

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 February 21, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of certain exhibits submitted by Cincinnati Bell Telephone Company ("Cincinnati Bell") in response to certain requests for information by the Attorney General of the Commonwealth of Kentucky ("Attorney General") served upon Cincinnati Bell on the grounds that the information is protected from disclosure by KRS 61.878, and it appearing to this Commission as follows:

Cincinnati Bell operates as a public utility in this state and is a wholly owned subsidiary of CBI. This proceeding was initiated by Cincinnati Bell to adjust its current rate schedule. As an intervenor in this proceeding, the Attorney General has requested certain information from Cincinnati Bell relating to its relationship with CBI. By this petition and the supporting affidavit of one of its officers, CBI has requested that some of the information furnished in response to the request be protected as confidential on the grounds that it is exempted from disclosure by the provisions of KRS 61.878.

KRS 61.878 is a section of the Kentucky Open Records Act codified in KRS 61.870 through KRS 61.884. The Act requires that all information filed with any public agency be maintained for public inspection unless specifically exempted by law. Exemptions from disclosure are found in KRS 61.878(1), which allows protection for several categories of information. 807 KAR 5:001, Section 7, was promulgated by the Commission to establish a procedure by which persons filing information with the Commission may obtain such protection.

The exemption provisions specifically relied upon by CBI are those found in KRS 61.878(1)(c)<sup>1</sup> and KRS 61.878(1)(l).<sup>2</sup> CBI also relies upon certain guidelines which were in the regulation prior to its amendment in 1991. The current regulation simply refers to information protected by the exemption provisions and establishes a procedure obtaining protection. As noted in KRS 61.871, the exemptions from disclosure must "be strictly construed, even though such examination may cause inconvenience or embarrassment." Therefore, unless it is established that information falls within one or more of the categories of information exempted by KRS 61.878(1), it cannot be protected and must be maintained for public inspection.

The first category relied upon is that found in KRS 61.878(1)(c)1. That paragraph exempts commercial information

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<sup>1</sup> Referred to by CBI as KRS 61.878(1)(b).

<sup>2</sup> Referred to by CBI as KRS 61.878(1)(j).

confidentially disclosed to the Commission which if publicly disclosed is likely to cause substantial competitive harm to the party from whom the information was obtained. To qualify for the exemption, 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.

While the petition and affidavit identify CBI's and its subsidiary corporations' competitors, they do not demonstrate how the information could be used by those competitors. Therefore, the petition cannot be granted on those grounds.

The other category relied upon by CBI is that found in KRS 61.878(1)(1). That section exempts information whose disclosure is prohibited or restricted by statute. CBI maintains that the information sought to be protected is trade secrets protected from public disclosure by the Uniform Trade Secrets Act which has been adopted by the state and codified in KRS 365.880 et seq. A recent opinion of the Attorney General concluded that since the purpose of the Act is to protect trade secrets from public disclosure, they are entitled to protection by KRS 61.878(1)(1) when filed with a government agency. 94-ORD-97, pp 4-80-4-83. Trade secrets are defined by KRS 365.880(4) to mean:

"Trade secrets" means information, including a formula, pattern, compilation, program, data, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

In other words, trade secrets are information which has economic or "competitive value" and the test for determining whether information qualifies for protection under KRS 61.878(1)(1) as a trade secret is identical to the test for determining whether the information has competitive value and, therefore, qualifies for exemption under KRS 61.878(1)(c)1.

Here, the petition does not establish that the information qualifies for protection under the latter exemption, it likewise fails to establish that it qualifies for protection under the former exemption.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential portions of Cincinnati Bell's responses to the Attorney General's data request relating to CBI and its subsidiary corporations be and is hereby denied.

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


amended petition in accordance with the requirements of the statute.


3. If at the expiration of the 20-day period an amended petition has not 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 1st day of May, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director