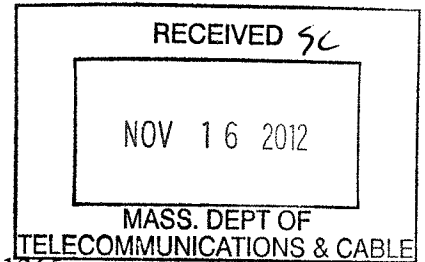


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November 15, 2012

BY OVERNIGHT MAIL

Catrice Williams
Secretary
Department of Telecommunications and Cable
1000 Washington Street- Suite 820
Boston, MA 02118-6500

Re: CoxCom, Inc. d/b/a Cox Communications Basic Service Rates-Holland
D.T.C. 12-1

Dear Secretary Williams:

Enclosed please find for filing in the above matter the following: (1) an original and two (2) copies of the Company's Motion for Protective Order and supporting Affidavit of John Wolfe; (2) an original and two (2) copies of the Company's Response to Information Request DTC 1-5, with Attachments A and B; and (3) a Certificate of Service.

A confidential response to Department Information Request D.T.C. 1-1 is being provided to the Hearing Officer only in a sealed envelope and labeled as confidential information. The public version of this response was previously filed.

Do not hesitate to contact me if the Department has further questions or needs additional information. Thank you for your assistance.

Sincerely yours,



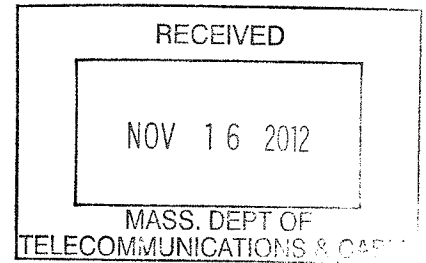
Alan D. Mandl

Enclosures

cc: Sean Carroll, Hearing Officer
James Wettlaufer, Chairman-Holland Board of Selectmen

CERTIFICATE OF SERVICE

D.T.C. 12-1



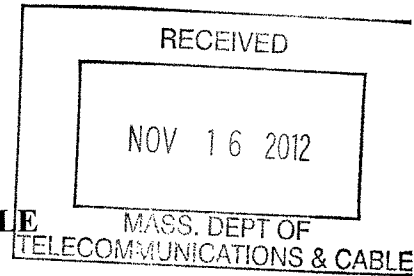
I, Alan D. Mandl, hereby swear that on this 15th day of November, 2012, I served a copy of the Motion of CoxCom, Inc., d/b/a Cox Communications for Protective Order, Affidavit of John Wolfe and the Company's Response to Information Request D.T.C. 1-5 upon the Town of Holland by mailing copies of the same by first class mail, postage prepaid, to James Wettlaufer, Chairman of the Board of Selectmen.

Dated this 15th day of November, 2012.



Alan D. Mandl, Esq.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE



_____)
Petition of CoxCom, Inc., d/b/a Cox)
Communications to establish and adjust)
the basic service tier programming,)
equipment and installation rates for the)
Town of Holland)
_____)

D.T.C. 12-1

**MOTION OF COXCOM, INC., D/B/A COX COMMUNICATIONS NEW ENGLAND
FOR PROTECTIVE ORDER**

INTRODUCTION

Pursuant to G.L.c.25C, §5 and 801 C.M.R. 1.01(8), CoxCom, Inc., d/b/a Cox Communications New England (“Cox”), moves for a protective order seeking that programming cost information, requested by the Cable Television Division in Information Request 1-1, made on October 18, 2012, be protected from public disclosure and maintained on a confidential basis.¹

Information Request D.T.C. 1-1 asked Cox to provide “a list of all Cox channels that require retransmission consent payment” and for each of these channels, “the retransmission consent payment per subscriber.”

In this Motion, Cox explains why per channel retransmission payment information, submitted under seal, should be granted confidential treatment under G.L.c. 25C , §5 related

¹ Cox has provided a public, redacted response that lists programmers and redacts any programmer-specific cost information. The names of Basic Service Tier programmers are public in the Company’s Form 1240 filing and the only information redacted is the highly confidential per channel programming cost information.

