



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 22-4

July 17, 2024

CRC Communications LLC, d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid, and Verizon New England Inc.

HEARING OFFICER RULING ON **OTELCO'S MOTIONS FOR CONFIDENTIAL TREATMENT**

I. INTRODUCTION

In this Ruling, the Department of Telecommunications and Cable ("DTC," or "Department") grants requests for confidentiality filed by CRC Communications LLC, d/b/a OTELCO ("OTELCO").

The Ruling discusses three separate Motions for Confidential Treatment that OTELCO filed. OTELCO seeks to protect from disclosure certain data related to pole attachment deployment plans and infrastructure. *See Motion for Confidential Treatment of OTELCO's Confidential Response to Order Adopting Procedural Schedule* (May 15, 2024) ("May 15 Motion"); *Motion for Confidential Treatment of OTELCO's Rebuttal to Verizon's and National Grid's Responses to the DTC's Information Requests and Testimony* (May 29, 2024) ("May 29 Motion"); *Motion for Confidential Treatment of OTELCO's Initial and Reply Briefs* (June 14, 2024) ("June 14 Motion").

OTELCO filed its first Motion for Confidential Treatment (since the lifting of the stay in the proceeding) on May 15, 2024 ("May 15 Motion") for OTELCO's Confidential Response to

Order Adopting Procedural Schedule (“Confidential Response”). OTELCO filed its second Motion for Confidential Treatment on May 29, 2024 (“May 29 Motion”) for Portions of the Rebuttal Testimony of David Allen, and Attachments A through I to the Rebuttal Testimony of Joseph Teed (collectively, “OTELCO’s Confidential Rebuttal Testimony”). OTELCO filed the third Motion for Confidential Treatment on June 14, 2024 (“June 14 Motion”) for Portions of OTELCO’s June 7, 2024 Initial Brief (“2024 Initial Brief”), and Portions of OTELCO’S June 14, 2024 Reply Brief (“2024 Reply Brief”) (collectively, “Confidential Briefs”).

The Department, pursuant to M.G.L. c. 25C, § 5, may protect from public disclosure trade secrets or confidential, competitively sensitive or other proprietary information provided during the course of proceedings. For the reasons discussed in the sections below, DTC determines that OTELCO established sufficient grounds to afford protection to the information provided in the May 15 Motion, May 29 Motion, and June 14 Motion.

II. STANDARD OF REVIEW

All documents and data received by DTC are generally considered public records and, therefore, are to be made available for public review under a general statutory mandate. *See* M.G.L. c. 66, § 10; M.G.L. c. 4, § 7(26). “Public records” include “all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose unless such materials or data fall within [certain enumerated] exemptions.” M.G.L. c. 4, § 7(26). Materials that are “specifically or by necessary implication exempted from disclosure by statute” are excluded

from the definition of “public records.” *Id.* § 7(26)(a).

DTC is permitted to “protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings” conducted pursuant to DTC’s chapter of the General Laws, Chapter 25C. *See* M.G.L. c. 25C, § 5. In applying this exception, there is 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.” *Id.*

M.G.L. c. 25C, § 5 provides a three-part standard for determining whether, and to what extent, information filed by a party in the course of a DTC proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute “trade secrets, confidential, competitively sensitive or other proprietary information.” Second, the party seeking protection must overcome the statutory presumption that all such information is public by “proving” the need for its non-disclosure. *See* M.G.L. c. 66, § 10. Third, even where a party proves such need, DTC 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 Investigation by the Department of Telecommunications & Energy on its own Motion into the Appropriate Regulatory Plan to Succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts’ Intrastate Retail Telecommunications Services in the Commonwealth of Massachusetts*, D.T.E. 01-31 Phase I, *Hearing Officer Ruling on Verizon Massachusetts’ Motions for Confidential Treatment* at 2-3 (Aug. 29, 2001) (citing M.G.L. c. 25, § 5D, the prior applicable standard, which contains the same language as M.G.L. c. 25C, § 5).

III. MAY 15 MOTION

For the May 15 Motion, OTELCO requests confidential treatment of existing pole survey information, contained in its Confidential Response, which was submitted simultaneously with the May 15 Motion. *See May 15 Motion* at 3; Confidential Response. Specifically, the existing survey information consists of O-Calc Reports, Verizon Prelims, Verizon Form 3s, National Grid Exhibit 5s, IKE Files, Verizon Boxed Pole Photographs, and OTELCO's Boxing Data Compilation. *See May 15 Motion*. The information contained in the materials listed above are, collectively, survey information that contains data about pole infrastructure and deployment plans.

