

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE PETITION OF CONTEL CELLULAR OF)
LOUISVILLE, INC. FOR AN EXEMPTION FROM) CASE NO. 92-362
THE REGULATION FOR ENHANCED SERVICES)

O R D E R

On August 17, 1992, Contel Cellular of Louisville, Inc. ("Contel Cellular") filed a petition pursuant to KRS 278.512 and KRS 278.514 requesting that its voice mail enhanced services be exempted from regulation. On February 17, 1993, the Commission ordered Contel Cellular to provide additional information relating to its petition. Contel Cellular requested and was granted until April 19, 1993 to file its response. As no requests for a public hearing were filed, Contel Cellular's petition was submitted for decision based upon the case record.

BACKGROUND

Voice Messaging Services ("VMS") are provided through the use of computer equipment capable of storing a caller's voice message for later retrieval by the VMS subscriber. Each VMS subscriber is assigned a unique "mail box" or storage location in which voice messages sent to the VMS subscriber are retained. When the VMS subscriber desires to retrieve his messages, he gains access to the computer equipment and reviews the stored messages. In most instances, the VMS subscriber will employ some form of call forwarding to transfer a call to the voice messaging system when his line is busy, or there is no answer. Many additional features

may be included, or purchased separately, to further enhance the VMS such as message waiting indicator (stutter dial tone to indicate a message has been left) and message detail (call time and number).

Rapid technological changes are making the communications industry and markets increasingly competitive. This increasing competitiveness may in the future be reflected in decreasing prices and a growing array of service options and providers. Though there are at least two cellular service providers in each geographically defined market, there are several choices available to customers for enhanced services.

DISCUSSION

In evaluating Contel Cellular's petition for exemption of its voice mail service, the Commission is bound by KRS 278.512 and KRS 278.514. KRS 278.512 provides that the Commission may exempt telecommunications services and products or may reduce regulation if it finds that exemption or alternative regulation is in the public interest. KRS 278.512 identifies eight criteria to be considered by the Commission when determining if a service or product should be exempted from regulation or subject to alternative regulation. The statute also permits the Commission to consider any other factor it deems in the public interest.

The FCC has licensed two primary cellular providers within each RSA or MSA: a wireline and a non-wireline carrier. In larger MSA markets, cellular resellers may also offer cellular services, including voice mail services. However, there are a variety of

viable alternatives to cellular voice mail service. Customers have a wide array of existing potential choices for their voice mail services: answering services, home answering machines, paging services, local exchange carriers ("LEC"), and interexchange carriers ("IXC"). Anyone possessing a computer with the proper "store and forward" capabilities that is tied to the network can offer voice mail services. Subscribers to one cellular provider can easily use the voice mail service of one of the provider's competitors.

Contel Cellular states that, "call forwarding and no-answer transfer services, which may be purchased separately or are included in a service plan, could be combined with one of these alternatives by the customer based on the customer's needs. Contel Cellular's subscribers may call from their cellular or landline phone to retrieve messages from the competitive voice mail service provider."¹ Even though Contel Cellular identified Mo-Tel Cellular and First Kentucky Cellular as its only direct competitors, it is clear that customers have viable voice mail alternatives to Contel Cellular's services.

Cellular companies primarily generate revenues by selling cellular air time. Therefore, it appears reasonable that prices for voice mail services would be kept at competitive levels in order to encourage usage and generate additional air time revenues. The availability of viable alternatives, aside from another cellular

¹ See Item 3, pages 3-4, in Contel Cellular's response dated April 19, 1993.

provider, will impose additional market discipline on Contel Cellular's prices. This will also help prevent cross-subsidization from the regulated side of Contel Cellular's cellular business. Contel Cellular's prices for its voice mail services appear comparable to those of its competitors.

Cellular voice mail services are offered to customers primarily as an adjunct to existing basic cellular telephone services. Exempting Contel Cellular's cellular voice mail services will not have an adverse effect on the availability of its basic services, but should enhance its ability to respond effectively to market pressures. Regulatory exemption will also free Contel Cellular from the burdens of regulatory monitoring and oversight of its operations. Customers may benefit because reduced regulatory burden implies lower costs, which could mean lower prices for cellular services.

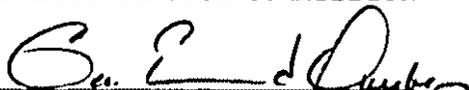
After considering the statutory criteria contained in KRS 278.512, the Commission finds that exempting Contel Cellular's voice mail service from the provisions of KRS Chapter 278 is in the public interest. Although Contel Cellular's investment, revenues, and expenses associated with voice mail will not be considered by the Commission in approving rates for Contel Cellular's services, the Commission retains jurisdiction over exempted services pursuant to KRS 278.512 and KRS 278.514. Contel Cellular shall continue to fulfill all reporting requirements of KRS Chapter 278 or Commission Order, including continued use of separate accounts and allocation of costs to document that no cross-subsidization exists.

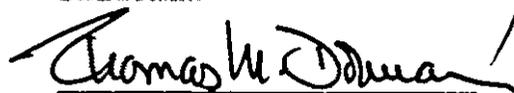
Exemption of cellular voice mail services does not mean that adequate safeguards do not exist to protect customers from unfair treatment, poor service quality, or excessive prices. Though the market will discipline cellular companies for infractions, customers are encouraged to exercise their option of filing complaints with the company and the Commission.

The Commission having determined that exemption of Contel Cellular's voice mail service is in the public interest and being otherwise sufficiently advised, IT IS ORDERED that the voice mail enhanced services, only as specifically described in Contel Cellular's petition, are exempted from regulation, pursuant to KRS 278.512 and KRS 278.514.

Done at Frankfort, Kentucky, this 5th day of August, 1993.

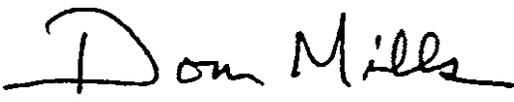
PUBLIC SERVICE COMMISSION


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Vice Chairman


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ATTEST:


Executive Director