

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR APPROVAL OF ASSET SALE)
OF TMC OF LEXINGTON, INC. TO CORPORATE) CASE NO. 94-301
TELEMANAGEMENT GROUP, INC.)

O R D E R

This matter arising upon the joint petition of TMC of Lexington, Inc. ("TMC") and Corporate Telemanagement Group, Inc. ("CTG"), filed October 4, 1994, pursuant to 807 KAR 5:001, Section 7, for confidential protection of designated portions of their agreement for the sale and purchase of the assets of TMC to CTG on the grounds that designated portions of the agreement contain information of a personal nature, the disclosure of which would constitute an unwarranted invasion of personal privacy of the sole stockholder and director of TMC, and upon the additional grounds that disclosure of the information is likely to cause TMC and CTG competitive injury, and it appearing to this Commission as follows:

TMC is a Kentucky corporation certified by this Commission to provide intrastate interLATA long-distance telecommunications service. J. T. Carneal is its sole stockholder and director. By written contract dated June 8, 1994, TMC agreed to sell substantially all of its assets to CTG under the terms and conditions specified in the contract. On August 12, 1994, TMC and CTG, by joint petition, requested approval of the sale from this Commission. On August 22, 1994, TMC and CTG filed a joint petition

to protect as confidential designated portions of the written agreement. Because the petition did not conform to the requirements of 807 KAR 5:001, Section 7, the petition was dismissed on September 14, 1994. TMC and CTG then filed, on October 5, 1994, their "second amended petition" which addressed the deficiencies noted in the earlier petition.

KRS 61.872(1) requires information filed with the Commission to be available for public inspection unless specifically exempted by statute. Exemptions from this requirement are provided in KRS 61.878(1). That section of the statute exempts 11 categories of information. In their petition, TMC and CTG maintain that the information sought to be protected in this proceeding qualifies for protection under KRS 61.878(1)(a) and KRS 61.878(1)(c) 1.a. and b.

KRS 61.878(1)(a) exempts from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." To qualify for this exemption, the person seeking protection must establish that disclosure of the information will relay details of an individual's private life and that the individual's privacy interest in the information outweighs the public's interest in the information.

The petition seeks to protect as confidential numerous portions of the agreement between the petitioners, including information contained in supporting documents incorporated into the agreement by reference. The petition does not identify what

information falls within this exemption and, therefore, protection should not be granted on this basis.

The petition also seeks to protect the information on the grounds that it qualifies for protection under KRS 61.878(1)(c)1. b. and c. That exemption applies to information which "if openly disclosed would permit an unfair commercial advantage to competitors of" the entity that disclosed the information. Therefore, to qualify for the exemption it must be established that disclosure of the information is likely to cause substantial competitive injury to the person from whom the information was obtained. To satisfy this test the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is publicly disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

The petition filed by the petitioners does not identify any competitors either by name or by description who would benefit from the information sought to be protected. Nor does the petition describe how the information could be used by competitors to gain an unfair advantage over either of the petitioners. Therefore, the petition cannot be granted on those grounds.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential designated portions of the agreement between the petitioners be and is hereby denied.

2. The information sought to be protected shall be held and retained by this Commission as confidential for a period of 20 days from the date of this Order, at the expiration of which it shall be placed in the public record without further Orders herein.

Done at Frankfort, Kentucky, this 31st day of October, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director