

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF	)	
MCCAW CELLULAR COMMUNICATIONS,	)	
INC., CELLULAR FUND, INC.,	)	
MCCAW CELLULAR FUNDING, INC.,	)	
CENTRAL KENTUCKY CELLULAR	)	
TELEPHONE COMPANY, CUMBERLAND	)	
CELLULAR TELEPHONE COMPANY,	)	CASE NO.
INC., CONTEL CORPORATION, AND	)	89-303
CONTEL CELLULAR INC., RESPECTING	)	
THE TRANSFER AND ACQUISITION OF	)	
CONTROL OF CENTRAL KENTUCKY	)	
CELLULAR TELEPHONE COMPANY AND	)	
CUMBERLAND CELLULAR TELEPHONE	)	
COMPANY, INC., AND RELATED	)	
REORGANIZATION	)	

O R D E R

This matter arising upon joint petition of Contel Corporation and Contel Cellular, Inc. (collectively "Contel") filed October 20, 1989, pursuant to 807 KAR 5:001, Section 7, for confidential protection of a purchase agreement filed in support of the subject application on the grounds that public disclosure of the information is likely to result in competitive injury, and it appearing to this Commission as follows:

Contel has jointly filed with McCaw Cellular Communications, Inc., Cellular Fund Inc., McCaw Cellular Funding, Inc., Central Kentucky Cellular Telephone Company, and Cumberland Cellular Telephone Company, Inc. an application respecting the acquisition

and transfer of control of Central Kentucky Cellular Telephone Company and Cumberland Cellular Telephone Company and the reorganization related to the acquisition. Contel seeks to protect from disclosure the purchase agreement by the parties to the acquisition on the grounds that disclosure of the information will result in competitive injury.

In support of the petition, Contel maintains that the purchase agreement contains information that would be of significant benefit to any party desiring to enter the cellular market. Contel states that the agreement covers marketing plans and strategies, on-going service arrangements, personnel and sales commissions matters, and financing and tax strategy. Contel also states that the exact purchase price and specified adjustments contained in the agreement reveal proprietary information concerning customer base, net asset values, and other competitive data. Contel contends that the information could be used by potential competitors to obtain valued customers, employees, or sales agents, and thereby obtain an unfair advantage from the information.

807 KAR 5:001, Section 7(2)(a), requires that petitions for confidentiality identify the material or information sought to be protected by underscoring or highlighting the information when it is filed with the Commission. Section 7 further protects such information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from

whom the information was obtained. To satisfy this test, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage. Clearly, not all of the information contained in the purchase agreement satisfies this requirement, and Contel has not identified those portions of the agreement which are likely to cause it competitive injury if publicly disclosed. Therefore, the petition cannot be granted.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition for confidential protection of the purchase agreement shall be held in abeyance to allow Contel to identify the material sought to be protected in a manner prescribed by regulation and to state with specificity the identity of the competitors who would benefit from the information and how the information could be used by such competitors to the competitive injury of Contel.

2. If such statement is not filed within 20 days, the petition for confidentiality shall, without further Orders herein, be denied.

Done at Frankfort, Kentucky, this 29th day of January, 1990.

PUBLIC SERVICE COMMISSION

  
For the Commission

ATTEST:

  
Executive Director