

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF INDEPENDENT CELLULAR)
NETWORK, INC., (1) FOR THE ISSUANCE OF)
A CERTIFICATE OF PUBLIC CONVENIENCE AND)
NECESSITY TO PROVIDE A NEW DOMESTIC)
PUBLIC CELLULAR RADIO TELECOMMUNI-)
CATIONS SERVICE TO THE PUBLIC IN)
GREENUP, CARTER AND BOYD COUNTIES,)
KENTUCKY, AND (2) FOR THE ISSUANCE OF)
AN ORDER (a) APPROVING THE ABSTENTION) CASE NO. 10173
FROM RATE AND TARIFF REGULATION BY THE)
PUBLIC SERVICE COMMISSION OF KENTUCKY)
AND "INFORMATIONAL REPORTING" STATUS)
OR, IN THE ALTERNATIVE, (b) APPROVING)
RATES, CHARGES, RULES AND REGULATIONS)
ON A BASIS COORDINATED WITH THE WEST)
VIRGINIA PUBLIC SERVICE COMMISSION)

O R D E R

On February 22, 1988, Independent Cellular Network, Inc. ("ICN"), filed an application with the Commission seeking: 1) a certificate of public convenience and necessity to construct facilities for a new domestic public cellular radio telecommunications service to the public in Greenup, Carter, and Boyd counties, Kentucky;¹ 2) abstention, by the Commission, of rate and tariff regulation of ICN and the granting of "informational reporting" status; or 3) the approval of ICN's rates, charges, rules, and regulations on a basis coordinated with the West Virginia Public Service Commission ("West Virginia PSC").

¹ These Kentucky counties are part of the Huntington-Ashland-Ironton Metropolitan Statistical Area ("Huntington MSA"), which also includes portions of West Virginia and Ohio.

The Federal Communications Commission ("FCC"), by public notice, Report No. CL-86-142, May 7, 1986, granted a construction permit to GTE Mobilnet, Inc., for construction in the Huntington-Ashland West Virginia/Kentucky/Ohio cellular market. The construction permit was subsequently assigned to ICN, with consent of the FCC, in December 1987. Additionally, the FCC has issued a mobile radio station authorization for the currently operating cell site. ICN has notified the FCC of changes in location for the antennas serving cell sites at Laurel Ridge (location 002) and Russell (location 003).

The Commission notes that the West Virginia Public Service Commission, by order of February 11, 1988 (Exhibit A to the application), granted a certificate of convenience and necessity to ICN, for the provision of cellular service within the Huntington MSA.

ICN's answers to the Commission's information requests make clear that construction of facilities at the two cell sites located in Kentucky has commenced and is, in fact, virtually complete. ICN is hereby notified that the Commission is to be notified prior to the beginning of construction of any utility facility. Pursuant to KRS 278.020(1):

No person, partnership, public or private corporation or combination thereof shall begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in KRS 278.010, except retail electric suppliers for service connections to electric-consuming facilities located within its certified territory and ordinary extensions of existing systems in the usual course of business, until such person has obtained from the public service commission a certificate that public convenience and necessity require such construction.

The Commission having been preempted by the FCC on the issue of need for cellular services, prior notification serves to inform the Commission of cell site location. The Commission notes that the Kentucky facilities of ICN are constructed at remote dead end locations, with no nearby structures, except for a water tank and guyed radio tower at the Russell cell site. Apparently, neither site is subject to planning and zoning restrictions. The Russell site is leased from the City of Russell, Kentucky. Under the circumstances, no penalty shall be imposed. The facilities having already been constructed, no basis exists for the granting of a certificate of public convenience and necessity.²

Having reviewed the information included as Exhibits P and R, as well as the various authorizations issued to ICN by the West Virginia PSC and the FCC, the Commission is convinced that ICN has the financial, managerial, and technical abilities to provide reasonable service.

ICN's proposed tariff, submitted as Exhibit N to the application, is identical to the tariff found reasonable and approved by the West Virginia PSC. The Commission recognizes the need for uniformity, where possible, for cellular utilities providing service in Metropolitan Statistical Areas including parts of more than one state. Therefore, full faith and credit

² ICN is advised that prior approval should be sought before the construction of additional cell sites begins. The application indicates that ICN intends to construct a third Kentucky cell site, near Grayson, in Carter County, Kentucky.

with respect to the maximum rates found reasonable by the West Virginia PSC, will be accorded to ICN. ICN must, however, comply with KRS 278.160 by filing a tariff consistent with the proposed tariff. The tariff and future changes should be filed consistent with the requirements of 807 KAR 5:011.

FINDINGS

1. ICN possesses the financial, managerial, and technical abilities to provide reasonable service.

2. ICN's proposed tariff is reasonable, and should be accepted.

IT IS THEREFORE ORDERED that:

1. ICN be authorized to provide cellular radio service within the Kentucky portion of the Huntington MSA.

2. ICN's proposed tariff is hereby accepted.

3. Within 30 days of the date of this Order, ICN shall file its tariff.

Done at Frankfort, Kentucky, this 24th day of May, 1988.

PUBLIC SERVICE COMMISSION

Richard D. Hemminger, Jr.
Chairman

Robert M. Davis
Vice Chairman

ATTEST:

Executive Director

Sam Williams
Commissioner