

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

|   |   |          |
|---|---|----------|
| DANBURY CELLULAR TELEPHONE CO., A         | ) |          |
| CONNECTICUT CORPORATION D/B/A CELLULAR    | ) |          |
| ONE/UNITED BLUEGRASS CELLULAR CORP., AND  | ) |          |
| HORIZON CELLULAR TELEPHONE COMPANY OF     | ) | CASE NO. |
| CENTRAL KENTUCKY, L.P., A DELAWARE        | ) | 93-048   |
| LIMITED PARTNERSHIP, FOR APPROVAL OF THE  | ) |          |
| TRANSFER OF THE ASSETS AND LIABILITIES OF | ) |          |
| DANBURY CELLULAR TELEPHONE CO. TO HORIZON | ) |          |
| CELLULAR TELEPHONE COMPANY OF CENTRAL     | ) |          |
| KENTUCKY, L.P., AND RELATED FINANCING     | ) |          |

O R D E R

On July 23, 1993, Vivian E. Warner, an intervenor, filed a petition requesting the Commission to reopen this case on the grounds that Danbury Cellular Telephone Co. ("Danbury") and Horizon Cellular Telephone Company of Central Kentucky, L.P. ("Horizon") are allegedly parties to a July 14, 1993 contract that involves the allocation of cellular telephone service territories, including Rural Service Areas 5, 6, and 8 which were the subject of the Commission's April 6, 1993 transfer order. Ms. Warner claims that this allocation of service territories calls into question the qualifications of Danbury and Horizon, and she requests an opportunity to present evidence on that issue.

Danbury and Horizon filed responses in opposition to the petition, arguing that: 1) the Commission lacks jurisdiction to consider a request to reopen or reconsider a final order when that request is not filed within the 20 day period prescribed by KRS 278.400; 2) the petition is barred by principles of res judicata

and collateral estoppel; 3) the petition does not meet the statutory requirements to be considered a formal complaint; and 4) even if the Commission has jurisdiction, the petition fails to allege sufficient facts to support the relief requested.

Based on the petition and the responses, and being advised, the Commission hereby finds that KRS 278.390 does grant us the jurisdiction to reopen this case. See Union Light, Heat and Power Company v. Public Service Commission, Ky., 271 S.W.2d 361 (1954) and Mike Little Gas Company v. Public Service Commission, Ky.App. 574 S.W.2d 926 (1978). However, res judicata bars the relitigation of an issue at the administrative level absent significant change of conditions or circumstances. See Bank of Shelbyville v. Peoples Bank of Bagdad, Ky., 551 S.W.2d 234 (1977). Our April 6, 1993 Order approved the transfer of assets and liabilities of Danbury to Horizon based upon the findings that Horizon possessed the requisite financial, technical, and managerial qualifications to own and operate a cellular telecommunications utility in Rural Service Area Nos. 5, 6, and 8, and that the transfer was for a proper purpose and was consistent with the public interest. The petition for rehearing fails to allege the existence of any facts to call into question those findings which were based upon an extensive evidentiary record including a hearing.

The sole basis to reopen is Ms. Warner's allegation that she "has been advised" as to the existence of a contract involving the allocation of cellular service territories without regulatory approval. Assuming this allegation to be true, it is the Federal

Communications Commission, not the Kentucky Public Service Commission, that has exclusive jurisdiction over the establishment and subsequent modification of cellular service territories. Furthermore, while the transfer of utility assets and liabilities is subject to our jurisdiction, it is not uncommon for such transfers to be accomplished by contracts which are contingent upon subsequent regulatory approval. Thus, the petition falls far short of demonstrating the existence of any change of conditions or circumstances sufficient to reopen this case.

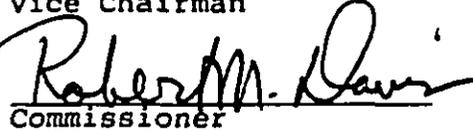
IT IS THEREFORE ORDERED that the petition to reopen be and it hereby is denied.

Done at Frankfort, Kentucky, this 16th day of August, 1993.

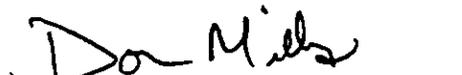
PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director