

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

A REVIEW OF THE RATES AND CHARGES)
AND INCENTIVE REGULATION PLAN OF) CASE NO. 90-256
SOUTH CENTRAL BELL TELEPHONE COMPANY)

O R D E R

This matter arising upon petition of South Central Bell Telephone Company ("South Central Bell") filed December 17, 1990 and supplemented on January 28, 1991 pursuant to 807 KAR 5:001, Section 7, for confidential protection of portions of South Central Bell's responses to certain of the Attorney General's Data Request No. 1 dated November 21, 1990 and the Attorney General's Data Request No. 2 dated December 3, 1990 on the grounds that public disclosure is likely to cause South Central Bell competitive injury, and it appearing to this Commission as follows:

On December 17, 1990, South Central Bell petitioned to protect as confidential its responses to portions of Items 2, 4, 7, and 23 of the Attorney General's Data Request No. 1 dated November 21, 1990, and portions of its responses to Items 39, 40, 42, 49, 60, 80, 82, 83, 84, 85, 90, 102, 103, and 107 of the Attorney General's Data Request No. 2 dated December 3, 1990. The petition did not provide sufficient information upon which the Commission could make a decision, and by Order entered January 16, 1991, the petition was held in abeyance to allow South Central

Bell an opportunity to supplement the petition. The supplement was filed on January 28, 1991.

As stated in the earlier Order, 807 KAR 5:001, Section 7, protects information as confidential when it is established that disclosure is likely to cause substantial competitive harm to the party from whom the information was obtained. In order to satisfy this test, 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.

Items 2 and 4 provide the long-range financial planning documents and the long-range strategic planning documents for South Central Bell and other companies with whom it is affiliated. By virtue of this Commission's recent decision in Administrative Case No. 323,¹ South Central Bell faces potential competition in the intraLATA toll market. The planning information contained in the responses to these items would provide valuable information to these potential competitors in devising their own marketing strategies. Therefore, the information contained in South Central Bell's responses to Items 2 and 4 should be protected as confidential.

The response to Item 7 provides South Central Bell's detailed capital budgets for 1990 through 1994, and describes the

¹ Administrative Case No. 323, An Inquiry Into IntraLATA Toll Competition, An Appropriate Compensation Scheme for Completion of IntraLATA Calls by Interexchange Carriers, and WATS Jurisdictionality.

investment South Central Bell intends to make in various aspects of its toll network to improve and modernize its service. The information would provide toll market competitors with insight into the areas South Central Bell intends to focus upon, and the level of expenditures it intends to make in those areas. This information would be valuable to potential competitors in devising their own plans to compete with South Central Bell, and it should be protected as confidential.

The information provided in response to Item 23 contains detailed forecasts of financial projections provided by BellSouth and South Central Bell to security analysts since January 1989. South Central Bell maintains that disclosure of the information would provide "insider information" that would be of benefit to potential investors. While the use of "insider information" to a limited number of potential investors is generally proscribed by statute and is subject to criminal penalties when made a matter of public record available to any potential investor, the information can no longer be considered "insider information." Of more significance in this situation is that the information sought to be protected contains sensitive market information, cost trends, and sources of vital revenue streams which potential competitors in the intraLATA toll market could use in devising their own marketing strategies. Therefore, the information should be protected from disclosure as confidential.

South Central Bell's response to Item 42 provides its inside wire maintenance revenues, expenses, and investments for 1988, 1989, and 1990. Building contractors and electricians also

provide inside wiring and they could use this information in determining whether to provide inside wire maintenance in competition with South Central Bell. Therefore, this information should be protected as confidential.

South Central Bell's response to Item 49 contains the monthly sales revenue figures for BellSouth Products over a 22 month period from January 1989 to October 1990. BellSouth Products is a deregulated company that sells single line telephone sets as well as other customer premises equipment. BellSouth Products competes with other manufacturers and distributors of customer premises equipment. While competitors of BellSouth Products could use this information to determine broad sales trends in the market, the information is very general in nature and does not contain sufficient detail to have any competitive value. Therefore, the information is not entitled to protection as confidential.

South Central Bell's responses to Item Nos. 39, 40, 102, 103, and 107 contain information relating to the rental rates paid by BellSouth Corporation and BellSouth Services, Inc. for space in the Campanile Building and Colonnade Buildings. These responses also contain information on the fully distributed cost of these buildings as well as a comparative analysis of the Colonnade lease rates with other similar building lease rates. The buildings referred to are located in Birmingham and Atlanta, where the market for rental office space is very competitive. Office space in these buildings is leased not only to BellSouth Corporation and BellSouth Services, Inc., but to non-affiliated tenants as well. South Central Bell contends that disclosure of the lease rates

paid by non-affiliated companies would be valuable to competitors who could use the information to lure non-affiliated tenants out of these buildings by offering lower rental rates in their buildings.

To qualify for the exemption, it must be established that the information sought to be protected is not generally known and cannot be obtained from other sources. While competitors may not be able to get the information directly from BellSouth, tenants in those buildings would more than likely be willing to divulge such information if it would be to their advantage to do so. Therefore, the information is not entitled to protection as confidential.

The responses to Item Nos. 60, 82, 83, 84, 85, and 90 contain agreements between South Central Bell and BAPCO, as well as financial information related to BAPCO, L. M. Berry, and other directory-related subsidiaries. BAPCO publishes telephone directories for BellSouth and its affiliated companies, and L. M. Berry sells directory advertising for BAPCO. South Central Bell alleges that these businesses are engaged in markets where most competitors are subject to no regulation and that disclosure of the financial information relating to their operations would provide their competitors with valuable information which they could use in marketing competing services.

While BAPCO and L. M. Berry may compete to a limited extent with others in the directory advertising business, most of their market is affiliated Bell operating companies for which they have

no competition. Therefore, the information is not entitled to protection as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The information provided in response to Item Nos. 2, 4, 7, and 23 of the Attorney General's first Data Request and Item No. 42 of the Attorney General's second Data Request, which South Central Bell has petitioned be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. The petition to protect as confidential South Central Bell's responses to Item Nos. 39, 40, 49, 60, 80, 82, 83, 84, 85, 90, 102, 103, and 107 be and it is hereby denied.

3. The information denied protection from disclosure shall be held as confidential and proprietary for a period of five working days from the date of this Order, at the expiration of which time it shall be placed in the public record.

Done at Frankfort, Kentucky, this 20th day of February, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director