

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR CONFIDENTIAL TREATMENT OF)	
INFORMATION FILED WITH GTE SOUTH)	
INCORPORATED'S PROPOSED CONTRACT WITH)	CASE NO. 95-492
ONE OF ITS BUSINESS CUSTOMERS FOR THE)	
PROVISION OF CERTAIN INTRALATA LONG)	
DISTANCE SERVICES)	

O R D E R

This matter arising upon petition of GTE South Incorporated ("GTE"), filed November 6, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of a customer's identity, the prices contained in an agreement with the customer, and a cost study filed in support of the agreement on the grounds that disclosure of the information is likely to cause GTE competitive injury, and it appearing to this Commission as follows:

GTE has contracted with a customer to provide certain intraLATA long-distance services. As part of the contract, GTE has agreed not to disclose the identity of the customer and by this petition, seeks approval of that part of the agreement. In addition, GTE seeks to protect the prices to be charged to the customer under the agreement and to protect the cost study filed in support of the agreement.

The information sought to be protected is not known outside of GTE and its internal use is restricted to those employees who have a legitimate business need to review the information. GTE attempts to control the dissemination of the information through all reasonable means.

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 subsection of the statute exempts several categories of information. One category exempted in paragraph (c)1 of that subsection is commercial information confidentially disclosed to the Commission which if made public would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for the exemption, 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.

In addition to seeking the protection of the customer in order to comply with the terms of the contract, GTE also maintains that disclosure of the customer's identity will cause it competitive injury. If the customer's identity is made public, GTE's competitors will be able to seek out this customer specifically and attempt to obtain its business. Therefore, disclosure of the customer's identity is likely to cause GTE competitive injury, and the information should be protected as confidential.

Similarly, disclosure of the cost studies, which were developed by GTE in conjunction with certain of its intraLATA long-distance services, would enable GTE's competitors to obtain market information about GTE, which they could use to develop entry or marketing strategies in competition with GTE. Therefore,

disclosure of the cost studies is likely to cause GTE competitive injury, and the information should be protected as confidential.

The protection, however, provided by KRS 61.878(1) is not applicable to the prices that will be charged to the customer under the contract. Instead, their public disclosure is mandated by KRS 278.160. That section of the statute requires all utilities to file schedules of their rates and conditions of service with the Commission and to display those schedules for public inspection. The prices to be charged under the contract, as well as the term of the contract, are "rates and conditions of service," within the meaning of KRS 278.160 and are subject to its requirements. In such cases where public disclosure is directed by another statute, 61.878(1)(c)3 provides that the exemption provisions of that section do not apply. Therefore, the petition to protect the prices under the contract should be denied.

This Commission being otherwise sufficiently advised:

IT IS ORDERED that:

1. The cost support data and the identity of the customer with whom GTE has contracted to provide certain intraLATA long-distance services, which GTE has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. The petition to protect as confidential the prices to be charged under the contract be and is hereby denied.

3. GTE shall, within 20 days of the date of this Order, file for inclusion in the public record, edited copies of the contract which conform to the requirements of this Order.

Done at Frankfort, Kentucky, this 20th day of December, 1995.

PUBLIC SERVICE COMMISSION

Linda K. Brantlett
Chairman

Vice Chairman

Robert M. Davis
Commissioner

ATTEST:

Don Mills
Executive Director