

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF HORIZON CELLULAR)
TELEPHONE COMPANY OF SPENCER, L.P.,)
A DELAWARE LIMITED PARTNERSHIP,) CASE NO. 93-345
FOR AUTHORITY TO ASSUME CERTAIN)
LIABILITIES)

O R D E R

This matter arising upon petition of Horizon Cellular Telephone Company of Spencer, L.P., a Delaware limited partnership ("Horizon Cellular-Spencer"), filed July 28, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the conditions upon which proceeds will be advanced under a credit agreement on the grounds that disclosure of the information is likely to cause Horizon Cellular-Spencer competitive injury, and it appearing to this Commission as follows:

On March 8, 1993, Horizon Cellular-Spencer was granted a Certificate of Public Convenience and Necessity by this Commission to provide domestic cellular radio telecommunications services in the Kentucky rural service area designated as RSA No. 4. Subsequently, on September 4, 1993, Horizon Cellular-Spencer requested authority to assume certain liabilities with respect to indebtedness to be incurred by its limited partner, Horizon Cellular Telephone Company, L.P. and its wholly-owned subsidiary, Horizon Finance Corporation. On July 28, 1994, Horizon Cellular-Spencer applied for authority to amend its application to assume

those same liabilities and as a part of its amended application filed this petition to protect as confidential the conditions upon which proceeds will be advanced under the credit agreement contained in the application. As grounds for this petition, Horizon Cellular-Spencer maintains that disclosure of the conditions upon which proceeds will be advanced will result in competitive injury.

Horizon Cellular-Spencer and the other parties to the agreement have consistently treated the information sought to be protected as confidential business information and have strictly limited its distribution to those employees who have a business need for the information.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 11 categories of information. One category exempted in subparagraph (c) of that section is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. 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.


Horizon Cellular-Spencer is in the business of not only providing cellular telephone services, but also in acquiring existing providers of such service. As such, it competes with other companies who also seek to acquire cellular systems when they are offered for sale on the open market. Disclosure of the information sought to be protected will reveal to such competitors the financial resources available to Horizon Cellular-Spencer for future acquisitions. Such information would enable competitors to compete more effectively in the acquisition of other cellular systems. Therefore, disclosure of the information is likely to cause Horizon Cellular-Spencer competitive injury and the information should be protected as confidential.


This Commission being otherwise sufficiently advised,

IT IS ORDERED that the conditions upon which proceeds will be advanced under the credit agreement contained in its application, which Horizon Cellular-Spencer 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.

Done at Frankfort, Kentucky, this 14th day of September, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director