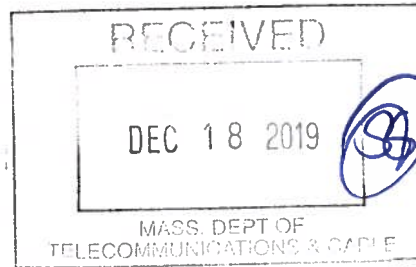


brownrudnick

JESSE S. REYES
direct dial: 617.856.8338
jreyes@brownrudnick.com

December 18, 2019



VIA ELECTRONIC MAIL

Shonda D. Green, Secretary
Department of Telecommunications and Cable
Commonwealth of Massachusetts
1000 Washington Street, Suite 600
Boston, MA 02118-6500

RE: CoxCom, LLC d/b/a Cox Communications New England, D.T.C. 19-3
Responses to Department's Record Requests and Motion for Protective Treatment

Dear Secretary Green:

On behalf of CoxCom, LLC d/b/a Cox Communications New England ("Company"), attached for filing are the Company's responses to the Department of Telecommunications and Cable's Record Requests. Additionally, enclosed is a Motion for Protective Treatment of Confidential Information contained in the response to RR-DTC-2. The Company is providing an unredacted copy of the response to RR-DTC-2 to the Hearing Officer, as well as a redacted version for the public record.

Please contact me should you have any questions regarding this filing. Thank you for your attention to this matter.

Sincerely,

BROWN RUDNICK LLP

A handwritten signature in black ink, appearing to read "Jesse S. Reyes".

Jesse S. Reyes

Encl.

cc: ✓ William Bendetson, Hearing Officer
D.T.C. 19-3 Service List

Record Request DTC-1

Please refer to Exh. DTC-6. Why do certain channels have the same retransmission consent fees?

Response

Those channels have the same owner and are under the same contract.

PUBLIC - REDACTED

Record Request DTC-2

- (a) Please refer to Exh. DTC-6-CONFIDENTIAL. Why is [begin confidential] [REDACTED] [end confidential] included in the chart used to illustrate retransmission consent fees?
- (b) What channels that are included in the basic service tier have programming costs?
- (c) Please provide a justification for including [begin confidential] [REDACTED] [end confidential] in the Company's Request for Confidential Treatment?

Response

- (a) That channel was erroneously included in the chart and should not have been included, because the cost is not a retransmission consent fee. However, the cost for that channel was not included in the sum of the Retransmission Consent Fees on the bottom line of that chart, nor was it included in Worksheet 7, Line 702. Thus, those figures remain accurate and do not require revision.
- (b) Other than commercial television broadcast stations for which Cox pays retransmission consent fees, [begin confidential] [REDACTED] [end confidential] are the only channels in the basic service tier that have programming costs.
- (c) All channel-specific programming rates are confidential. As indicated in the Company's Motion for Confidential Treatment accompanying these record request responses, public disclosure of the Confidential Information in that line in Exh. DTC-6-CONFIDENTIAL could enable competitors to calculate confidential channel-specific cost information of the channels identified in response (b) above.

Record Request DTC-3

Please provide the date when the channel referenced in RR-DTC-2(a) began to have a cost associated with its programming?

Response

2006

Record Request DTC-4

Please refer to Information Request Response DTC-1-7. Please provide an explanation for the increase (24.5%) in the copyright fees between 2017-2 and 2018-1.

Response

Copyright fees generally are calculated as a percentage of a cable television system's gross revenues from programming tiers that carry broadcast television stations. The increase in copyright fees Cox paid for the Enfield system in the 2017-2 (\$48,595.47) and 2018-1 (\$58,798.52) SOA filings represents an increase of approximately 21%, which is identical to the percentage increase in the system's relevant gross revenues for those filings (\$4,567,234.36 and \$5,526,176.74, respectively). *See* Attachments DTC-7(a) and DTC-7(b), Space L (Copyright Royalty Fee) and Space K (Gross Receipts).

