

cc: Andrea Nixon, Clerk

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATION AND ENERGY

CABLE TELEVISION DIVISION

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Annual Report of Verizon New England Inc. of
Complaints Received Regarding FiOS TV service MA
Form 500 Complaint Report, 2006

MOTION FOR CONFIDENTIAL TREATMENT

Verizon **New England Inc.** d/b/a Verizon **Massachusetts** ("Verizon **MA** ") **hereby**
requests that the Massachusetts Department of Telecommunications and Energy
("Department") grant this motion to provide confidential treatment for certain
information provided in the Form 500 Annual Report filed on January 31, 2007. As
grounds for this request, Verizon MA states that the number of subscribers of Verizon
MA's FiOS TV service in each municipality in which it provides the service, as shown in
Form 500, is competitively sensitive information and constitutes a trade secret under
Massachusetts law.

STANDARD OF REVIEW

Under Massachusetts General Laws c. 25, § 5D, the Department is empowered to
protect from public disclosure trade secrets or other proprietary information that is
produced in the course of Department proceedings.

In detennining whether certain infonnation qualifies as a "trade secret,"¹
Massachusetts courts have considered the following:

¹ Massachusetts law defines a trade secret as "anything tangible or electronically kept or stored which constitutes, represents, evidences or records a secret scientific, technical, merchandising, production or management information

- (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 of 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)

design, process, procedure, formula, invention or improvement." Mass. General Laws c. 266, § 30; ~ ~ 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 Mumford and Son, Inc., 260 N.E.2d 723, 729 (1970).

ARGUMENT

Verizon MA seeks to restrict from public disclosure only information that if made available to the public, would allow Verizon MA's competitors to readily know the number and location of Verizon MA's FiGS TV subscribers, potentially allowing those competitors to, among other things, gain a competitive advantage by tailoring market strategies at a granular level to quash nascent competition, targeting and protecting particular areas that are being subjected to increased competition, or deploying facilities or enhanced marketing and sales resources to particular areas in order to defend strongholds on the video marketplace. Such information thus hands to those competitors a distinct competitive advantage over Verizon MA in the cable television marketplace and would cause substantial harm to the competitive position of Verizon MA in the State. Verizon MA takes extensive measures to protect such detailed subscribership information when it is made available to non-employees and employees alike, which is done only under limited circumstances.

Verizon MA's competitors would gain valuable insights into its business operations and benefit from the disclosure of such sensitive and detailed commercial information in several ways.

First, disclosure could harm Verizon MA by allowing its competitors to determine the particular areas where they have or have not been successful in acquiring customers. Access to the specific number of subscribers that Verizon has in service in a particular area could allow competitors to target areas in which Verizon MA has identified, through its own efforts, areas of demand for particular services. Such information is more useful to competitors than simply knowing that Verizon's competitive video service exists and

is being offering within a given geographic area. Such information would also identify the structure of competition (e.g., the relative success rates of Verizon) in particular areas. For example, with an easy means to determine the number of Verizon's customers in each area in the State, a competitor serving an area with a high number of Verizon video subscribers might decide to step up its own efforts to deploy upgraded facilities or services in that area, while at the same time deciding that it could afford to delay investments in a second area with a relatively lower number of FiGS TV subscribers in order to concentrate on competing against Verizon in "high-subscriber" locations. Such information regarding market conditions would help competitors to identify and exploit Verizon's competitive weaknesses in particular areas.

The concerns arising from competitors' knowledge with regard to the relative success of Verizon MA in particular geographic areas is heightened by the ability of competitors to combine company-specific subscribership data with other information. For example, combining the numbers of subscribers with publicly available population figures or other information could allow competitors to make specific estimates of Verizon's success rate in acquiring customers in particular areas.

Further, as a new entrant into the video marketplace in Massachusetts, Verizon MA is likely to be particularly disadvantaged by the release of detailed subscribership data. Verizon's competitors already serving those geographic areas could use the Form 500 subscribership data to identify areas in which Verizon is in the initial stages of entering the market and tailor customer retention efforts or "winback" efforts directed at former customers to prevent the success of Verizon's entry. Such information also could

allow additional entrants an unfair "free ride" on the efforts of the Verizon's efforts (as a new entrant) to identify areas where competition is more likely to be successful

Second, competitors' access to historical, as well as current, Verizon-specific Form 500 subscribership data could harm Verizon by giving competitors information about marketplace trends that would not be otherwise available through legitimate means, For example, information regarding whether Verizon's video subscribers has increased or **decreased in a particular area over time provides competitors with insights into how** Verizon is focusing its investment and marketing efforts. **If Verizon publicly reported a** large increase in subscribers in a specific area, its strategy to target certain areas for marketing efforts would be advertised to competitors. Such information would be of **value in evaluating Verizon MA's strategies, strengths and weaknesses and developing a** strategy to stifle Verizon MA's competitive efforts.

The changing landscape in Massachusetts requires the Cable Division to adjust its policies to take account of competition and to encourage businesses to fairly compete. **That also means that competitors such as Verizon MA must be allowed to maintain the confidentiality of data which, if released, would give its competitors an advantage marketplace, such as the numbers and locations of Verizon MA's subscribers. That other cable television providers have in the past disclosed similar information in a largely non-competitive environment without seeking protection from public disclosure does not waive Verizon MA's rights to protect its proprietary data, nor is it dispositive as to whether detailed subscribership information qualifies as a trade secret** Massachusetts law in today's *competitive* landscape. Moreover, the data Verizon MA seeks to protect is unrelated to the core purpose of Form 500: to function as the

prescribed *form* for cable operators to comply with the complaint reporting requirement of M.G.L. c. 166A, § 10: to report "[c]omplaints of subscribers received during the reporting period and the manner in which they have been met, including the time required to make any necessary repairs or adjustments" to the Cable Division and Issuing Authorities. The subscribership information that Verizon MA seeks to protect here is easily segregable from the other statutorily-required information contained in Form 500, and neither the purpose of, nor the requirements contained in, M.G.L. c. 166A, § 10 would be impeded in any way by protecting from public disclosure the number of Verizon MA's FiOS TV subscribers in a given city or town.

Verizon MA recognizes the number of subscribers of Verizon MA's FiOS TV service in each municipality will fluctuate over time and therefore an Order granting **confidentially need not be of an indefinite nature.** Verizon MA seeks protection of certain information provided in the Form 500 Annual Report for a period of two years from the date of the filing of the Form 500. At which time Verizon MA may move to further extend such protection.

Accordingly, Verizon MA has a legitimate need to maintain the confidentiality of that data, and that interest far outweighs any minor benefit to be obtained through public disclosure of the material

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