

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| AN INVESTIGATION INTO DIVERSIFIED |) | |
| OPERATIONS OF LOCAL EXCHANGE |) | ADMINISTRATIVE |
| TELEPHONE COMPANIES |) | CASE NO. 340 |

O R D E R

This matter arising upon petition of Foothills Rural Telephone Cooperative Corporation, Inc. ("Foothills RTCC") filed March 4, 1992 for confidential protection of Exhibits 1 and 3 of its responses to the Commission's Order of October 25, 1991 on the grounds that disclosure of the information would constitute an invasion of Foothills RTCC's privacy and that disclosure of the information is likely to cause Foothills RTCC competitive injury, and it appearing to this Commission as follows:

On January 13, 1992, Foothills RTCC petitioned this Commission for confidential protection of Exhibits 1 and 3 of its responses to the Commission's Order of October 25, 1991. The Commission, on February 18, 1992, denied the petition and, on March 4, 1992, Foothills RTCC renewed its request. The grounds for both petitions are identical.

As noted in the earlier Order and in both petitions, Exhibit 1 contains journal entries which disclose Foothills RTCC's exact dollar investments in the capitalization of subsidiary corporations. Exhibit 3, on the other hand, contains excerpts from actual board meetings which authorize Foothills RTCC's

investments and capital contributions in its cellular operations. It is not clear from Exhibit 3 to what extent the investments and capital contributions are reflected in Exhibit 1 and to what extent they reflect projected investments and contributions.

The exemption for personal information is provided in KRS 61.878(1)(a). The Order of February 18, 1992 found that the exemption was only applicable to individuals and that Foothills RTCC, as a corporation, was not entitled to protection under its provisions. That ruling is based upon decisions of the Kentucky courts, as well as decisions of the federal courts when applying a similar provision under the federal Freedom of Information Act.

The Order of February 18, 1992 also denied protection under KRS 61.878(1)(b) which exempts certain commercial information confidentially disclosed to the Commission. As noted in the Order, that section of the statute protects information filed with a public agency which "if openly disclosed would permit an unfair advantage to competitors of the subject enterprise." 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. The Commission, in denying protection, determined that the information concerning Foothills RTCC's investments in its cellular operations could be derived from its periodic reports filed with the Commission and, therefore, the information was not confidential and not entitled to protection. The Commission also found that the projected investments and capital contributions were presented

in summary form and did not contain sufficient detail to have significant competitive value.

Upon reexamination, it would appear that with respect to the information providing the projected investments and capital contributions, the petition fails because it does not identify the competitors who would benefit from the information, nor does it describe with sufficient specificity how the information could be used by a competitor to gain an advantage over Foothills RTCC.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential the journal entries disclosing the exact dollar investments in the capitalization of subsidiary corporations provided in Exhibit 1 to Foothills RTCC's responses to the Commission's Order of October 25, 1991 and excerpts from board meetings authorizing those expenditures provided in Exhibit 3 to Foothills RTCC's responses be and is hereby denied.

2. Exhibit 1 shall be held and retained by this Commission as confidential for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Order of the Commission.


3. The financial amounts authorized by the corporate minutes filed in response to Exhibit 3 to Foothills RTCC's responses to the Commission's Order of October 25, 1991 shall be held and retained by this Commission as confidential for a period of 20 days and shall not be open for public inspection to allow Foothills RTCC to file a supplement to this petition identifying

the competitors who would benefit from public disclosure of the information and describing with specificity how such competitors can use the information to gain a competitive advantage. If at the expiration of the 20-day period no supplement to this petition is filed, the information shall be placed in the public record without further Order of the Commission.

4. If Foothills RTCC files a supplemental petition to protect the projected investment and capital contribution information, it shall as a part of the petition file an edited version of Exhibit 3 obscuring only that portion of the exhibit which provides that information.

Done at Frankfort, Kentucky, this 27th day of April, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director, Acting