

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE USE OF CONTRACT SERVICE )  
ARRANGEMENTS BY TELECOMMUNICATIONS ) CASE NO.  
CARRIERS IN KENTUCKY ) 2002-0456

CONFIDENTIALITY PETITION  
PURSUANT TO 807 KAR 5:001 SECTION 7

Petitioner, BellSouth Telecommunications, Inc., ("BellSouth"), hereby moves the Public Service Commission of the Commonwealth of Kentucky (the "Commission"), pursuant to KRS 61.878 and 807 KAR 5:001, §7, to classify as confidential the highlighted information contained in portions of the Attachments to BellSouth's Response to Commission Data Request No. 1:

CSA's on CD-ROM format, Item 1, located in Proprietary CD subdirectory BST\_R\_PSCDR#1\_ATT\_032403;

The Responses on the spreadsheet showing customer name, billing address, and case number, Item 1(a) located on CD subdirectory BST\_R\_PSCDR#1a-f.ATT\_032403; and

Portions of the price-out spreadsheet indicating demand, CSA total revenue, tariff total revenue and net revenue (CSA, tariff total revenue, and net revenue are factors from which demand can be calculated, Items 1(f)-1(i) located in Proprietary CD subdirectory BST\_R\_PSCDR#1g-k\_ATT\_032403.

With the exception of CSAs, a non-proprietary version of the responses are included on a non-proprietary CD-ROM format.

The Kentucky Open Records Act exempts certain commercial information from the public disclosure requirements of the Act. KRS 61.878(1)(c)1. To qualify for this commercial information exemption and, therefore, keep the information confidential, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors and the parties seeking confidentiality if openly discussed. KRS 61.878(1)(c)1; 807 KAR 5:001 § 7. The Commission has taken the position that the statute and rules require the party to demonstrate actual competition and the likelihood of competitive injury if the information is disclosed.

This proceeding, initiated December 19, 2002, by the Commission into the use of contract service arrangements by telecommunications carriers contained data requests which required production of full and complete copies of all CSA's entered into during 2001 and 2002 in addition to a variety of other information. Because of the volume of materials requested, BellSouth sought modification of the Commission's requests with regard to the manner and timing of BellSouth's responses.

By Order dated January 28, 2003, the Commission granted in part, and denied in part, BellSouth's request. The Commission's order continued the requirement that BellSouth file all CSA's entered into during 2001 and 2002. However, the Commission granted BellSouth's request that some of the information could be provided based on a random sampling method of those CSA's. In

addition, the Commission also granted BellSouth's request to submit its data responses in CD-ROM format. The Commission also provided detailed instructions with respect to document format and document naming instructions. The net effect of the Commission's requirements in the January 28, 2003, Order is that, although BellSouth may submit a sampling of some information, BellSouth is still required to file the full text of all CSA's for a two year time period and now is required to provide this information in CD-ROM format.

BellSouth has no objection to providing the requested information or providing it in this format to the Commission and to the other parties, for their use in this proceeding. However, the result of the Commission's retaining its original requirement that BellSouth submit all CSA's during this time period and also granting, in part, BellSouth's request to submit the information in CD-ROM format, is that the information prepared and filed in this manner and format provides detailed and specific information regarding all BellSouth customers' contractual agreements as well as customers' contact information, the effective dates when contracts expire, the total contract revenue, and a variety of other competitively useful information, all in a handy, electronic, CD-ROM format. Confidential treatment of this commercially valuable information must be provided because if it is not granted, BellSouth's competitors would have a substantial unfair advantage. In a CD-ROM format, all of BellSouth's CSA's

could be duplicated and multicopied in a matter of minutes, distributed electronically to competitors' sales teams for their use in marketing or even deployed over the Internet. For a modest cost and in a very short period of time, BellSouth's competitors could duplicate the entire set of CSA's which BellSouth has entered into over the last two years, including, as noted, the information on the expiration date of those contracts, the pricing and other significant competitive information which would make a particularly useful marketing tool for BellSouth's competitors who could put the information into the hands of all of their marketing staff if confidential treatment is not accorded this information when it is provided in this format.

The material for which BellSouth seeks confidential treatment in the portions of the Attachments identified above contains commercially valuable information. As noted, providing CSA's on a CD-ROM in this format would provide a very useful marketing tool to virtually all of BellSouth's competitors. Further, providing this information in this format represents a work product in which BellSouth has invested time and money. Because this is commercially valuable information, it would be unfair to require BellSouth to provide the information in this format without proprietary treatment and allow BellSouth's competitors to utilize it for marketing to BellSouth's customers.

With respect to Item 1(a), the portions of the spreadsheet that contain customer name, address, and case number, if utilized

with the rest of the spreadsheet, would provide a one-stop list for a competitor. In conjunction with the information on the spreadsheet, Item 1(a), would allow competitors to take BellSouth's work effort and readily develop a competitive marketing plan. Further, BellSouth does not utilize customer-specific information, except pursuant to Customer Proprietary Network Information ("CPNI") restrictions. The identified portions of the spreadsheet should be protected as confidential so that the spreadsheet does not become a ready tool for competitors to obtain detailed information and to readily, and unfairly, utilize the detailed information from specific CSA's to compete with BellSouth. Information provided to the Commission concerning specific customers is or may be Customer Proprietary Network Information ("CPNI") and should not be publicly disclosed without the approval of the individual customers.

The information on the portion of the "price-out" spreadsheet, Item 1(f)-(i), for which BellSouth seeks confidential treatment is demand information, and the three other columns of figures (CSA total, tariff total, and net revenue), from which demand could be "reverse engineered". Demand is competitively useful information which can be utilized in developing marketing plans. This demand information should not be made available to BellSouth's competitors in an unrestricted fashion that would allow them to unfairly take advantage of BellSouth's work product.

All of the information identified herein has potential value to other participants in the local exchange market, such as incumbent local exchange carriers (ILECs), competitive access providers (CAPs), facilities-based competitive local exchange carriers (CLECs), cable companies who have developed or are contemplating the development of wholesale network products, and wireless providers.

Public disclosure of the identified information would provide BellSouth's competitors with an unfair competitive advantage. The Commission should also grant confidential treatment to the information for the following reasons:

- (1) The information for which BellSouth is requesting confidential treatment is not known outside of BellSouth or, in the case of CSA's, it is not available in the format provided in this proceeding;
- (2) The information is not disseminated within BellSouth and is known only by those of BellSouth's employees who have a legitimate business need to know and act upon the information;
- (3) BellSouth seeks to preserve the confidentiality of this information through all appropriate means, including the

maintenance of appropriate security at its  
offices; and

(4) By granting BellSouth's petition, there  
would be no damage to any public interest.

For the reasons stated herein, the Commission should grant  
BellSouth's request for confidential treatment of the identified  
information.

Respectfully submitted,

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