COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department 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

MOTION FOR CONFIDENTIAL TREATMENT

Verizon Massachusetts ("Verizon MA") requests that the Department, in accordance with Mass. General Laws c. 25, § 5D and the Department's Ground Rules in this proceeding, grant this Motion to provide confidential treatment of data that Verizon MA provided in response to DTE Set 2, Item No. 9, filed on June 5, 2001. As shown below, the data qualify as "trade secret" or "confidential, competitively sensitive, proprietary information" under Massachusetts law and are entitled to protection from public disclosure in this proceeding.

ARGUMENT

In determining whether certain information qualifies as a "trade secret,"[1] Massachusetts courts have considered the following:

> (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;

[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(4); *see also* Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court, 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 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). Massachusetts courts have frequently indicated that "a trade secret need not be a patentable invention." *Jet Spray Cooler, Inc. v. Crampton*, 385 N.E.2d 1349, 1355 (1979).

> (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;
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> (5) the amount of effort or money expended by the employer in developing the information; and
>
> (6) the ease of 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 attachment to DTE 2-9 provides January 2001 data that detail the competitive activities of Verizon MA and resellers on an exchange-specific basis. In particular, the attachment identifies, on a central office basis, the number of Verizon MA retail business lines, the number of resold business lines, and the percentage of resold lines to Verizon MA business lines. It further identifies the 54 resellers that had installed lines as of January 2001.

The requested data represent valuable commercial information that competitors could use to frustrate Verizon MA and reseller efforts in the competitive market. The information, which

[2] *See also, e.g., Hearing Officer's Ruling on Motions for Protective Treatment*, D.T.E. 99-105 (2000).

is developed from Verizon MA databases, is not published elsewhere or publicly available. Further, Verizon MA regularly seeks to prevent dissemination of the information in the ordinary course of its business. If made public, the requested information could create a competitive disadvantage for Verizon MA and the relevant resellers, and be of value to other providers in developing competing market strategies. In short, disclosure of the competitively sensitive material will undermine Verizon MA's ability to compete with other providers of like services that are not subject to equal public scrutiny.

In balancing the interests of Verizon MA in protecting the information with those of the Department and the parties, Verizon MA has agreed to make the requested information available to the parties in this proceeding, subject to a mutually acceptable nondisclosure agreement.

CONCLUSION

WHEREFORE, Verizon MA respectfully requests that the Department grant this Motion to afford confidential treatment to exchange-specific data contained in its attachment to DTE 2-9. As demonstrated above, the information is entitled to such protection, and no compelling need exists for public disclosure in this proceeding.

Respectfully submitted,

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