

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

AN INVESTIGATION INTO THE INTRASTATE)	
SWITCHED ACCESS RATS OF ALL KENTUCKY)	ADMINISTRATIVE
INCUMBENT AND COMPETITIVE LOCAL)	CASE NO. 2010-00398
EXCHANGE CARRIERS)	

INSIGHT PHONE'S PETITION FOR CONFIDENTIAL PROTECTION

Insight Phone of Kentucky, LLC (“Insight Phone”) hereby petitions the Kentucky Public Service Commission (“Commission”) pursuant to 807 KAR 5:001, Section 7, and KRS 61.878(1)(c) to grant confidential protection to certain financial information included in response to the Commission’s May 30, 2012 Order that directed “all affected Parties” to file revisions to their Kentucky access services tariffs.

Although Insight Phone is not a named party and has not been served with the Order, it has filed access tariff revisions (with an effective date of July 1, 2012) to comply with the reforms adopted in the Federal Communications Commission’s (“FCC”) order released on November 28, 2011 (FCC 11-161). In the interest of cooperating with the Commission’s efforts to review tariff filings required by the FCC, Insight Phone is filing information responsive to ordering paragraphs 1(a) through 1(c) of the May 30 Order. Insight Phone petitions the Commission to grant confidential treatment to the confidential worksheet reflecting its calculation of the July 1, 2012 intrastate access rates. In support of this Petition, Insight Phone states as follows:

1. The Kentucky Open Records Act exempts from disclosure certain commercial information, including records generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. KRS 61.878(1)(c). To qualify for this exemption and, therefore,

maintain the confidentiality of the information, a party must establish that disclosure of the commercial information would permit an unfair advantage to competitors of the party seeking confidentiality. *See Southeastern United Medigroup v. Hughes*, 952 S.W. 2d 195, 199 (Ky. 1997).

2. The confidential and proprietary financial and business information for which confidential protection is sought in this case is precisely the sort of information meant to be protected by KRS 61.878 (1) (c) 1. In *Hoy v. Kentucky Industrial Revitalization Authority*, 907 S.W.2d 766 (Ky. 1995), the Kentucky Supreme Court held that financial information submitted by General Electric Company with its application for investment tax credits was not subject to disclosure simply because it had been filed with a state agency. The Court applied the plain meaning rule to the statute, reasoning that “[i]t does not take a degree in finance to recognize that such information concerning the inner workings of a corporation is ‘generally recognized as confidential or proprietary.’” *Id.* at 768. Similarly, the Kentucky Supreme Court applied the KRS 61.878 (1) (c) 1. “competitive injury” exemption to financial information that was in the possession of Kentucky’s Parks Department in *Marina Management Services, Inc. v. Commonwealth, Cabinet for Tourism*, 906 S.W.2d 318, 319 (Ky. 1995): “These are records of privately owned marina operators, disclosure of which would unfairly advantage competing operators. The most obvious disadvantage may be the ability to ascertain the economic status of the entities without the hurdles systematically associated with acquisition of such information about privately owned organizations.” The same reasoning applies here.

3. Insight Phone is a competitive local exchange carrier (“CLEC”) and competes with incumbents AT&T-Kentucky, Brandenburg Telephone Company, Cincinnati Bell Telephone Company, Windstream Kentucky, and other Kentucky local exchange carriers

(“LECs”), including parties to the captioned access rate investigation. While Insight Phone’s tariff rates for access services are public, Insight Phone and other Kentucky CLECs have never been required to disclose the amount of revenue generated by individual access rate elements.

4. The worksheet reflects the business efforts and competitive position of Insight Phone. Insight Phone does not share this information with its various competitors in the telecommunications service business unless required by lawful process. Likewise, those competitors do not share their own internal studies or similar information with Insight Phone.

5. The Commission has already granted Insight Phone’s competitors confidential treatment in this case for access usage and revenue data and calculation of revenue shift under alternative assumptions, and amounts of traffic and access revenue received for certain switched access rate elements. *See, e.g.*, letter from Jeff Derouen to Douglas E. Hart dated September 16, 2011 (granting Cincinnati Bell’s petition for confidential treatment); letter from Jeff Derouen to Mary K. Keyer dated September 16, 2011 (granting AT&T Kentucky and TCG Ohio’s petitions). The Commission should protect the same type of information disclosed here, which clearly merits confidential protection pursuant to *Hoy, Marina Management*, and KRS 61.878 (1) (c) 1.

6. If the Commission disagrees, however, it must hold an evidentiary hearing (a) to protect the due process rights of Insight Phone and (b) to supply the Commission with a complete record to enable it to reach a decision with regard to this matter. *Utility Regulatory Commission v. Kentucky Water Service Company, Inc.*, 642 S.W.2d 591, 592-94 (Ky. Ct. App. 1982).

7. In accordance with the provisions of 807 KAR 5:001 Section 7, one physical copy of the confidential worksheet is being filed, and a copy with confidential information redacted is filed electronically herewith.

WHEREFORE, Insight Phone respectfully requests that the Commission grant confidential protection for the worksheet which supports its June 5, 2012 access tariff revision, or in the alternative, schedule an evidentiary hearing on all factual issues while maintaining the confidentiality of the information pending the outcome of the hearing.

June 7, 2012

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Douglas F. Brent". The signature is stylized and written in a cursive-like font.

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CERTIFICATE OF SERVICE

I hereby certify that the electronic version of this filing made with the Commission on June 11, 2012, is a true and accurate copy of the document filed herewith in paper form, and the electronic version of the filing has been transmitted to the Commission.

A handwritten signature in black ink, appearing to read "Douglas F. Brent". The signature is stylized and written in a cursive-like font.

Douglas F. Brent