

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CONTEL CELLULAR OF)
LOUISVILLE, INC. FOR ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE AND) CASE NO.
NECESSITY TO PROVIDE DOMESTIC PUBLIC) 91-355
CELLULAR RADIO TELECOMMUNICATIONS IN)
KENTUCKY RURAL SERVICE AREA NO. 11)

O R D E R

This matter arising upon petition of Contel Cellular of Louisville, Inc. ("Contel") filed October 2, 1991 pursuant to 807 KAR 5:001, Section 7, for confidential protection of its pro forma financial statements and loan commitment filed in support of its application herein on the grounds that disclosure of the information is likely to cause Contel competitive injury, and it appearing to this Commission as follows:

Contel has applied for a Certificate of Public Convenience and Necessity to provide domestic public cellular radio telecommunications service to the public in Kentucky Rural Service Area No. 11. In support of its application, Contel has filed, as Exhibit D, a loan commitment to finance the construction and operation of the system and, as Exhibit F, its pro forma financial statements for its first year of operations. Contel contends that disclosure of the information contained in these exhibits is likely to cause it competitive injury and has petitioned that the information be protected as confidential.

The information sought to be protected is not generally disclosed by Contel. Contel discloses the information only to those employees who have a business need to know and act upon the information.

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. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The cellular telephone market is a competitive industry and Contel will face competition in the Rural Service Area in which it proposes to construct its system from First Kentucky Cellular Corporation. Competitors of Contel could use the information on the amounts and terms of the loans contained in the loan commitment and information on projected revenues and expenses and estimated assets and liabilities contained in the financial statements to structure their rate or market their services in a manner that could preclude Contel from competing effectively for customers. Therefore, disclosure of the information is likely to cause Contel competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The loan commitment to finance the construction and operation of the cellular system and the pro forma financial statements for its first year of operations, which Contel 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. Contel shall, within 10 days of the date of this Order, file an edited copy of the exhibits with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 4th day of November, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

Commissioner

ATTEST:


Executive Director