

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION INTO DIVERSIFIED)
OPERATIONS OF LOCAL EXCHANGE) ADMINISTRATIVE
TELEPHONE COMPANIES) CASE NO. 340

O R D E R

This matter arising upon petition of Mountain Rural Telephone Cooperative Corporation, Inc. ("Mountain RTCC") filed February 24, 1992 pursuant to 807 KAR 5:001, Section 7, for confidential protection of Exhibits 1 and 3 of its responses to the Commission's Order of October 25, 1991 on the grounds that disclosure of the information is likely to cause Mountain RTCC competitive injury, and it appearing to this Commission as follows:

As part of its responses to the Commission's Order of October 25, 1991, Mountain RTCC has attached Exhibits 1 and 3 which it seeks to protect as confidential. Exhibit 1 contains journal entries which disclose Mountain RTCC's exact dollar investments in the capitalization of subsidiary corporations involved in the purchase of general partnership interest in the Appalachian Cellular Partnership for Cellular Rural Service Area No. 9 and Mountaineer Cellular Partnership for Cellular Rural Service Area No. 10. In addition, Exhibit 1 provides the projected additional capitalization and subsequent capitalization construction costs for the cellular partnerships. Exhibit 3 provides excerpts from

Mountain RTCC's corporate board meetings which contain information concerning the exact amount of the financial investment in the subsidiary corporations, as well as the projected capital investment cost to be incurred for construction and operation thereafter.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 10 categories of information. One category exempted in subparagraph (b) of that section is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information 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.

Only information which is confidential is entitled to protection. To the extent that the information is available from other sources, it must be available for public inspection. The information sought to be protected here consists of actual purchase costs, capital expenditures, and projected costs. Actual purchase costs and capital expenditures are required to be included in periodic reports filed with the Commission which are a

matter of public record. Therefore, they are not confidential and are not entitled to protection.

Projected costs and investments are not a matter of public record. However, the petition does not identify the competitors who would benefit from the information, nor does it describe with sufficient specificity how such competitors can use the information to gain a competitive advantage. Therefore, the petition does not establish that the information is entitled to confidential protection.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the actual purchase costs and capital expenditures contained in Exhibits 1 and 3 of Mountain RTCC's responses to the Commission's Order of October 25, 1991 be and is hereby denied.

2. The actual purchase costs and capital expenditures contained in Exhibits 1 and 3, which Mountain RTCC 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 for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Order of the Commission.

3. The projected capital costs contained in Exhibits 1 and 3, which Mountain RTCC has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential for a period of 20 days from the date of this Order to allow Mountain RTCC to supplement its petition by identifying

the competitors who would benefit from the information and describing the manner in which the information could be used to gain a competitive advantage. If at the expiration of the 20-day period no supplement to the petition is filed, the information shall be placed in the public record without further Order of the Commission.

4. If Mountain RTCC files a supplemental petition to protect the projected investment and capital contribution information, it shall as a part of the petition file an edited version of Exhibits 1 and 3 obscuring only that portion of the exhibits which provide that information.

Done at Frankfort, Kentucky, this 27th day of April, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director, Acting