COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England Inc. d/b/a Verizon MAssachusetts' intrastate retail telecommunications services in the Commonwealth of Massachusetts	D.T.E. 01-31

MOTION FOR CONFIDENTIAL TREATMENT

Verizon MAssachusetts ("Verizon MA") requests that the Department, in accordance with Mass. General Laws c. 25, § 5D and the Department's Ground Rules in this proceeding, grant this Motion to provide confidential treatment of certain data that Verizon MA provided in response to Information Requests AG-VZ 5-4 and AG-VZ 5-7, filed on December 6, 2001, and the Supplemental Rejoinder Testimony of John Conroy at page 4. As shown below, the data qualify as "trade secret" or "confidential, competitively sensitive, proprietary" information under Massachusetts and federal law and are entitled to protection from public disclosure in this proceeding.

ARGUMENT

In determining whether certain information qualifies as a "trade secret,"[1] Massachusetts courts have considered the following:

[1] Under Massachusetts law, a trade secret is "anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information design, process, procedure, formula, invention or improvement." Mass. General Laws c. 266, § 30(4); *see also* Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court, quoting from the Restatement of Torts, § 757, has further stated that "[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.... It may be a formula treating or preserving material, a pattern for a machine or other device, or a list of customers." *J.T. Healy and Son, Inc. v. James Murphy and Son, Inc*., 260 N.E.2d 723, 729 (1970). Massachusetts courts have frequently indicated that "a trade secret need not be a patentable invention." *Jet Spray Cooler, Inc. v. Crampton*, 385 N.E.2d 1349, 1355 (1979).

> (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, 282 N.E.2d 921, 925 (1972).

The protection afforded to trade secrets is widely recognized under both federal and state law. In *Board of Trade of Chicago v. Christie Grain & Stock Co.*, 198 U.S. 236, 250 (1905), the U.S. Supreme Court stated that the board has "the right to keep the work which it had done, or paid for doing, to itself." Similarly, courts in other jurisdictions have found that "[a] trade secret which is used in one's business, and which gives one an opportunity to obtain an advantage over competitors who do not know or use it, is private property which could be rendered valueless ... to its owner if disclosure of the information to the public and to one's competitors were compelled." *Mountain States Telephone and Telegraph Company v. Department of Public Service Regulation*, 634 P.2d 181, 184 (1981).[2]

[2] *See also, e.g., Investigation into Appropriate Regulatory Plan for Verizon,* DTE 01-31, Hearing Officer Ruling (September 14, 2001) at 8 ("I determine that Verizon has neither violated 47 U.S.C. § 222(b), nor has Verizon been unreasonable in its refusal to disclose to parties in this proceeding third-party specific information in Verizon's province, without authorization from the third-parties involved. This has been the prior practice in this proceeding and in other Department proceedings.") and Hearing Officer Ruling (August 29, 2001) at 3 ("I agree with VZ–MA that its response to AG-VZ-1-8 involves third-party specific data which could jeopardize the competitive position of a service provider who is not a party to this proceeding. Unless RCN waives protection and grants VZ–MA permission to publicly disclose this information, I grant VZ–MA's Motion to treat the materials submitted attached to AG-VZ-1-8 as confidential, proprietary materials."); *Bell Atlantic's Tariffs Nos. 14 and 17*, DTE 98-51, Hearing Officer Ruling (November 5, 1999) at 5 (ruling that "the number of plain old telephone service (POTS) lines each carrier has in each central office should avoid public scrutiny."); *Bell Atlantic's Local Service Provider*

The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. §§ 151 et seq., provides further protection for the confidential and proprietary information of telecommunications customers and carriers. *See* 47 U.S.C. § 222. Among other things, § 222 protects both customer proprietary network information and the confidentiality of proprietary carrier data.[3]

The attachment responsive to Information Request AG-VZ 5-4 identifies exchanges and the percentage of residential and business lines served by CLECs in each exchange. The data described in the response were developed using information provided in the Massachusetts Competitive Profile, regarding which the Hearing Officer previously afforded protective treatment in this proceeding.[4] The data represent valuable competitor and service-specific commercial information that other providers could find useful in establishing sales and network strategies that target particular market segments. Verizon MA regularly seeks to

---

Freeze, DTE 99-105, Hearing Officer Ruling (April 20, 2000) (protecting carrier data regarding ordering volumes); *Bell Atlantic's Local Service Provider Freeze*, DTE 99-105, Hearing Officer Ruling (April 20, 2000) (protecting carrier documents relating to (i) internal procedures implementing, removing or responding to local service provider freeze and (ii) information containing customer service and marketing information regarding success or failure at overcoming service provider freezes).

[3] Section 222(f)(1) defines "customer proprietary network information" in relevant part as:

> (A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and
>
> (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier.

In addition, §§ 222(a) and (b) provide:

> (a) IN GENERAL.—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.
>
> (b) CONFIDENTIALITY OF CARRIER INFORMATION.—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

prevent dissemination of this information in the ordinary course of its business. Also, disclosure of such information would place the relevant providers at a competitive disadvantage.

