

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

Birch Telecom of the South, Inc., (hereinafter "Movant"), pursuant to KRS 61.878 and 807 KAR 5:001, Section 7, hereby requests that the Commission provide confidential treatment to certain of Movant's responses to BellSouth's First Set of Interrogatories and Requests for Production. The request relates to responses to Interrogatories 11, 30 through 34, 43, 44, 46 and 48 in BellSouth's First Set, relating to wire centers in which Movant provides service, service penetration levels, numbers of customers, average monthly revenues from identified customer classes, customer acquisition costs and churn rates, information concerning crossover points, and information concerning how Movant defines certain cost elements.

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. BellSouth propounded numerous requests to Movant and other CLEC parties.

2. Movant transmits herewith its responses to BellSouth, including certain confidential information in response to various interrogatories and requests for production.
3. Movant hereby seeks confidential treatment of its confidential information. The noted responses contain information which Movant deems to be proprietary and confidential and which should be afforded confidential treatment by the Commission.
4. The confidential information is not being filed electronically with the public filings in this case. The confidential information is being provided to BellSouth pursuant to a protective agreement, and to the Commission.
5. 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.
6. The information contained in Movant 's responses 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. Further, 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.

7. 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, the public interest will be served because competition will be protected.

WHEREFORE, Movant respectfully requests that the Commission enter an order granting confidential treatment of the information contained in the accompanying confidential responses.

Respectfully submitted,

/s/
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CERTIFICATE OF SERVICE

I hereby certify that the electronic version of this filing made with the Commission this 17th day of December, 2003 is a true and accurate copy of the documents attached hereto in paper form. This version was transmitted to the Commission for forwarding to those persons receiving electronic notices from the Commission in this case. A copy of the filing was also served by U.S. mail to those persons whose postal addresses appear on the service list below.

/s/

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