

THE COMMONWEALTH OF MASSACHUSETTS  
**DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**  
**CABLE TELEVISION DIVISION**

In the Matter of	)	Docket No. CTV 01-8	
	)	Date Issued: October 8, 2002	
	)		
Charter	)	Auburn, CUID MA 0073	North Brookfield, CUID MA 0308
Communications	)	Barre, CUID MA 0329	Northborough, CUID MA 0197
Entertainment I,	)	Belchertown, CUID MA 0286	Northbridge, CUID MA 0180
L.L.C.	)	Berlin, CUID MA 0333	Oakham, CUID MA 0344
	)	Boylston, CUID MA 0260	Oxford, CUID MA 0120
	)	Brookfield, CUID MA 0335	Paxton, CUID MA 0304
	)	Charlton, CUID MA 0309	Pepperell, CUID MA 0281
	)	Chicopee, CUID MA 0087	Rutland, CUID MA 0328
	)	Dudley, CUID MA 0036	Southampton, CUID MA 0184
	)	East Brookfield, CUID MA 0312	Southborough, CUID MA 0259
For a	)	East Longmeadow, CUID MA 0092	Southbridge, CUID MA 0029
Determination of	)	Easthampton, CUID MA 0107	Spencer, CUID MA 0043
Cable Television	)	Grafton, CUID MA 0177	Sturbridge, CUID MA 0209
Rates	)	Groton, CUID MA 0282	Sutton, CUID MA 0292
	)	Hadley, CUID MA 0285	Upton, CUID MA 0242
	)	Hampden, CUID MA 0103	Uxbridge, CUID MA 0290
	)	Harvard, CUID MA 0334	West Boylston, CUID MA 0319
	)	Hinsdale, CUID MA 0313	West Brookfield, CUID MA 0305
	)	Holden, CUID MA 0179	West Stockbridge, CUID MA 0311
	)	Hubbardston, CUID MA 0330	Westborough, CUID MA 0198
	)	Lanesborough, CUID MA 0300	Westport, CUID MA 0297
	)	Leicester, CUID MA 0044	Wilbraham, CUID MA 0054
	)	Ludlow, CUID MA 0081	Worcester, CUID MA 0018
	)	Millbury, CUID MA 0121	

**INTERLOCUTORY ORDER ON MOTION FOR CONFIDENTIAL TREATMENT**

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I. INTRODUCTION

On November 1, 2001, Charter Communications Entertainment I, L.L.C. (“Charter” or “the Company”), filed with the Cable Television Division (“Cable Division”) of the Department of Telecommunications and Energy (“Department”) its nationwide FCC Form 1205 for the year ending December 31, 2000, to establish equipment and installation rates for its regulated Massachusetts communities. As part of the Cable Division’s investigation, we issued information requests to the Company. On June 12, 2002, Charter filed a Motion for Confidential Treatment (“Motion”) under G.L. c. 25, § 5D with respect to certain responses to these information requests.

Specifically, Charter seeks confidential treatment of a portion of its response to Cable Division Information Request 11A, and its entire responses to Cable Division Information Requests 11B, 13 and 14 (Motion at 1-5).<sup>1</sup> For each response, Charter states that the response should be kept confidential because the disclosure of this information would allow Charter’s competitors and vendors to understand Charter’s internal cost structure and business plans, and such information could be used to Charter’s detriment in the competitive marketplace (Motion at 3, 4, 5). Charter requests that such information be kept confidential indefinitely (id.). If the Cable Division requires a sunset date, Charter suggests that the material be kept confidential for at least three years, or else be returned to Charter after the Cable Division has finished its review of the information in question (id.). Charter also states that it did not report information in this format to the FCC or other public agencies, and that it treats such information as confidential (id. at 2-3, 4, 5). We address Charter’s request in this Interlocutory Order.

II. STANDARD OF REVIEW

The FCC’s rate regulations provide for the confidential treatment of proprietary information. 47 C.F.R. § 76.938. This section also provides that “[p]ublic access to such proprietary information shall be governed by applicable state and local law.” Id. In the case of the Cable Division, this consists of the statutes and regulations applicable to the Department of Telecommunications and Energy, of which the Cable Division is a part.<sup>2</sup>

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

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<sup>1</sup> Charter’s responses to Information Requests 13 and 14 are identical.

<sup>2</sup> Following the merger of the Cable Division with the Department, effective January 1, 1998, the records of the Cable Division became records of the Department. St. 1997, c. 164, § 323.

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. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon 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.