Department standards of review and past Department precedent. The Company also requests that the Department maintain the confidentiality of the Company's per channel retransmission payment information for a period of five years, with an opportunity afforded to Cox to request an extension of confidential treatment of its programming cost information.

ARGUMENT

A. DEPARTMENT CONFIDENTIALITY STANDARDS

Information filed with the Department or its Divisions may be protected from public disclosure pursuant to G.L.c.25C, §5, which states in part that:

The 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 on 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 exemption afforded pursuant to G.L.c.25C, §5 is an exemption recognized under G.L.c.4, §7, cl. twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

The Department has applied a 3 part standard in applying G.L.c.25C, §5. First, the information for which protection has been sought must constitute the type of information that can be exempted from public disclosure (e.g., confidential, competitively sensitive or other proprietary information). Second, the party seeking protection must prove the need for its non-disclosure as public information. Third, where such a need has been demonstrated, protection will be accorded only to so much of that information as is necessary to meet the established need and the length of time such protection may be in effect may be limited. *Time Warner Cable, Inc.*, CTV 03-4 (July 1, 2004)(Order on Request for Confidential Treatment). *CoxCom, Inc.*, d/b/a

Cox Communications, DTC 07-10(May 30, 2008) (Order on Request for Confidential Treatment). *CoxCom, Inc., d/b/a Cox Communications*, DTC 08-8 (June 23, 2009) (Hearing Officer Ruling on Motion for Protective Order). *CoxCom, Inc., d/b/a Cox Communications*, DTC 10-10 (October 12, 2011).

For the reasons below, the information provided by Cox under seal and supporting evidence and argument meet the legal standards for an exemption from public disclosure of this information.

B. PER CHANNEL RETRANSMISSION CONSENT PAYMENT INFORMATION IS CONFIDENTIAL

1. Programming Cost Information Has Been Treated as Confidential Information by Both the Department and the Federal Communications Commission

Both the Department and the FCC have classified programming contracts (and programming cost information contained therein) as exempt from public disclosure. The FCC permits programming contracts to be filed under seal without the need for a request for confidential treatment. 47 CFR §§0.457, 0.459.² The Department has specifically ruled that per channel programming costs are confidential information and exempt from public disclosure under G.L.c.25C, §5. *See, e.g., Time Warner Cable*, CTV 05-4 (June 12, 2006) at 5, note 2; *Time Warner Cable*, CTV 03-4 (Order on Request for Confidential Treatment dated July 1, 2004). *CoxCom, Inc., d/b/a Cox Communications*, D.T.C. 07-10 (May 30, 2008) (Order on Request for Confidential Treatment). *CoxCom, Inc., d/b/a Cox Communications*, DTC 08-8 (June 23, 2009)

² Cox acknowledges that in the context of ratemaking concerning basic service tier programming costs, the FCC has affirmed the obligation of cable operators to provide the requested information and made the determination of confidentiality of this information subject to state laws. *See, e.g., In the Matter of Tele-Media Company of Virginia*, 10 FCC Rcd. 3862 (DA 95-339)(Released February 24, 1995); *In the Matter of TCI Cablevision of the Metroplex, Inc.*, 10 FCC Rcd. 12210 (DA-95-2275)(Released November 9, 1995)(noting that the cable operator producing programming contract cost information need not associate specific contract information with an identified programmer).

(Hearing Officer Ruling on Motion for Protective Order). *CoxCom, Inc., d/b/a Cox Communications*, DTC 08-8 (June 23, 2009)(Hearing Officer Ruling on Motion for Protective Order). *CoxCom, Inc., d/b/a Cox Communications*, DTC 09-7(July 9, 2010)(Hearing Officer Ruling on Motion for Protective Order). *CoxCom, Inc., d/b/a Cox Communications*, DTC 10-10 (October 12, 2011).

