

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #3)
CELLULAR GENERAL PARTNERSHIP FOR)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO) CASE NO. 92-022
CONSTRUCT A CELL SITE IN RURAL)
SERVICE AREA #3 (MEADE) OF THE)
COMMONWEALTH OF KENTUCKY)

O R D E R

This matter arising upon petition of Kentucky RSA #3 Cellular General Partnership ("Kentucky RSA #3") filed February 4, 1992 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the cost of constructing the Sinking Creek cell site on the grounds that disclosure of the information is likely to cause Kentucky RSA #3 competitive injury, and it appearing to this Commission as follows:

Kentucky RSA #3 has applied for a Certificate of Public Convenience and Necessity to construct a cell site in Kentucky Rural Service Area #3. Kentucky RSA #3 has attached to its application the estimated construction cost of its Sinking Creek cell site. Kentucky RSA #3 seeks to protect this information as confidential on the grounds that disclosure is likely to cause it competitive injury.

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.

The cellular telephone market is a competitive industry and Kentucky RSA #3 will have competition in the rural service area in which it proposes to construct the system described in its application for a Certificate of Public Convenience and Necessity. Kentucky RSA #3 maintains that such competition could use the cost of construction of the cell site to determine the rates which Kentucky RSA #3 must charge for its services in order to break even and thereby structure competing rates accordingly. Construction costs have or provide only one element of those costs which determine rates and, by themselves, provide no insight into the rates Kentucky RSA #3 will need to meet its expenses. Therefore, disclosure of the information is not likely to cause Kentucky RSA #3 competitive injury and the information is not entitled to protection.

This Commission being otherwise sufficiently advised,

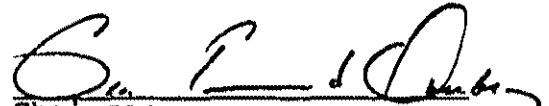
IT IS ORDERED that:

1. The petition to protect as confidential the cost of constructing the Sinking Creek cell site be and is hereby denied.

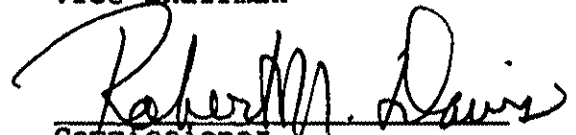
2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which it shall be placed, without further Orders herein, in the public record.

Done at Frankfort, Kentucky, this 24th day of March, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director