

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF MIDWEST FIBERNET )  
INC. FOR A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO ) CASE NO. 90-101  
PROVIDE INTERLATA INTEREXCHANGE )  
SERVICES WITHIN KENTUCKY AS A )  
NON-DOMINANT CARRIER )

O R D E R

This matter arising upon petition of Midwest Fibernet Inc. ("Fibernet") filed April 24, 1990, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the financial information attached to its application for a Certificate of Public Convenience and Necessity as Exhibit III, on the grounds that public disclosure could cause Fibernet competitive injury, and it appearing to the Commission as follows:

Fibernet's application seeks authority to provide interLATA interexchange service within this state. As a part of its application, Fibernet has attached to Exhibit III statements of income for 1989 and January 1990, and balance sheets for 1989 and January 1990, which Fibernet seeks to protect from public disclosure.

807 KAR 5:001, Section 7, protects 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. 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. Fibernet's petition does not satisfy either requirement.

Fibernet maintains that disclosure of the information could be used by competitors to assess its susceptibility to pricing strategy. Fibernet also contends that competitors could use the information to ascertain the amount of funds Fibernet has available for marketing and advertising, to determine Fibernet's reserves, and to determine its ability to expand. The petition, however, does not identify the competitors who would benefit from the information or explain how such competitors could use the information to Fibernet's detriment. Therefore, the petition should not be granted.

This Commission being otherwise sufficiently advised,


IT IS ORDERED that:


1. The petition by Fibernet for confidential protection of the financial information, attached to Exhibit III of its application, shall be held in abeyance to allow Fibernet to supplement its petition with a statement identifying the competitors who would benefit from the information sought to be protected, and setting forth with specificity the competitive injury likely to result from disclosure of this information to such competitors.


2. If such statement is not filed within 10 days from the date of this Order, the petition for confidentiality shall, without further Orders herein, be denied and the materials sought to be protected shall be placed in the public record.

Done at Frankfort, Kentucky, this 8th day of May, 1990.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director