

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

IN RE:)
APPLICATION OF YOURTEL AMERICA, INC.)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER ON A) **DTC Case No. 11-1**
WIRELESS BASIS (LOW INCOME ONLY))

MOTION FOR PROTECTION FROM PUBLIC DISCLOSURE

YourTel America, Inc. (“YourTel” or the “Company”) hereby requests that the Massachusetts Department of Telecommunications and Cable (“Department”) protect from public disclosure portions of the responses to responses of YourTel to DTC staff requests 1-12 and 1-22 (including the attachment to the response to 1-12) in this proceeding for a period of 5 years. The full response to these requests with the confidential sections denoted are being submitted contemporaneously with this motion in a sealed envelope marked confidential consistent with 220 CMR 1.04(e). As grounds for this request, YourTel states that the facilities information included in the denoted sections of the discovery responses are competitively sensitive information and constitute trade secret and proprietary information under Massachusetts law.

STANDARD OF REVIEW

Under Massachusetts General Laws c. 25C, § 5, the Department is empowered to protect from public disclosure trade secrets or other proprietary information that is provided in the course of Department proceedings. In determining whether certain information qualifies as a “trade secret,”¹ Massachusetts courts have considered the following:

¹ Massachusetts law defines a trade secret as “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.

(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 to his 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).

ARGUMENT

YourTel seeks to restrict from public disclosure only information that, if made available to the public, would allow YourTel’s competitors to know valuable information about YourTel. YourTel’s information in this case involves its facilities and the use of facilities would allow competitors to gain a competitive advantage by modifying their pricing strategies, business plans, or operations based on part or all of this information. Such information about a

General Laws c. 4, § 7. 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).

competitor is valuable to competing firms seeking to find ways to gain advantages in a highly competitive marketplace. Public disclosure of this information thus hands to those competitors a distinct competitive advantage over YourTel in the telecommunications marketplace and would potentially cause substantial harm to the competitive position of YourTel in the Commonwealth.

YourTel takes measures to protect this information when it is made available to non-employees and employees alike, which is done only under limited circumstances. Specifically, making cost, revenue, asset and facilities data public would allow a competitor to access otherwise unavailable information to benchmark YourTel's financial data and facilities use against its own, and draw inferences about YourTel's operations and demand for its services. A competing firm would not be able to gain this information from any publicly available sources.

The landscape in Massachusetts and the nation requires the Department to take account of competition and to encourage businesses to fairly compete. That means that competitors such as YourTel must be allowed to maintain the confidentiality of data which, if released, would give its competitors an advantage in the marketplace. Accordingly, YourTel has a legitimate need to maintain the confidentiality of this data, and that interest far outweighs any minor benefit to be obtained through public disclosure of the material.

WHEREFORE, YourTel respectfully requests that the Department grant this motion.

Respectfully submitted,

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