

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION FOR APPROVAL OF TRANSFER)
OF ASSETS AND CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY FROM) CASE NO. 96-206
PENNSYLVANIA ALTERNATIVE COMMUNICA-)
TIONS, INC. TO LCI INTERNATIONAL TELECOM)
CORP.)

O R D E R

This matter arising upon joint petition of Pennsylvania Alternative Communications, Inc. ("PACE") and LCI International Telecom Corp. ("LCI Telecom"), filed June 13, 1996, pursuant to 807 KAR 5:001, Section 7, for confidential protection of portions of a Purchase and Sale Agreement between the petitioners on the grounds that disclosure of the information is likely to cause the petitioners competitive injury, and it appearing to this Commission as follows:

LCI is engaged in providing retail long-distance telecommunications services. Under the terms of the written agreement between LCI and PACE, LCI has agreed to sell to PACE all of its assets associated with that business. By this petition, LCI and PACE seek to protect portions of the agreement on the grounds that disclosure is likely to cause irreparable harm to their ability to compete in the telecommunications market.

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.

The telecommunications industry is highly competitive both in the provision of services and in the acquisition of existing companies. Disclosure of the information sought to be protected would provide competitors of the petitioners important data concerning the results of private and confidential negotiations between them. Competitors could use this information for future negotiations with other companies that have been targeted for acquisition by the petitioners, thereby undermining their ability to negotiate on a level playing field. Therefore, disclosure of the information is likely to cause the petitioners competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that those portions of the agreement between the petitioners which they have 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.

Done at Frankfort, Kentucky, this 2nd day of July, 1996.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

E. J. [Signature]
Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director