

# NEWMAN, COMLEY & RUTH

PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW  
MONROE BLUFF EXECUTIVE CENTER  
601 MONROE STREET, SUITE 301  
P.O. BOX 537  
JEFFERSON CITY, MISSOURI 65102-0537  
www.ncrpc.com

TELEPHONE: (573) 634-2266  
FACSIMILE: (573) 636-3306

ROBERT K. ANGSTEAD  
MARK W. COMLEY  
CATHLEEN A. MARTIN  
STEPHEN G. NEWMAN  
JOHN A. RUTH  
J. MATTHEW SHELLENBERGAR  
ALICIA EMBLEY TURNER

May 9, 2003

**FILED**<sup>3</sup>

MAY 09 2003

Missouri Public  
Service Commission

The Honorable Dale Hardy Roberts  
Secretary/Chief Regulatory Law Judge  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102-0360

Re: ACN Communication Services, Inc.; Basic Local Application

Dear Judge Roberts:

Enclosed for filing in the above-referenced matter, please find the original and eight copies of an Application for a Certificate of Service Authority to Provide Basic Local Telecommunications Service in portions of the State of Missouri and for Competitive Classification. I note that I filed a motion for a protective order with the Commission in conjunction with Exhibit C of the Application and also enclose the original and eight copies of the highly confidential Exhibit C which is filed under seal. In addition, I point out that the Application contains tariffs labeled Exhibit D-1 and D-2 bearing 45-day effective dates, and I enclose the original and five copies of such tariffs.

If you have any questions, please advise. Thank you very much for your attention to this matter.

Sincerely,

NEWMAN, COMLEY & RUTH P.C.

By:



Cathleen A. Martin  
[martinc@ncrpc.com](mailto:martinc@ncrpc.com)

CAM:tgg

Enclosures

cc: Office of Public Counsel  
General Counsel  
Monique Byrnes

**FILED<sup>3</sup>**

MAY 09 2003

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI

Missouri Public  
Service Commission

In the Matter of the Application of )  
ACN Communication Services, Inc. )  
for a Certificate of Service Authority )  
to provide Basic )  
Local Telecommunications )  
Service in portions of the State of Missouri )  
and for Competitive Classification )

Case No. \_\_\_\_\_

\_\_\_\_\_  
**MOTION FOR PROTECTIVE ORDER**  
\_\_\_\_\_

**INTRODUCTION**

ACN Communication Services, Inc. (“ACN,” “Movant” or “Company”), by its attorneys and pursuant to 4 CSR 240-2.085, hereby files this Motion for a Protective Order (“Motion”) in the above-captioned proceedings. ACN submits this Motion for the purpose of seeking the confidential treatment of certain commercially-sensitive financial information, which has been appended as *Exhibit C* to its Application for a Certificate of Service Authority to Provide Basic Local Telecommunications Services in portions of the State of Missouri and for Competitive Classification (“Application”). Because the instant Motion is an inseparable part of the Application, it is being filed concurrently with ACN’s Local Exchange Application.

In support of this Motion, ACN states the following:

## **I. DESCRIPTION OF CONFIDENTIAL INFORMATION**

1. MO. REV. STAT. § 392.455(1) requires the Missouri Public Service Commission (“Commission”) to grant certificates to new entrants to provide basic telecommunications service on a common carrier basis provided that such applicants demonstrate that they possess sufficient financial resources and abilities to provide the telecommunications services requested in their applications. In conformity with these rules, ACN has appended to the above-referenced Application as *Exhibit C* a copy of current audited financial statements of ACN’s parent company, American Communications Network, Inc., and its subsidiaries. In addition, ACN has submitted its preliminary consolidated income statement for 2002.

## **II. GROUNDS FOR CLAIM OF PROTECTIVE TREATMENT**

2. ACN seeks to protect the information contained in *Exhibit C* because its financial statements contain highly-confidential and strictly-proprietary information, the public disclosure of which potentially may result in direct and immediate harm to the competitive position of ACN in Missouri and elsewhere.

3. Because Company’s financial statements contain confidential and commercially-sensitive information from which its competitors may derive economic value, ACN actively seeks to protect such material from public disclosure. ACN derives independent economic value from the fact that significant, detailed and proprietary information regarding the Company’s financial structure and current financing activities is unknown to its competitors. Given this fact, the disclosure of this information could provide existing and potential competitors, including competitive local exchange carriers (“CLECs”), incumbent local exchange carriers (“ILECs”), independent local exchange carriers, and interexchange carriers (“IXCs”) in Missouri, as well as in other states in which ACN provides or intends to provide telecommunication services, with an unfair and undeserved competitive advantage over ACN.

4. ACN and its parent company are privately-held companies presently immune from a legal obligation to prepare or submit financial information to any public entity. As such, the financial statements set forth in *Exhibit C* to ACN's Application are not readily ascertainable by persons external to it or its parent company, and none of the information for which this claim of confidentiality is made may be found in any format in any other public document.

### **III. PERIOD OF NONDISCLOSURE**

5. ACN requests that the material contained in *Exhibit C* to ACN's Application be held confidential for a minimum of three (3) years.

### **CONCLUSION**

6. The information for which confidential treatment is sought in this Motion is both private and competitively-sensitive. The direct harm that could be caused to ACN as a result of any such disclosure is real and not speculative. Moreover, to date, no other jurisdiction or governmental agency has required ACN to make its financial statements available to the public. For all of these reasons, ACN's financial statements should be protected from public disclosure.

WHEREFORE, ACN Communication Services, Inc. respectfully requests that the Commission grant its Motion for Protective Order with respect to *Exhibit C* of its Application for a Certificate of Service Authority to Provide Basic Local Telecommunications Services in portions of the State of Missouri and for Competitive Classification.

Respectfully submitted,

NEWMAN, COMLEY & RUTH, P.C.

By: 

Cathleen A. Martin #45682  
Newman, Comley & Ruth, P.C.  
601 Monroe Street, Suite 301  
P.O. Box 537  
Jefferson City, MO 65102-0537  
(573) 634-2266  
(573) 636-3306 (FAX)  
[martinc@ncrpc.com](mailto:martinc@ncrpc.com)

ATTORNEYS FOR APPLICANT  
ACN COMMUNICATION SERVICES, INC.

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing document has been hand-delivered or mailed, postage prepaid, this 9<sup>th</sup> day of May, 2003, to:

Office of the Public Counsel  
P.O. Box 7800  
Jefferson City, MO 65102

Dan Joyce, General Counsel  
Missouri Public Service Commission  
P.O. Box 360  
Jefferson City, MO 65102

