

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF GTE SOUTH INCORPORATED)
FOR CONFIDENTIAL TREATMENT OF)
INFORMATION FILED IN SUPPORT OF ITS) CASE NO. 92-469
SPECIAL SERVICE AGREEMENT WITH THE)
KENTUCKY LOTTERY CORPORATION)

O R D E R

This matter arising upon petition of GTE South Incorporated ("GTE South") filed November 4, 1992 pursuant to 807 KAR 5:001, Section 7, for confidential protection of the rates and the cost information supporting those rates developed in connection with the proposed special service agreement with the Kentucky Lottery Corporation ("Lottery Corporation") on the grounds that disclosure of the information is likely to cause GTE South competitive injury, and it appearing to this Commission as follows:

This is a proceeding to approve a contract by GTE South to provide analog private line services to the Lottery Corporation. The agreement which is attached to the request as Attachment A sets forth the term of the service arrangement and includes rates specifically developed for the Lottery Corporation. In a separate three page document, attached as Attachment B to the request and entitled "Pricing Control Sheet," GTE South sets forth the rates for the contract services and the cost support for those rates. In support of its position, GTE South contends that competitors that provide the same service could utilize the information to determine

how GTE South prices its analog private line service. In addition, GTE South contends that disclosure of the information may jeopardize both past and future business proposals in that present and potential customers could compare the rates contained in the agreement with proposals the company has made or will make.

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 section of the statute exempts 11 categories of information. One category exempted in subparagraph (c) of that section is commercial information confidentially disclosed to the Commission. To qualify for that exemption, it must be established that disclosure of the information is likely to cause substantial competitive harm to the party from whom the information was obtained. 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.

The use of information by present and potential customers as a means of comparison is not a harm that subparagraph (c) of KRS 61.872(1) protects against. Therefore, the information cannot be protected under the provisions of that subparagraph on that basis.

Further, to qualify for the exemption, the information must be maintained as confidential. While it may be in the interest of GTE South to protect the contract rates provided in the agreement,

no similar interest on the part of the Lottery Corporation is demonstrated. On the contrary, if disclosure of that information would enable the Lottery Corporation to obtain a lower rate from a competitor, it would certainly be in its interest to do so. Therefore, the contract rates are not entitled to protection from public disclosure.

The cost support information, which is apparently known only to GTE South, would be valuable to its competitors. The information could be used by competitors to determine how GTE South prices its products. Such information would be useful to competitors in pricing their competing products. Therefore, disclosure of the cost support information could cause GTE South competitive injury and the information should be protected as confidential.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The cost support information contained in Attachment B to its request, which GTE South 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.

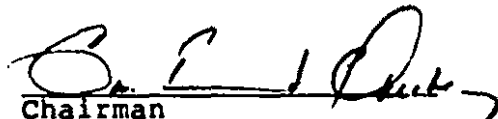
2. The petition to protect as confidential the rates for the contract services as set forth in the agreement between GTE South and the Lottery Corporation, attached as Attachment A to the request and contained in the "Pricing Control Sheet" attached as Attachment B to the request, be and is hereby denied.

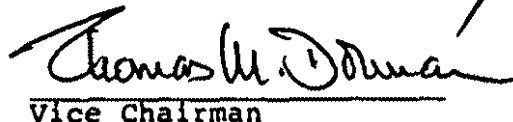
3. GTE South shall, within 20 days from the date of this Order, file edited copies of the "Pricing Control Sheet" with only the cost support information obscured for inclusion in the public record.


4. The agreement between GTE South and the Lottery Corporation shall be held and retained by this Commission as confidential and proprietary for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Order of the Commission.

Done at Frankfort, Kentucky, this 14th day of December, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director