

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF CINERGY COMMUNICATIONS)
COMPANY FOR ARBITRATION OF AN)
INTERCONNECTION AGREEMENT WITH) CASE NO. 2001-00432
BELLSOUTH TELECOMMUNICATIONS, INC.)
PURSUANT TO U.S.C. SECTION 252)

O R D E R

On February 22, 2002, BellSouth Telecommunications, Inc. (BellSouth), pursuant to 807 KAR 5:001, Section 7, petitioned the Commission to protect as confidential BellSouth's responses to items 1, 2, 4-12, and 19 of the data requests propounded by Cinergy Communications Company (Cinergy). As grounds for its petition, BellSouth asserted that disclosure of the responses would cause BellSouth competitive injury and that the information is entitled to protection under KRS 61.878(1)(c)(1). In support of its petition, BellSouth states that the information is confidential and not known outside of the company, and that the information is disseminated only within the company to employees who have a need to know and act upon it. BellSouth further states that the company seeks to preserve and protect the confidentiality of the information through all appropriate means, and that protection of the information would not damage the public interest.

After reviewing the information, the Executive Director denied confidentiality on June 4, 2002. His decision was based upon the determination that the information related to aggregate numbers were not competitively sensitive. On June 24, 2002,

BellSouth moved the Commission to consider the petition and to protect the information as confidential.

The proceeding that gives rise to this petition was initiated by Cinergy pursuant to Section 252(b) of the Telecommunications Act of 1996 (47 USC 252 (b)). That provision of the Act confers on state commissions the authority to arbitrate interconnection agreements between incumbent local exchange companies (ILEC) and competing local exchange companies (CLEC). Cinergy, a CLEC, petitioned the Commission for arbitration when it was unable to negotiate an interconnection agreement with BellSouth, an ILEC. The information sought to be protected was produced in response to a data request from Cinergy to BellSouth, and as a late-filed exhibit from the hearing that was conducted during the course of the proceeding. However, it should be noted that the late-filed exhibit was not filed until June 6, 2002, after the Executive Director s denial of confidentiality.

A central issue in this proceeding involves access by Cinergy to equipment utilized by BellSouth to provide high-speed Internet service, generally referred to as Digital Subscriber Line Service or DSL. The responses sought to be protected provide information on the extent to which BellSouth is capable of providing DSL service in this state and how far BellSouth has penetrated the Internet market. The subject matter of each of the data requests is summarized as follows:

Response to Data Request 1 provides the number of retail customers in Kentucky who received DSL service during 2001 from BellSouth through network service providers that purchased the service from BellSouth under its wholesale tariff.

Response to Data Request 2 provides the number of BellSouth central offices in Kentucky capable of providing

DSL service, and the total number of customers receiving DSL service from those offices.

Response to Data Request 4 provides the number and types of BellSouth remote terminals in Kentucky, the number capable of providing DSL service, and the number of DSL customers served from these remotes.

Response to Data Request 5 provides the number of residential and business customers and access lines served by remote terminals.

Response to Data Request 6 provides the number of BellSouth access lines in Kentucky served by fiber-fed copper loops.

Response to Data Request 7 provides the percentage of fiber-fed loops in Kentucky capable of supporting asynchronous digital subscriber line transmission.

Response to Data Request 8 provides the percentage of DSL customers in Kentucky served by fiber-fed loops.

Response to Data Request 9 provides the number of digital subscriber line access multiplexers (DSLAM) attached to BellSouth remote terminals and their location.

Response to Data Request 10 provides the number of next generation digital loop carriers deployed at BellSouth remote terminals and the percentage of access lines they serve in Kentucky.

Response to Data Request 11 provides the projected number of additional remote terminals to which next generation digital loop carriers are scheduled to be deployed in 2002.

Response to Data Request 12 provides the percentage of BellSouth's Kentucky access lines that would be served by existing and projected next generation digital loop carriers remote terminals.

Response to Data Request 19 provides the number of remote terminals in Kentucky where BellSouth has deployed DSLAM equipment and the number to which BellSouth plans to deploy such equipment in 2002.

