

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF INACOM COMMUNICATIONS,)
INC. FOR A CERTIFICATE TO RESELL) CASE NO. 94-447
TELECOMMUNICATIONS SERVICES)

O R D E R

This matter arising upon petition of Inacom Communications, Inc. ("Inacom"), filed April 18, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of information filed in response to the Commission's Order dated January 27, 1995, on the grounds that disclosure of the information is likely to cause Inacom competitive injury, and it appearing to this Commission as follows:

Inacom, a seller of telecommunication services, has applied for a Certificate of Public Convenience and Necessity to operate in this state. On January 27, 1995, the Commission requested Inacom to respond to the following data request:

"Has Inacom or any of its affiliates ever received compensation for providing intrastate telecommunication services in Kentucky?"

As part of its response, Inacom has identified the company with whom it has contracted in writing to sell telecommunication services and has provided a description of its agreement with that company. Inacom seeks to protect the written contract in its entirety together with the identity of the company with whom it has

contracted, and the description of their relationship as confidential on the grounds that disclosure of the information is likely to cause Inacom competitive injury. This request is in accordance with a provision of the contract that requires Inacom to maintain its confidentiality.

Inacom states that the information sought to be protected is not known outside of Inacom. Inacom's employees and others involved in Inacom's business do not have access to the information or the contract except on a need-to-know basis.

KRS 61.878(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. One category exempted in paragraph (c)1 of that section 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 the exemption, 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 a seller of telecommunication services, Inacom faces competition from other companies providing the same service. Inacom's competitors could use the information contained in its response which describes the relationship between Inacom and its

provider to gain information on Inacom's strategy and business. Likewise, Section 4 of the agreement which sets forth the terms which define the relation between Inacom and its providers, would provide Inacom's competitors with the same information. Therefore, disclosure of that information is likely to cause Inacom competitive injury and the information should be protected as confidential.

Although Inacom seeks to protect the identity of its provider, that information has been made a part of the public record and is no longer confidential. The same is true of some of the information contained in the remaining sections of the contract which Inacom seeks to protect. Additionally, the remaining sections relate to general information from which competitors can derive no benefit. Therefore, the identity of the provider and the remaining portions of the contract are not entitled to protection from public inspection.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The information filed in response to the Commission's Order of January 27, 1995, describing the relationship between Inacom and its provider, and Section 4 of the contract between Inacom and its provider, shall be held and retained by this Commission as confidential and shall not be open for public inspection.

2. Inacom shall, within 20 days from the date of this Order, file for inclusion in the public record an edited copy of its

response obscuring that portion which describes the relationship between Inacom and its provider and an edited copy of the contract with its provider obscuring Section 4 of the agreement.

Done at Frankfort, Kentucky, this 10th day of May, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairmah


Commissioner

ATTEST:


Executive Director