

COMMONWEALTH OF KENTUCKY
UTILITY REGULATORY COMMISSION

In the Matter of:

ADJUSTMENT OF RATES OF)
GENERAL TELEPHONE COMPANY)
OF KENTUCKY, INC.) CASE NO. 7669

ORDER

On January 15, 1980, Interconnect Telecommunications Systems, Inc., and the Kentucky Interconnect Telephone Association,^{1/} Intervenor in the above-styled proceeding, served discovery requests for data and information on General Telephone. General Telephone filed its response to those requests on January 22, 1980, by supplying the information on all items requested except those pertaining to key and PBX equipment. General Telephone contends that a detailed description of studies, backup material, service life involving cost, market demand and contributions on all key and PBX equipment, as well as specific revenue and investment data pertaining to GTD 120 PBX, "contains trade or business secrets and commercial information considered proprietary and confidential."

On January 1, 1980, the Attorney General served his Interrogatories, Second Set on General Telephone. The Company responded fully to the second set on January 21, 1980, with the exception of Questions 40(c), 41(c), 43(b) and 51(b). General Telephone stated that the documents sought in those interrogatories contained commercial information which should be held confidential.

^{1/} Hereinafter "Intervenors"

At a Commission hearing held January 23, 1980, the issue of the information claimed confidential was addressed by the parties involved.

The Attorney General's Interrogatories, Third Set were served on General Telephone on February 1, 1980. On February 29, 1980, General Telephone filed its response to the third set of interrogatories, objecting to the questions posed because the answers were not readily available and that numerous calculations would be required.

The Intervenors filed a memorandum of law on the topic of confidentiality February 22, 1980, and General Telephone's recent brief in Civil Action No. 87420 in the Franklin Circuit Court was incorporated into the record by reference at a subsequent hearing on March 4, 1980. At that hearing, Mr. William Frey, Vice-President of General Telephone of Kentucky, testified regarding the commercial sensitivity of the data contained in the studies, especially information disclosing profitability of individual equipment. He further testified that the ratepayers had paid for those studies and that they stood to lose the benefits derived from paying for those studies if disclosed to business competitors of General Telephone. The Attorney General submitted a memorandum in support of his motion to compel responses to document requests and interrogatories on March 4, 1980, which set forth his position on the subject of confidentiality and the need for the information requested. The cost information and studies supporting the proposed tariffs which the Intervenors and the Attorney General are seeking has already been furnished to the Commission as required by 807 KAR 25:030 Section 5(2)(c).

In support of their claim that the information on General Telephone's competitive costs should be made public, Intervenors place great reliance on the decision by the United States Supreme Court in FCC v. Schreiber, 381 U.S. 279 (1965). This case

holds that the "naked assertion of possible competitive injury" by a company is not sufficient to sustain confidential treatment of information submitted to an administrative agency. Instead, there must be an affirmative showing by the claimant to the agency that disclosure of the information submitted would have a competitive impact on the company. The administrative agency must, in turn, find that the harm to the private interest resulting from disclosure outweighs the public interest in full disclosure.

Applying these accepted principles to the instant proceeding, the Utility Regulatory Commission has analyzed the cost information on competitive items submitted by General Telephone confidentially to this agency and FINDS as follows:

1. That the information sought by the interconnect companies is not the type which is ordinarily disclosed to the public and that the cost and profit data should be accorded the protected status of trade secrets and confidential commercial information.

2. That disclosure of the information requested by the interconnect companies would irreparably damage the private, competitive interests of General Telephone and its ratepayers.

3. That these private competitive interests outweigh the paramount interest of the public in full public disclosure.

4. That these private competitive interests cannot be adequately protected by a procedure in which counsel for intervenors and their expert consultants are allowed to examine the cost information.

5. That the documents sought by the Attorney General in his Interrogatories, Second Set specifically, questions 40(c), 41(c), 43(b) and 51(b), contain commercial information similar to that sought by the interconnect companies and they should be treated confidentially by the Commission for the reasons stated herein.

6. The Commission further finds that while the information sought by the Attorney General in the third set of interrogatories is also a request for information on cost competitive items, this information can nevertheless be provided in the manner requested while still maintaining the confidentiality of the data. Accordingly, the Commission finds that General Telephone's response to this request should be provided in the format attached as an appendix to this order. Disclosure of the information in this format will allow the Attorney General (and any other party) to use the information for all legitimate rate analysis purposes, but will not inflict any competitive harm on General Telephone, nor will the compilation of such information be unduly burdensome to the Company.

Accordingly, the Commission having reviewed the record, including scrutinizing the cost studies themselves, having heard oral testimony and argument, and being sufficiently advised, finds and concludes:

Based upon the above-stated findings, it is hereby ORDERED that the Motion to Compel Discovery by Interconnect Telecommunications Systems, Inc., and The Kentucky Interconnect Telephone Association, is hereby denied.

It is further ORDERED that the Motion to Compel Response to Document Requests and Interrogatories by the Attorney General is hereby sustained insofar as the response to the third set of interrogatories can be submitted in the format contained in Appendix A, and that the motion of the Attorney General is hereby denied regarding questions 40(c), 41(c), 43(b) and 53(b) of the Interrogatories, Second Set.

It is further ORDERED that the hearing scheduled for April 1, 1980 for the purpose of cross-examination of the Intervenor's witnesses be and hereby is cancelled.

It is further ORDERED that General Telephone shall file the information requested by the Attorney General in the format

found in Appendix A with the Commission by March 19, 1980, with copies being sent to all parties of record.

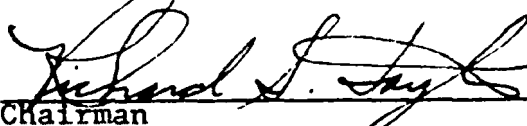
It is further ORDERED that all Intervenors have until April 3, 1980, in which to file their witnesses' testimony with the Commission.

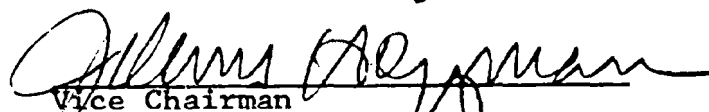
It is further ORDERED that a hearing be and hereby is scheduled for the purpose of cross-examination of the Intervenors' witnesses and Applicant's rebuttal testimony, if any, at the offices of the Utility Regulatory Commission on April 15, 1980, at 10:00 A.M., E.S.T.

It is further ORDERED that all parties desiring to submit briefs shall do so by May 1, 1980.

Done at Frankfort, Kentucky, this 12th day of March, 1980.

UTILITY REGULATORY COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary

Appendix "A"

Appendix to an ORDER of the Utility
Regulatory Commission in Case No.
7669 dated March 12 1980.

The following format is prescribed for General
Telephone of Kentucky's response to the Attorney General's
Interrogatories Third Set:

COST FOR COMPETITIVE ITEMS AS
CALCULATED BY THE COMPANY

| | <u>Markup</u> | | | |
|--|---------------|------------|------------|-------------|
| | <u>25%</u> | <u>50%</u> | <u>75%</u> | <u>100%</u> |
| Sum of Additional Revenues FOR <u>ALL</u> Competitive Services | \$ _____ | \$ _____ | \$ _____ | \$ _____ |

| | <u>Return on Capital</u> | | |
|--|--------------------------|------------|------------|
| | <u>15%</u> | <u>20%</u> | <u>25%</u> |
| Sum of Additional Revenues FOR <u>ALL</u> Competitive Services | \$ _____ | \$ _____ | \$ _____ |