The attachment responsive to Information Request AG-VZ 5-7 provides IntraLATA Presubscription Tracking Reports from January 2000 through October 2001. In particular, the reports detail, among other things, monthly toll free activities, market share status, and service quality (completion) intervals for IntraLATA activity. The data represent valuable Verizon MA service-specific commercial information that competitors could find useful in establishing sales and network strategies that target particular market segments. Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, disclosure of such information would place Verizon MA at a competitive disadvantage.[5]

The relevant section of the Supplemental Rejoinder Testimony of John Conroy (at page 4) identifies AT&T's listings in the E911 database, including business listings using telephone numbers assigned and ported to AT&T. In particular, the data reflect AT&T's confidential information regarding residence and business listings and assigned and ported numbers associated with E911 service. Public disclosure of the listings would undermine the confidentiality of AT&T data set forth in the E911 database. The Hearing Officer likewise granted protective treatment of AT&T E911 records provided during discovery.[6] Verizon MA regularly seeks to prevent dissemination of this information in the ordinary course of its business. Also, disclosure of such information would place AT&T at a competitive disadvantage.

---

4 *See, e.g.,* Hearing Officer Ruling dated November 30, 2001 ("I determine that it is not necessary to treat a subset of the information contained within the Massachusetts Competitive Profile any differently than treatment of the Profile as a whole.")

5 Similar Verizon MA retail data have been granted protection in other instances during this investigation. *See, e.g.*, Hearing Officer Ruling dated August 29, 2001.

6 Hearing Officer Ruling dated November 30, 2001.

The information for which Verizon MA is requesting protective treatment is compiled from internal databases that are not publicly available, is not shared with any non-Verizon employees for their personal use, and is not considered public information. Any dissemination of this information to non-Verizon employees, such as contracted service providers, is labeled as proprietary. Further, any non-Verizon employees who are working for Verizon and may have access to this information are under a non-disclosure obligation.

Verizon MA employees that have access to the relevant data are similarly subject to non-disclosure requirements. For example, employees who use this information during the course of their responsibilities are not permitted to publish the relevant data for general public use or release them for publication by others to the general public. Moreover, when these data are transferred internally they are transferred over a protected network and are marked proprietary. As explained below, public disclosure of the requested information could create a competitive disadvantage for Verizon MA and the relevant carriers, and be of value to other providers in developing competing market strategies.

The requested data represent valuable commercial information that competitors could use to frustrate Verizon MA and competitor efforts in the competitive market. For example, underscoring the confidential and competitively sensitive nature of the data, Verizon MA sales and marketing personnel are not provided access to the third-party information contained in the relevant responses for the purpose of competing against other providers. The data could be useful to Verizon MA retail representatives (and other competitors that seek to scrutinize Verizon MA's like proprietary information) by allowing them to know *which* services or exchanges warrant greater sales and marketing resources and, correspondingly, which may not. Disclosure of such information inappropriately tips the competitive balance by permitting competitors to target Verizon MA (and other competitors') customers to gain a competitive advantage in the marketplace that they otherwise would not enjoy. In balancing the public's

"right to know" against the public interest in an effectively functioning competitive marketplace, the Department should continue to protect information that, if made public, would likely create a competitive disadvantage for the party complying with legitimate discovery requests.

In short, the information is not readily available to competitors and would be of value to them in developing competitive marketing strategies. Competitive disadvantage is likely to occur if the confidential information is made public – solely as a result of regulatory oversight.[7] The benefits of nondisclosure, and associated evidence of harm to Verizon MA (and the relevant carriers), outweigh the benefit of public disclosure in this instance. By releasing this information to the public, competitive companies will be able to determine characteristics of Verizon MA's and the carriers' market segments and will have the ability to utilize this information in developing particular offerings in direct competition with Verizon MA and the carriers. Historically, both the Department and the telecommunications industry have recognized such information to be confidential and appropriately subject to protection by order and the execution of reasonable nondisclosure agreements. Nothing has changed in terms of law or circumstance that warrants an abandonment of that protection. Given the increasingly competitive telecommunications world, the Department should not now depart from its past practice and apply G.L. c. 25, §5D to permit competitors to gain access to what is private, commercial information. Disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services that are not subject to equal public scrutiny.

CONCLUSION

WHEREFORE, Verizon MA respectfully requests that the Department grant this Motion to afford confidential treatment to all data contained in the proprietary portions of its responses

[7] If Verizon MA were not a regulated entity, the relevant information would not be available for public inspection.

to Information Requests AG-VZ 5-4 and AG-VZ 5-7, and the Supplemental Rejoinder Testimony of John Conroy at page 4. As demonstrated above, the information is entitled to such protection, and no compelling need exists for public disclosure in this proceeding.

Respectfully submitted,

VERIZON MASSACHUSETTS

/s/Victor D. Del Vecchio
Victor D. Del Vecchio
Bruce P. Beausejour
185 Franklin Street, Room 1403
Boston, Massachusetts 02110-1585
(617) 743-2323

/s/Robert Werlin (by VDV)
Robert N. Werlin
Keegan, Werlin & Pabian, LLP
21 Custom House Street
Boston, Massachusetts 02110
(617) 951-1400

Dated: December 18, 2001

12-18-01motion-conf-treat