

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

In re Verizon Service Quality in Western Massachusetts

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) D.T.C. 09-1
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MOTION FOR CONFIDENTIAL TREATMENT

Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon MA") hereby requests that the Department of Telecommunications and Cable ("Department") protect from public disclosure and provide confidential treatment for Proprietary Attachments DTC-VZ 3-8(a, b) and Proprietary Attachment DTC-VZ 3-12 to Verizon MA's Responses to the Department's Third Set of Information Requests, filed today. In support of this Motion, Verizon MA states that the data at issue is confidential, proprietary, competitively sensitive information under Massachusetts law and is therefore entitled to protection from public disclosure. As further grounds for this motion, Verizon MA states the following.

1. M. G. L. c. 25C, § 5, provides in part that:

Notwithstanding clause Twenty sixth of section 7 of chapter 4 and section 10 of chapter 66, 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.

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; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court ("SJC"), 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

- (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. The information addressed in this Motion constitutes confidential, competitively sensitive, proprietary information that is entitled to protection under Massachusetts law. Proprietary Attachment DTC 3-8(a) is Verizon's Corporate Policy Statement setting forth the company's policies governing records management, including records retention. Proprietary

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).

Attachment DTC 3-8(b) is Verizon's lengthy and detailed Records Retention Schedule, setting forth the company's rules for retaining specifically-identified types of documents. Verizon MA developed the complex policies and rules set forth in this document only through the efforts of highly skilled Verizon employees and based on its many years' experience in business providing telecommunications services. The attachments thus provide significant organizational and operational benefit to Verizon MA and would also be of great value to other carriers, who could use the information in these documents to develop or improve their own records management and retention policies.

3. Proprietary Attachment DTC-VZ 3-12 states the number of phone numbers in Massachusetts that Verizon MA has ported to other carriers generally and, separately stated, to Verizon Wireless in particular in each of the years 2007, 2008 and 2009. Disclosure of this data would provide Verizon MA's competitors with the gross number and volume of numbers lost by Verizon MA over the past three years, as well as the number of lines (more accurately, phone numbers) picked up by one other competitor (Verizon Wireless) from the ILEC in the same period of time, affording competitors critical information regarding the success and status of Verizon MA's business in the state, as well as the success of Verizon Wireless, an entity that is not even a party to this case. No publicly available source reveals this data, and its disclosure would confer a competitive advantage on Verizon MA's competitors and Verizon Wireless' competitors.

4. In sum, the information for which Verizon MA seeks protective treatment is confidential, competitively sensitive and proprietary information that is not readily available to competitors and other carriers, and would be of value to them. Verizon MA compiled this information from internal sources, has maintained it as confidential and has not disclosed it

outside the company. There is no compelling need for public disclosure of any of this information. Conversely, Verizon MA is at risk of suffering competitive disadvantage if this information is made public. Given the increasingly competitive telecommunications world, the Department should not apply G.L. c. 25C, § 5 to permit competitors to gain access to Verizon MA's private, commercial information.

Verizon MA is providing the requested information to the parties in this proceeding who have entered into nondisclosure agreements.

WHEREFORE, Verizon MA respectfully requests that the Department grant this motion.

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney,



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