounts on the regulated books of telephone companies and radio common carriers to record revenues and expenses associated with nonregulated activities.

detariffing plan. The FCC allowed paging equipment acquired between January 1, 1983, and January 1, 1984, that had not been detariffed effective January 1, 1983, to be treated as embedded paging equipment⁹ and, later, made the detariffing of embedded paging equipment subject to the same guidelines as apply to the detariffing of embedded mobile telephone equipment.¹⁰ This Commission has no alternative but to concur with the FCC's action and will, therefore, detariff embedded paging equipment effective January 1, 1985, subject to the same valuation standard and accounting requirements as have been established for embedded mobile telephone equipment.

Orders

IT IS THEREFORE ORDERED that embedded mobile telephone equipment be and it hereby is detariffed effective January 1, 1985.

IT IS FURTHER ORDERED that embedded paging equipment be and it hereby is detariffed effective January 1, 1985.

IT IS FURTHER ORDERED that all telephone companies and radio common carriers subject to the jurisdiction of this Commission shall remove embedded mobile telephone and paging

⁹ That is: "All paging equipment that is acquired or put into service now through January 1, 1984, may be treated as new or embedded CPE, at the discretion of the carrier." CC Docket No. 83-372, Mobile Telephone Inquiry, Federal Register, December 6, 1983, page 54621, at footnote 10.

¹⁰ CC Docket No. 81-893, Second Computer Inquiry, Federal Register, July 6, 1984, page 27754, at footnote 1.

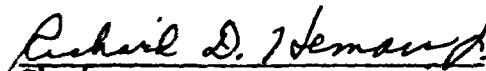
equipment, if any, from their regulated books of account according to the valuation standard established in this Order.

IT IS FURTHER ORDERED that all telephone companies and radio common carriers subject to the jurisdiction of this Commission that do not establish separate subsidiaries to provide embedded mobile telephone and paging equipment shall comply with the FCC's accounting guidelines as adopted by this Commission concerning nonregulated activities.

IT IS FURTHER ORDERED that within 30 days from the date of this Order all telephone companies and radio common carriers subject to the jurisdiction of this Commission with embedded mobile telephone and paging equipment on its books shall file revised tariff pages removing embedded mobile telephone and paging equipment from regulated service.

Done at Frankfort, Kentucky, this 30th day of January, 1985.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary