

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS)	
COMMISSION'S TRIENNIAL REVIEW ORDER)	CASE NO.
REGARDING LOCAL CIRCUIT SWITCHING)	2003-00347
FOR DS1 ENTERPRISE CUSTOMERS)	

**PETITION FOR CONFIDENTIAL TREATMENT
OF COMPETITIVELY SENSITIVE INFORMATION**

Cincinnati Bell Telephone Company ("CBT") hereby moves the Commission, pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, to classify as confidential the following described information:

The highlighted data set forth in Appendix A, an unedited copy of which is provided herewith in a separate sealed envelope marked "CONFIDENTIAL".¹

The highlighted data set forth in Appendix B, an unedited copy of which is provided herewith in a separate sealed envelope marked "CONFIDENTIAL".²

KRS 61.878(1)(c) exempts certain commercial information from the public disclosure requirements of the Kentucky Open Records Act. To qualify for this exemption, the party seeking confidential treatment must establish that disclosure of the commercial information would give its competitors an unfair commercial advantage if openly disclosed. KRS 61.878(1)(c); KAR 5:001, Section 7.

CBT submits that disclosure of certain information set forth in Appendix A and as provided in response to the Data Requests of the Commission's Staff would cause CBT

¹ An edited copy of Appendix A, with confidential information obscured, is attached to this Petition.

² An edited copy of Appendix B, with confidential information obscured, is attached to this Petition.

competitive injury if disclosed to the general public and to competitors and potential competitors of CBT. Appendix A provides a detailed level of information concerning services provided by CBT in its operating territory. Specifically, the responses to Data Requests 1.a.(i), 3.a., 3.b., and 3.c. set forth the number of subscribers and specific revenues generated by the sale of particular services at the wirecenter level. This information could provide a competitor with the information necessary to forecast areas of growth and areas of increased demand for services. In doing so, the information could be used to assist the competitor in developing competitive business strategies and in designing their service offerings and marketing plans. CBT does not believe that it should be required to divulge such detailed information to assist a competitor in the development of its business strategy. Publicly disclosing the information would give CBT's competitors an unfair competitive advantage in that they would have access to commercially sensitive information that could be used to CBT's detriment.

In addition, CBT seeks confidential treatment of its response to Data Request 3(f) as set forth in Appendix B pursuant to KRS 61.878(1)(c). In its response, CBT sets forth the steps that it takes in assessing the needs of its customers in a potentially competitive environment. While such an analysis is theoretically undertaken by every competitor, the precise criteria that CBT defines as "threshold" could reveal to a current or potential competitor the elements that CBT finds most important in its analysis and provide insight into the strategic thinking of CBT. The manner in which a company approaches an issue for a customer can enable a competitor to prepare an alternative approach in a much faster and more focused manner. Such information could, therefore, be used to CBT's detriment.

CBT also seeks to protect from public disclosure the information provided in response to Data Requests 1.b. and 3.d. as set forth in Appendix A pursuant to KRS 61.878(1)(k). KRS

61.878(1)(k) exempts from public disclosure under the Kentucky Open Records Act “[a]ll public records or information the disclosure of which is prohibited by federal law or regulation.”³ CBT submits that the number of lines sold on a wholesale basis for resale by CLECs at the wirecenter level (response to 1.b.), when presented with the identity of specific CLEC(s) providing service by wirecenter (response to 3.d.), qualifies for exemption under KRS 61.878(1)(k) in accordance with Section 222 of the Telecommunications Act of 1996 (“the Act”)⁴ and the implementing regulations propounded by the Federal Communications Commission (“FCC”).⁵

The responses to 1.b. and 3.d provide the number of DS1 lines sold to CLECs on a wholesale basis and the identity of CLECs providing DS1 service by wirecenter. Specifically, the Appendix A contains information that relates to the quantity and type of a telecommunications service subscribed to by a wholesale customer that is made available to CBT by the customer solely by virtue of the carrier-customer relationship. This information is individually identifiable “customer proprietary network information” (“CPNI”) ⁶ as defined by the Act, particularly where there is only one CLEC identified in 3.d.. Pursuant to Section 222 of the Act, CBT is obligated to protect the confidentiality of the customer’s CPNI.⁷ Section 222(c)(1) states as follows:

Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, and (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.⁸

³ KRS 61.878(1)(k).

⁴ 47 U.S.C. § 222.

⁵ 47 C.F.R. §§ 64.2001 et seq.

⁶ 47 U.S.C. § 222(f)(1)(A).

⁷ 47 U.S.C. § 222(a).

⁸ 47 U.S.C. § 222(c)(1).

In sum, federal law prohibits CBT from using, disclosing, or permitting access to individually identifiable CPNI in Appendix A unless necessary for the provision of service to the customer or “except as required by law or with the approval of the contract customer.” Because disclosure of this customer’s individually identifiable CPNI is not necessary for the provision of service and is neither approved by CBT’s wholesale customers⁹ nor required by law, the Commission should exempt the customer’s identity from disclosure to the public pursuant to KRS 61.878(1)(k).

Accordingly, CBT submits the highlighted information set forth in Appendices A and B under seal and in doing so, asks that the Commission grant the Petition such that the information will not be made available to the general public or to other parties without the expressed, written consent of CBT. CBT acknowledges the Commission’s need for access to this data for purposes of this proceeding. CBT is also aware that intervenors may have a need to have access to this data during this proceeding. CBT will, therefore, make these documents available to outside parties upon the execution of an appropriate confidentiality agreement.

CBT further submits that confidential treatment is warranted for the following reasons:

- (1) The data identified in this Petition is not known outside CBT;
- (2) The data is known only by those of CBT’s employees who have a legitimate business need to know and act upon the information;
- (3) It is CBT’s policy to preserve the confidentiality of such data through all appropriate means, including the maintenance of proper security at its offices;
- (4) Granting CBT’s Petition would not be detrimental to the policy objectives of the Kentucky Open Records Act. In fact, the public interest would best be served by granting CBT’s Petition because fair competition would thereby be promoted.

⁹ CBT is also prohibited from disclosing customer-specific wholesale information in accordance with its interconnection agreements with the identified CLECs. The interconnection agreements have been approved by the Commission and are available for inspection at the Commission’s offices.

For all of the foregoing reasons, CBT requests that the Commission grant its Petition for Confidential Treatment of the information identified in Appendices A and B and submitted in response to the Commission Staff's Data Requests.

Respectfully submitted,

Ann Jouett Kinney
Cincinnati Bell Telephone Company
201 East Fourth Street, 102-890
Cincinnati, OH 45202
(513) 397-7260

Attorney for Cincinnati Bell
Telephone Company