

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION BY MCI FOR ARBITRATION OF)
CERTAIN TERMS AND CONDITIONS OF A)
PROPOSED AGREEMENT WITH GTE SOUTH) CASE NO. 96-440
INCORPORATED CONCERNING INTER-)
CONNECTION AND RESALE UNDER THE)
TELECOMMUNICATIONS ACT OF 1996)

O R D E R

This matter arising upon petition of GTE South Incorporated ("GTE South"), filed October 7, 1996, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the cost studies filed in support of its arbitration position on the grounds that disclosure of the information is likely to cause GTE South irreparable harm, and it appearing to this Commission as follows:

This proceeding arises out of the Telecommunications Act of 1996 ("Act") which was enacted by Congress to open competition in the local exchange market. To achieve that objective, the Act requires, among other things, that incumbent local exchange companies provide interconnection to their local telephone networks, unbundle network elements, and provide existing services for resale to competing carriers. The Act permits the incumbent carriers to negotiate rates for the services they provide to the competing carriers. If rates cannot be agreed upon, Section 252(b)(3) of the Act allows competing carriers to petition a state agency to set the rates by arbitration.

The information sought to be protected was filed by GTE South as part of such an arbitration proceeding which MCI Telecommunications Corporation ("MCI") instituted by petition to this Commission on September 10, 1996. The information consists of cost studies used by GTE South to calculate its prices and to project future revenues, detailed price lists, and other information concerning vendor services and materials purchased by GTE South under terms of confidentiality.

The information sought to be protected is not known outside of GTE South and is generally protected by GTE South as confidential. Further, the information is not readily ascertainable from outside sources.

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 subsection of the statute exempts several categories of information. One category exempted in paragraph (c)1 of that subsection is commercial information confidentially disclosed to the Commission which if made public would permit an unfair commercial advantage to competitors of 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.

Because the purpose of the Act is to encourage competition in the local exchange market, information which would benefit potential competitors is entitled to protection. The cost studies sought to be protected by this petition fall into this category. The information would allow competitors to assess GTE South's strengths and weaknesses and allow them

to target strategic points in GTE South's business when planning market entry. Furthermore, competitors would know GTE South's cost structure and could establish competitive pricing in response. Therefore, disclosure of the information is likely to cause GTE South competitive injury and the information is entitled to confidential protection.

GTE South also contends that the information is entitled to protection as a trade secret. Since it has been established that the information is entitled to protection on the grounds of competitive injury, this issue need not be addressed.

This Commission being otherwise sufficiently advised,


IT IS ORDERED that:


1. The cost studies filed as part of the arbitration proceeding between GTE South and MCI, which GTE South has petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.


2. GTE South may require other parties to this proceeding receiving the information to execute a confidentiality agreement on terms mutually acceptable to the parties or, in the event the parties are unable to agree, on terms to be prescribed by this Commission.

Done at Frankfort, Kentucky, this 25th day of October, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director