G.L. c. 25, ' 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, ' 10; G.L. c. 4, ' 7, cl. twenty-sixth. Specifically, G.L. c. 25, ' 5D, is an exemption recognized by G.L. c. 4, ' 7, cl. twenty-sixth (a) (“specifically or by necessary implication exempted from disclosure by statute”).

G.L. c. 25, ' 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information;” second, the party seeking protection must overcome the G.L. c. 66, ' 10, statutory presumption that all such information is public information by “proving” the need for its non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, ' 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Boston Edison Company: Private Fuel Storage Limited Liability Corporation, D.P.U. 96-113, at 4, Hearing Officer Ruling (March 18, 1997) (exemption denied with respect to the terms and conditions of the requesting party’s Limited Liability Company Agreement, notwithstanding requesting party’s assertion that such terms were competitively sensitive); see also, Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996) (Department will grant exemption for electricity contract prices, but “[p]roponents will face a more difficult task of overcoming the statutory presumption against the disclosure of other [contract] terms, such as the identity of the customer”); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

### III. ANALYSIS AND FINDINGS

The statute establishes the presumption that the information for which confidential protection is sought is public information, and the burden is on Charter to prove the need for such protection. G.L. c. 25, § 5D. For each response it seeks to protect, Charter asserts that the prospective confidential information could be used to Charter's detriment in the competitive marketplace (Motion at 2, 3, 5). However, Charter does not explain how competitors and vendors could evaluate this information in order to produce competitive damage to Charter, or what that damage might be. We note that other cable operators routinely have provided to the Cable Division, as public documents, the type of information supporting their FCC Form 1205 filings that Charter wants kept confidential. Charter has not explained why its information, unlike that of other operators, requires confidential treatment.

Charter's vague assertions do not constitute the proof required for a finding of confidential treatment under the statute. However, we do not need to base our ruling on this conclusion, because Charter's motion for confidentiality encounters a fundamental obstacle. A request for confidentiality assumes that the information is not already in the public domain. Charter has already entered into the public record all of the responses for which it now seeks confidential treatment. See Charter Communications Entertainment I, L.L.C., CTV 01-2 (2002) ("CTV 01-2").

Charter introduced this information into evidence in CTV 01-2, in response to Cable Division information and record requests. In CTV 01-2, Charter had filed an FCC Form 1205 for the year ending December 31, 2000, the same period covered by the FCC Form 1205 under review in the current rate proceeding. Indeed, the two forms contain identical data, except that the FCC Form 1205 currently under review contains additional data concerning Charter's home wiring maintenance charge.<sup>3</sup>

In CTV 01-2, as part of our review, we asked Charter to provide back-up information concerning the FCC Form 1205, to which Charter responded (CTV 01-2, Exh. CTV-7) ("Exhibit 7"). Charter's Exhibit 7 response included documents that are identical to its responses to Information Requests 11B, 13 and 14, except that in its response to Information Request 11B, Charter omitted two of the four pages it had included in its Exhibit 7 response. Further, as part of its responses to record requests,

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<sup>3</sup> On the FCC Form 1205 under review in this proceeding, in order to include a home wiring maintenance charge, Charter completed the "Other Equip." column on Schedule C, changed the "Grand Total" on Schedule C, Line L, and completed Step E, "Charges for Other Leased Equipment" (Exh. Charter 27, at 3, 5). A comparative analysis of the two forms shows that except for the change to the "Grand Total" on Step C, Line L, no other numbers on the first form were altered.

Charter submitted documents that are identical to its responses to Information Requests 11A, 13, and 14 (CTV 01-2, RR-CTV-2, Attachment B).

While these documents had the word “confidential” stamped at the top of each page, Charter’s cover letters or responses neither requested confidential status nor made any references suggesting the confidential nature of the documents (CTV 01-2, Exh. CTV-7, RR-CTV-2). Charter also never filed a motion for confidential treatment with the Cable Division. Consequently, the documents were entered into the public record.

Therefore, Charter’s responses to Cable Division Information Requests 11A, 11B, 13 and 14, for which Charter requests confidential treatment, were disclosed to the public in CTV 01-2, and became public information. In its Motion, Charter has not addressed the fact that this information was already entered into the public record. We conclude that because the information is in the public record, Charter cannot meet its burden of proof pursuant to G.L. c 25, § 5D, to protect Information Requests 11A, 11B, 13 and 14 from public disclosure.

IV. ORDER

It is hereby Ordered:

Charter’s Motion for Confidential Treatment is denied.

**By Order of the  
Department of Telecommunications and Energy  
Cable Television Division**

**/s/ Alicia C. Matthews  
Alicia C. Matthews  
Director**