

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 March 4, 1991 pursuant to KRS 275.400, for reconsideration of an Order entered February 20, 1991 denying confidential protection of portions of South Central Bell's responses to the Attorney General's Data Request No. 2 on the grounds that the Commission erred in finding that disclosure of the information would not cause South Central Bell competitive injury, and it appearing to this Commission as follows:

By its petition filed December 17, 1990 and supplemented on January 28, 1991, South Central Bell requested that its responses to certain data requests of the Attorney General dated December 3, 1990 be protected from public disclosure as confidential. Included in the petition were the responses to data request Items 39, 40, 102, 103, 107, 60, 82, 83, 84, 85, and 90. By Order entered February 20, 1991, confidential protection of the information filed in response to these data request items was denied, and the motion seeks reconsideration of that portion of the Order.

The information sought to be protected falls into one of two distinct categories. In the first category, Items 39, 40, 102, 103, and 107 provide information relating to lease rates paid by BellSouth Corporation, BellSouth Services and other non-affiliated tenants in the Campanile and Colonnade office buildings as well as fully distributed cost figures relating to those buildings. In denying protection, the Commission found that the information sought to be protected was most likely available from other sources and, therefore, not confidential.

In the second category, Items 60, 82, 83, 84, 85, and 90 provide information concerning the contractual relationships between BellSouth Advertising and Publishing Company ("BAPCO") and South Central Bell, as well as financial information pertaining to BAPCO, L. M. Berry and Company ("L. M. Berry"), BellSouth Information Systems ("BIS"), TechSouth, and Graphics Holding Corporation. The information includes the balance sheets of these companies for the years 1987, 1988 and 1989. In denying protection for this information, the Commission found that the companies had no competitors who could benefit from the information and therefore it should not be protected.

KRS 61.872(1) of the Kentucky Open Records Act declares that "all public records shall be open for inspection" unless specifically exempted by statute. Exemptions from that policy are found in KRS 61.878(1). That section of the statute exempts nine types of information including commercial information submitted to an agency in confidence, the public disclosure of which would injure the competitive position of the party from whom the

information was obtained. To qualify for this exemption, this Commission has consistently required the party requesting confidentiality to demonstrate actual competition and a likelihood of substantial competitive injury if the information is publicly disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

In support of the petition to protect as confidential the responses to Items 39, 40, 102, 103, and 107 relating to the Campanile and Colonnade buildings, South Central Bell contends that these buildings, located in Atlanta and Birmingham, compete with other office buildings for leases and that competing lessors could use the fully distributed cost information, as well as the rate of return information, to lure prospective tenants to their buildings and away from the Campanile and Colonnade buildings.

While the rental markets in which these two buildings operate may be highly competitive, the Commission does not agree that disclosure of the lease rates paid by existing tenants would provide any substantial benefit to competing lessors. Lease rates reflect the market conditions existing at the time their lease agreements are executed and, as market conditions change, prospective tenants would normally be aware that lease rates also change to reflect the new conditions. It may be assumed that, in an open market, prospective tenants will compare lease rates of comparable properties and be attracted to the lessor who offers the best terms. Knowledge of lease rates agreed upon at earlier times would offer no benefit to competing lessors and, thus, the information sought to be protected contained in the responses to

Items 39, 40, 102, 103, and 107 has no competitive value, and the motion for reconsideration, with respect to that information, should be denied.

The second category of information sought to be protected concerns the relationship between South Central Bell, BAPCO, L. M. Berry, BIS, TechSouth and Graphics Holding Corporation. In an earlier Order entered in this proceeding on March 11, 1991, the Commission found that BAPCO and South Central Bell are wholly owned subsidiaries of BellSouth. BAPCO's primary function is to compile, publish, deliver and market telephone directories for South Central Bell operating companies, all of whom are subsidiaries of BellSouth. As part of that function, BAPCO sells both yellow page and white page advertising in its directories, either directly or, as in the case of Kentucky, through subcontractors. The subcontractor responsible for the sale of advertising in Kentucky is L. M. Berry. BAPCO is compensated by receiving a share of the directory revenues apparently generated primarily from the sale of advertising. BAPCO, in turn, compensates L. M. Berry on a commission basis.

