

DT 99-075

ACI CORP. D/B/A ACCELERATED CONNECTIONS

**Petition for Authority to Provide
Local Telecommunications Services**

**Order Granting Motion for
Confidential Treatment**

O R D E R N O. 23,274

August 2, 1999

On May 14, 1999, ACI Corp. d/b/a Accelerated Connections (ACI or Company) filed with the New Hampshire Public Utilities Commission (Commission) a petition for authority to provide switched and non-switched local exchange telecommunications services pursuant to RSA 374:22-g.

On June 22, 1999 the Commission issued Order Nisi No. 23,242, effective July 22, 1999, approving ACI's petition for authority to provide intrastate local exchange telecommunications services in the service territory of Bell Atlantic subject, inter alia, to the requirements of N.H. Admin Rule Puc 1304.03.

On May 14, 1999 ACI also filed, in support of its petition, a certain Exhibit 10, which included a current financial balance sheet of the petitioner together with a Motion for Confidential Treatment. The financial balance sheet includes a statement of the Company's current assets, including equity, and its liabilities (the Information). The Motion for Confidential Treatment asserts that the Information qualifies

under the "confidential, commercial or financial information" exemptions from disclosure as set forth in RSA 91-A:5, IV and Puc 204.06 and that the Information qualifies as a trade secret pursuant to RSA 350-B.

In its motion ACI also avers that: (1) Neither ACI nor its parent, RHYTHMS NetConnections, Inc., publicly disclose the Information and that they take all reasonable measures to prevent dissemination of the Information in the regular course of business; (2) that disclosure of the Information would provide no general benefit to the public and would place ACI at a material disadvantage with respect to its competitors; and (3) that ACI and its parent have expended a great deal of financial resources on the development of its technology and the application of that technology in the telecommunications market and that the benefit to ACI of that investment would be lost if the Information was disclosed.

Pursuant to Puc 204.05(b), documents submitted to the Commission or Commission Staff accompanied by a motion for confidentiality are protected as provided in Puc 204.06(d) until the Commission rules on the Motion for Confidential Treatment.

The Commission has determined that there will be no significant benefit to the public by requiring disclosure of the private financial information at issue, and non-disclosure will

avoid likely harm to the petitioner by preserving its sensitive financial information.

We find that the Information provided in the filing contains confidential information that meets the requirements of Puc 204.06 (b) and (c). Based on the company's representations, under the balancing test we have applied in prior cases, e.g., Re New England Telephone Company (Auditel), 80 NHPUC 437 (1995); Re Bell Atlantic, DE 97-171 (SGAT) Order No. 22,851 (February 17, 1998); Re EnergyNorth Natural Gas, Inc., Order No. 22,859 (February 24, 1998), we find that the benefits to ACI of non-disclosure in this case outweigh the benefits to the public of disclosure. The Confidential Information should be exempt from public disclosure pursuant to RSA 91-A:5, IV and Puc 204.06 (1998).

The petitioner alleges in its motion that the Information is a "trade secret" pursuant to RSA 350-B. While we are prepared to find that the motion sets forth a basis for concluding that the Information, if disclosed, would likely, pursuant to Puc 204.06(c)(1), create a competitive disadvantage for the Petitioner, we do not conclude that the Information "[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use", as required by the definition of trade secret provided in RSA 350-B:1,IV(a). While the

Information may constitute sensitive financial information for ACI, ACI has not shown in its motion either that the Information derives independent economic value from non-disclosure or that its competitors could obtain economic value from its disclosure or use. While we do grant ACI its requested relief in finding that the Information meets the test of Puc 204.06, we do not find that the Information constitutes a trade secret pursuant to RSA 350-B.

Based upon the foregoing, it is hereby

ORDERED, that ACI's Motion for Confidential Treatment is GRANTED; and it is

FURTHER ORDERED, that this Order is subject to the ongoing rights of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider this Order in light of RSA 91-A, should circumstances so warrant.

By order of the Public Utilities Commission of New Hampshire this second day of August, 1999.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Claire D. DiCicco
Assistant Secretary