As to the first prong of the Department's standard, DTC has previously recognized the competitively sensitive nature of similar technical information related to OTELCO facilities and pole infrastructure, as well as deployment plans. *See CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.*, D.T.C. 22-4, *Hearing Officer Ruling on OTELCO's Motions and Verizon's Motion for Confidential Treatment* at 4 ("OTELCO Ruling") (granting confidential treatment for location details related to the company's broadband deployment); *Petition of Dish Wireless L.L.C. for Designation as an Eligible Telecomms. Carrier*, D.T.C. 23-1, *Order* at 4 ("Dish Order") (granting confidential treatment regarding the company's physical facilities or plans to create them); *Petition of Starlink Serv's, LLC for Designation as an Eligible Telecomms. Carrier*, D.T.C. 21-1, *Order Approving Petition* at 5 ("Starlink Order") (granting confidential treatment for technical information such as facility location, equipment, and network structure); *Petition of YourTel America, Inc. For Designation as an Eligible Telecomms. Carrier*, D.T.C. 11-1, *Hearing Officer Ruling on Motion for Protection from Pub. Disclosure* at 3 ("YourTel Ruling") (granting

confidential treatment for response that contain information about company facility locations and equipment). As mentioned above, OTELCO submitted various documents with the May 15 Motion that contain information relevant to poles related to current and projected use by OTELCO, including O-Calc Reports, Verizon Prelims, Verizon Form 3s, National Grid Exhibit 5s, IKE Files. *See Initial Brief of CRC Communications LLC, d/b/a/ OTELCO* (“OTELCO Initial Brief”) at 18-20. The O-Calc Reports contain detailed information about the poles, as well as the facilities attached to the poles, such as the pole class, pole setting depth, and the poles remaining load capacity, among other things. *Id* at 19-20.

The Verizon Prelims contain measurements of the poles, like the height of all company attachments to the poles to the nearest inch. *Id* at 19. The Verizon Form 3s contain similar information to the O-Calc Reports and Verizon Prelims, as well as poles that require make-ready work. *Id* at 19. Lastly, the National Exhibit 5s and IKE Files contain pole numbers and pole locations. *Id* at 18-20. Similar to the Starlink Order and YourTel Ruling, which granted confidential treatment for data related to company facilities and equipment, this information is technical and proprietary in nature and the type of information that DTC may protect from public disclosure. *See OTELCO Ruling* at 4; *Dish Order* at 4; *Starlink Order* at 5; *YourTel Ruling* at 3. Revealing this information would allow OTELCO’s competitors to gain an unfair competitive advantage by allowing unique insight into OTELCO’s pole infrastructure and deployment plans. Thus, the existing survey information contained in the Confidential Response is competitively sensitive.

With regards to the second prong, the Department has long held it will not automatically grant requests for protective treatment, stating that “[c]laims of competitive harm resulting from public disclosure, without further explanation, have never satisfied DTC’s statutory requirement

of proof of harm.” *See Starlink Order* at 6. DTC accepts OTELCO’s assertion that OTELCO not publicized the details of the existing survey information, taking steps to protect the information as confidential and competitively sensitive. *See May 15 Motion* at 4. Moreover, DTC has consistently found the type of information OTELCO seeks to protect in the May 15 Motion to warrant protection from public disclosure given the potential for competitive harm in the event of disclosure. *See OTELCO Ruling* at 4; *Dish Order* at 4; *Starlink Order* at 5; *YourTel Ruling* at 3. Accordingly, DTC finds that OTELCO satisfied its burden to demonstrate that protection of the competitively sensitive information in the May 15 Motion is warranted.

As for the third prong, protection should be afforded only to the extent needed. In its May 15 Motion, OTELCO outlines the specific competitively sensitive information that should be afforded confidential treatment. OTELCO does not make a blanket assertion of confidentiality, instead tailoring its request only to the most competitively sensitive portions of its response. *See May 15 Motion. Compare Choice One Commc’ns of Mass, Inc.*, D.T.C. 08-3, *Order* at 11 (Apr. 9, 2009) (“Choice One Order”) (granting confidential treatment to all the information for which such treatment was requested because all such information collectively constituted competitively sensitive information), *with TracFone Wireless, Inc.*, D.T.C. 09-9, *Hearing Officer Ruling on Motion for Protective Treatment by TracFone Wireless, Inc. Regarding Annual Audit of SafeLink Wireless Lifeline Customers* at 5 (Feb. 9, 2010) (“TracFone Ruling”) (denying motion for confidential treatment because the company’s request for confidential treatment of everything submitted in the proceeding was impermissibly broad). DTC finds that protecting only the existing survey information of OTELCO’s response—O-Calc Reports, Verizon Prelims, Verizon Form 3s, National Grid Exhibit 5s, IKE Files, Verizon Boxed Poles Photographs, OTELCO’s

Boxing Data Compilation—fulfills the requirement that protection is limited to that which is necessary to meet the demonstrated need.

