

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Petition of Choice One Communications of Massachusetts)
Inc., Conversent Communications of Massachusetts Inc.,)
CTC Communications Corp. and Lightship Telecom LLC)
for Exemption from Price Cap on Intrastate Switched)
Access Rates as Established in D.T.C. 07-9)

D.T.C. 10-2

VERIZON'S MOTION FOR CONFIDENTIAL TREATMENT

Verizon New England Inc., d/b/a Verizon Massachusetts, MCImetro Access Transmission Services of Massachusetts, Inc., d/b/a Verizon Access Transmission Services, MCI Communications Services, Inc., d/b/a Verizon Business Services, Verizon Long Distance LLC, and Verizon Select Services, Inc. (collectively "Verizon") hereby request that the Massachusetts Department of Telecommunications and Cable ("Department") grant this motion for confidential treatment of proprietary cost information of Verizon Massachusetts and two Verizon ILEC affiliates, provided in supplemental responses to One Comm-VZ-4-2, 4-4, and 4-11, filed concurrently with this motion. As grounds for this request, Verizon states that proprietary cost information is competitively sensitive information and constitutes a trade secret under Massachusetts law. Specifically, Verizon seeks confidential treatment for : (1) incremental cost studies for switched access services submitted by Verizon ILEC affiliates (Verizon Pennsylvania Inc. and Verizon New Jersey Inc.) in proceedings before the Pennsylvania Public Utility Commission (Docket No. C-2002-7195) and the New Jersey Board of Public Utilities (Docket

No. TX08090830);¹ and (2) proprietary cost information regarding the most recent purchases of Lucent 5ESS switches by Verizon Massachusetts.

STANDARD OF REVIEW

Under Massachusetts General Laws c. 25, § 5D, the Department is empowered to protect from public disclosure trade secrets or other proprietary information that is produced in the course of Department proceedings. In determining whether certain information qualifies as a “trade secret,”² 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;
- (4) the value of the information to the employer and its competitors;

¹ The cost studies for which Verizon seeks protection here were treated as protected information in the Pennsylvania and New Jersey proceedings.

² 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. 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).

- (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).

ARGUMENT

Verizon seeks to restrict from public disclosure only information that, if made available to the public, would allow Verizon's competitors to know valuable information about Verizon's costs. Cost information about a competitor is valuable to competing firms seeking to find ways to gain advantages in a highly competitive marketplace. Public disclosure of cost information thus hands to those competitors a distinct competitive advantage over Verizon in the telecommunications marketplace and would potentially cause substantial harm to the competitive

position of Verizon in the Commonwealth as well as in the states that are the subject, in part, of this discovery request, *i.e.* Pennsylvania and New Jersey. Verizon takes extensive measures to protect cost information when it is made available to non-employees and employees alike, which is done only under limited circumstances.

Verizon's competitors might gain valuable insights into its business operations and benefit from the disclosure of such sensitive commercial information. Specifically, making cost data public would allow a competitor to access otherwise unavailable information to benchmark Verizon's data against its own, and draw inferences about Verizon's cost structure. A competing firm would not be able to gain this information from any publicly available sources.

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

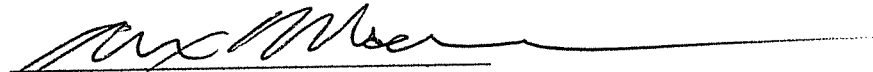
WHEREFORE, Verizon respectfully requests that the Department grant this motion.

Respectfully submitted,

VERIZON NEW ENGLAND INC., MCIMETRO
ACCESS TRANSMISSION SERVICES OF
MASSACHUSETTS, INC., MCI
COMMUNICATIONS SERVICES, INC., VERIZON

LONG DISTANCE LLC, and VERIZON SELECT
SERVICES, INC.

By their Attorneys,



Alexander W. Moore
125 High Street, Oliver Tower, 7th Floor
Boston, Massachusetts 02110-1585
(617) 743-2265

Richard C. Fipphen
140 West Street – 27th Floor
New York, New York 10007
(212) 321-8115

Dated: January 10, 2011