

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF AMERICAN COMMUNICATION)
SERVICES OF LOUISVILLE, INC. FOR THE)
ISSUANCE OF A CERTIFICATE OF PUBLIC) CASE NO. 94-268
CONVENIENCE AND NECESSITY TO PROVIDE)
INTRASTATE SERVICES TO CONSUMERS)
LOCATED WITHIN KENTUCKY)

O R D E R

This matter arising upon petition of American Communication Services of Louisville, Inc. ("American Communication"), filed July 18, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of Exhibits G and H to American Communication's application on the grounds that disclosure of the information is likely to cause American Communication competitive injury, and it appearing to this Commission as follows:

American Communication has applied for a Certificate of Public Convenience and Necessity to operate within this state. In support of its application, American Communication has filed as Exhibit G its network construction cost and as Exhibit H its financial information, both of which documents it seeks to protect as confidential. No edited copies of the exhibits were filed with the petition.

807 KAR 5:001, Section 7, provides the procedure for obtaining confidential protection of information filed with the Commission. Subsection (2)(a)(2) requires the petitioner seeking protection to

file an edited copy of the information with the confidential material obscured for inclusion in the public record. American Communication has failed to comply with this provision of the regulation and its petition must be denied.

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 ten categories of information, including an exemption for information which if publically disclosed 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. While the petition alleges that disclosure of the information sought to be protected is likely to cause American Communication competitive injury, it does not identify the competitors who would benefit from the information, nor does it demonstrate how the information would be of benefit to such competitors. Therefore, it cannot be determined from the petition whether the information qualifies for exemption under the statute.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential Exhibits G and H to American Communication's application be and is hereby denied.

2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection for a period of 20 days from the date of this Order to allow American Communication to file a petition in accordance with the procedure set forth in 807 KAR 5:001, Section 7.


3. If at the expiration of the 20-day period American Communication has not filed a petition in accordance with the regulation, the information sought to be protected shall be placed in the public record without further Orders herein.

Done at Frankfort, Kentucky, this 3rd day of August, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director