

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

- I. THE APPLICATION OF METRO MOBILE CTS OF )  
POWELL, INC., A KENTUCKY CORPORATION, )  
FOR ISSUANCE OF A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY TO PROVIDE )  
DOMESTIC PUBLIC CELLULAR RADIO )  
TELECOMMUNICATIONS SERVICE TO THE )  
PUBLIC IN THE KENTUCKY RURAL SERVICE )  
AREA WHICH INCLUDES POWELL, ESTILL, )  
WOLFE, LEE, JACKSON, OWSLEY, BREATHITT, )  
PERRY, KNOTT, AND LETCHER COUNTIES IN )  
KENTUCKY, FOR APPROVAL OF FINANCING, )  
AND FOR ESTABLISHMENT OF INITIAL RATES )
  
- II. THE JOINT APPLICATION OF METRO MOBILE )  
CTS OF POWELL, INC. AND ALPHA CELLULAR )  
TELEPHONE COMPANY, A FLORIDA GENERAL )  
PARTNERSHIP, FOR THE TRANSFER OF THE )  
ASSETS AND LIABILITIES OF METRO MOBILE )  
CTS OF POWELL, INC. TO ALPHA CELLULAR )  
TELEPHONE COMPANY AND OF RELATED )  
FINANCING )

CASE NO. 91-410

O R D E R

This matter arising upon petition of Metro Mobile CTS of Powell, Inc. ("Metro Mobile") and Alpha Cellular Telephone Company ("Alpha Cellular") filed November 1, 1991 pursuant to 807 KAR 5:001, Section 7, for confidential protection of their Business Plan, their Vendor Financing Term Sheet, and their RSA Asset Purchase Agreement on the grounds that disclosure of the information is likely to cause Metro Mobile and Alpha Cellular competitive injury, and it appearing to this Commission as follows:

Metro Mobile and Alpha Cellular have applied for a Certificate of Public Convenience and Necessity to provide domestic public cellular telecommunications service to the public in their Rural Service Area and have further applied for approval of the transfer of the assets and liabilities of Metro Mobile to Alpha Cellular. In support of their application, Metro Mobile and Alpha Cellular have submitted, as Exhibit 6, their Business Plan which includes estimates of the cost of construction and pro forma financial statements; as Exhibit 7, the Vendor Financing Term Sheet issued by NovAtel Finance Inc.; and, as Exhibit 20, the RSA Asset Purchase Agreement. Metro Mobile and Alpha Cellular contend that disclosure of this information is likely to cause competitive injury and has petitioned that the information be protected as confidential.

The information sought to be protected is not known outside of the businesses of Metro Mobile and Alpha Cellular and is not generally known by their employees except those who have a business need to know and act upon the information. Metro Mobile and Alpha Cellular have sought to protect and preserve the confidentiality of the information through all appropriate means.

Under 807 KAR 5:001, Section 7, information is protected 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.

The cellular telephone market is a competitive industry and Metro Mobile and Alpha Cellular will have competition in the Rural Service Area in which they propose to construct their system described in their application for a Certificate of Public Convenience and Necessity. Potential competitors could use the information to structure their rates and market their services in a manner which would preclude effective competition for customers. Therefore, disclosure of the information is likely to cause competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:


1. The Business Plan, the Vendor Financing Term Sheet, and the RSA Asset Purchase Agreement, which Metro Mobile and Alpha Cellular have 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. Metro Mobile and Alpha Cellular shall, within 10 days of the date of this Order, file an edited copy of the exhibits 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 November, 1991.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

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Commissioner

ATTEST:

  
Executive Director