COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 22-4 April 11, 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 AND VERIZON'S MOTION FOR CONFIDENTIAL TREATMENT

I. INTRODUCTION

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

OTELCO initially filed three separate Motions for Confidential Treatment. OTELCO sought to protect from disclosure certain projected costs and budgets related to broadband deployment which OTELCO seeks to build in 17 Massachusetts communities, along with the names of the 17 communities. *See* OTELCO's Motion for Confidential Treatment regarding its Response to the Department First Set of Information Requests (July 12, 2022); OTELCO's Motion for Confidential Treatment of Pre-filed Testimony of David Allen and Tom Perrone (July 12, 2022); OTELCO's Motion for Confidential Treatment regarding its Initial Brief (Aug. 18, 2022). On November 4, 2022, OTELCO filed an Amended Consolidated Motion for Confidential Treatment ("OTELCO Amended Motion" and, collectively, "OTELCO's Motions").

Verizon filed a Motion for Confidential Treatment on July 12, 2022 for Exhibits OTELCO-VZ 1-6 (B-E), OTELCO-VZ 1-7, and OTELCO-VZ 1-20 to Verizon's responses to OTELCO's First Set of Information Requests. Verizon Motion for Conf. Treatment (July 12, 2022) ("Verizon's Motion"). Verizon requested confidential treatment of internal training materials and job aids, Verizon's operational policies concerning boxing, and a list of all pole-climbing accidents in Massachusetts over the last ten years. *Id.*

II. STANDARD OF REVIEW

All documents and data received by the Department are generally considered public records and, therefore, are to be made available for public review under a general statutory mandate. *See* G.L. c. 66, § 10; 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." 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).

The Department 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 this chapter." G.L. c. 25C, § 5. In applying this exemption, the Department presumes 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.*

Chapter 25C, § 5 provides 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, 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* G.L. c. 66, § 10. 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* D.T.E. 01-31 Phase I, *Hearing Officer Ruling on Verizon Mass.' Motions for Confidential Treatment* at 2-3 (Aug. 29, 2001) (citing G.L. c. 25, § 5D, the prior applicable standard, which contains the same language as G.L. c. 25C, §5).

III. OTELCO'S REQUESTS

OTELCO requests confidential treatment of the budgets and costs of various broadband deployment projects in Massachusetts, Maine, and Connecticut, including budgeted and actual costs per mile. *See* OTELCO's Motions; DTC-OTELCO 1-2; DTC-OTELCO 1-7; DTC-OTELCO 1-12; Allen Test. at 3, 10, 19; Perrone Test. at 5; OTELCO Br. at 9, 10, 27, 44. OTELCO also requests confidential treatment of the location of its broadband buildout. *See* OTELCO's Motions; OTELCO Amended Motion; DTC-OTELCO 1-2; Allen Test. at 3. For the reasons set forth below, the Department grants OTELCO's Amended Motion.

As to the first prong of the Department's standard, the Department has recognized the competitively sensitive nature of companies' confidential calculations and financial materials. *See Petition of Starlink Services, LLC for Designation as an Eligible Telecomms. Carrier*, D.T.C. 21-1, *Order* at 5 (June 7, 2021) ("*Starlink Order*"); *In re BLC Mgmt., LLC d/b/a Angles*

Commc'ns Solutions, D.T.C. 09-2, *Order* at 5-6 (Aug. 23, 2010) ("*Angles Order*"). In this case, OTELCO has submitted the Company's project budgets and costs. *See* OTELCO Response to First Set of Information Requests; David Allen and Tom Perrone pre-field testimony and OTELCO Initial Brief. This type of information is exactly the type of information that the Department may protect from public disclosure. *See Starlink Order* at 5; *Angles Order* at 5-6. Revealing this confidential financial information could allow OTELCO's competitors to have an unfair competitive advantage by allowing unique insight into the Company's proprietary business model. Thus, OTELCO's financial information is competitively sensitive.

