

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

<u>PHOENIX NETWORK CORPORATION</u>	)	
	)	
ALLEGED VIOLATION OF KRS	)	CASE NO. 89-356
278.020 AND KRS 278.160	)	

O R D E R

This matter arising upon petition of Charter Network Company ("Charter"), formerly The Phoenix Network Corporation,<sup>1</sup> filed August 1, 1990 pursuant to 807 KAR 5:001, Section 7, for confidential protection of Charter's report, listing customers' names and the amount of their intrastate toll usage, during the period December 16, 1986 through and including January 5, 1990 on the grounds that disclosure of the information is likely to cause Charter competitive injury, and it appearing to this Commission as follows:

Charter provides long-distance telecommunications service to Chicago and Peoria, Illinois; Indianapolis, Fort Wayne, and South Bend, Indiana; Akron, Cleveland, Columbus, Dayton, Toledo, Youngstown, and Cincinnati, Ohio; and Milwaukee and Madison, Wisconsin. At least 25 companies presently compete in whole or in part with Charter in these markets, including American Telephone & Telegraph

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<sup>1</sup> By order of January 5, 1990 in Case No. 89-356, The Phoenix Network Corporation was authorized to change its name to Charter Network Company.

Company, U.S. Sprint Communications Company, MCI Telecommunications Company, Allnet, and Wiltell.

Pursuant to the Commission's Order of January 5, 1990, Charter filed a report listing its customers during the period of December 16, 1986 through and including January 5, 1990 and the amount of the customers' intrastate usage during the period. By this petition Charter seeks to protect public disclosure of that information as confidential.

The information sought to be protected is treated confidentially by Charter and its billing agent and is not available to others outside Charter's business.

807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order 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.

As a long-distance carrier, Charter faces competition in the markets that it serves. Competitors in those markets could use the information sought to be protected as a pool of potential customers willing to use a reseller. The information also provides Charter's competitors with a convenient and not otherwise available method of identifying Charter's best customers. Thus, disclosure of the information is likely to cause Charter competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS HEREBY ORDERED that:

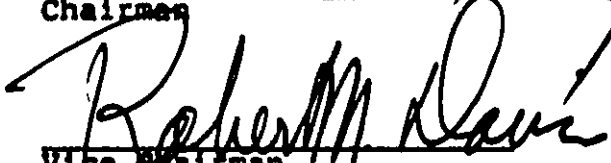
1. Charter's report listing customers' names and amounts of their intrastate toll usage, during the period December 16, 1986 through and including January 5, 1990, filed pursuant to the Commission's Order of January 5, 1990, which Charter has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

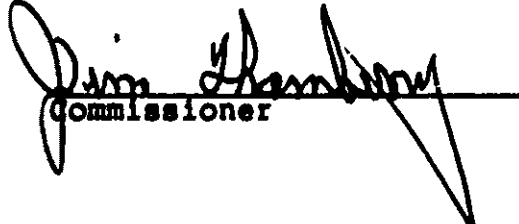
2. To the extent that it has not already done so, Charter shall, within 10 days of the date of this Order, file an edited copy of the report with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 24th day of September, 1990.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director