KRS 61.872 requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. KRS 61.878(1) exempts several categories of information. In its petition, BellSouth maintains that the information provided in the designated responses to Cinergy's data request is exempt from public disclosure under KRS 61.878(1)(c)(1), which protects information confidentially disclosed to the Commission, and 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 seeking confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is publicly disclosed. Competitive injury occurs when the disclosure of the information gives competitors an unfair business advantage.

BellSouth provides DSL service to its retail customers through BellSouth Fast Access Service. BellSouth also provides DSL service to network service providers who purchase the service under BellSouth's wholesale tariff for resale to their customers. BellSouth identifies its competitors in the high-speed Internet market as local cable companies who can provide broadband services to their customers, including high-speed Internet service. BellSouth maintains that the responses should be withheld from public disclosure for the following reasons: (a) the responses would enable competing cable companies to determine the extent to which BellSouth is currently capable of providing service in their markets; (b) the responses would reveal BellSouth's plans to expand its capability during 2002 into those markets; and (c) the responses would reveal the extent to which BellSouth's services have penetrated those markets. Competing cable companies could then use this information to design marketing

strategies that effectively target BellSouth's DSL customers, thereby obtaining an unfair business advantage.

After careful re-examination of the responses, the Commission reaffirms, with one exception, the Executive Director's finding that the responses provide only aggregate numbers on a state-wide basis and would have little value in determining the extent to which BellSouth has penetrated any local market. Therefore, the information generally does not have competitive value and is not entitled to protection.

The one exception is in the response to Data Request 9. It provides the number of DSLAMs attached to BellSouth remote terminals. An attachment to the response lists the location of each DSLAM in Kentucky, and a cable company could use that information to determine the number of BellSouth's DSLAMs in each market served by that cable company. The information thus has competitive value and should be protected.

Similarly, the late-filed exhibit to Data Request 9 provides the percentage of utilization of DSLAMs for each BellSouth wire center in Kentucky. This information would enable a cable company to determine the extent to which BellSouth has penetrated the DSL market in each market served by the cable company. Such information would also have competitive value and should be protected. However, unlike the late-filed exhibit to Data Request 9, the supplemental information provided by the late-filed exhibits to Data Requests 6, 7, and 8, provide only aggregate information, and would have no competitive value because they provide no information specific to any local markets. Therefore, those responses are not entitled to protection.

Like the responses to Data Request 9, the late-filed exhibit to Data Request 1 also provides information specific to each local market served by BellSouth. In addition to a list of the facilities-based CLECs with whom BellSouth has collocation agreements in Kentucky, the exhibit includes a breakdown of Kentucky CLECs by BellSouth wire centers. It is the breakdown of Kentucky CLECs by BellSouth wire centers that BellSouth seeks to protect because it reveals the number and identity of the CLECs operating from any specific BellSouth office. Despite that fact, however, it would have no competitive value since it is unlikely that the information itself is confidential. On the contrary, it is more likely that CLECs offering DSL service from a wire center would publicly advertise their presence in the area. Thus, disclosure of the information would not provide BellSouth's competitors an unfair advantage, and the information should be available for public inspection.

IT IS THEREFORE ORDERED that:

1. The petition to protect as confidential BellSouth's responses to Cinergy's Data Requests 1, 2, 4-8, 10-12, and 19 is denied, including the information submitted in BellSouth's late-filed exhibits to those responses.
2. The petition to protect as confidential BellSouth's responses to Cinergy's Data Request 9 is denied, except as to the information provided in the attachment to the response and in the late-filed exhibit to the response.
3. Within 20 days of the date of this Order, BellSouth shall file a copy of its response to Data Request 9, highlighting the information protected by this Order.
4. Within 20 days of the date of this Order, BellSouth shall file a copy of its response to Data Request 9, redacting the information protected by this Order.

5. The remaining information sought to be protected by BellSouth shall be held and retained by the Commission as confidential for 20 days and shall not be open for public inspection. When the 20-day period expires, the information shall be placed in the public record without further Order.

Done at Frankfort, Kentucky, this 23rd day of September, 2002.

By the Commission

ATTEST:


Executive Director