

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-4845-PET

Joint petition of Southern Vermont Cable Company (SVCC) and Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC (Comcast) for authority to (1) sell substantially all of SVCC's assets to Comcast, pursuant to 30 V.S.A. § 109; (2) abandon SVCC's cable-television service in Vermont and revoke its Certificate of Public Good, pursuant to 30 V.S.A. § 505; and (3) allow Comcast to own and operate SVCC's cable television system in Vermont, pursuant to 30 V.S.A. §§ 503 and 504	
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Order entered: 07/28/2020

PROTECTIVE ORDER FOR CONFIDENTIAL TREATMENT OF EVIDENCE

I. INTRODUCTION

On June 29, 2020, Comcast of Connecticut/Georgia/Massachusetts/New Hampshire/New York/North Carolina/Virginia/Vermont, LLC, d/b/a Comcast and Southern Vermont Cable Company ("Petitioners" or "Comcast") filed a motion with the Vermont Public Utility Commission ("Commission") related to the confidential treatment of its plan for migrating customers of Southern Vermont Cable Company ("SVCC") from SVCC services and billing to Comcast services and billing. Comcast's migration plan is required by condition 34 of the Certificate of Public Good issued in this case. Comcast represents that the migration plan contains proprietary and commercially sensitive information regarding its integration of SVCC's system and customers into Comcast's system. Comcast submitted an averment to support its request for confidential treatment. No party opposed Comcast's motion.

I have reviewed the motion and supporting materials, and conclude that Comcast has made a *prima facie* showing that confidential treatment is warranted for the information at issue. Therefore, I grant Comcast's motion for a protective order.

II. DISCUSSION

To promote full understanding of the bases for its decisions, the Vermont Public Utility Commission (“Commission”) has actively taken steps to limit the amount of information subject to protective orders. The Commission has encouraged parties to remove material from that protection to the extent possible. The Commission requires petitioners seeking a protective order to submit a document-specific (or information-specific) averment of the basis for keeping confidential any document (or information) that they wish to be kept under seal. This arrangement appropriately places a heavy burden on the party seeking confidentiality to justify that decision. It also ensures that counsel for the party seeking confidentiality has actually reviewed and considered the relevant confidentiality factors, as they relate to the specific document or information at issue.¹

Generally, the Commission resolves disputes about information only when there is a disagreement about its confidential nature.² However, even when the motion is uncontested, the Commission will review the motion and supporting averment or averments to ensure that the moving party has presented a *prima facie* case for keeping the document or information under seal. In determining whether to protect allegedly confidential information, the Commission considers three issues:

- (1) Is the matter sought to be protected a trade secret or other confidential research, development, or commercial information which should be protected?
- (2) Would disclosure of such information cause a cognizable harm sufficient to warrant a protective order?
- (3) Has the party seeking protection shown “good cause” for invoking the Commission’s protection?³

Comcast maintains that the details of its SVCC-customer migration plan would give insight to video competitors in the former SVCC-system area and that those competitors would not be able to easily replicate the information on their own. Comcast requests that the details of

¹ *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6545 (“*Entergy Docket*”), Order of 11/9/01 at 5-6.

² *Id.* at 6.

³ *See, e.g., Entergy Docket*, Order of 3/29/02 at 2.

the migration plan be kept confidential until one month after all customer migrations are completed.

I have reviewed the motion and supporting materials, and applied the existing standard. I conclude that the redacted information is commercially sensitive information that should be protected, that disclosure would cause a cognizable harm sufficient to warrant a protective order, and that there is good cause for protecting the information. Therefore, I conclude that Comcast has made a *prima facie* showing that confidential treatment is warranted for the information at issue, and we grant Comcast's motion for a protective order.

