

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

Petition of CoxCom, Inc., d/b/a Cox
Communications to establish and adjust
the basic service tier programming,
equipment and installation rates for the
Town of Holland

D.T.C. 14-1

**MOTION OF COXCOM, INC., D/B/A COX COMMUNICATIONS NEW ENGLAND
FOR PROTECTIVE ORDER**

INTRODUCTION

Pursuant to G.L.c.25C, §5 and 801 C.M.R. 1.01(8), CoxCom, Inc., d/b/a Cox Communications New England (“Cox”), moves for a protective order regarding its responses to Department Information Request 1-2(f) (requesting the number of Holland customer by service tier as of October 1, 2014) and 1-2(g) (requesting the number of new Holland customers enrolled by Cox in each calendar year beginning January 1, 2010 and ending October 1, 2014).

In this Motion, Cox explains why the current number of its subscribers by service tier and the number of annual new connects since 2010 should be granted confidential treatment under G.L.c. 25C , §5 related Department standards of review and past Department precedent. The Company also requests that the Department maintain the confidentiality of the above Company subscriber information for a period of five years, with an opportunity afforded to Cox to request an extension of confidential treatment of its programming cost information.

ARGUMENT

A. DEPARTMENT CONFIDENTIALITY STANDARDS

Information filed with the Department or its Divisions may be protected from public disclosure pursuant to G.L.c.25C, §5, which states in part that:

The department 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. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the department shall protect only so much of the information as is necessary to meet such need.

The exemption afforded pursuant to G.L.c.25C, §5 is an exemption recognized under G.L.c.4, §7, cl. twenty-sixth (a) (“specifically or by necessary implication exempted from disclosure by statute”).

The Department has applied a 3 part standard in applying G.L.c.25C, §5. First, the information for which protection has been sought must constitute the type of information that can be exempted from public disclosure (e.g., confidential, competitively sensitive or other proprietary information). Second, the party seeking protection must prove the need for its non-disclosure as public information. Third, where such a need has been demonstrated, protection will be accorded only to so much of that information as is necessary to meet the established need and the length of time such protection may be in effect may be limited. *Time Warner Cable, Inc.*, CTV 03-4 (July 1, 2004) (Order on Request for Confidential Treatment). *CoxCom, Inc., d/b/a Cox Communications*, DTC 07-10(May 30, 2008) (Order on Request for Confidential Treatment). *CoxCom, Inc., d/b/a Cox Communications*, DTC 08-8 (June 23, 2009) (Hearing Officer Ruling on Motion for Protective Order). *CoxCom, Inc., d/b/a Cox Communications*, DTC 10-10 (October 12, 2011).

For the reasons below and in a supporting affidavit by Robert Howley, the information provided by Cox under seal should be accorded confidential treatment and exempted from public disclosure.

**B. CURRENT PER TIER SUBSCRIBER COUNT INFORMATION NEW
CUSORMER CONNECTS BY YEAR ARE CONFIDENTIAL INFORMATION**

**1. Non-Public Subscriber Count Information Has Been Treated as Confidential
Information by the Department**

The Department has classified non-public subscriber count information as exempt from public disclosure. *Budget PrePay, Inc.*, D.T.C. 11-12 at 10 (Hearing Officer Ruling on confidentiality on non-public subscriber counts). The Department should find that the information requested in DTC 1-2(f) and 1-2(g), provided by Cox under seal, constitutes confidential information.

**2. The Requested Information is Confidential
Commercial Information**

Per programming service tier customer count information and the annual number of new customer connects during the past 5 years constitute confidential, competitively sensitive and proprietary information. As the Affidavit of Robert J. Howley (“Howley Affidavit”) attests, the above-described information is highly sensitive commercial information, the public disclosure of which would result in significant commercial and competitive harm to the Company. (Howley Affidavit).

The requested information is not in the public domain. Cox treats such information as highly confidential and competitively sensitive. Cox does not make any public disclosure of this information. The requested information is treated as confidential information within Cox and is not generally available within the Company. Only those employees with a need to know have

access to this information. In addition, the requested information is not made public in the ordinary course of business. (Howley Affidavit).

