

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REGULATION OF CONVENTIONAL TWO-WAY) ADMINISTRATIVE
MOBILE TELEPHONE SERVICES) CASE NO. 325

O R D E R

On May 12, 1988, the Commission issued an Order in Administrative Case No. 322, Commission Jurisdiction Over One-Way Radio Paging Services, finding that one-way radio paging services do not constitute utility service as defined by KRS 278.010(3)(e). In that Order, the Commission found that it lacked jurisdiction over persons providing only one-way radio paging services. Additionally, the Commission suggested that it would later reexamine its proper role in the regulation of conventional two-way mobile telephone services. *Id.* at p. 6, n. 10. This case is being established to consider whether:

(1) the Commission should make changes in the way that conventional two-way mobile radio telephone service utilities¹ (hereinafter "two-way mobile service providers") are regulated; and

¹ We intend to limit the scope of this proceeding to the regulation of conventional two-way mobile radio telephone service provided by licensees in the public land mobile service using FCC licensed frequencies assigned pursuant to 47 C.F.R. §22.501 (1987), and providers of maritime services using FCC licensed frequencies assigned pursuant to 47 C.F.R. §80.13 (1987). This proceeding is not intended to include FCC licensees in the domestic public cellular radio telecommunication service. Such licensees are assigned frequencies pursuant to 47 C.F.R. §22.902 (1987). However, cellular utilities are being served with this Order.

(2) whether such regulatory changes may be made in a manner that is consistent with the public interest and the requirements of KRS Chapter 278.

The Commission has asserted regulatory authority over two-way mobile service providers since at least 1969. These providers are utilities. KRS 278.010(3)(e).

Over the past few years the Commission has observed a number of changes within the telecommunications industry which prompt us to consider whether continued regulation of the two-way mobile telephone service industry is warranted. For example, competition within the industry appears to be healthy, inasmuch as numerous utilities offer the services. Approximately 14 utilities, not including local exchange telephone utilities, provide two-way services within Kentucky. Such carriers face competition from cellular mobile radio telephone service providers in many parts of the Commonwealth. Given the rapid growth in demand for cellular telephones, we assume that the demand for conventional car telephones has diminished in areas where cellular service is available. The wide availability of frequencies for two-way mobile service providers, combined with the relatively low cost of entry into the business, leads to our tentative view that competition in the provision of two-way mobile services is likely to continue.

In past recognition of such competition, we have not limited market entry by two-way mobile service providers within individual markets. Certain areas are served by numerous providers of two-way services. Although the Commission requires certificates

of public convenience and necessity for construction of utility facilities by two-way mobile service providers, we have presumed that the duplication created by such construction is beneficial rather than wasteful.

In addition to receiving certificates for construction of facilities, two-way mobile service providers are required to seek initial authority to operate, file tariffs, file annual reports, and pay the annual assessment imposed upon utilities. Additionally, such utilities are required to seek Commission approval, pursuant to KRS 278.020, for the transfer or acquisition of control of such utility businesses.

One possible barrier to entry may be the regulatory process itself. Although the entry requirements currently imposed upon two-way mobile service providers may not be onerous, the Commission wonders whether further relaxation of regulatory requirements could work to facilitate competition and, consequently, reduce prices and improve service for ratepayers.

In order that the Commission might be assisted in its consideration of the regulatory framework of two-way mobile service providers, we request that these utilities, their customers, and other interested persons provide comments, addressing the following questions.

1. What goals should the Commission seek to achieve in its regulation of two-way mobile service providers?

2. Given the goals described in response to question 1, would the deregulation of two-way mobile service providers, or

certain of their services, be in the public interest? Please provide a description of costs and benefits.

3. If deregulation of mobile service providers would serve the public interest, may such deregulation be accomplished within the present statutory framework of KRS Chapter 278? If not, what regulatory options exist under the current statute? What regulatory options would require enabling legislation? If such legislation were necessary, what legislation should the Commission support?

4. Given the goals described in response to question 1, do any aspects of regulation need to be strengthened rather than reduced?

5. How competitive are two-way mobile services? Respondents should describe the areas they serve, and identify competitors within specific markets. Are there elements of the services that are bottleneck monopolies? Are there areas within Kentucky where there is a lack of competition among two-way mobile service providers?

6. What issues related to interconnection between two-way mobile service providers and local exchange carriers exist? Would deregulation of the two-way mobile services industry create new interconnection issues?

7. Do mobile services compete with other services as substitutes? Identify other telecommunication services that either are or may be used as substitutes for two-way mobile service. Do two-way mobile services function as basic telephone service in some parts of Kentucky?

8. How difficult are entry and exit for two-way mobile service providers? Identify potential barriers to entry and exit in the two-way mobile services market in Kentucky.

9. Would deregulation affect the difficulty of entry and exit? If the Commission determined that deregulation is in the public interest would such determination affect the difficulty of entry and exit in the two-way mobile services market.

10. Does consolidation of mobile service providers pose a threat to competition? Is the industry likely to become more concentrated? Would such consolidation provide benefits to ratepayers?

11. Should the Commission consider any other mobile services issues?

12. How should any proposed regulatory changes be implemented?

The Commission FINDS that responses to the questions herein will enable the Commission to consider possible changes in the regulation of mobile service providers within Kentucky. In the alternative, such information may assist the Commission in working with the industry to propose legislative changes to implement regulatory goals found to require such changes. The Commission strongly encourages all mobile service providers to give notice of this proceeding to their subscribers.

IT IS THEREFORE ORDERED that:

1. This investigation into the regulation of two-way mobile service providers is hereby instituted on the Commission's own motion.

2. All such utilities subject to the jurisdiction of the Commission -- and all local exchange telephone utilities -- are made respondents to this Order and are invited to present their comments on the above questions. Other persons are invited to submit comments. Such comments will be considered and such commenters shall not be required to seek formal intervention.

3. Any interested persons and respondents to this Order may file answers and comments to the above questions by January 27, 1989. Such responses shall be served on all persons listed on the attached service list. (Exhibit A)

4. Interested persons and respondents to this Order may file reply comments on or before February 24, 1989. Such reply comments shall be served on all respondents filing initial comments and responses.

5. Interested persons and respondents to this Order shall file an original and 10 copies of any comments with the Executive Director. Each person submitting comments shall make a copy of its comments available to any interested person on request.

Done at Frankfort, Kentucky, this 20th day of December, 1988.

PUBLIC SERVICE COMMISSION

Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner

Exhibit A to an Order of the Public Service Commission
In Administrative Case No. 325

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