

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF KENTUCKY RSA #3)
CELLULAR GENERAL PARTNERSHIP FOR)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
PROVIDE DOMESTIC PUBLIC CELLULAR) CASE NO. 90-307
TELECOMMUNICATIONS SERVICE TO THE)
PUBLIC IN RURAL SERVICE AREA #3)
(MEADE) OF THE COMMONWEALTH OF)
KENTUCKY)

O R D E R

This matter arising upon petition of Kentucky RSA #3 Cellular General Partnership ("Kentucky RSA #3") filed January 3, 1991 for confidential protection of Exhibit K to its letter of January 3, 1991 and upon petition filed January 11, 1991 for confidential protection of Exhibit L to its response to Item 18 of the Commission's Order of November 29, 1990 on the grounds that disclosure of the information is likely to cause Kentucky RSA #3 competitive injury and that the information is exempt from disclosure under 807 KAR 5:001, Section 7, and it appearing to this Commission as follows:

Kentucky RSA #3 is a partnership that has filed an application for a Certificate of Public Convenience and Necessity to provide cellular telecommunications service in rural service area #3 of this state. On November 29, 1990, the Commission entered an Order directing Kentucky RSA #3 to provide certain specified information, including a detailed breakdown of the

operating expenses estimated for the service and an explanation of how the estimates were derived. In response to the Order, the information was furnished to the Commission as Exhibit L.

In addition, Kentucky RSA #3 has attached, as Exhibit K to its letter of January 3, 1991, the partnership agreement under which Kentucky RSA #3 was formed. The exhibit identifies the amount that each partner contributed toward construction of the partnership's proposed communications system, and the financial statement of each of the partners.

The information sought to be protected is not generally known outside of Kentucky RSA #3 and is known only to those employees and others involved in Kentucky RSA #3's business on a need-to-know basis. Kentucky RSA #3 seeks to protect and preserve the confidentiality of the information by all appropriate means.

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.

On November 28, 1990, the Commission entered an Order granting confidential protection to Exhibits 3 and 4 of Kentucky RSA #3's application. These exhibits contained the acquisition costs and the capital costs of the projected cell sites for its

first year of operation, and the acquisition costs and the capital costs of the Kentucky switch for the cellular telecommunications system of which Kentucky RSA #3 is a part. In granting confidential protection, the Commission found that the exhibits contained financial information which competitors could use to determine the revenue Kentucky RSA #3 would require in order to meet its operating expenses, and that competitors could use this information to Kentucky RSA #3's disadvantage in marketing their own services. The information contained in Exhibit L which Kentucky RSA #3 seeks to protect as confidential is the same information contained in Exhibits 3 and 4 of the application except in more detail. Therefore, disclosure of the information contained in Exhibit L is also likely to cause Kentucky RSA #3 competitive injury, and the information should be protected as confidential.

Similarly, Exhibit K to Kentucky RSA #3's letter of January 3, 1991 contains financial information which competitors could also use to determine the revenue Kentucky RSA #3 will require in order to meet its operating expenses. This information could therefore be used by Kentucky RSA #3's competitors in marketing competing services, and therefore, the information should also be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED:

1. The information contained in Exhibit K to Kentucky RSA #3's letter of January 3, 1991 to the Commission and Exhibit L to Kentucky RSA #3's response to Item 18 of the Commission's Order of

November 28, 1990, which Kentucky RSA #3 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. Kentucky RSA #3 shall, within 10 days of the date of this Order, file an edited copy of Exhibits K and L with the confidential material obscured for inclusion in the public record, with copies to all parties of record.

Done at Frankfort, Kentucky, this 21st day of February, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director