

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY MCI FOR ARBITRATION )  
OF CERTAIN TERMS AND CONDITIONS )  
OF A PROPOSED AGREEMENT WITH )  
BELLSOUTH TELECOMMUNICATIONS, ) CASE NO. 96-431  
INC., CONCERNING INTERCONNECTION )  
AND RESALE UNDER THE TELE- )  
COMMUNICATIONS ACT OF 1996 )

O R D E R

This matter arising upon petition of BellSouth Telecommunications, Inc. ("BellSouth"), filed October 21, 1996, pursuant to 807 KAR 5:001, Section 7, for confidential protection of certain total element long run incremental cost ("TELRIC") studies filed in support of its arbitration position on the grounds that disclosure of the information is likely to cause BellSouth irreparable harm, and it appearing to this Commission as follows:

This proceeding arises out of the Telecommunications Act of 1996 ("Act") which was enacted by Congress to, inter alia, open competition in the local exchange market. To achieve that objective, the Act requires, among other things, that incumbent local exchange companies provide interconnection to their local telephone networks, unbundle network elements, and provide existing services for resale to competing carriers. The Act permits the incumbent carriers to negotiate rates for the services they provide to the competing carriers. If rates cannot be agreed upon, Section 252(b)(1) of the Act allows competing carriers to petition a state commission to set the rates by arbitration.

The information sought to be protected was filed by BellSouth as part of such an arbitration proceeding which MCI Telecommunications Corporation ("MCI") instituted by petition to this Commission. The information consists of cost data from BellSouth's TELRIC studies regarding Unbundled Loops: Physical Collocation , 2-Wire Cross Connect, 4-Wire Cross Connect, Unbundled Loop Channelization System and Central Office Channel Interface.

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 business need to know and to act upon the information. BellSouth seeks to preserve and protect the confidentiality of the information through all appropriate 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.

Because a major purpose of the Act is to open the local exchange market to competition, information which would unfairly benefit potential competitors is entitled to protection. The cost studies sought to be protected by this petition fall into this category.

The information would give competitors an unfair business advantage in assessing BellSouth's strengths and weaknesses, in developing competitive business strategies, networks and operations, and in designing services and marketing plans for those services. Therefore, disclosure of the information is likely to cause BellSouth competitive injury and the information is entitled to confidential protection.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that the TELRIC study information filed as part of the arbitration proceeding between BellSouth and MCI, 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 6th day of December, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director