

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF TELEPHONE)
AND DATA SYSTEMS, INC., UNITED)
STATES CELLULAR CORPORATION AND)
TSACONAS CELLULAR, INC. FOR)
APPROVAL OF THE ACQUISITION OF)
TSACONAS CELLULAR, INC., BY)
TELEPHONE AND DATA SYSTEMS, INC.)
AND THE TRANSFER TO UNITED STATES)
CELLULAR CORPORATION)

CASE NO. 93-118

O R D E R

This matter arising upon petition of Telephone and Data Systems, Inc. ("TDS") and United States Cellular Corporation ("USCC") filed March 30, 1993 pursuant to 807 KAR 5:001, Section 7, for confidential protection of information relating to the consideration to be paid by TDS for the acquisition of Tsaconas Cellular, Inc. ("Tsaconas") on the grounds that disclosure of the information is likely to cause TDS competitive injury, and it appearing to this Commission as follows:

In this proceeding, the parties are seeking approval of the acquisition of Tsaconas by TDS and the transfer to USCC. As an exhibit to the application, the parties have filed the acquisition agreement setting forth the terms and conditions of the proposed transaction. Included in the agreement is the method by which the consideration for the acquisition will be determined. TDS and USCC seek to protect that portion of the acquisition agreement from public disclosure.

The information sought to be protected is treated as confidential by the parties to this proceeding. The parties have sought to protect and preserve 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 11 categories of information. One category exempted in subparagraph (c) 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.

TDS and USCC state that the sale and purchase of cellular licenses is conducted in a highly competitive market. They argue that competitors could use the information sought to be protected to gain valuable pricing information that would give them an unfair business advantage which they could use when bidding against or negotiating with them for the purchase or sale of cellular systems in Metropolitan Service Areas and Rural Service Areas. They

therefore maintain that the information has competitive value and is entitled to protection.

While disclosure of the consideration paid by TDS and USCC to acquire Tsaconas may give their competitors some insight into the value TDS and USCC place upon this particular cellular system, it does not affect the relative ability of TDS and USCC and each of their competitors to compete for the acquisition of other cellular licenses. Therefore, no competitive harm has been established and the petition for protection from disclosure should be denied.

This Commission being otherwise sufficiently advised,

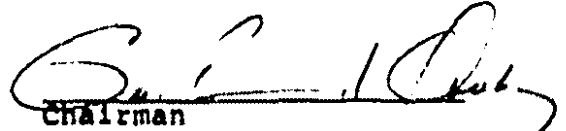
IT IS ORDERED that:

1. The petition for confidential protection of information concerning the consideration to be paid by TDS and USCC for the acquisition of Tsaconas, which TDS and USCC have petitioned be withheld from public disclosure, be and is hereby denied.

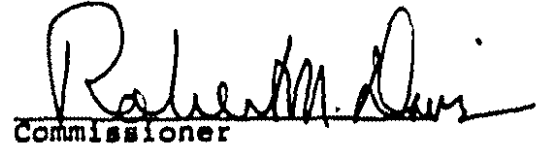
2. The information sought to be protected from disclosure shall be held as confidential and proprietary for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Order of the Commission.

Done at Frankfort, Kentucky, this 3rd day of May, 1993.


PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:



Executive Director