The Department concludes that OTELCO satisfied its burden of showing a need for protection from public disclosure under the statute, therefore grants OTELCO's May 15 Motion for Confidential Treatment. DTC places no time limit on this grant of confidentiality.

IV. MAY 29 MOTION

For the May 29 Motion, OTELCO requests confidential treatment of OTELCO's Confidential Rebuttal Testimony, which consists of portions of the rebuttal testimony of David Allen and Attachments A-I to the Rebuttal Testimony of Joseph Teed. *See May 29 Motion* at 1; *Rebuttal Testimony of David Allen on Behalf of CRC Communications LLC, d/b/a OTELCO* (May 29, 2024) ("Allen Rebuttal Testimony"); *Rebuttal Testimony of Joseph Teed on Behalf of CRC Communications LLC, d/b/a OTELCO* ("Teed Rebuttal Testimony"). Attachments A-I to the Teed Rebuttal Testimony are, respectively, National Grid Exhibit 5, Verizon Form 3, Verizon Prelim, O-Calc Report, IKE File, Photo Pole No. 1, Photo Pole No. 2, Photo Pole No. 14, and Photo Pole No. 6. *See Teed Rebuttal Testimony*. The information contained in the materials listed above are, collectively, information that contains data about pole infrastructure and deployment plans.

Regarding the first prong, as mentioned above, the Department has previously recognized the competitively sensitive nature of similar technical information related to company facilities and pole infrastructure. *See OTELCO Ruling* at 4; *Dish Order* at 4; *Starlink Order* at 5; *YourTel Ruling* at 3. The Allen Rebuttal Testimony contains information related to strategic pole deployment plans. *See May 29 Motion* at 1; *Allen Rebuttal Testimony* at 10, 11. Attachments A-I contain information related to poles and their current and projected use by OTELCO, including pole height, number, location, photographs, and other identifying information. *See Teed Rebuttal*

Testimony. This information is exactly the type of information that DTC may protect from public disclosure. *See OTELCO Ruling* at 4; *Dish Order* at 4; *Starlink Order* at 5; *YourTel Ruling* at 3.

DTC accepts OTELCO's assertion that this information could allow competitors to delay or block OTELCO's activities or otherwise use the information to gain a competitive advantage.

OTELCO also submitted various documents that contain information relevant to poles related to current and projected use by OTELCO, including pole height, number, location, photographs, and other identifying information. *See OTELCO Initial Brief* at 18-20. As stated above, this proprietary technical information is the type of information that DTC may protect from public disclosure. The information could allow competitors to have an unfair competitive advantage by allowing unique insight into OTELCO's pole infrastructure and deployment plans. Thus, the information contained in OTELCO's Confidential Rebuttal Testimony is competitively sensitive.

As for the second prong, the Department has long held it will not automatically grant requests for protective treatment, stating that "[c]laims of competitive harm resulting from public disclosure, without further explanation, have never satisfied the DTC's statutory requirement of proof of harm." *See Starlink Order* at 6. DTC accepts OTELCO's assertion that it has not made public deployment plan details and has protected the information as confidential and competitively sensitive. *See May 29 Motion* at 3-4. Moreover, DTC has consistently found the type of information OTELCO seeks to protect in the May 29 Motion to warrant protection from public disclosure given the potential for competitive harm in the event of disclosure. *See OTELCO Ruling* at 4; *Dish Order* at 4; *Starlink Order* at 5; *YourTel Ruling* at 3. Accordingly, DTC finds that OTELCO has satisfied its burden to demonstrate that protection of the competitively sensitive information in the May 29 Motion is warranted.

For the third prong, protection should be afforded only to the extent needed. In its May 29 Motion, OTELCO outlines the specific competitively sensitive information that should be afforded confidential treatment. OTELCO does not make a blanket assertion of confidentiality, instead tailoring its request only to the most competitively sensitive portions of its response. *See May 29 Motion. Compare Choice One Order* at 11 (granting confidential treatment to all the information for which such treatment was requested because all such information collectively constituted competitively sensitive information), *with TracFone Ruling* at 5 (denying motion for confidential treatment because the company’s request for confidential treatment of everything submitted in the proceeding was impermissibly broad). DTC finds that protecting only the Confidential Rebuttal Testimony—specific portions of David Allen’s rebuttal testimony and Attachments A-I of Joseph Teed’s rebuttal testimony—fulfills the requirement that protection is limited to that which is necessary to meet the demonstrated need. DTC places no time limit on its grant of confidentiality.

The Department concludes that OTELCO has satisfied its burden of showing a need for protection from public disclosure under the statute, and therefore grants OTELCO’s May 29 Motion for Confidential Treatment.

