

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF FEDERAL COMMUNICATIONS)	
COMMISSION'S TRIENNIAL REVIEW ORDER)	CASE
NO.		
REGARDING UNBUNDLING REQUIREMENTS)	2003-00379
FOR INDIVIDUAL NETWORK ELEMENTS)	

PETITION FOR CONFIDENTIALITY

NewSouth Communications Corp., (hereinafter "Movant or NewSouth"), pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, hereby requests that the Commission provide confidential treatment to Movant's responses to oral requests made by the staff of the Commission during the tour of NewSouth's Louisville central office on January 14. The tour was in conjunction with an informal conference. The staff's requests relate to switch capacity and utilization rates for the switch. While capacity was discussed in broad and general terms during the tour, staff has asked for, and NewSouth is providing, very specific information concerning utilization of the Louisville switch.

In support of its petition Movant states as follows:

1. The Commission issued an Order in this docket on November 4, 2003 providing for data requests on non-incumbent providers of local exchange services who are parties to this case. At the time of the January 14 informal conference, NewSouth had not intervened as a party. However, NewSouth voluntarily provided access to its facility because it was located within walking distance of a BellSouth central

office where a tour took place on the same day. Movant has subsequently filed its notice of intervention to enable it to participate fully in this proceeding.

2. Movant hereby seeks confidential treatment of its proprietary information being provided to staff. The response contains information that Movant deems to be proprietary and confidential and which should be afforded confidential treatment by the Commission.
3. The confidential information is not being filed electronically with the public filings in this case. A redacted version of NewSouth's letter to the Commission is filed contemporaneously with this motion.
4. KRS. 61.870, et seq., requires that public agencies within the Commonwealth make available for inspection all public records. Certain exceptions to that general requirement are contained in KRS 61.878, which includes an exception for confidential or proprietary information. In order to qualify for this exception under KRS 61.878(1)(c), a party must demonstrate that disclosure of its commercial information would permit an unfair commercial advantage to its competitors. The procedure for requesting confidential treatment from the Commission is outlined at 807 KAR 5:001, Section 7.
5. The information contained in Movant 's response includes data that Movant believes contains proprietary and commercial information that would permit an unfair advantage to competitors, including competitors who may have chosen not to participate in this docket. Accordingly, Movant requests the Commission to afford confidentiality to this information pursuant to the exception provided in KRS 61.878(1)(c). This information, if disclosed, would cause irreparable harm

to Movant. A competitor could use the data to obtain market information about the Company and its business plans. In addition, the information being provided to staff reveals precisely the level of remaining capacity in Movant's Louisville facility. Competitors with knowledge of this information could exploit it in their efforts to compete with NewSouth. These competitors would know whether or not NewSouth could serve a customer of a particular size without having to purchase additional switch modules. This is information NewSouth does not reveal to its competitors and these competitors do not share such information with NewSouth. Further, the information reveals the mix of technology and facility types NewSouth utilizes to serve its customers. In a competitive market, any information gained about a competitor can be used to that competitor's detriment. Such an unfair competitive advantage skews the marketplace and prevents the development of true competition to the ultimate detriment of the consumer.

6. Disclosure of confidential information of this nature will be detrimental to Movant because it contains data that is not otherwise available to the Company's competitors. Once supplied with this information, a competitor could use it to target their marketing efforts to the detriment of Movant. The information sought to be protected is not known outside Movant, nor is it provided to the public; its internal use is restricted to only those employees who have a legitimate business reason for reviewing such, and the Company attempts to control the dissemination of this material through all reasonable means. Indeed, by granting the Company's petition and protecting information that was requested from a non-party who provided it on a voluntary basis, the public interest will be served.

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