

In its petition for rehearing AmeriCall contends that the Commission applied the wrong test in denying confidential protection. AmeriCall states that it sought protection under 807 KAR 5:001, Section 7(7)(a), but that the Commission applied the test in 807 KAR 5:001, Section 7(7)(b).

807 KAR 5:001, Section 7(7), sets out guidelines for evaluating petitions for confidentiality. Subsection (a) in particular sets forth six criteria which the Commission may consider in determining whether information claimed to be a trade secret is entitled to protection. These factors, however, are intended only as guidelines and not as the exclusive criteria for determining whether information should be exempt from public disclosure.

807 KAR 5:001, Section 7, derives its authority from KRS 61.878(1)(b). That section of the statute allows information to be treated as confidential if disclosure of the information "would permit an unfair advantage to competitors of the subject enterprise." Thus, as stated in the earlier Order, "the party claiming confidentiality must demonstrate actual competition and a likelihood of substantive competitive injury if the information is disclosed." This test is mandated by the statute and applies whether protection is sought under 807 KAR 5:001, Section 7(7)(a), or 807 KAR 5:001, Section 7(7)(b).

While the supplemental petition establishes that AmeriCall competes with other companies in the telecommunications industry, the petition does not demonstrate or establish that such competitors could use the information sought to be protected to gain

any competitive advantage. The information consists of a list of numbers representing each of AmeriCall's customers. AmeriCall states that competitors could use this information to access additional customer information from AmeriCall's customer service department and with the additional information, target customers for marketing efforts. AmeriCall also contends that the numbering system represents a unique process known only to AmeriCall. If competitors have access to the information they will be able to duplicate the process. The petition, however, presents no evidence to support the allegations. Therefore, in the exercise of caution, a hearing should be scheduled to allow AmeriCall an opportunity to present evidence in support of its position.

The information sought to be protected was filed with the Commission pursuant to a Subpoena Duces Tecum and as such constitutes a determination that the information is germane to these proceedings. Therefore, the information should be retained by the Commission for use in these proceedings.


This Commission being otherwise sufficiently advised,

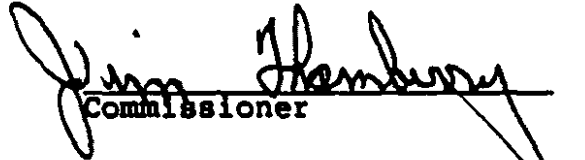
IT IS ORDERED that the petition for rehearing of the Commission's Order of June 4, 1990 shall be heard before the Commission at 10:00 a.m., Eastern Daylight Time, September 11, 1990, in Hearing Room 1 of the Commission's offices, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 23rd day of August, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

The information sought to be protected is not known outside of AmeriCall, nor is it customarily disclosed to the public. Unless ordered disclosed as a public record, the information is not obtainable by any other person or party.

Commercial information is protected as confidential pursuant to KRS 61.878(1)(b) and 807 KAR 5:001, Section 7, promulgated thereunder, when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order 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.

AmeriCall, as a provider of service in the Kentucky inter-exchange marketplace, faces competition from other companies furnishing the same or similar services. Such competitors could use the information identifying AmeriCall's customers found in Exhibits 1, 2, 3, and 6 to market their competing services. Therefore, disclosure of the information is likely to cause AmeriCall competitive injury and the information should be protected from disclosure.

The information contained in Exhibit 5, while listing the total number of customers receiving each of the designated services, is too general in nature to have any competitive value. Therefore, the petition to protect this information should be denied.

This Commission being otherwise sufficiently advised,

IT IS HEREBY ORDERED that:

1. The customer information contained in Exhibits 1, 2, 3, and 6 of AmeriCall's responses to the Subpoena Duces Tecum issued May 25, 1990, which AmeriCall has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. AmeriCall shall, within 10 days of the date of this Order, file an edited copy of the Exhibits with the confidential material excluded or obscured, for inclusion in the public record, with copies to all parties of record.

3. The petition to protect as confidential the information contained in Exhibit 5 of AmeriCall's response to the Subpoena Duces Tecum issued May 25, 1990 be and it hereby is denied.

4. The information contained in Exhibit 5 shall be held as confidential and proprietary for a period of 5 working days from the date of this Order, at the expiration of which time it shall be placed in the public record.

Done at Frankfort, Kentucky, this 23rd day of August, 1990.

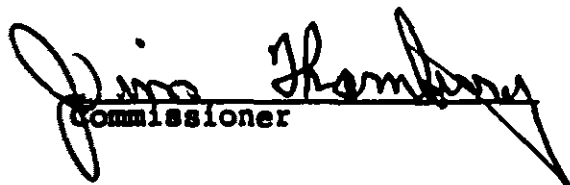
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