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

CoxCom, LLC d/b/a Cox Communications
New England

Docket No. 19-3

MOTION FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION

Pursuant to G.L. c. 25C, § 5 and 207 CMR 1.04(5)(e), CoxCom, LLC d/b/a Cox Communications New England ("Cox" or the "Company") moves that the Department of Telecommunications and Cable ("Department") protect from public disclosure certain confidential, competitively sensitive, and proprietary information provided in this proceeding. Specifically, Cox respectfully requests that the Department grant an exemption from public disclosure of detailed information regarding channel-specific programming cost information contained in its Response to Record Request RR-DTC-2 ("Confidential Information").

The confidential version of Cox's Response to Record Request RR-DTC-2 [CONFIDENTIAL] is being submitted to the Hearing Officer contemporaneously with this motion in a sealed envelope marked "Confidential." Cox has also provided a redacted version of the Cox's Response to Record Request RR-DTC-2 [REDACTED].

I. LEGAL STANDARD

The Department is authorized to protect certain information from public disclosure in accordance with G.L. c. 25C, § 5, which states in part:

[T]he department 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.

The Department has established a three-part test for determining whether, and to what extent, information submitted by a party in the course of a Department proceeding may be protected from public disclosure under G.L. c. 25C, § 5. First, the information for which protective treatment is sought must constitute “trade secrets, [or] confidential, competitively sensitive or other proprietary information.” Second, the party seeking protective treatment must overcome the statutory presumption in G.L. c. 66, § 10 that all such information is public information by “proving” the need for non-disclosure. Third, even where a party establishes the need for protective treatment, the Department may protect only so much of that information as is deemed necessary to meet the established need and may also limit the term or length of time such protection will be in effect. G.L. c. 25C, § 5. *Comcast Cable Communications*, D.T.C. 18-5 at 4–5 (2019) (“Comcast Rate Order”); *Cox Communications New England*, D.T.C. 17-7, Hearing Officer Ruling at 2–3 (December 21, 2018); *Charter Communications*, D.T.C. 17-5, Hearing Officer Ruling at 2–3 (August 2, 2018).

II. ARGUMENT

The requested Confidential Information should be protected from public disclosure under G.L. c. 25C, § 5 and the Department’s three-part analysis. First, the requested programming cost information is proprietary, confidential, and competitively sensitive. Public disclosure of such information would result in significant commercial and competitive harm. Moreover, to the best of the Cox’s knowledge, information, and belief, the Confidential Information is not in the public domain and is not readily ascertainable by Cox’s competitors who could obtain economic value from its disclosure. Cox treats this type of channel-by-channel programming cost information as highly confidential and competitively sensitive within the Company and it is not made public in the ordinary course of business. The release of this type of programming contract cost information would put Cox (and potentially other parties) at a competitive disadvantage in its negotiations with third parties and would allow its competitors to use Cox’s cost structure in developing marketing and pricing strategies.

Specifically, although the information referenced in RR-DTC-2(a) and RR-DTC-2(c) was erroneously included in a table provided in response to Information Request DTC-1-6, the information remains confidential, competitively sensitive channel-specific programming cost information, to which the Department should grant protective treatment. Similarly, public disclosure of the channels listed in the response to RR-DTC-2(b) would disclose confidential, competitively sensitive channel-specific information, and in combination with the information in Exh. DTC-6-CONFIDENTIAL,¹ RR-DTC-2-CONFIDENTIAL, could be used to calculate channel-specific programming cost information, to which the Department has a longstanding precedent of granting protective treatment. Accordingly, the Confidential Information should be treated as competitively sensitive information. See, e.g. Comcast Rate Order at 6 (“As the Department has previously recognized specific information regarding . . . retransmission consent fees as being competitively sensitive, the Department finds that [the Company] has satisfied the first prong of the analysis.”); *Cox Communications New England*, D.T.C. 17-7, Hearing Officer Ruling at 3–4 (December 21, 2018) (“the disclosure of Cox’s channel-specific programming cost information could expose Cox to competitive disadvantage by potentially enabling Cox’s competitors to formulate competing marketing strategies and pricing offers”).