III. ORDER

IT IS HEREBY ORDERED that Comcast's migration plan shall be treated in this proceeding as follows:

1. All testimony, affidavits, transcripts, exhibits, and other documents that are subject to this Order as confidential information, and any testimony or documents that discuss or reveal documents that constitute confidential material, shall be filed with the Commission via email sent to puc.clerk@vermont.gov. The subject line of all such emails must start with the words "Confidential documents attached" and must include the case number in which the documents are being filed. In addition, filers must follow up by mailing one hard copy to the Commission using first-class mail.⁴ The hard copies shall be placed in sealed envelopes or other appropriate sealed containers on which shall be endorsed the caption and case number of the proceeding, the nature of the content (*e.g.*, exhibit, report, etc.), and a statement that it shall not be opened or released from the custody of the Clerk of the Commission except by order of the Commission. Despite such a statement, the members of the Commission, any employee or consultant specifically authorized by the Commission to assist the Commission in this proceeding, and any Hearing Officer appointed in this case may have access to such sealed confidential information, but shall not disclose such information to any person.

2. At any hearing or conference in this proceeding, no persons, other than those who have agreed to be bound by this Order and any Protective Agreement approved in this case, and

⁴ Vermont Public Utility Commission orders and memoranda issued in response to COVID-19 pandemic, Case No. 20-0789-INV, Orders of 3/31/20 and 5/21/20.

those whom the Commission has expressly authorized to have access to this confidential information, shall be permitted to give, hear, or review testimony given or held with respect to this confidential information.

3. Each Commission stenographer or reporter in this proceeding shall acknowledge and be bound by this Order. Each such Commission stenographer or reporter shall be instructed to and shall start a separate transcription for testimony or discussion on the record of confidential information. Such transcription shall be marked “Confidential” and shall be sealed and filed with the Clerk of the Commission, and copies of the same shall be made available only to those persons authorized to view such information. Such transcription shall, in all other respects, be treated as confidential information pursuant to this Order.

4. The Commission retains jurisdiction to make any amendments, modifications, and additions to this Order as it may, from time to time, deem appropriate, including any amendments, modifications, or additions resulting from a motion made pursuant to the Protective Agreement.

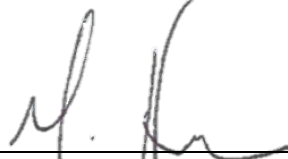
5. In any future proceeding, the burden of establishing that the confidential treatment of this information is warranted is on the party seeking to avoid disclosure.

6. Any party or other person may apply to the Commission for an amendment, modification, or addition to this Order.

7. The confidential treatment of evidence provided for in this Order shall expire one month after all customer migrations are completed, not to exceed two years from the date of this order. Comcast is directed to notify the Commission when customer migrations are complete and may request an extension of the confidential treatment period prior to the expiration of two years if additional time for customer migrations is required.

SO ORDERED.

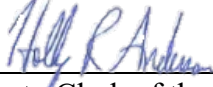
Dated at Montpelier, Vermont, this 28th day of July, 2020.



Micah Howe
Hearing Officer

OFFICE OF THE CLERK

Filed: July 28, 2020

Attest: 

Deputy Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 19-4845-PET - SERVICE LIST

Parties:

Sarah L. J. Aceves
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
sarah.aceves@vermont.gov

(for Vermont Department of Public Service)

Elijah D Emerson, Esq.
Primmer Piper Eggleston & Cramer PC
PO Box 1309
Montpelier, VT 05601
eemerson@primmer.com

(for Southern Vermont Cable Company)

Gerald R Tarrant
Tarrant, Gillies & Richardson
P.O. Box 1440
Montpelier, VT 05601-1440
gtarrant@tgrvt.com

(for Comcast of
Connecticut/Georgia/Massachusetts/New
Hampshire/New York/North
Carolina/Virginia/Vermont, LLC)

Cor Trowbridge
Brattleboro Community Television, Inc.
230 Main Street, Suite 201
Brattleboro, VT 05301
cor@brattleborotv.org

(for Brattleboro Community Television, Inc.)