

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Investigation by the Department on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Massachusetts is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Department for Approval in Accordance with 47 U.S.C. § 252

DTC 13-6

COMPETITIVE CARRIERS' MOTION FOR CONFIDENTIAL TREATMENT

1. The Competitive Carriers (CTC Communications Corp. d/b/a EarthLink Business; Lightship Telecom LLC d/b/a EarthLink Business; Choice One Communications of Massachusetts, Inc. d/b/a EarthLink Business; Conversent Communications of Massachusetts, Inc. d/b/a EarthLink Business; EarthLink Business, LLC (formerly New Edge Network, Inc. d/b/a EarthLink Business); Cbeyond Communications, LLC; tw data services llc; Level 3 Communications, LLC; and PAETEC Communications, Inc.) respectfully request that the Department grant confidential treatment to and exempt from public disclosure the following information and/or documents that this motion accompanies:

Portions of the Competitive Carriers' response to information request VZ-I 1-3, constituting or containing information regarding agreements that the Competitive Carriers' expert, David J. Malfara, Sr., has negotiated or consulted upon.

Information in the separate responses to VZ-I 1-5 by each of tw data services, llc; Cbeyond Communications, LLC; Level 3 Communications, LLC; and PAETEC Communications, Inc.

This information and/or these documents constitute or contain proprietary, confidential, and/or competitively sensitive information that is entitled to confidential treatment and protection from public disclosure.

2. Pursuant to G. L. c. 25C, § 5, “the [D]epartment may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter.” “A trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” *J.T. Healy and Son, Inc. v. James Murphy and Son, Inc.*, 357 Mass. 728, 736, 260 N.E.2d 723, 729 (1970) (quoting *Restatement of Torts*, § 757). A leading Massachusetts case cites “six factors of relevant inquiry” in determining trade secret status: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the employer to guard the secrecy of the information; (4) the value of the information to the employer and its competitors; (5) the amount of effort or money expended by the employer in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Jet Spray Cooler, Inc. v. Crampton*, 361 Mass. 835, 282 N.E.2d 921, 925 (1972). The information and/or documents that are the subject of this Motion are entitled to protection under these standards.

3. The response to VZ-I 1-3 lists certain contracts or agreements between telecommunications carriers that are not parties to this action, identifies the parties, and describes what is covered by the agreements. Certain of the agreements are covered by nondisclosure agreements prohibiting Mr. Malfara from publicly disclosing their contents. Mr. Malfara understands that the parties, dates, and descriptions of those agreement constitute or contain competitively sensitive information; that disclosure of the information could work competitive harm to the parties to those agreements by revealing to other competitors the existence of the

agreements, parties, and effective dates; that the information is not publicly available; and that the parties to the underlying contracts are at risk of suffering competitive disadvantage if this information is made public. Mr. Malfara has kept the information confidential. However, in one instance, the non-party has authorized Mr. Malfara to disclose certain information about the agreement, subject to a claim of confidentiality.

4. The information provided by each of the Competitive Carriers that have claimed confidentiality with respect to their separate responses to VZ-I 1-5 concerns the percentage of its retail customers served by VoIP. In each case, the information has been compiled from internal sources in order to respond to this request. It is not publicly available. Only a handful of the respective company personnel have this information. Disclosure of this information could work competitive harm to the disclosing Competitive Carrier by revealing product, marketing, and strategic information to its competitors.

6. In sum, the information and/or documents described above are confidential, competitively sensitive, and proprietary; are not readily available to competitors; and would be of value to such competitors. There is no compelling need for public disclosure of any of this information.

WHEREFORE, the Competitive Carriers respectfully request that the Department afford confidential treatment to the information and/or documents described above and exclude them from the public record in this case.

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Respectfully submitted,



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