Second, in considering whether a moving party has met its statutory burden of proving the need for non-disclosure, the Department looks at its findings as to whether the information constitutes confidential, competitively sensitive information along with the measures the moving party has taken to protect the confidential information. See Comcast Rate Order at 8; *YourTel America, Inc.*, D.T.C 11-1, Hearing Officer Ruling at 5 (July 6, 2011). The Department will also consider the extent to which it has previously protected similar information. Comcast Rate Order at 9. As explained above, the requested Confidential Information is competitively sensitive in nature, and Cox treats it as such within the Company. Cox does not publicly

¹ The Company has a pending motion for protective treatment of Confidential Information contained in its response to Information Request DTC-1-6, which was entered into evidence as Exh. DTC-6.

provide, file, or disclose the requested Confidential Information. Moreover, Cox's contracts with broadcasters carried on its system prohibit public disclosure of the contracts' terms and conditions, including fees. Finally, the Department has regularly recognized that this type of information is confidential and exempt from public disclosure. Comcast Rate Order at 9, *citing Comcast Cable Communications, LLC*, D.T.C., 14-4, Hearing Officer Ruling (Aug. 6, 2015); *Cox Communications New England*, D.T.C. 07-10, Hearing Officer Ruling at 5 (May 30, 2008); *see also Cox Communications New England*, D.T.C. 17-7, Hearing Officer Ruling at 4 (December 21, 2018); *Charter Communications*, D.T.C. 17-5, Hearing Officer Ruling at 8 (August 2, 2018). Accordingly, the Department should deem the Confidential Information to be confidential and protect it from public disclosure pursuant to G.L. c. 25C, § 5.

Where the need for protective treatment has been established, the third part of the Department's analysis limits confidential treatment to "only so much of the information and for the only the length of time necessary to meet the established need." Comcast Rate Order at 9. Accordingly, Cox "is not making a blanket assertion of confidentiality, but rather has tailored its request to protect only the most competitively sensitive portions of its information request responses." *See YourTel America, Inc.*, D.T.C 11-1, Hearing Officer's Ruling at 6 (July 6, 2011). Further, in accordance with the Department's prior rulings regarding the protection of the type of cost information contained in the Confidential Information, Cox requests that the Confidential Information discussed herein be protected for a minimum of five years with an opportunity to renew its request for confidential treatment at the end of the five-year period based upon a showing of need for continuing protection. *See Comcast Rate Order* at 9-10; *Cox Communications New England*, D.T.C. 17-7, Hearing Officer Ruling at 5 (December 21, 2018); *Cox Communications New England*, D.T.C. 07-10, Hearing Officer Ruling (motion stamp-granted, July 23, 2018) (granting an extension of a five-year term of protective order for channel-by-channel programming costs).

III. CONCLUSION

WHEREFORE, for the reasons stated herein, Cox respectfully requests that the Department grant this Motion for Protective Treatment of Confidential Information with respect to Confidential Information contained in its Response to Record Request RR-DTC-2 [CONFIDENTIAL] for a period of at least five years with the opportunity to renew the request for confidential treatment upon a showing of need for continuing protection.

Respectfully submitted,

**COXCOM, LLC D/B/A COX
COMMUNICATIONS NEW ENGLAND**

By its Attorneys:



Jed M. Nosal, Esq.

jnosal@brownrudnick.com

Jesse S. Reyes, Esq.

jreyes@brownrudnick.com

Brown Rudnick LLP

One Financial Center

Boston, MA 02111

(617) 856-8200

Dated: December 18, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all persons in the service list compiled by the Secretary of the Department in this proceeding and all parties of record in accordance with the requirements of 207 CMR 1.05(1) (Department's Procedural Rules).

Dated at Boston, Massachusetts, this 18th day of December 2019.



Jesse S. Reyes