

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF MIDCOM)
COMMUNICATIONS, INC. AND GE CAPITAL) CASE NO. 96-078
COMMUNICATION SERVICES CORPORATION FOR)
APPROVAL OF A TRANSFER OF ASSETS)

O R D E R

This matter arising upon the joint petition of MIDCOM Communications, Inc. ("MIDCOM") and GE Capital Communication Services Corporation, d/b/a GE Exchange and GE Capital Exchange ("GE"), filed February 29, 1996, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the customer base purchase and sale agreement between the parties on the grounds that disclosure of the information is likely to cause competitive injury, and it appearing to this Commission as follows:

GE is a corporation authorized to provide intrastate telecommunications services in this state. Under the terms of a customer base purchase and sale agreement, GE has agreed to convey to MIDCOM, a portion of its customer accounts and the accounts receivable relating to those accounts. As part of the agreement, MIDCOM has agreed to provide telecommunications service to those customers. In seeking approval of the transaction, MIDCOM and GE have filed copies of their contract and by this petition seek to protect portions of that contract from public disclosure.

The information sought to be protected is not known outside of MIDCOM or GE. Further, employees and others involved in the

business of MIDCOM and GE do not have access to the information except on a need-to-know basis.

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 subsection of the statute exempts several categories of information. One category exempted in paragraph (c)1 of that subsection is commercial information confidentially disclosed to the Commission which if made public would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for the exemption, 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.

Although MIDCOM and GE maintain that disclosure of the information would benefit their competitors, the petition neither identifies the competitors nor demonstrates how competitors could use the information to the detriment of MIDCOM and GE. Therefore, the petition does not demonstrate that the information is entitled to protection from public disclosure and the petition should be denied.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

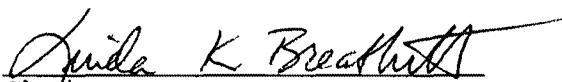
1. The petition to protect as confidential the agreement between MIDCOM and GE is hereby denied.


2. The information sought to be protect 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 to allow MIDCOM and GE an opportunity to file an amended petition in accordance with the requirements of the statute.

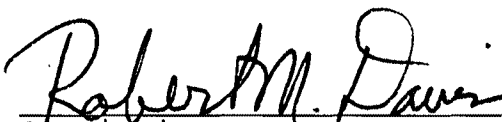
3. If, at the expiration of the 20-day period, an amended petition has not been filed, the information sought to be protected shall be placed in the public record without further Orders herein.

Done at Frankfort, Kentucky, this 20th day of March, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director