

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

In re Verizon Service Quality in Western Massachusetts) D.T.C. 09-1
_____)

MOTION FOR CONFIDENTIAL TREATMENT

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) hereby requests that the Department of Telecommunications and Cable (“Department”) protect from public disclosure and provide confidential treatment for Proprietary Attachments AG-VZ 3-41(a, b, c) to Verizon MA’s Responses to the Attorney General’s Third Set of Document and Information Requests, filed herewith. In support of this Motion, Verizon MA states that the data at issue is confidential, proprietary, competitively sensitive information under Massachusetts law and is therefore entitled to protection from public disclosure. As further grounds for this motion, Verizon MA states the following.

1. M. G. L. c. 25C, § 5, provides in part that:

Notwithstanding clause Twenty sixth of section 7 of chapter 4 and section 10 of chapter 66, the [D]epartment 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.

In determining whether certain information qualifies as a “trade secret,”¹ Massachusetts courts have considered the following:

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; see also Mass. General Laws c. 4, § 7. The Massachusetts Supreme Judicial Court (“SJC”), 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).

- (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;
- (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).

2. The information addressed in this Motion constitutes confidential, competitively sensitive, proprietary information that is entitled to protection under Massachusetts law. Proprietary Attachments AG-VZ 3-41(a, b, c) identify: (a) Verizon MA’s approved capital service improvement projects in Western Massachusetts; (b) those capital service improvement projects that are pending approval; and (c) the open plant jobs that are pending approval. The attachments include detailed data regarding each project, such as the location and budget or cost.

Disclosure of this data would map out for Verizon MA's competitors just where Verizon MA intends to invest in improvements to its network in Western Massachusetts and the nature of those improvements, allowing competitors to better tailor their own investments and marketing plans in response. Disclosure would thus confer a competitive advantage on those competitors.

4. This information is confidential, competitively sensitive and proprietary information that is not readily available to competitors and other carriers, and would be of value to them. Verizon MA compiled this information from internal sources, has maintained it as confidential and has not disclosed it outside the company. There is no compelling need for public disclosure of any of this information. Conversely, Verizon MA is at risk of suffering competitive disadvantage if this information is made public. Given the increasingly competitive telecommunications world, the Department should not apply G.L. c. 25C, § 5 to permit competitors to gain access to what is private, commercial information.

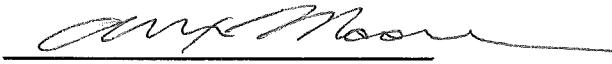
In order to balance the interests of Verizon MA in protecting the information with those of the Department and the parties, Verizon MA will make the requested information available to the parties in this proceeding, subject to mutually acceptable nondisclosure agreements.

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

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney,


Alexander W. Moore
185 Franklin Street – 13th Floor
Boston, MA 02110-1585
(617) 743-2265

Dated: October 7, 2009