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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS & ENERGY

)
Investigation by the Department on its own)
Motion as to the propriety of the rates and)
charges set forth in M.D.T.E No. 17, filed with)
the Department on May 5, 2000 to become) D.T.E. 98-57, Phase III
effective June 4 and June 6, 2000 by New)
England Telephone and Telegraph Company)
d/b/a Bell Atlantic – Massachusetts)

BELL ATLANTIC-MASSACHUSETTS'
MOTION FOR CONFIDENTIAL TREATMENT

Bell Atlantic-Massachusetts ("BA-MA"), hereby requests that the Department grant this Motion requesting confidential treatment of data provided by BA-MA in response to the following information requests from Rhythms Links ("RL") and Covad Communications Company ("Covad"): RL/Covad Nos. 1-25 (supplemental), 1-45, 1-51 (supplemental), 1-59 (supplemental), 1-65 (second supplemental), 1-80 (supplemental), 1-96 (supplemental). As shown below, that data qualifies as a "trade secret" or "confidential, competitively sensitive, proprietary information" under Massachusetts law and, therefore, is entitled to protection from public disclosure in this proceeding.

ARGUMENT

In determining whether certain information qualifies as a "trade secret," 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;
- (3) the extent of measures taken by the employer to guard the secrecy of the information;

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- (4) the value of the information to the employer and its competitors;
- (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).

Based on the above criteria, the following information requests should be afforded confidential treatment by the Department. BA-MA is willing to provide the data in those requests subject to reasonable terms of the standard protective agreement, which properly limit the use of the data to the preparation and conduct of this proceeding. That restriction is intended to prevent actual and potential competitors from unduly and unfairly benefiting from access to that data by using it to their commercial and competitive advantage.

No party has filed any objection to BA-MA's provision of the above information request pursuant to a Protective Agreement. Likewise, no compelling need exists for public disclosure of those proprietary responses for the Department to analyze and decide the issues addressed in this proceeding. Accordingly, BA-MA's interest in preserving the confidentiality of the data should far outweigh any interest in public disclosure, which would only provide carriers with unbridled access to highly sensitive information by placing it in the public domain.

RL/COVAD-IR-1-65 (Second Supplemental)

RL/COVAD 1-65 (Second Supplemental) contains various internal methods and procedures ("M&Ps") developed for BA-MA's use in provisioning xDSL and line sharing services. Those materials would qualify as "trade secret" or "confidential, competitively sensitive proprietary information" under Massachusetts law because they are a blueprint of internal business practices developed and utilized by BA-MA in a competitive marketplace. Those M&Ps describe BA-MA's technical systems, mechanized processes and administrative practices in a level of detail that is not known outside of the Company. Moreover, the development of those M&Ps involved considerable time and effort and cannot be easily duplicated by competitors.

The Department has previously considered comparable M&P-type information relating to intraLATA presubscription and number portability to be proprietary. See e.g., BA-MA's Reply to DTE 1-2, provided in D.T.E. 98-59 (Complaint of Tel-Save); BA-MA's Reply to M1 1-7 and 1-8, provided in D.T.E. 99-42/43 (Arbitration Petition of MediaOne). There is no reasonable basis to treat M&P data relating to DSL and line sharing any differently in this proceeding.

If the M&Ps are made publicly available, then any of BA-MA's competitors could use that data to assist them in developing their own internal procedures or for any other purpose. The M&Ps would also provide BA-MA's competitors with considerable additional information about the Company's internal operating systems that cannot be readily obtained from other non-Company sources, thereby giving them an unfair

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business advantage. This is the very anti competitive result that state and federal laws protecting trade secret information are designed to prevent. Accordingly, the M&Ps should be considered BA-MA's "private property" and a "trade secret" and, therefore, not subject to public disclosure.

RL/COVAD-IR-1-45 and 1-80 (supplemental)

The materials contained in RL/COVAD-IR-1-45 and 1-80 (supplemental) are technical documents that reveal BA-MA's overall network deployment plans based on certain marketing strategies, as well as specific planning for xDSL. For example, the type of information disclosed in the Outside Plant Engineering Guidelines provided in RL/COVAD 1-45 includes, inter alia, feeder relief strategies for different customer scenarios; potential network solutions for different service requirements; and conditions for planning, designing and deploying certain outside plant, technology and loop electronics systems. Likewise, the Network Planning Deployment Plan provided in RL/COVAD 1-80 (supplemental) discusses the technological and operational aspects of xDSL based on Bell Atlantic's demand levels and market forecasts. It also refers to potential changes in processes identified as a result of sensitivity analyses and business case financial models described in that document.

The level of detail and the competitively sensitive nature of the marketing and operational information contained in those documents clearly fall within the definition of trade secret under both Massachusetts statute and case law. Both documents reveal detailed information regarding BA-MA's network and associated marketing plans that were developed by the Company for its own business use. That data cannot be replicated and, therefore, would be of significant business value to potential competitors. Those competitors would be substantially and unjustifiably benefited if the data is publicly disclosed, resulting in irreparable harm to BA-MA.

RL/COVAD-IR-1-51 (supplemental) and 1-96 (supplemental)

The cost study filed with the Federal Communications Commission ("FCC") in support of its retail ADSL filing is included in RL/COVAD-IR-1-51 (supplemental), and the underlying cost documentation is provided in RL/COVAD-IR-1-96 (supplemental). Both documents were afforded confidential treatment by the New York Public Service Commission ("NYPSC") in a similar proceeding. This is appropriate because the costs consist of vendor specific equipment-related charges that BA-MA is not at liberty to disclose publicly in accordance with long-standing Company practices and contractual requirements by vendors to maintain the confidentiality of their prices. Thus, public disclosure of such third-party information would competitively disadvantage the vendors involved.

In addition, both documents contain demand forecasts, projections and marketing data relating to a retail service offered through a separate Bell Atlantic subsidiary. Because of its significant business and marketing value in a competitive environment, Bell Atlantic has a legitimate need to maintain the confidentiality of that highly competitively sensitive marketing data which far outweighs any benefit in obtaining public disclosure of the material. If public disclosure is permitted, then any competitor may obtain access to that data to assist them in their competitive initiatives. Since competitors would be unable to replicate this information, this would provide an unfair business advantage and, therefore, proprietary treatment is warranted.

RL/COVAD-IR-1-25 (supplemental) and 1-59 (supplemental)

The information provided in RL/COVAD-IR-1-25 (supplemental) consists of a Telcordia

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Technologies' New York presentation regarding OSS functionality, processes and solutions. This was previously treated as proprietary by the NYPSC. Likewise, RL/COVAD-IR-1-59 (supplemental) reflects the vendor processes for upgrading DLC systems. BA-MA considers this third-party vendor-specific data to be "trade secret" or "confidential, competitively sensitive proprietary information" under Massachusetts law because of its significant business value to potential competitors, who cannot reasonably develop or duplicate that data.

CONCLUSION

WHEREFORE, BA-MA respectfully requests that the Department grant this Motion to afford confidential treatment to BA-MA's responses to the above information requests because certain data contained in that response constitutes competitively sensitive business information that would be considered a "trade secret" under Massachusetts law and, therefore, entitled to protection from public disclosure in this proceeding.

Respectfully submitted,

NEW ENGLAND TELEPHONE

AND TELEGRAPH COMPANY, d/b/a

BELL ATLANTIC-MASSACHUSETTS

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