

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CINCINNATI BELL TELEPHONE COMPANY S	)	
PETITION FOR CONFIDENTIAL TREATMENT OF	)	CASE NO.
CERTAIN TERMS AND CONDITIONS OF AN	)	2002-00004
INDIVIDUAL CUSTOMER CONTRACT, AND COST	)	
DATA IN SUPPORT THEREOF	)	

ORDER

On December 20, 2001, Cincinnati Bell Telephone Company ("CBT") filed a petition pursuant to 807 KAR 5:001, Section 7, for confidential protection of the identity of a customer with whom it has executed a special contract for Integrated Advantage Service on the grounds that disclosure of the information would cause CBT competitive injury. In support of the petition, CBT stated that the information is not known outside of CBT and that it is known only by those CBT employees who have a business need to know and act upon the information. CBT also states that its policy is to protect the confidentiality of such information through all appropriate means, and that protecting the information would be consistent with the Kentucky Open Records Act and would serve the public interest.

CBT owns and operates facilities in Boone, Campbell, Gallatin, Grant, Kenton, and Pendleton counties, which it uses to provide telephone service as an incumbent local exchange carrier. On September 27, 2001, CBT executed a special contract with one of its customers to provide Integrated Advantage Service for a fixed term at a monthly rate. It is the identity of that customer that CBT has petitioned to protect.

Utilities are required by 807 KAR 5:011, Section 13, to file copies of special contracts that set out rates, charges or conditions of service that differ from their general tariffs. CBT offers Integrated Advantage Service under its general tariff at a higher rate than agreed upon in the special contract executed on September 27; therefore, the contract is required by the regulation to be filed with the Commission. However, because the service is comparable to similar services offered by competing local exchange carriers in its operating territory, CBT has petitioned the Commission to protect the identity of the customer as confidential on the grounds that disclosure would provide its competitors for the service with an unfair business advantage.

Integrated Advantage Service is marketed by CBT to business customers with fewer than 19 access lines. Subscribers to this service receive a high capacity line that can be used to provide local exchange service, Digital Trunk Service, Voice Grade Special Access Service, Digital Data Service and Frame Relay Service in any combination up to 24 channels. In other words, with this service a customer with multiple service applications, such as telephones, FAX machines and Internet access, can replace its separate lines for each of those services with one higher capacity line capable of handling multiple services.

Customers in CBT's operating territory are not limited to CBT for this type of service. Intermedia, NuVox and Time Warner, competing local exchange carriers in the same territory, offer similar or comparable services, which they actively market. In this case, Intermedia had, in fact, offered the customer a comparable service. Apparently, by providing the service under a special contract, CBT was able to offer it to the customer at a competitive price. Nevertheless, CBT is concerned that disclosing the

identity of customers who contract for Integrated Advantage Service will give its competitors an unfair advantage in marketing their competing services. CBT does not require customers who sign up for the service to keep secret the terms of their contracts or their identities as CBT customers.

Information filed with the Commission is required by KRS 61.872(1) to be kept available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided by KRS 61.878(1), which exempts several categories of information. In its petition, CBT claims that the identity of its customer qualifies for exemption under KRS 61.878(1)(b). However, that appears to be a typographical error, as that provision only provides for confidential protection of records compiled and maintained for scientific research. It appears, instead, that the exemption is being claimed under KRS 61.878(1)(c). That provision exempts from disclosure information "confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." The standard for determining when information qualifies for protection under this exemption was defined by the Supreme Court in *Southeastern United Medigroup, Inc. v. Hughes*, 952 S.W. 2d 195 (Ky., 1997). There the Court held, at page 199, that "if it is established that a document is confidential or proprietary, and that disclosure to competitors would give them substantially more than a trivial unfair advantage, the document should be protected from disclosure to those who are not parties to the proceeding." The information CBT seeks to protect does not meet this standard and does not qualify for the exemption.

Integrated Advantage Service allows the customer to make use of the service applications it purchases through one line. Since the total cost of several lines will normally exceed the cost of one higher capacity line capable of handling all the traffic, the service lowers a subscriber's cost of simultaneously using multiple services. Almost any small business would seem to be an obvious candidate for such a service. Therefore, the identity of an individual subscriber of the service would be of little value to CBT's competitors and would not provide them an unfair advantage.

Furthermore, the customer is aware of its identity as an Integrated Advantage Service subscriber and is free to disseminate that information to anyone and in any manner it chooses. Therefore, the information is not confidential and the allegation in the petition that the information is not known outside of CBT is simply inaccurate. Finally, it is unclear why CBT would conclude that a person's name would be generally recognized as confidential and proprietary for purposes of KRS 61.878(1)(c). For these reasons, the petition should be denied.

The decision to deny protection of customer names is consistent with earlier decisions of the Commission. For example, in Case No. 2001-00077<sup>1</sup> it was held that contract customer names contained in monthly summary reports filed with the Commission were not entitled to confidential protection.

---

<sup>1</sup> Case No. 2001-00077, BellSouth Telecommunications, Inc.'s Proposed Changes In Procedures for Filing Contract Service Arrangements and Promotions.

CBT maintains that this finding is contrary to the finding made by the Commission in Case No. 2001-00118.<sup>2</sup> There the Commission granted confidential protection to a list of BellSouth Telecommunications, Inc.'s ADSL customers who qualified for volume discounts. The Order was based on the Commission's finding that companies offering competing services in the DSL market could use the list to develop their business strategies and to design service offerings and marketing plans. CBT maintains that the same reasoning is applicable here. The Commission disagrees.

CBT's argument ignores a crucial difference between the two cases. In Case No. 2001-00118, the list of DSL customers was generated internally by BellSouth and, unlike this case, the contents of the list were not known outside the company. Therefore, the Commission concluded that the information was confidential and entitled to protection.

This Commission, being otherwise sufficiently advised, HEREBY ORDERS that:

1. The petition to protect as confidential the identity of a customer with whom CBT executed a special contract for Integrated Advantage Service is denied.
2. The information sought to be protected shall be held and retained by the Commission as confidential for a period of 20 days, at the expiration of which it shall be placed in the public record and be open for public inspection.


---

<sup>2</sup> Case No. 2001-00118, Petition for Confidentiality of BellSouth for Certain Customers and Cost Support Information Associated with FCC Filings for ADSL Service.

Done at Frankfort, Kentucky, this 1<sup>st</sup> day of April, 2002.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas M. Dixon", written over a horizontal line.

Executive Director