BIS is a wholly owned subsidiary of BellSouth and it provides computer-based system services to BellSouth affiliates, including BAPCO. From its response to Item 90, it would appear that TechSouth and Graphics Holding Corporation are also affiliated companies of South Central Bell.

The earlier Order also found that BAPCO and South Central Bell compete for the sale of advertising with five other directory publishers in Kentucky. In addition, according to this motion for

reconsideration, BAPCO competes for advertising revenue with, among others, newspapers, magazines, television, radio, telemarketing services, direct mail advertising services and billboards. If the information sought to be protected in this category would enable these competitors to more effectively compete with South Central Bell and BAPCO, the information should be protected from disclosure.

In response to Item 60, South Central Bell has filed a copy of its contract with BAPCO. The contract delineates BAPCO's responsibilities in compiling, publishing and delivering South Central Bell's telephone directories and, in a separate exhibit, shows the percentage of revenues paid to BAPCO for its services. The contract reveals no marketing strategies, provides no estimates of revenues or expenses and, while it may be of general interest to competitors, would provide no competitive benefit. Therefore, the information is not entitled to protection, and the petition to reconsider Item 60 should be denied.

The information filed in response to Item 82 provides the total revenue derived from yellow page and white page advertising in Kentucky local directories, and the corresponding percentage of sales paid on commission by South Central Bell in 1984, 1985, 1986, and 1987. The information merely reveals the gross revenue for the sale of advertising and would provide no information that would be beneficial to South Central Bell and BAPCO competitors. Therefore, confidential protection of the information filed in response to Item 82 should be denied.

Item 83 merely states whether the commissions paid to L. M. Berry are based on gross or net revenue. This information would have no competitive value and the motion to reconsider protection of this information should be denied.

The information filed in response to Item 84 consists of BAPCO's income statements for its Kentucky operations for 1984, 1985 and 1986. The income statements show the amounts realized from six different sources and the various expenses incurred in generating that revenue. South Central Bell maintains that competitors could use this information in developing their marketing strategies. The information, however, is not furnished in sufficient detail to enable competitors to analyze the composition of the market, and the motion to reconsider protection of this information should be denied.

The information furnished in response to Item 85 consists of BAPCO's income statements for both its BellSouth and South Central Bell operations for the years 1984, 1985, 1986, 1987, 1988, and 1989. This is the same information filed in response to Item 84, except that Item 84 pertains only to its Kentucky operations. Like the information filed in response to Item 84, this information would not, for the same reasons, be of benefit to South Central Bell competitors, and should not be protected from disclosure. Therefore, the motion for reconsideration should be denied.

The information filed in response to Item 90 includes the balance sheets for BAPCO, L. M. Berry, BIS, TechSouth and Graphic Holding Corporation for the years 1987, 1988 and 1989. Like the

responses to Items 84 and 85, the response to Item 90 is not in sufficient detail to be of benefit to South Central Bell competitors, and likewise, should not be protected from disclosure. Therefore, the petition to reconsider protection of this information should be denied.

This Commission being otherwise sufficiently advised,
IT IS ORDERED that:

1. The petition for reconsideration of the Commission's Order of February 20, 1991 denying confidential protection to Items 39, 40, 102, 103, 107, 60, 82, 83, 84, 85, and 90 of the Attorney General's Data Request No. 2 be and is hereby denied.

2. The information denied reconsideration 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.

3. South Central Bell shall, to the extent that it has not previously done so, within 10 days of the date of this Order, serve copies of its responses to the Attorney General's Data Request No. 2 on all parties of record.

Done at Frankfort, Kentucky, this 25th day of March, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director