V. JUNE 14 MOTION

For the June 14 Motion, OTELCO requests confidential treatment of its Confidential Filings, which consists of confidentially designated portions of OTELCO’s 2024 Initial Brief (“2024 Initial Brief”), confidentially designation portions of OTELCO’s 2024 Reply Brief (“2024 Reply Brief”), screenshots of National Grid Exhibit 5s (“Exhibit 5s”), and screenshots of IKE Files (“IKE Files”). *See June 14 Motion* at 3; *Initial Brief of CRC Communications LLC, d/b/a OTELCO* (June 7, 2024); *Reply Brief of CRC Communications LLC, d/b/a OTELCO* (June 14, 2024). The screenshots of the Exhibit 5s and IKE Files are included in the 2024 Initial Brief.

See 2024 Initial Brief. The information contained in the materials listed above are, collectively, information that contains data about pole infrastructure and deployment plans.

First, as mentioned above, the Department has previously recognized the competitively sensitive nature of similar technical information related to company facilities and pole infrastructure. *See OTELCO Ruling* at 4; *Dish Order* at 4; *Starlink Order* at 5; *YourTel Ruling* at 3. The 2024 Initial Brief and 2024 Reply Brief contain information regarding OTELCO's strategic deployment plans. *See 2024 Initial Brief; 2024 Reply Brief.* The Exhibit 5s and the IKE Files contain information related to poles and their current and projected use by OTELCO including pole height, number, location, photographs, and other identifying information. *See 2024 Initial Brief.* Once again, this proprietary technical information is exactly the type of information that DTC may protect from public disclosure. *See OTELCO Ruling* at 4; *Dish Order* at 4; *Starlink Order* at 5; *YourTel Ruling* at 3. DTC accepts OTELCO's assertion that this information could allow competitors to delay or block OTELCO's deployment plans or otherwise use the information to gain a competitive advantage. Thus, the information contained in OTELCO's Confidential Filings is competitively sensitive.

Secondly, the Department has long held it will not automatically grant requests for protective treatment, stating that "[c]laims of competitive harm resulting from public disclosure, without further explanation, have never satisfied the DTC's statutory requirement of proof of harm." *See Starlink Order* at 6. DTC accepts OTELCO's assertion that it has not made public deployment plan details and has protected the information as confidential and competitively sensitive. *See June 14 Motion* at 3. Moreover, DTC has consistently found the type of information OTELCO seeks to protect in the June 14 Motion to warrant protection from public disclosure given the potential for competitive harm in the event of disclosure. *See OTELCO*

Ruling at 4; *Dish Order* at 4; *Starlink Order* at 5; *YourTel Ruling* at 3. Accordingly, DTC finds that OTELCO has satisfied its burden to demonstrate that protection of the competitively sensitive information in the June 14 Motion is warranted.

Lastly, protection should be afforded only to the extent needed. In its June 14 Motion, OTELCO outlines the specific competitively sensitive information that should be afforded confidential treatment. OTELCO does not make a blanket assertion of confidentiality, instead tailoring its request only to the most competitively sensitive portions of the briefs. *See June 14 Motion* at 3; *2024 Initial Brief*; *2024 Reply Brief*. Compare *Choice One Order* at 11 (granting confidential treatment to all the information for which such treatment was requested because all such information collectively constituted competitively sensitive information), with *TracFone Ruling* at 5 (denying motion for confidential treatment because the company's request for confidential treatment of everything submitted in the proceeding was impermissibly broad). DTC finds that protecting only the Confidential Filings—the confidentially designated portions of the 2024 Initial Brief, the confidentially designated portions of the 2024 Reply Brief, the Exhibit 5s, and the IKE Files—fulfills the requirement that protection is limited to that which is necessary to meet the demonstrated need. DTC places no time limit on its grant of confidentiality.

The Department concludes that OTELCO has satisfied its burden of showing a need for protection from public disclosure under the statute, and therefore grants OTELCO's June 14 Motion for Confidential Treatment.

VI. CONCLUSION

For the reasons set forth above, the Department indefinitely GRANTS:

1. Motion for Confidential Treatment of OTELCO's Confidential Response to Order Adopting Procedural Schedule (May 15 Motion);
2. Motion for Confidential Treatment of OTELCO's Rebuttal to Verizon's and National Grid's Responses to DTC's Information Requests and Testimony (May 29 Motion); and
3. Motion for Confidential Treatment of OTELCO's Initial and Reply Briefs (June 14 Motion).

/s/ William Bendetson

William Bendetson
Hearing Officer
With Assistance from Legal Intern: Trisha Gautam

NOTICE OF RIGHT TO APPEAL

Under the provisions of G.L. c. 30A, § 11(8) and 207 C.M.R. 1.00, any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.