

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ACC OF KENTUCKY LLC'S)	
PETITION FOR)	CASE NO. 99-184
CONFIDENTIAL PROTECTION)	

O R D E R

ACC of Kentucky LLC ("ACC") filed a motion with the Commission on May 4, 1999 requesting the Commission's reconsideration of denial of confidential protection for certain information on the grounds that the disclosure thereof is likely to cause ACC competitive injury.

On September 9, 1999, the Commission granted ACC's motion for a formal hearing to be held October 14, 1999. However, ACC subsequently requested that the matter be submitted to the Commission on the record and waived the formal hearing. On July 6, 1999, ACC filed its response to the Commission's data request and filed its brief on September 1, 1999.

Pursuant to KRS 278.130 and 278.140, ACC is required to file with the Commission a Gross Operating Revenue Report. In that report ACC must set forth its total number of customers in Kentucky and its gross revenue in Kentucky. It is this information that ACC seeks to protect from public disclosure under KRS Chapter 61, the Kentucky Open Records Act.

ACC has been denied confidential treatment for its total number of customers and its annual gross revenue upon the grounds that the information is too general in nature to have a competitive value.

ACC urges the Commission to reassess its position on the treatment of this information and to grant confidential treatment of the information pursuant to the provisions of KRS 61.878(1)(c)1 and 61.878(1)(c)2.

First, ACC points out that the information is not required for tariff purposes, but rather is required for assessment purposes. KRS 278.130 requires the Revenue Cabinet to annually assess utilities under the jurisdiction of the Commission for the support of the Commission and its regulatory functions. KRS 278.140 requires utilities to file a report of earnings to ascertain the amount of that assessment. ACC maintains that because the information is collected only for the purpose of calculating an annual assessment, the information should not be subject to public inspection.

Second, ACC argues collectively that the information is generally recognized as proprietary and its disclosure would permit an unfair commercial advantage to its competitors. ACC refers to KRS 65.7639, as amended in 1998, in support of its position that the Kentucky Legislature has recognized the proprietary nature of the information ACC seeks to protect in this proceeding. The Legislature stated in KRS 65.7639 that the entity receiving the information from a commercial mobile radio service (“CMRS”) provider could release such information “only in aggregate amounts which do not identify or allow identification of numbers of subscribers or revenues attributable to an individual CMRS provider.”

ACC argues that the changing nature of the telecommunications industry converts information which was once too general to have competitive value to competitively sensitive information. ACC maintains that the disclosure of gross revenues and customer numbers reveals ACC's average revenue per customer. This information, ACC argues, can be used by its competitors to approximate the cost of providing cellular service to a customer in a given area; then, using that information, a competitor could calculate ACC's profitability per customer, revealing the principal component of capital available for expansion. ACC further argues that the foregoing, combined with disclosure of annual customer count, would reveal the area of new customer growth. A competitor would thereby be provided the necessary information to focus on that market area, thus creating an unfair commercial advantage.

Based on recent changes in the law and in the wireless telecommunications market, the Commission finds that the gross revenue and customer number information (such as that filed by ACC in the Gross Operating Revenue Report) is the type of information that falls within the provisions of KRS 61.878(1)(c)1. Marina Management Servs., Inc v. Cabinet for Tourism, Ky., 906 S.W. 2d 318 (1995). Accordingly, the gross revenue and customer number information should be granted confidential treatment and withheld from public disclosure.

As the conclusions herein depart from established Commission precedent, a copy of this Order shall be served on each wireless telecommunications provider doing business in Kentucky.

The Commission, being sufficiently advised, HEREBY ORDERS that:

1. The petition of ACC is granted.

2. The gross revenue and customer number information filed in ACC's Gross Operating Revenue Report is hereby held to be confidential and shall be withheld from public disclosure.

3. A copy of this Order shall be served upon each wireless telecommunications provider doing business in Kentucky.

Done at Frankfort, Kentucky, this 24th day of January 2000.

By the Commission

ATTEST:

Executive Director