

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

In the Matter of An Investigation into the)
Intrastate Switched Access Rates of All) Administrative Case No.
Kentucky Incumbent and Competitive) 2010-00398
Local Exchange Carriers)

**PETITION FOR CONFIDENTIAL TREATMENT OF CERTAIN DATA
SUBMITTED BY CINCINNATI BELL TELEPHONE COMPANY LLC
IN RESPONSE TO FCC USF/ICC TRANSFORMATION ORDER**

Pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c), Cincinnati Bell Telephone Company LLC (“CBT”) moves the Public Service Commission of Kentucky (the “Commission”) to accord confidential treatment to certain information contained in CBT’s responses to the Federal Communication Commission’s Report And Order And Further Notice Of Proposed Rulemaking.¹ In support of its Petition, CBT states as follows.

I. Applicable Law.

807 KAR 5:001 §7(2) sets forth a procedure by which certain information filed with the Commission may be treated as confidential. Specifically, the party seeking confidential treatment must “[set] forth specific grounds pursuant to KRS 61.870 *et seq.*, the Kentucky Open Records Act, upon which the commission should classify that material as confidential.” 807 KAR 5:001 §7(2)(a)(1). The Kentucky Open Records Act, KRS 61.870, *et seq.*, exempts certain records from the requirement of public inspection. See KRS 61.878. In particular, KRS 61.878(1)(c)(1) provides as follows:

¹ FCC 11-161, WC Docket 10-90, GN Docket 09-51, WC Docket 07-135, WC Docket 05-337, CC Docket 01-92 CC Docket 96-45 WC Docket 03-109, WT Docket 10-208, released November 18, 2011 (“USF/ICC Transformation Order”). CBT is filing electronically and serving redacted versions of its responses to data requests to all parties. CBT is filing both redacted and unredacted paper versions with the Commission, with the confidential information removed from the redacted versions and highlighted in the unredacted versions.

[r]ecords confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records.

Id. Applying this provision to the financial information of a corporation, the Supreme Court of Kentucky has held that “disclosure of [this financial information] 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.” *Marina Management Servs. v. Cabinet for Tourism, Dep’t of Parks*, 906 S.W.2d 318, 319 (Ky. 1995); see also *Hoy v. Kentucky Indus. Revitalization Auth.*, 907 S.W.2d 766, 768 (Ky. 1995) (“It 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’ and falls within the wording of KRS 61.878(1)(c).”)

II.

CBT’s

Financial Information Should Be Classified As Confidential.

In its USF/ICC Transformation Order, the FCC ruled that intrastate switched access rates must be brought into parity with interstate rates by July, 1 2014 in two equal steps. CBT will be filing new switched access rates as the first step of the two-step process to reduce any switched access rate that exceeds the equivalent interstate rate by one-half of the difference between the two rates. The USF/ICC Transformation Order also requires ILECs to provide state commissions with rate and unit detail by switched access rate element reflecting the revenue impact of the decrease.

CBT is requesting confidential treatment for all intrastate unit demand and revenue information labeled as confidential in its provision of data to the Commission as required by the USF/ICC Transformation Order. The data contains proprietary, confidential information

that would aid competitors of CBT if released, and otherwise is proprietary and trade secret information not released outside the company. Such confidential and proprietary trade secret information is subject to protection from disclosure pursuant to Kentucky law. See KRS 61.870 et seq.

The data provided by CBT in accordance with the USF/ICC Transformation Order in material part contain specific dollar figures or demand information relating to CBT's operations in Kentucky. This information constitutes a trade secret because it is commercial information that, if disclosed, could cause substantial competitive harm to CBT. This information is not publicly available. The information provided is based on highly confidential and proprietary network and traffic information. It would be difficult, if not impossible, for someone to discover this information from other sources. If this information was available to competitors in this form, it could be used to the competitive disadvantage of CBT.

Read in conjunction, 807 KAR 5:001 §7(2)(a)(1) and KRS 61.878(1)(c) provide that the Commission may classify information as confidential if the open disclosure of the information "required by the [Commission] to be disclosed to it, [is] generally recognized as confidential or proprietary, which if openly disclosed would present an unfair commercial advantage to competitors of the entity that disclosed the records" *See* KRS 61.878(1)(c). The highlighted information contained in CBT's responses to the USF/ICC Transformation Order is sensitive financial information that CBT is required to file as part of the current proceeding. These responses contains confidential data regarding CBT's business, including access usage and revenue data. The data includes specific information regarding the amount of traffic and access revenue CBT receives for certain switched access rate elements. None of this information is public.

The disclosure of this highly sensitive information would result in an unfair commercial advantage to CBT's competitors and a compromised competitive position for CBT. It has the potential to allow CBT's competitors "to ascertain the economic status of [CBT] without the hurdles systematically associated with acquisition of such information." *Marina Management Servs.*, 906 S.W.2d at 319. The information for which CBT seeks confidential treatment is of such a sensitive nature that it is not known outside of the company, and even within the company it is known only by those employees who have a legitimate business need to know and act upon the information. "[S]uch information concerning the inner workings of a corporation is 'generally recognized as confidential or proprietary' and falls within the wording of KRS 61.878(1)(c)(2)." *Hoy*, 907 S.W.2d at 768.

III. Conclusion.

For these reasons, the Commission should classify the highlighted information in CBT's data responses as confidential pursuant to 807 KAR 5:001 §7 and KRS 61.878(1)(c), and accordingly prevent the public disclosure of the information.

Respectfully



submitted,

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