

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

Petition of Choice One Communications of)	
Massachusetts Inc., Conversent Communications)	
Massachusetts Inc., CTC Communications Corp.)	
and Lightship Telecom, LLC (collectively, "One)	D.T.C. 10-2
Communications"), For Exemption from Price Cap on)	
Intrastate Switched Access Rates as Established)	
in D.T.C. 07-9)	

**AT&T COMMUNICATIONS' MOTION FOR CONFIDENTIAL
TREATMENT OF DISCOVERY RESPONSE**

As a result of the Hearing Officer's ruling on December 30, 2010, AT&T Communications, Inc. ("AT&T") hereby moves for confidential treatment of its supplemental response to OneComm's Information Request OneComm-AT&T No. 2-1, which was submitted under seal today. Because this supplemental response contains confidential, proprietary material from an AT&T affiliate (three cost studies and a cost model, all by AT&T Connecticut), AT&T hereby moves for confidential treatment of the documents produced in response to OneComm-AT&T 2-1.

As grounds for this request, AT&T states that the cost studies and cost model submitted by AT&T ILEC affiliates in proceedings before the Connecticut state commission are competitively sensitive information and constitute a trade secret under Massachusetts law. Specifically, AT&T seeks confidential treatment for AT&T Connecticut's Reciprocal Compensation cost study, Transit_CLEC cost study, Transit_Wireless cost study, and SICAT cost model submitted by AT&T Connecticut in proceedings before the Connecticut Department of Public Utility Control (Docket No. 09-04-21). The information for which AT&T seeks protection here was treated as protected information in the Connecticut proceeding.

STANDARD OF REVIEW

Under Massachusetts General Laws c. 25, § 5 D, 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 determining whether certain information qualifies as a "trade secret,"¹ Massachusetts courts have considered the following:

- (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

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 design, process, procedure, formula, invention or improvement." Mass. General Laws c. 266, § 30; 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).

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).

ARGUMENT

AT&T seeks to restrict from public disclosure only information that, if made available to the public, would allow AT&T Connecticut's competitors to know valuable information about AT&T Connecticut's costs. Cost information about a competitor is valuable to competing firms seeking to find ways to gain advantages in a highly competitive marketplace. Public disclosure of cost information thus hands to those competitors a distinct competitive advantage over AT&T Connecticut in the telecommunications marketplace and would potentially cause substantial harm to the competitive position of AT&T Connecticut. AT&T and AT&T Connecticut take extensive measures to protect cost information when it is made available to non-employees and employees alike, which is done only under limited circumstances.

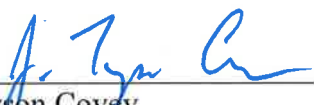
AT&T Connecticut's competitors might gain valuable insights into its business operations and benefit from the disclosure of such sensitive commercial information. Specifically, making cost data public would allow a competitor to access otherwise unavailable information to benchmark AT&T Connecticut's data against its own, and draw inferences about AT&T Connecticut's cost structure. A competing firm would not be able to gain this information from any publicly available sources.

Competitors such as AT&T Connecticut must be allowed to maintain the confidentiality of data which, if released, would give its competitors an advantage in the marketplace. Accordingly, AT&T, as an affiliate of AT&T Connecticut, has a legitimate need to maintain the

confidentiality of the cost study data, and that interest far outweighs any minor benefit to be obtained through public disclosure of the material.

WHEREFORE, AT&T respectfully requests that the Department grant this motion.

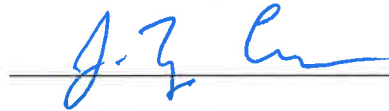
Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing document to be served upon all parties of record in this proceeding, as listed on the attached Service List, by email and overnight mail, with all charges paid, this 10th day of January, 2011.



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