

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WIRELESSCO, L.P. FOR)
OPERATING AUTHORITY AND ISSUANCE OF)
CERTIFICATE OF PUBLIC CONVENIENCE) CASE NO. 96-077
AND NECESSITY TO CONSTRUCT)
COMMERCIAL MOBILE RADIO SERVICE)
TRANSMISSION FACILITIES IN KENTUCKY)

O R D E R

This matter arising upon motion of WirelessCo, L.P. ("WirelessCo"), filed June 13, 1996, for reconsideration of the Commission's Order of May 24, 1996, denying confidential protection to Exhibits C, E, and F to WirelessCo's application for a Certificate of Public Convenience and Necessity, and it appearing to this Commission as follows:

On February 27, 1996, WirelessCo filed an application for a Certificate of Public Convenience and Necessity to construct and operate a commercial mobile radio service transmission system to serve customers in this state. In support of its application, WirelessCo filed as Exhibit C its balance sheet, as Exhibit E a description of its initial planned coverage within its authorized service area, and as Exhibit F its tower design criteria and its tower cost estimates. Concurrent with its application WirelessCo also filed a petition to protect the three exhibits as confidential. The petition was denied on May 24, 1996 and this motion followed.

Information filed with any governmental agency, including this Commission, is required by KRS 61.872(1) to be available for public inspection unless specifically

exempted by statute. Exemptions from this requirement are provided in subsection (1) of KRS 61.878. In its original petition WirelessCO maintained that the information provided in Exhibits C, E, and F were exempt from public inspection under KRS 61.878 (1)(c)2.d.¹ That statutory provision protects "...records confidentially disclosed to an agency or required by an agency to be disclosed to it, *generally recognized as confidential or proprietary*, which are compiled and maintained...(f)or the grant or review of a license to do business"(emphasis added). To qualify for the exemption it must be established that the information is held in confidence by those who have knowledge of it and is a type of information generally recognized as confidential or proprietary. The May 24, 1996 Order denied confidentiality after it was found that the petition did not satisfy this test.

Specifically, with respect to the balance sheet information in Exhibit C, the Order found that the petition did not establish that the information was not known outside the company and therefore confidentially protected by the company. In seeking reconsideration, WirelessCo maintains that by describing the information as "extremely sensitive, confidential, and commercially valuable" it was implicit from the petition that the information was protected within the company. Nevertheless, to remove any question on the issue WirelessCo now states explicitly in its motion for reconsideration that the information in Exhibit C is not known outside of the company, and is maintained

¹ This statutory provision was erroneously cited in the petition as KRS 61.878 (2)(d).

as confidential information. Assuming this is true, the issue remains whether the information is generally recognized as confidential or proprietary.

In support of its contention that the information in Exhibit C is generally recognized as confidential or proprietary, WirelessCo relies on the decision of the Supreme Court in *Hoy vs. Kentucky Industrial Revitalization Authority*, Ky., 907 S.W.2d 766,(1995). There Thomas Hoy sought to obtain financial records which General Electric Company had filed with the Kentucky Industrial Revitalization Authority as part of an application for business incentives available under KRS Chapter 154. The Court, in holding that the information was entitled to protection stated:

It does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is "generally recognized as confidential or proprietary" and falls within the wording of KRS 61.878 (1)(c)(2). Id. at 768.

WirelessCo maintains that this same reasoning is applicable to the balance sheet information provided in Exhibit C and the information should, therefore, be protected as confidential. However, there is a significant aspect of the information filed by WirelessCo which was apparently not present in the information filed by General Electric Company.

According to a registration statement filed with the U.S. Securities and Exchange Commission and thereby made a matter of public record, WirelessCo is a subsidiary of Sprint Spectrum Holding Company, L.P., a holding company whose operations are financed to a certain degree by the sale of securities on the open market. Such transactions are regulated by various state and federal agencies, such as the Securities and Exchange Commission, who generally require that companies offering securities to the public file with it information of the type contained in the balance sheet that

WirelessCo has filed in this proceeding. The purpose of these filings is to provide the public with full disclosure of information thought necessary to make an informed decision concerning the soundness of the investment offer. To achieve this objective the information is not only a matter of public record but is also often provided in a prospectus issued to the public for each security offering. Thus, even if the information is confidentially maintained by WirelessCo at this time, because it is a company that relies upon public investor financing, it is not information that is generally recognized as confidential or proprietary and Exhibit C is not entitled to protection.

Concerning WirelessCo's plans for extending coverage in its authorized service area which are provided in Exhibit E, the May 24, 1996 Order denied protection for the information after finding that the same information could be derived from other information previously placed in the public record by WirelessCo and, therefore, it was no longer confidential. Specifically, the Order was referring to three letters dated February 26, 1996 from Gearon and Co. Inc. that it intended to install antennas for WirelessCo at three separate locations. While the letters do not describe the areas for which the antennas will provide coverage, that information can be determined from their location. Therefore, the information in Exhibit E is not confidential and is not entitled to protection.

In the alternative WirelessCo requests that if the information in Exhibit E is determined not to be exempt from public disclosure, it be allowed to withdraw the information from the file and submit in its place a description of its Kentucky MTA. The

information is not required to process WirelessCo's application for a Certificate of Public Convenience and Necessity and the request should be granted.

Concerning the tower design criteria and the tower cost estimates provided in Exhibit F, in its original petition WirelessCo maintained that the information was exempt from disclosure by KRS 61.878(1)(c)2.d. While the motion for reconsideration cites the same statutory provision as the basis for protection, it contends that the information should be protected under this provision because its disclosure will benefit WirelessCo's competitors and thereby cause it competitive injury. Although competitive injury is a ground for protecting information under a related statutory provision, KRS 61.878(1)(c)1, it is not under the provision relied upon by WirelessCo. Nevertheless, both provisions require that the information be confidential. Here again, as found in the original Order, the information pertaining to tower design criteria and tower cost estimates is fairly standard in the industry and readily available to the public. Thus, Exhibit F is not confidential and is not entitled to protection. Furthermore, it would seem that the design and cost of each tower will depend upon its location, so that knowing the cost and design specifics of one tower will provide no substantial benefit in planning for another at a different location.

In the alternative WirelessCo again requests that if the information in Exhibit F is determined not to be exempt from public disclosure, it be allowed to withdraw the information from the file. The information is not required to process WirelessCo's application for a Certificate of Public Convenience and Necessity and the request should

be granted. However, this should not relieve WirelessCo from providing specific site costs and designs as required by the April 23, 1996 Order.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:


1. The Order of May 24, 1996 denying protection to the balance sheet information provided in Exhibit C to the application, to the description of the company's initial planned coverage provided in Exhibit E to the application, and to the tower design criteria and the tower cost estimates in Exhibit F is reaffirmed.

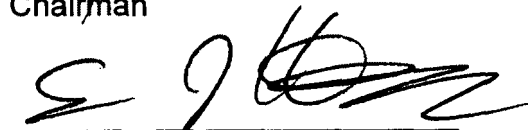
2. The motion to withdraw from the application Exhibits E and F is granted, and the information shall be returned to the applicant.

3. WirelessCo shall within 20 days file a description of its Kentucky MTA and shall further continue to comply with all provisions of the April 23, 1996 Order.

Done at Frankfort, Kentucky, this 2nd day of July, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director