

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) CASE NO. 96-431
TELECOMMUNICATIONS, INC., CONCERNING)
INTERCONNECTION AND RESALE UNDER)
THE TELECOMMUNICATIONS ACT OF 1996)

O R D E R

This matter arising upon petition of BellSouth Telecommunications, Inc. ("BellSouth"), filed November 20, 1996, for confidential protection of two cost study programs filed in response to the Commission's request on the grounds that disclosure of the information is likely to cause BellSouth competitive injury, and it appearing to this Commission as follows:

At the hearing before this Commission on November 8 and 9, 1996, BellSouth was requested to file two cost study programs, the Switching Cost Information System ("SCIS") and the Network Cost Analysis Tool ("NCAT"), used by BellSouth in preparing its cost studies for this proceeding. The programs are the property of Bell Communications Research, Inc. ("Bellcore") and were licensed to BellSouth for its use. In addition to BellSouth, Bellcore currently licenses the programs to 21 other domestic and international telephone companies and telecommunications regulatory authorities. Because Bellcore considers these programs to be highly sensitive, licensees are required under the terms of their licensing agreements to maintain the confidentiality of the programs. Although the

information was requested to be produced by November 22, 1996, BellSouth has refrained from doing so and has requested that the Commission deviate from its normal procedure and rule on the petition before the information is filed.

The information sought to be protected is not known outside of BellSouth and Bellcore except to those companies or agencies which are licensed to use the programs. As a licensee, BellSouth seeks to preserve the confidentiality of the information through all appropriate means including the maintenance of appropriate security at its offices.

The procedure for obtaining confidential protection is set forth in 807 KAR 5:001, Section 7. That regulation requires, among other things, that the information sought to be protected be filed with the Commission. Because Bellcore and BellSouth consider this information to be highly sensitive, they have requested the Commission rule on the petition prior to the submission of the information.

Section 14 of 807 KAR 5:001 permits the Commission to deviate from these regulations for good cause shown. Given the highly sensitive nature of the cost programs, a deviation which permits BellSouth to withhold the information pending a ruling on its petition is proper.

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.

Bellcore is the developer of the cost-modeling program sought to be protected. Cost-modeling services are highly competitive. Bellcore's competitors in this market include, among others, Analysis Ltd., a firm based in the United Kingdom, the Rand Corporation, KPMG, Coopers & Lybrand, and National Economic Research Associates. In addition, several telephone companies are attempting to develop their own cost-modeling systems. All of these competitors would derive benefit from knowledge of the cost modeling programs developed by Bellcore. Additionally, these programs contain vendor-specific information from switch vendors who would be reluctant to provide such information in the future if not protected as confidential. Therefore, disclosure of the information is likely to cause BellSouth and Bellcore competitive injury, and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that the cost study programs requested by the Commission, 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 19th day of December, 1996.

PUBLIC SERVICE COMMISSION

Linda K. Breathitt
Chairman

Er J. H. [Signature]
Vice Chairman

B. J. Helton
Commissioner

ATTEST:

Don Mills
Executive Director