

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF AMERICAN COMMUNICATION)
SERVICES OF LOUISVILLE, INC. FOR THE)
ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO. 94-268
CONVENIENCE AND NECESSITY TO PROVIDE)
INTRASTATE SERVICES TO CONSUMERS)
LOCATED WITHIN KENTUCKY)

ORDER

This matter arising upon petition of American Communication Services of Louisville, Inc. ("ACSL"), filed December 16, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the network and marketing information contained in its responses to Items 19 and 20 of the Commission's data request and Items 1 and 6 of BellSouth Telecommunication, Inc., d/b/a South Central Bell Telephone Company's ("South Central Bell") data request on the grounds that disclosure of the information is likely to cause ACSL competitive injury, and it appearing to this Commission as follows:

ACSL has applied for a Certificate of Public Convenience and Necessity to provide intrastate telecommunication service. As part of these proceedings, ACSL has been requested by the Commission and by South Central Bell to furnish certain information concerning its network and market plans. By this petition, ACSL seeks to protect as confidential its responses to Items 19 and 20 of the Commission's data request, and Items 1 and 6 of South Central Bell's data request.

The information sought to be protected is not known outside ACSL or its parent corporation, American Communication Services, Inc., and is not disseminated within ACSL except to those employees who have a legitimate business need to know and act upon the information. ACSL seeks to preserve the confidentiality of the information through 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.

The service ACSL proposes to offer will compete with services offered with South Central Bell, competitive access providers in the Louisville market, Mid American Cable Corporation, Access Transmission Services, Inc., Metropolitan Fiber Systems, Inc., and IntelCom Group, Inc. In responding to South Central Bell's data request Items 1 and 6, ACSL has furnished a schematic diagram

describing the services to be provided and a map of its current network. Competitors of ACSL could use this information in devising more effective competitive strategies. Therefore, this information should be protected as confidential.

Items 19 and 20 of the Commission's data request seek information concerning ACSL's switching facilities. Specifically, Item 19 asks whether ACSL has plans to own, install, and operate switching facilities in this state and Item 20 asks whether ACSL owns or operates switching facilities that are capable of completing local telephone calls. The information requested and the responses provided are so general in nature that they provide no information of competitive value. Therefore, protection of the information should be denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential ACSL's responses to Items 19 and 20 of the Commission's data request be and is hereby denied.

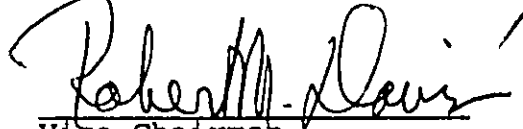
2. The network and marketing information contained in ACSL's responses to Items 1 and 6 of South Central Bell's data request, which ACSL has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

3. ACSL shall, within 20 days from the date of this Order, file for inclusion in the public record, its responses to Items 19 and 20 of the Commission's data request.

Done at Frankfort, Kentucky, this 24th day of February, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director