

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF USA MOBILE)
COMMUNICATIONS, INC. II FOR AN ORDER)
HOLDING THE ISSUANCE OF SENIOR NOTES)
EXEMPT FROM THE APPLICATION PROCESS) CASE NO. 93-466
PURSUANT TO KRS 278.300(10) OR,)
ALTERNATIVELY, AUTHORIZING THE ISSUANCE)
OF THE NOTES)

O R D E R

INTRODUCTION

On December 14, 1993, USA Mobile Communications, Inc. II ("USA II") filed an application requesting a determination that its proposed issuance of Senior Notes is not subject to Commission approval under KRS 278.300(1) because the transaction is subject to the supervision and control of a federal agency, the Securities and Exchange Commission ("SEC"), and thus exempt pursuant to KRS 278.300(10). Alternatively, USA II requests that if the exemption in KRS 278.300(10) is determined to be inapplicable, Commission authorization of the proposed financing be granted.

BACKGROUND

USA II is a Delaware Corporation engaged in the provision of radio paging services and ancillary communications services including tone-only paging, tone-plus-voice paging, digital display paging, and non-cellular two-way mobile radio within the state of Kentucky. The provision of one-way radio paging services was

deregulated in Administrative Case No. 322.¹ Therefore, the only service provided by USA II which is currently subject to Commission jurisdiction is non-cellular, two-way mobile radio. USA II offers this service to fewer than ten customers, representing less than one percent of USA II's total business in Kentucky.

Under the regulatory scheme currently in place in Kentucky, USA II is considered a non-dominant carrier subject to relaxed regulation by the Commission. USA II's rates are not based upon a cost of capital or rate of return methodology. Finally, the company is not subject to any of the Federal Communications Commission's rules found in Title 47 of the Code of Federal Regulations including Part 64 dealing with cost allocations. As a result it is impossible to determine the extent to which the financing may relate to operations not subject to the Commission's jurisdiction.

DISCUSSION

KRS 278.300(1) prohibits the issuance of securities or evidences of indebtedness by utilities until authorized to do so by the Commission. However, KRS 278.300(10) exempts from Commission review any financing that is "subject to the supervision or control of the federal government or any agency thereof." USA II states that this exemption applies because its financing is subject to SEC administered registration requirements under the Securities Act of 1933.

¹ Administrative Case No. 322, Commission Jurisdiction Over One-Way Radio Paging Services.

USA II also cites West Kentucky Rural Electric Cooperative Corp. v. Energy Regulatory Commission, No. 80-CI-1747 (Franklin Cir. Ct. 1982) to support its exemption request. In West Kentucky, the Court determined that the Commission lacked authority to review financing by an electric cooperative which was "under the supervision and control of the REA as regards the feasibility of loan approval, as well as the TVA as regards rates adequate to assure financial soundness." West Kentucky, Slip Opinion at 1.

In stark contrast to the financial and rate supervision and control exercised by the REA and TVA in West Kentucky, here the SEC requirements extend only to the disclosure of information to protect the investing public. The SEC has no authority to determine whether it is feasible and appropriate for USA II to issue its proposed Senior Notes or whether the issuance is for a lawful corporate purpose and is appropriate for or consistent with the proper performance of its service to the public. Thus, the SEC neither supervises nor controls the issuance of securities to trigger the exemption in KRS 278.300(10).

In the exercise of business judgment, the directors and officers of USA II have determined to implement a plan of recapitalization, using the proceeds from the sale of the Senior Notes to refinance its outstanding secured credit facility and to provide financing for the continued expansion of its non-regulated paging operations. USA II further states that the note offering complies with all of the criteria for approval set forth in KRS 278.300(3).

USA II offers services in a highly competitive field characterized by many providers of similar or substitutable services. Therefore, the financial harm which might befall USA II as a result of poor financial planning will accrue entirely to its stockholders leaving its customers free to choose among alternative suppliers. As a result the public interest would not be endangered.

IT IS THEREFORE ORDERED that:

1. USA II's request for an exemption under KRS 278.300(10) be and it hereby is denied.
2. USA II's request for authority to issue Senior Notes as more fully described in its application be and it hereby is granted.

Nothing contained herein shall be construed as a finding of value for any purpose or as a warranty on the part of the Commonwealth of Kentucky or any agency thereof as to the securities authorized herein.

Done at Frankfort, Kentucky, this 4th day of February, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director