

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF KENTUCKY DATA LINK, INC.)
AND ALBERT E. CINELLI FOR APPROVAL OF A)
CHANGE OF CONTROL OF KENTUCKY DATA LINK,) CASE NO. 96-056
INC.)

O R D E R

On February 8, 1993, the Commission entered an Order granting Kentucky Data Link, Inc. ("KDL") authority to provide intrastate telecommunications services within the Commonwealth of Kentucky.¹ KDL, a Kentucky corporation, is therefore under the jurisdiction of the Commission.

On March 11, 1996, KDL and Albert E. Cinelli ("Applicants") filed with the Commission a joint application, pursuant to KRS 278.020, seeking approval of a change of control of KDL. The application states that upon approval of the proposed transaction, Albert E. Cinelli will own fifty-one percent (51%) of the issued and outstanding shares of common stock of KDL and A.D. Wright, Jr., the sole shareholder and President of KDL, will own the remaining forty-nine percent (41%).

On March 14, 1996, Thomas G. Ward filed with the Commission a letter, which the Commission treated as a motion, requesting full intervention in this case. In support

¹ Case No. 92-399, The Application of Kentucky Data Link, Inc. For A Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunications Services Within the Commonwealth of Kentucky.

of his motion, which was granted on March 20, 1996, Mr. Ward stated that his interest in this proceeding is "due to the pending closing of the transfer of control of [KDL] to [him] pursuant to [an] Agreement dated September 15, 1995." Mr. Ward attached to his motion a copy of his Complaint against the Applicants, which is filed in Fayette Circuit Court and alleges, inter alia, breach of contract.²

On July 1, 1996, Mr. Ward's attorneys filed with the Commission a document entitled Thomas G. Ward Petition to Deny Transfer of Control Application ("Petition"). The Petition contains, inter alia, allegations that the Applicants are seeking Commission approval of an unlawful rather than a proposed transfer of control of KDL.

On July 19, 1996, attorneys for the Applicants filed with the Commission a document entitled Notice of Inadvertent Violation and Motion to Withdraw Application. In their notice, Applicants state by affidavit that they inadvertently violated KRS 278.300 by failing to obtain the Commission's prior approval for loans that were secured by them. They do not however address the allegation of an unlawful transfer.

In their motion, Applicants seek retroactive approval of the previously unauthorized indebtedness, or, in the alternative, authorization to proceed in this matter without approval pursuant to the Commission's Order in Administrative Case No. 359.³ In support of the motion, Applicants state that Mr. Ward is seeking only monetary

² Thomas G. Ward v. Kentucky Data Link, Inc., et al., Fayette Circuit Court, Civil Action No. 96CI0735.

³ Administrative Case No. 359, Exemptions For Interexchange Carriers, Long-Distance Resellers, Operator Service Providers and Customer-Owned, Coin-Operated Telephones, Order dated June 21, 1996.

damages in the civil action and has not requested any relief which would affect the control of KDL. Furthermore, Applicants argue that they may be exempt from the requirements set forth in KRS 278.020 because the Commission's decision in this case will be rendered after the August 1, 1996 effective date of the Commission's Order in Administrative Case No. 359.

On August 5, 1996, Thomas G. Ward's Opposition to Notice Of Inadvertent Violation and Motion to Withdraw Application ("Motion") was filed with the Commission. The Motion reiterates Mr. Ward's July 1, 1996 arguments. Moreover, it states that the relief sought by Mr. Ward in the civil action would, contrary to the Applicants' claims, affect the control of KDL.

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, finds that Applicants' motions should, under the circumstances, be granted in part and denied in part.

IT IS THEREFORE ORDERED that:

1. Applicants' motion seeking withdrawal of their application and authorization to proceed in this matter without approval pursuant to the Commission's Order in Administrative Case No. 359 is hereby granted.

2. Applicants' motion seeking retroactive approval of the unauthorized indebtedness is hereby denied.

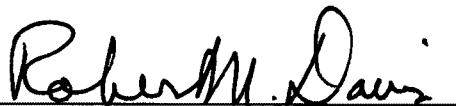
3. This case is hereby closed.

Done at Frankfort, Kentucky, this 8th day of August, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director