OTELCO also seeks protection of the names of the 17 communities in which it plans to deploy broadband. In various conversations with OTELCO's attorney Maria Browne, the Department expressed concern that these communities would become public through the permitting process and expressed a reluctance to protect these communities from public disclosure. In response, OTELCO argued that 1) not all of the communities will likely require a permit; and 2) there would be a tremendous competitive disadvantage to OTELCO if its competitors could access a list that compiled the communities in one place, rather than contacting all possible municipalities individually. The latter reason convinced the Department that the names of these communities should remain confidential. In an analogous Public Records Law case regarding Criminal Offender Record Information (CORI), the Massachusetts Supreme Judicial Court held that the compilation of data can be much more valuable than individual data points. *See Attorney General v. District Attorney for Plymouth District,* 484 Mass. 260 (2020). In that case, the Court held that the CORI statute limited the ability of public records requestors to obtain large sets of CORI data in a single request, even though the individual records could be obtained through public court house records." *Id* at 266. ("Those who are frustrated by the

amount of information available to them in a CORI report and want to obtain a complete criminal history can go to the clerk's office in every court house, search for every case under the individual's name, and review the court file. They would be limited in this endeavor only by the practical constraints of time and expense; obtaining someone's criminal history in this piecemeal fashion does not violate the CORI act.") This holding is consistent with that of a 2019 Massachusetts Supreme Judicial Court case ("We have yet to address in the public records context whether there is a greater privacy interest in a compilation of personal information than in the discrete information that a compilation summarizes. We now recognize, as have the United States Supreme Court and the Appeals Court, that in certain circumstances there is." Bos. Globe Media Partners, LLC v. Dep't of Pub. Health, 482 Mass. 427, 440 (2019).

The same principle applies in this situation where the entire list of OTELCO's targeted communities would give OTELCO's competitors a competitive advantage when deciding which municipalities might be profitable locations for broadband construction using OTELCO's blueprint. Thus, OTELCO's list of 17 communities is competitively sensitive. Therefore, although some of OTELCO's 17 chosen municipalities may require a permitting process which will make the names of those municipalities public, we find that the Department's statute and regulations protect the confidentiality of the full list because the compilation is competitively sensitive.

As 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 the Department's statutory requirement of proof of harm." *See Starlink Order* at 6. The Department accepts OTELCO's assertion that it does not make its project budgets, project costs, or build locations available to

the public. OTELCO's Motions at 3; OTELCO Amended Motion at 7. Furthermore, the Department has consistently found the type of information OTELCO seeks to protect to warrant protection from public disclosure given the potential for competitive harms in the event of disclosure. *See Starlink Order*; *Angles Order*. Accordingly, the Department finds that OTELCO has satisfied its burden to demonstrate that protection of competitively sensitive information is warranted.

Turning to the third prong, protection should be afforded only to the extent needed. OTELCO is not making a blanket assertion of confidentiality, but rather has tailored its request to protect only the most competitively sensitive portions of its pleadings. *See* OTELCO Motions; OTELCO Amended Motion. *Compare Choice One Commc'ns of Mass. Inc.*, D.T.C. 08-3, *Order* at 11 (Apr. 9, 2009) (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) (denying motion for confidential treatment because the company's request for confidential treatment of everything submitted in the proceeding was impermissibly broad). The Department finds that protecting only the specific portions of OTELCO's pleadings—DTC-OTELCO 1-2, DTC-OTELCO 1-7, DTC-OTELCO 1-12, Allen Test. at 3, 10, 19, Perrone Test. at 5, and OTELCO Br. at 9, 10, 27, 44—fulfills the requirement that protection is limited to that which is necessary to meet the demonstrated need. The Department, however, recognizes that OTELCO's new broadband network will not clearly become public once constructed and therefore places a time limit of five years on its grant of confidentiality. After five years from the date of this ruling, OTELCO must demonstrate to the

Department that a need for confidentiality still exists, if OTLECO seeks an extension of the protected treatment designation.

The Department concludes that OTELCO has satisfied its burden of showing a need for protection from public disclosure under the statute, and the Department therefore grants OTELCO's Motions for Confidential Treatment, with a limit of five years for the list of 17 municipalities where OTELCO plans to deploy its network.

IV. VERIZON'S MOTION

Verizon requests confidential treatment of its internal training materials and job aids, its internal operational policies concerning boxing of poles and a list of pole-climbing accidents in Massachusetts over the last ten years.

As to the first prong of the Department's standard, the Department has recognized the confidential nature of a company's internal training manuals, policies, and procedures as competitively sensitive information. *In re Budget PrePay, Inc.*, D.T.C. 11-12, *Hearing Officer Ruling* at 15 (Dec. 19, 2012) ("*Budget PrePay Ruling*"); *Angles Order* at 3-4; *In re T-Mobile Ne. LLC Petition for Ltd. Designation as an Eligible Telecomms. Carrier*, D.T.C. 12-4, *Order Approving Petition* at 7 (Aug. 30, 2012) ("T-Mobile ETC Order"); *Investigation by the Dep't of Telecomms. & Energy on its own motion, pursuant to G.L. c. 159, §§ 12 & 16, into the collocation security policies of Verizon New England Inc. d/b/a Verizon Mass.*, D.T.E. 02-8, *Order* at 11 (May 25, 2005). In this case, Verizon has provided internal training materials and job aids developed by Verizon for use by its technicians and others in performing pole work. Verizon Motion at 2-3. Verizon also provided its internal operational policies regarding boxing of Verizon's poles and allocation of modification costs to attachers on those poles. *Id.* at 3. These types of information are exactly the types of information that the Department may protect from

