

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF ALPHA CELLULAR	)	
TELEPHONE COMPANY, A FLORIDA	)	CASE NO.
GENERAL PARTNERSHIP, FOR APPROVAL	)	92-098
OF FINANCING	)	

O R D E R

This matter arising upon petition of Alpha Cellular Telephone Company ("Alpha Cellular") filed March 13, 1992 pursuant to 807 KAR 5:001, Section 7, for confidential protection of its financing documents on the grounds that disclosure of the information is likely to cause Alpha Cellular competitive injury, and it appearing to this Commission as follows:

Alpha Cellular has applied for approval of its arrangements to finance the documents relating to its proposed financing. Specifically, the documents sought to be protected are the Working Capital Note and Purchase Price Note (Exhibit 3); Loan and Security Agreement (Exhibit 4); Mortgage, Leasehold Mortgage, Security Agreement, Fixture Filing and Financing Statement (Exhibit 5); System Sale Agreement (Exhibit 7); and Schedule of Estimated Draws and Amortization Schedule (Exhibit 8). Alpha Cellular maintains that this information could be used by its competitors to structure their rates and market their services in a manner which would preclude Alpha Cellular from competing effectively for customers.

The information sought to be protected is not known outside of Alpha Cellular and is not generally known by Alpha Cellular's employees except on a business need-to-know basis. Alpha Cellular seeks to preserve and protect the confidentiality of the information by all appropriate means.

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 information is available from other sources, it must be maintained for public inspection. The information sought to be protected by this agreement consists, in part, of mortgages, leasehold mortgages, security agreements, fixture filings, and financing statements. Such instruments are normally recorded in the county court clerk's office and, on occasion, in the office of the Secretary of State and are thereby

made a matter of public record. Therefore, those documents and any information that can be derived from those documents are not entitled to protection as confidential and the petition should be denied.

This Commission being otherwise sufficiently advised,

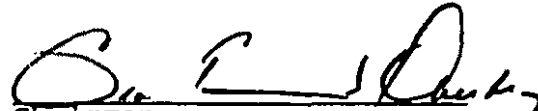
IT IS ORDERED that:

1. The petition to protect as confidential the financing documents filed by Alpha Cellular be and is hereby denied.

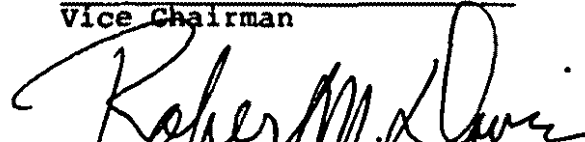
2. The information sought to be protected shall be maintained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order, at the expiration of which, it shall be placed in the public record.

Done at Frankfort, Kentucky, this 10th day of April, 1992.

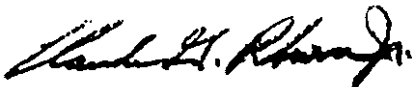
PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:



Executive Director