

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION FOR APPROVAL OF ASSET SALE)
FROM INTERNATIONAL TELECOMMUNICATIONS) CASE NO. 95-084
EXCHANGE CORPORATION TO CORPORATE)
TELEMANAGEMENT GROUP, INC.)

O R D E R

This matter arising upon the joint petition of International Telecommunications Exchange Corporation ("INTEX") and Corporate Telemanagement Group, Inc. ("CTG"), filed April 11, 1995, pursuant to 807 KAR 5:001, Section 7, for confidential protection of certain financial information contained in an agreement between the parties, on the grounds that disclosure of the information is a violation of the privacy interest of INTEX's principal stockholders, that disclosure may influence CTG's negotiations with other companies, that the information sought to be protected is sensitive from a competitive perspective, and it appearing to this Commission as follows:

INTEX and CTG have entered into an agreement under the terms of which INTEX has agreed to sell to CTG all of its business assets, except those specifically excluded by the contract. By this petition, CTG seeks to protect as confidential certain information relating to the purchase price for the assets and certain representations and warranties made by INTEX to CTG.

The information sought to be protected is not publicly available; nor is it generally known outside of INTEX's or CTG's businesses.

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). Pursuant to its rule making authority, the Commission has promulgated 807 KAR 5:001, Section 7. This regulation establishes the procedure by which persons filing information with the Commission may request that it be protected as confidential. The regulation requires, among other things, that persons seeking confidentiality file a petition setting forth the specific statutory grounds relied upon, that the information sought to be protected be identified in the document in which it is found, and that ten copies of the document with the information to be protected obscured be filed in the public record.

The information sought to be protected is found in Section 3, paragraph 3.2, and Section 4, paragraph 4.2 of the contract. Section 3 sets forth the purchase price for the assets and paragraph 3.2 provides the manner of payment. Although the petition refers generally to protection of the purchase price information, only the amount of the down payment due upon execution of the agreement and the amount of the balance due at the closing of the sale were identified for protection in the copy of the contract filed with the Commission, and only those amounts were obscured in the copies filed for inclusion in the public record.

Similarly, the petition does not identify the other terms of the contract it seeks to protect, and that information was determined from the copy of the contract filed with the petition in which the information was highlighted.

In their petition, CTG and INTEX set forth three separate grounds for protecting the information. The first ground asserted is that disclosure of the information will constitute an invasion of the personal privacy of the principle stockholders of INTEX and, therefore, the information is protected as confidential by KRS 61.878(1)(a). That subsection exempts from disclosure "information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." Because INTEX is a closely held corporation whose sole stockholders are John Paul Jones De Joria and his immediate family, the petitioners contend that information pertaining to the purchase price is a matter of private interest. Furthermore, since there are no intervenors in this proceeding, INTEX maintains that the privacy interest of the De Joria family outweighs the public's interest in the information. However, the two payments, the total amount of which is a matter of public record, are to be made within a relatively short period of time and will reveal very little personal information beyond that already known. Disclosure of the information will not be an invasion of the stockholders' personal privacy, and the information is not entitled to protection on those grounds.

Paragraph 4.2 of Section 4 discloses the number of shares of common stock that INTEX is authorized to issue, the par value of each share, and the number of authorized shares outstanding. The petition maintains that this information is entitled to protection because disclosure of these terms may influence or affect CTG's negotiations with other companies it may seek to acquire and because the information is sensitive from a competitive perspective.

KRS 61.878(1) contains no provision for treating information as confidential because disclosure may affect future negotiations. Therefore, the information cannot be protected on those grounds.

KRS 61.878(1)(c)1 does exempt information 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.

While the petition filed by INTEX and CTG alleges that disclosure of the information relating to INTEX's corporate stock is sensitive from a competitive nature, it does not identify the competitors who would benefit from the disclosure, nor does it demonstrate how its competitors could use the information to CTG's disadvantage. Therefore, the information is not entitled to protection on those grounds.

This Commission being otherwise sufficiently advised,

IT IS ORDERED that:

1. The petition to protect as confidential certain terms of the agreement between INTEX and CTG is denied.

2. The information sought to be protected shall be held and retained by this Commission as confidential and shall not be open for public inspection 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 17th day of May, 1995.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director