Cox is a private corporation and the requested information is closely related to its financial information. Cox's rate schedules are public and disclosure of its customers by service tier would provide competitors with a granular view of Cox's revenue sources and amounts. Annual new customer connect data also would provide competitors with more insight into Cox's private business operations. Compare, *Budget PrePay, Inc.*, D.T.C. 11-12 at 10 (Hearing Officer Ruling on confidentiality on non-public subscriber counts)

3. The Requested Subscriber Information is Competitively Sensitive and its Disclosure Would Result in Substantial Competitive Harm to Cox

The information requested by the Department also competitively sensitive in nature. Cox would be placed at a competitive disadvantage if this information were made available to its competitors.¹ The availability of service tier specific customer information and year by year customer additions would cause significant competitive harm to Cox because information about its customer service counts by programming service tiers and customer activity could be used by competitors in fashioning marketing and pricing plans. (Howley Affidavit).

The Department's legitimate needs to investigate rate filings and the legitimate interests of Cox in keeping the requested information confidential can effectively be balanced by granting a protective order. Under a protective order, the Department would have access to information that it has requested and Cox would not be exposed to competitive harm.

¹ The Department has acknowledged the competitive environment in which Cox operates.

For these reasons, Cox has demonstrated that (1) the information produced falls within the categories of information that can be exempted from public disclosure and (2) a need for protection of that information from public disclosure exists in this case.

4. The Request for Protection of Customer Count by Service Tier and New Customer Connect Information is Narrowly Limited to Meet an Established Need for Protection

The information for which a protective order has been requested is limited in nature and necessary to meet the established need for protection. Cox has sought protection only regarding its responses to Department Information Requests 1-2(f) and 1-2(g). G.L.c 25C, §5. See note 1, *supra*. Thus, the third standard applied by the Department is satisfied.

C. THE DEPARTMENT'S PROTECTIVE ORDER SHOULD CONTAIN CONTINUING SAFEGUARDS FOR PROTECTING THE SECRECY OF CONFIDENTIAL INFORMATION

The Department should adopt a protective order in this matter to: (1) classify the information requested in DTC 1-2(f) and 1-2(g) as exempt from public disclosure under G.L.c.25C, §5; (2) include specific safeguards against public disclosure of this information; and (3) provide an opportunity to Cox to seek an extension of confidential treatment of this information at the end of a five year period of confidentiality.

The Department should make findings and rulings to confirm that the above-requested information provided by Cox is confidential information that shall be exempt from public disclosure pursuant to G.L.c.25C, §5. Next, the Department should explain how it maintains the confidentiality of information accorded confidential treatment as part of its order. Finally, the Department's order should provide that Cox's above-requested information provided under seal will be accorded confidential treatment for five (5) years from the date of its production, with an

opportunity given to Cox to seek an extension of the period of confidentiality based upon a showing of need for continuing protection against public disclosure.²

The increased competition in the cable industry (as well as from “over the top” programming is a further reason for providing a longer period of confidentiality.

While Cox understands that the Department will not afford it notice of any third party request for the above information in advance of its ruling on such a request and also understands that during the period of confidentiality granted the Department will maintain the confidentiality of Cox’s information, Cox respectfully requests that in its grant of protection in this matter, the Department include notice to Cox after it rules on any such third party request. Given that the third party requester may appeal the Department’s denial of a public record request, Cox has an interest in being aware of any attempts to force public disclosure of what it regards as highly confidential, proprietary and competitively sensitive information.³

² The Department has employed this protection for a period of five years in other cases. *CoxCom, Inc., d/b/a Cox Communications*, DTC 08—8 (June 23, 2009)(Order on Motion for Protective Order). The Department has adopted measures to enable an affected party to seek a further protection of confidential information in instances where the Department has accorded confidential treatment for a period of years and not in perpetuity. In *Re Verizon New England, Inc., d/b/a Verizon Massachusetts*, D.T.E. 01-31-Phase I (Interlocutory Order on Verizon Massachusetts’ Appeal of Hearing Officer Ruling Denying Motion for Protective Treatment), the Department granted confidentiality of information for two years, but provided that after that time, Verizon would have the opportunity to move the Department to further extend such protection accompanied by adequate proof of the need to do so.

³ Cox notes that in protective agreements filed by parties in adjudicatory proceedings, it is commonly provided that in the event that the Department rules that information provided as confidential, but subject to reclassification by the Department at the request of a party, should be made public, the producing party is afforded a reasonable period of time to seek judicial protection against public disclosure before public disclosure is made by the Department.

CONCLUSION

For the reasons above, the Department should treat the information provided under seal in response to DTC 1-2(f) and 1-2(g) as confidential information not subject to public disclosure, in accordance with G.L.c.25C, §5, and adopt the protective order terms requested by the Company.

Respectfully submitted,

COXCOM, INC., D/B/A COX COMMUNICATIONS
NEW ENGLAND

By its attorneys,



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Dated: October 30, 2014