

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

In re Verizon Service Quality in Western Massachusetts

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) D.T.C. 09-1
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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 9-7 and 9-15(a-e) to Verizon MA’s Responses to the Attorney General’s Ninth Set of Document and Information Requests and Proprietary Attachment AG-VZ 10-6 to Verizon MA’s Responses to the Attorney General’s Tenth Set of Document and Information Requests, all of which are filed today. 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;

- (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.

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).

Proprietary Attachment AG-VZ 9-7 discloses the number of orders for installations received by Verizon MA for the BayPath SBU in each month of 2008 and 2009, further disaggregated by residential and business customers. Verizon MA has maintained this information as confidential, and its disclosure would give Verizon MA's competitors an otherwise unavailable, detailed perspective into the volume of new business obtained by Verizon MA and the success of its retail offerings in this region over the past two years, as well as data to analyze for any trends or patterns over time.

3. Proprietary Attachments AG-VZ 9-15(a-e) consist of the Competitive Profiles that Verizon MA has filed with the Department for the years 2004 through 2008 in D.T.C. No. 01-31. The profiles disclose, by wire center, the number of residential access lines and, separately, business access lines served by Verizon MA as well as the number of resold residential and business lines, UNE-P lines and lines shown in the E911 database (reflecting full facilities-based carrier lines). Thus, public disclosure of the Competitive Profiles would reveal highly valuable information about the competitive position of many carriers at the wire center level across the state. The Department has long afforded the Competitive Profiles confidential treatment.

4. Similarly, Proprietary Attachment AG-VZ 10-6 consists of the Forms 477 Verizon MA has filed with the Federal Communications Commission for the years 2004 early 2009. The Forms 477 disclose substantial data concerning competition in the Commonwealth, including the total number of Verizon MA customer connections for broadband services (disaggregated by type of service and speed tiers among other parameters) and for wireline telephone service, also disaggregated in a number of ways, such as by retail, UNE loop, UNE loop plus switching and so on. Disclosure of this data would give Verizon MA's competitors detailed data concerning the scope and success of Verizon MA's lines of business, including its wholesale business, and the

relative success of other competitors in Massachusetts as well. Verizon has consistently filed this information with the FCC as confidential pursuant to 47 C.F.R. § 43.11(c), and the FCC has treated it as such.

5. In sum, the information for which Verizon MA seeks protective treatment 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 Verizon MA's private, commercial information.

Verizon MA is providing the requested information to the parties in this proceeding who have entered into nondisclosure agreements.

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

Respectfully submitted,

VERIZON NEW ENGLAND INC.

By its attorney,



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