The Department should find that the per channel retransmission consent payment information produced by Cox under seal constitutes confidential information, based upon its past decisions regarding per channel programming cost information and the information submitted in support of its Motion.

2. The Requested Programming Cost Information is Confidential Commercial Information

Per channel retransmission payment information constitutes confidential, competitively sensitive and proprietary information. This information is among Cox's and the programmers' most highly confidential information. As the Affidavit of John Wolfe attests, Cox regards programming cost information, including retransmission consent payments, as highly sensitive commercial information, the public disclosure of which would result in significant commercial and competitive harm. Any disclosure is subject to confidentiality requirements contained in Cox's retransmission consent agreements. (Affidavit of John Wolfe at pages 1-3).

Also, the requested information is not in the public domain. Cox and the programmers treat such information as highly confidential and competitively sensitive. The requested information is treated as confidential information within Cox and is not generally available within the Company. Only those employees with a need to know have access to this information. In addition, the requested information is not made public in the ordinary course of business and

restrictions on any disclosure by Cox are imposed under its retransmission consent agreements. (Affidavit of John Wolfe at pages 1-3).

Cox maintains strict confidentiality of retransmission consent payment information internally and do not make any public disclosure of this information. Cox is subject to non-disclosure requirements in its retransmission consent agreements. (Affidavit of John Wolfe at pages 1-2).

In other proceedings, the Department has granted an exemption from public disclosure in the case of gas and electricity contract pricing provisions. *Re Verizon New England, Inc., d/b/a Verizon Massachusetts*, D.T.E. 01-31-Phase I (Interlocutory Order on Verizon Massachusetts' Appeal of Hearing Officer Ruling Denying Motion for Protective Treatment)(citing rulings in *Standard of Review for Electric Contracts*, D.P.U. 96-39 at 2, Letter Order dated August 30, 1996), and *Colonial Gas Co.*, D.P.U. 96-18 at 4 (1996). Reasoned consistency requires that confidential treatment be accorded to the requested information. For these reasons, per channel retransmission consent payment information should be recognized as confidential and proprietary information.

3. The Requested Per Channel Cost Information is Competitively Sensitive and its Disclosure Would Result in Substantial Competitive Harm to Cox as well as the Affected Programmers

The per channel retransmission consent payment information requested by the Department also is competitively sensitive in nature. Cox would be placed at a competitive disadvantage if this information were made available to its competitors.³ The availability of channel by channel retransmission consent payment information would cause significant

³ The Department has acknowledged the competitive environment in which Cox operates.

competitive harm to Cox because information about its cost structure could be used by competitors in fashioning marketing and pricing plans. (Affidavit of John Wolfe at pages 2-3).

Public disclosure of this cost information also would subvert the competitive interests of the Company and stations that conduct negotiations with multiple cable operators. Actual per subscriber per channel payments or very close approximations could be readily backed out from the cost information provided by simply multiplying that cost data by the publicly available average number of subscribers in Holland. Some of the channels are provided to subscribers located in other communities in other states under retransmission consent agreements (Affidavit of John Wolfe at pages 2-4).

The Department's legitimate needs to investigate rate filings and the legitimate interests of Cox and programmers in keeping programming cost information confidential can effectively be balanced by granting a protective order with regard to retransmission consent payment information on a per subscriber, per channel basis.

For these reasons, Cox has demonstrated that (1) the information being produced falls within the categories of information that can be exempted from public disclosure and (2) a need for protection of that information from public disclosure exists in this case.

4. The Request for Protection of Per Subscriber, Per Channel Retransmission Payment Information is Narrowly Limited to Meet an Established Need for Protection

The information for which a protective order has been requested is limited in nature and necessary to meet the established need for protection. Cox has provided public responses to all of the Department's information requests and sought protection only regarding limited portions of one information request consisting of proprietary, confidential and competitively sensitive

information. G.L.c 25C, §5.⁴ See note 1, *supra*. Thus, the third standard applied by the Department is satisfied.