public disclosure. *See Budget PrePay Ruling* at 15; *Angles Order* at 3-4. Having knowledge of this internal information would provide Verizon's competitors with a business advantage, particularly those companies that lack Verizon's expertise regarding how to manage plant in a safe and efficient manner. Verizon Motion at 3. Revealing such information would disadvantage Verizon because it would allow competitors to easily comply with applicable law and avoid noncompliance violations by copying Verizon's operations procedures. *Id.* Therefore, Verizon's training materials and job aids are competitively sensitive.

Turning to Verizon's records of all pole accidents on Verizon poles in the last 10 years, the Department of Public Utilities ("DPU") has held that accident information constitutes competitively sensitive information. *Investigation of the Department of Public Utilities, on its own motion, instituting a rulemaking pursuant to Chapter 187 of the Acts of 2016*; D.P.U 17-81A at 77 (Sept. 8, 2017). Given that this decision occurred after 2007, when the former Department of Telecommunications and Energy ("DTE") was divided into the DPU and the DTC, this DPU decision offers persuasive, not binding, authority. Nonetheless, the Department agrees with DPU's conclusion that accident data can be kept confidential in certain contexts and the factfinder must decide when accident data warrants confidential treatment. The DPU further balanced the need for public disclosure with the need to protect competitively sensitive information. Revealing pole accident data would force Verizon to reveal proprietary information that would provide valuable information to Verizon's competitors regarding the safety of Verizon's processes and network and likely cause the Company serious harm. Verizon Motion at 3-4. Furthermore, the competitive harm of disclosing this information outweighs any potential benefit of making this data public. Thus, Verizon's pole accident data is competitively sensitive.

As 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 the Department's statutory requirement of proof of harm." *See Starlink Order* at 6. The Department accepts Verizon's assertion that it does not make its internal training materials, job aids, operational boxing policies, or pole accident data available to the public. *See* Verizon Motion at 4; *Verizon New England, Inc.*, D.T.E. 01-31-Phase I, *Interlocutory Order on Verizon Mass.' Appeal of Hearing Officer Ruling Denying Motion for Protective Treatment* (Aug. 29, 2001) at 9 (acknowledging a provider's measures taken to protect the information). Furthermore, the Department has consistently found that this type of information warrants protection from public disclosure given the potential for competitive harms in the event of disclosure. *See Starlink Order*; *Angles Order*; *Budget PrePay Ruling*. Accordingly, the Department finds that Verizon has satisfied its burden to demonstrate that protection of competitively sensitive information is warranted.

Turning to the third prong, protection should be afforded only to the extent needed. Verizon 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* Verizon Motion at 1. *Compare Choice One Commc'ns of Mass. Inc.*, D.T.C. 08-3, *Order* at 11 (Apr. 9, 2009) (granting confidential treatment to all of the information for which confidential treatment was requested 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) (denying motion for confidential treatment because the company's request for confidential treatment of everything submitted in the proceeding was impermissibly broad). Therefore, the Department finds that protecting only the specific portions

of Verizon's responses—Exhibits OTELCO-VZ 1-6 (B-E), OTELCO-VZ 1-7, and OTELCO-VZ 1-20—fulfills the requirement that protection is limited to that which is necessary to meet the demonstrated need. The Department, however, holds that pole accident data might not need to be protected indefinitely. Therefore, the Department grants confidentiality for the pole accident data for a period of five years. Verizon can request continued confidentiality at that time, if it deems it necessary.

The Department concludes that Verizon has satisfied its burden of showing a need for protection from public disclosure under the statute, and the Department grants Verizon's Motion for Confidential Treatment with no time restriction.

V. CONCLUSION

For the reasons set forth above, the Department GRANTS:

1. OTELCO's Amended Motion, with a limit of five years for the list of 17 municipalities where OTELCO plans to deploy its network; and
2. Verizon's Motion for Confidential Treatment with a limit of five years for pole accident data and no time restriction with respect to Verizon's internal training materials and job aids, internal operational policies concerning boxing of poles.

/s/ William Bendetson

William Bendetson
Hearing Officer

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.