

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

FIBER TECHNOLOGIES NETWORKS, L.L.C.
f/k/a FIBER SYSTEMS, LLC
140 Allens Creek Road
Rochester, New York 14618

Complainant,

v.

D.T.E. 02-____

VERIZON NEW ENGLAND, f/k/a NEW ENGLAND
TELEPHONE AND TELEGRAPH COMPANY
185 Franklin Street, Room 1403
Boston, Massachusetts 02110

and

NORTHEAST UTILITIES SERVICE COMPANY
d/b/a WESTERN MASSACHUSETTS ELECTRIC CO.
107 Selden Street
Berlin, Connecticut 06037

Respondents.

**MOTION OF FIBER TECHNOLOGIES NETWORKS, L.L.C.
FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION**

Pursuant to G.L. c. 25, § 5D, G.L. c. 66, § 10, G.L. c. 4, § 7 cl. twenty-sixth and section 1(c) of the Department’s Ground Rules, Fiber Technologies Networks, L.L.C. (“Fibertech”) hereby requests that the Department of Telecommunications and Energy (the “Department” or “DTE”) grant protection from public disclosure certain confidential, competitively sensitive and proprietary information submitted by Fibertech in accordance with G.L. c. 25, § 5D and the Department’s Ground Rules in this proceeding. Specifically, Fibertech requests that the exhibits and attachments to its Petition for Interim Relief and Complaint (“Petition”) be given protective

treatment because they contain competitively sensitive and highly proprietary Fibertech information and trade secrets, including, but not limited to, the location of Fibertech's facilities, and therefore, under Massachusetts law, are entitled to protection from public disclosure in this proceeding.

DISCUSSION

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part:

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.

The Department has recognized that competitively sensitive information is entitled to protective status. In *Hearing Officer's Ruling on the Motion of CMRS Providers for Protective Treatment and Requests for Non-Disclosure Agreement*, the Department found that competitively sensitive and proprietary information should be protected. D.P.U. 95-59B, at 7-8 (1997). In addition, the Department recognized that protection of competitively sensitive and proprietary information is desirable as a matter of public policy in a competitive market. *Id.* Massachusetts courts have considered the following factors in determining whether certain information qualifies as a "trade secret"¹:

- (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;

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 lost of customers." *J.T. Healy and Son, Inc. v. James Murphy and Son, Inc.*, 260 N.E.2d 723, 729 (1970). In addition, Massachusetts courts have recognized that "a trade secret need not be a patentable invention." *Jet Spray Cooler, Inc. v. Crampton*, 385 N.E.2d 1349, 1355 (1979).

- (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. The United States Supreme Court has stated that a board has the “right to keep the work which it had done, or paid for doing, to itself.” *Board of Trade of Chicago v. Christie Grain & Stock Co.*, 198 U.S. 236, 250 (1905). 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).

The information contained in the exhibits and attachment to Fibertech’s Petition is not readily available to competitors and is not considered public information. In addition, the disclosure of such information would allow Fibertech’s competitors and customers to gain access to documents that are routinely considered confidential, proprietary and highly sensitive. Disclosure of such information would place Fibertech at a competitive disadvantage in the marketplace.

CONCLUSION

The exhibits and attachments to Fibertech's Petition contain extremely proprietary and highly sensitive information. By revealing the information to the public, Fibertech would be placed at a great disadvantage with respect to both its competitors and its customers. Therefore, Fibertech request that the Department, in accordance with G.L. c. 25, § 5D, grant protective treatment to such exhibits and attachments.

Respectfully submitted,

FIBER TECHNOLOGIES NETWORKS, L.L.C.

By: Fibertech Networks, LLC, its sole member

By: _____
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Dated: January 21, 2003

* motion to enroll as counsel *pro hac vice* filed contemporaneously herewith

CERTIFICATE OF SERVICE

I hereby certify that on August ___, 2002, I served a copy of the foregoing document on the Respondents, by delivering a copy of the same to:

Bruce P. Beausejour, Esq.
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