

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF TELEPHONE)
AND DATA SYSTEMS, INC., UNITED)
STATES CELLULAR CORPORATION AND)
TSACONAS CELLULAR, INC. FOR)
APPROVAL OF THE ACQUISITION OF) CASE NO. 93-118
TSACONAS CELLULAR, INC., BY)
TELEPHONE AND DATA SYSTEMS, INC.)
AND THE TRANSFER TO UNITED STATES)
CELLULAR CORPORATION)

O R D E R

This matter arising upon the application of Telephone and Data Systems, Inc. ("TDS") and United States Cellular Corporation ("USCC") filed May 21, 1993 pursuant to KRS 278.400 for rehearing of the Commission's Order of May 3, 1993 denying confidential protection to the consideration to be paid by TDS for the acquisition of Tsacomas Cellular, Inc. ("Tsacomas") on the grounds that KRS 61.878(1)(c)1 exempts the information from public disclosure, and it appearing to this Commission as follows:

In this proceeding, the parties are seeking approval of the acquisition of Tsacomas by TDS and its subsequent transfer to USCC. As part of their application, TDS and USCC have filed an agreement setting forth the terms and conditions of the proposed transaction. On March 30, 1993, TDS and USCC petitioned the Commission to protect as confidential that portion of the agreement containing the consideration for the acquisition of Tsacomas on the grounds

that disclosure of that information is likely to cause TDS and USCC competitive injury.

In their original petition, TDS and USCC maintained that the market in which cellular systems are traded is highly competitive, and that knowledge of the price TDS was willing to pay for Tsaconas would reveal to TDS's competitors in that marketplace the value which TDS places on cellular systems similar to the Tsaconas system. TDS and USCC alleged that competitors' use of this knowledge, when seeking to acquire or dispose of a system, could result in TDS's and USCC's paying more for a cellular system than they would otherwise pay, failing to obtain a cellular system that they would otherwise obtain, or receiving less for a cellular system than they would otherwise receive.

On May 3, 1993, the Commission found that "while disclosure of the consideration paid by TDS and USCC to acquire Tsaconas may give their competitors some insight into the value TDS and USCC place upon the particular cellular system, it does not affect the relative ability of TDS and USCC and each of their competitors to compete for the acquisition of other cellular licenses." Based on this finding, the petition was denied. In their petition for rehearing, TDS and USCC reiterate the original grounds for their petition.

As noted in the earlier Order, to qualify for the exemption under KRS 61.878(1)(c)1, the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. While TDS and

USCC may compete with other entities in purchasing and selling cellular systems, it is unlikely that knowledge of the price they paid for one system would substantially affect their ability to compete for other systems. Therefore, the application for rehearing should not be granted on that basis.

As additional grounds, raised for the first time in their petition for rehearing, TDS and USCC also maintain that knowledge of the purchase price paid to Tsacomas would affect USCC's ability to compete in selling its services in the cellular market. Cellular companies operate in a market in which each cellular company competes with one other cellular operator in the service area in which it is authorized to provide service. TDS and USCC contend that knowledge of the purchase price paid to Tsacomas would permit the competitor in that market to determine the rates that USCC will be required to charge for its services in order to break even. They also argue that knowledge of USCC's break even point would enable the competitor to structure its rates and market its services in a manner that may make it more difficult for USCC to compete effectively and economically for customers.

The acquisition cost of any business enterprise is only one of many factors which must be considered in determining that enterprise's overall cost of doing business. Therefore, disclosure of the acquisition cost, without providing additional information relating to the company's operations, is unlikely to reveal the company's break even point. Thus, disclosure of the acquisition

cost is not likely to benefit USCC's competitor and the information is not entitled to protection on those grounds.

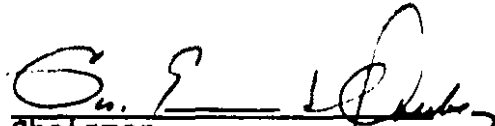
This Commission being otherwise sufficiently advised,
IT IS ORDERED that:

1. The application for rehearing of the Commission's May 3, 1993 Order concerning the consideration to be paid to TDS and USCC for the acquisition of Tsaconas, which TDS and USCC have petitioned be withheld from public disclosure, be and is hereby denied.

2. The information sought to be protected from disclosure shall be held as confidential and proprietary 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.

Done at Frankfort, Kentucky, this 10th day of June, 1993.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director