

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST FOR CONFIDENTIAL TREATMENT OF )  
INFORMATION FILED WITH BELLSOUTH TELE- )  
COMMUNICATIONS, INC.'S PROPOSED TARIFF ) CASE NO. 95-548  
TO REDUCE NONRECURRING RATES FOR 911 )  
NETWORK FEATURES )

O R D E R

This matter arising upon petition of BellSouth Telecommunications, Inc., d/b/a South Central Bell Telephone Company ("BellSouth"), filed December 7, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the cost data filed in support of its proposed tariff revisions on the grounds that disclosure of the information is likely to cause BellSouth competitive injury, that the information is a trade secret of BellSouth, and that disclosure of the information will impair BellSouth's ability to contract for goods and services on favorable terms, and it appearing to this Commission as follows:

In this proceeding BellSouth has proposed revisions in its General Subscribers Services Tariff which will reduce rates for 911 network features. In support of the proposed revisions, BellSouth has filed cost information which it seeks to protect as confidential.

The information sought to be protected is not known outside of BellSouth and is not disseminated within BellSouth except to those employees who have a legitimate business need to know and act upon

the information. BellSouth seeks to preserve and protect the confidentiality of the information through all appropriate means, including the maintenance of appropriate security at its offices.

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 is likely to give competitors an unfair business advantage. The petition filed by BellSouth does not satisfy this test.

Although no competitors of BellSouth offer 911 service, BellSouth maintains that the information is entitled to protection because there is potential for such competition. That potential exists because other vendors now offer equipment that serves the same purpose as BellSouth's E911 equipment, and it is feasible that a vendor of such equipment could purchase BellSouth's basic network elements, duplicate the efforts associated with building the E911

database, and offer a competitive alternative to BellSouth's 911 service.

The statute, however, requires actual competition and existing competitors who can derive benefit from the information. In the absence of actual competition there can be no competitive injury from disclosure of the information, and the information is not entitled to protection on that ground.

BellSouth also maintains that disclosure would impair its ability to contract for goods and services on favorable terms. Although the cost data reflect prices from specific vendors, the petition neither demonstrates how disclosure of the information would adversely affect BellSouth's ability to negotiate favorable terms in the future, nor how the cost data would qualify for exemption if its disclosure did have such an adverse effect. Therefore, the information is not entitled to protection on this ground.

As a final ground, BellSouth maintains that the information should be protected because it is a trade secret. "Trade secrets" are defined by KRS 365.880(4) as information that:

- (a) Derives 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, and
- (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.


Because the cost information would be of economic value to BellSouth's potential competitors for 911 service it is a "trade secret" within the meaning of the statute and qualifies as confidential information under the Uniform Trade Secrets Act codified in KRS 365.880 to 365.990. As such, the cost data is protected from public disclosure by KRS 61.878 (1)(1), which exempts information "made confidential by enactment of the General Assembly."

This Commission being otherwise sufficiently advised,

IT IS ORDERED that the cost information filed in support of the proposed tariff revisions, which BellSouth 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.

Done at Frankfort, Kentucky, this 29th day of January, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director