

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT APPLICATION OF DELTACOM, INC. AND )  
ITC HOLDING COMPANY, INC. FOR AN ORDER )  
APPROVING A TRANSFER AND ACQUISITION OF ) CASE NO. 95-534  
OWNERSHIP AND CONTROL )

O R D E R

This matter arising upon the joint petition of DeltaCom, Inc. ("DCI") and ITC Holding Company, Inc. ("ITC"), filed December 19, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of the financial statement of ITC and the purchase price set forth in a stock purchase agreement between all the shareholders of DCI and ITC on the grounds that the information is generally recognized as confidential, and that disclosure of the information is likely to cause DCI and ITC competitive injury, and it appearing to this Commission as follows:

DCI and ITC are corporations engaged in providing long-distance telecommunications services within this state and in other jurisdictions. By a written agreement dated October 27, 1995, the stockholders of DCI have agreed to sell all of their stock in the corporation to ITC for a specified amount. Because this agreement will transfer control of DCI, DCI and ITC have requested Commission approval of the agreement. By this petition, DCI and ITC have also requested that the purchase price agreed upon for the stock that is set forth in the agreement and a financial statement of ITC filed

in support of the proposed acquisition be protected from public inspection.

As privately owned corporations, neither DCI nor ITC is required publicly to disclose information regarding its financial position or value. Although the information sought to be protected has previously been provided to the Mississippi Public Service Commission and accepted as confidential, it otherwise has not been disclosed to any person or entity outside the petitioning companies. Dissemination of the information within each company is restricted to those who have a legitimate business need to know and act upon the information.

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 several categories of information. DCI and ITC maintain that both the purchase price and the financial statement qualify for protection under two of those categories.

Paragraph (c)2 of that section contains one of the categories relied upon in the petition. That paragraph exempts information generally recognized as confidential or proprietary. To qualify for the exemption, the party claiming confidentiality must demonstrate that the information is not readily available from other sources, and that the information falls within one or more of

the categories specified in paragraph (c)2.<sup>1</sup> The information sought to be protected here does not qualify for exemption under any of the categories and, therefore, cannot be protected on this ground.

The other category of information relied upon in the petition is commercial information confidentially disclosed to the Commission which if made public would permit an unfair commercial advantage to competitors of the party from whom the information was obtained. To qualify for this exemption, which is found in paragraph (c)1 of KRS 61.878(1), the party claiming confidentiality must demonstrate actual competition and a likelihood of substantial competitive injury if the information is disclosed. Competitive injury occurs when disclosure of the information gives competitors an unfair business advantage.

As participants in the long-distance telecommunications service market, DCI and ITC compete with local exchange companies, interexchange companies, and resellers of long-distance service. Disclosure of the information would provide such competitors with detailed information regarding ITC's financial position and with ITC's evaluation of DCI's assets and continuing business operation. This information could be useful to competitors in developing market strategies. Therefore, disclosure of the information is likely to cause DCI and ITC competitive injury, and the information should be protected as confidential.

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<sup>1</sup> These categories are "mineral exploration records, unpatented, secret commercially valuable plans, appliances, formulae, or processes, which are used for the making, preparing, compounding, treating, or processing of articles or materials which are trade commodities obtained from a person."

This Commission being otherwise sufficiently advised,

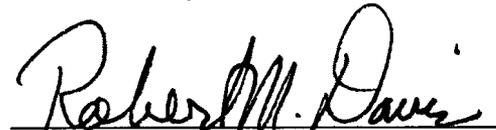
IT IS ORDERED that the financial statement of ITC and the purchase price contained in the stock purchase agreement, which DCI and ITC have petitioned to be withheld from public disclosure, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

Done at Frankfort, Kentucky, this 3rd day of April, 1996.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director