C. THE DEPARTMENT'S PROTECTIVE ORDER SHOULD CONTAIN CONTINUING SAFEGUARDS FOR PROTECTING THE SECRECY OF CONFIDENTIAL INFORMATION

The Department should adopt a protective order in this matter to: (1) classify per subscriber, per channel retransmission consent payment information as exempt from public disclosure under G.L.c.25C, §5; (2) include specific safeguards against public disclosure of this information; and (3) provide an opportunity to Cox to seek an extension of confidential treatment of this information at the end of a five year period of confidentiality.

The Department should make findings and rulings to confirm that the per subscriber, per channel retransmission consent payment information provided by Cox is confidential information that shall be exempt from public disclosure pursuant to G.L.c.25C, §5. Next, the Department should explain how it maintains the confidentiality of information accorded confidential treatment as part of its order. Finally, the Department's order should provide that Cox's programming cost information will be accorded confidential treatment for five (5) years from the date of its production, with an opportunity given to Cox to seek an extension of the period of confidentiality based upon a showing of need for continuing protection against public disclosure.⁵

⁴ Cox appreciates the Department's tailoring its request to a narrow form, predicated on its need for confirmation of programming cost information used to derive the Form 1240 Maximum Permitted Rate. *See*, 47 C.F.R. §76.938; *In the Matter of TCI Cablevision of San Jose* 10 FCC Rcd. 12,581 (DA-95-2270)(Released November 15, 1995)(emphasizing that franchising authorities "...should be judicious in their requests for proprietary data, make sure that such information is needed, and narrow their requests, if appropriate, to permit cable operators to submit only the specific information requested.").

⁵ The Department has employed this protection for a period of five years in other cases. *CoxCom, Inc., d/b/a Cox Communications*, DTC 08—8 (June 23, 2009)(Order on Motion for Protective Order). The Department has adopted measures to enable an affected party to seek a further protection of confidential information in instances where

A five year period of protection is appropriate because of the long-term relationships that have existed between Cox and the programmers and the likelihood of continuing relationships with its programmers. The increased competition in the cable industry is a further reason for providing a longer period of confidentiality.

While Cox understands that the Department will not afford it notice of any third party request for its per subscriber, per channel retransmission consent payment information in advance of its ruling on such a request and also understands that during the period of confidentiality granted the Department will maintain the confidentiality of Cox's information, Cox respectfully requests that in its grant of protection in this matter, the Department include notice to Cox after it rules on any such third party request. Such notice will enable Cox to inform the stations of any requests for public disclosure, as it is obligated to do as a matter of contract. Given that the third party requester may appeal the Department's denial of a public record request, Cox and affected stations have an interest in being aware of any attempts to force public disclosure of what they regard as highly confidential, proprietary and competitively sensitive information.⁶

CONCLUSION

For the reasons above, based upon the information provided under seal and supporting affidavits, the Department should treat per subscriber, per channel retransmission consent

the Department has accorded confidential treatment for a period of years and not in perpetuity. In *Re Verizon New England, Inc., d/b/a Verizon Massachusetts*, D.T.E. 01-31-Phase I (Interlocutory Order on Verizon Massachusetts' Appeal of Hearing Officer Ruling Denying Motion for Protective Treatment), the Department granted confidentiality of information for two years, but provided that after that time, Verizon would have the opportunity to move the Department to further extend such protection accompanied by adequate proof of the need to do so.

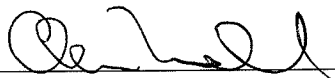
⁶ Cox notes that in protective agreements filed by parties in adjudicatory proceedings, it is commonly provided that in the event that the Department rules that information provided as confidential, but subject to reclassification by the Department at the request of a party, should be made public, the producing party is afforded a reasonable period of time to seek judicial protection against public disclosure before public disclosure is made by the Department.

payment information as confidential information not subject to public disclosure, in accordance with G.L.c.25C, §5, and adopt the protective order terms requested by the Company.

Respectfully submitted,

COXCOM, INC., D/B/A COX COMMUNICATIONS
NEW ENGLAND

By its attorneys,



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Dated: November 15, 2012