

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ADJUSTMENT OF RATES OF CINCINNATI)
BELL TELEPHONE COMPANY) CASE NO. 94-355

O R D E R

This matter arising upon petition of Cincinnati Bell Inc. ("CBI"), filed January 13, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of portions of Cincinnati Bell Telephone Company's response to Item 41 (a) and (b) of the Commission's data request on the grounds that disclosure of the information is likely to cause CBI competitive injury and that the information is exempt from disclosure under the Kentucky Trade Secrets Act, and it appearing to this Commission as follows:

CBI is a parent company of several subsidiaries, including Cincinnati Bell Telephone Company, a regulated utility providing telecommunications services in this state. Cincinnati Bell Telephone Company has requested authority to adjust its rates and amend its regulations and practices. As part of that proceeding, the Commission issued requests for information, several of which pertained not only to Cincinnati Bell Telephone Company, but to its parent and related subsidiaries of that parent. In particular, Item 41 (a) and (b) request financial information of each affiliated company which billed Cincinnati Bell Telephone Company for services provided in this state. CBI has requested that to the

extent such information is not otherwise publically disclosed, it be protected as confidential.

The information sought to be protected is maintained as confidential by CBI and its subsidiaries and is not revealed to anyone employed by CBI or its subsidiaries except on a need-to-know basis. CBI and its subsidiaries maintain the information as confidential with appropriate security.

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 information sought to be protected has been provided in the form of balance sheets, income statements, and retained earning statements. Although the petition identifies several competitors of CBI and alleges that disclosure of the information would provide these competitors with a competitive advantage, it does not

demonstrate how the information could be used by such competitors to the detriment of CBI and its subsidiaries. Therefore, the information cannot be protected on those grounds.

CBI also maintains that the information sought to be protected contains trade secrets as defined by statute and specifically exempted from the Open Records Act.

KRS 61.878(1)(k) exempts information whose disclosure is prohibited or restricted by state statute. The Uniform Trade Secrets Act, as enacted in Kentucky, is codified as KRS 365.880 et. seq. That Act establishes equitable and legal remedies for the misappropriation of trade secrets. The Trade Secrets Act, however, has no application to the provisions of the Open Records Act codified in KRS 61.870 et seq. Therefore, the petition cannot be granted on those grounds.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential portions of Cincinnati Bell Telephone Company's responses to Item 41 (a) and (b) of the Commission's data request, which CBI has petitioned to be withheld from public disclosure, be and is hereby denied.

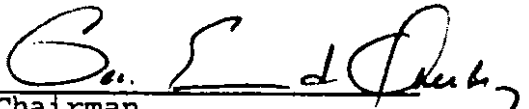
2. The information sought to be protected shall be held and retained by this Commission for a period of 20 days from the date of this Order to allow CBI an opportunity to file an amended petition.

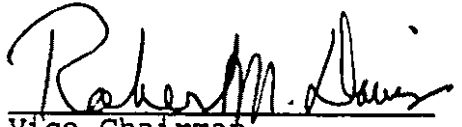
3. If at the expiration of the 20-day period, no amended petition has been filed by CBI, the information sought to be

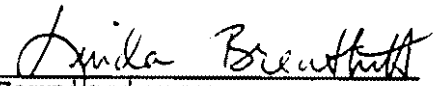
protected shall be placed in the public record without further
Orders herein.

Done at Frankfort, Kentucky, this 3rd day of March, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director