

STATE OF NEW HAMPSHIRE
Before the
PUBLIC UTILITIES COMMISSION

segTEL, INC. d/b/a FIRSTLIGHT FIBER

REQUEST FOR LICENSES BY NOTIFICATION PURSUANT TO RSA 371:17-b

CRS _____

Motion for Confidential Treatment

segTEL, Inc. d/b/a FirstLight Fiber (“FirstLight”) seeks confidential treatment pursuant to RSA 95-A:5,IV, for the List of Locations attached to its accompanying Request for Licenses by Notification Pursuant to RSA 372:17-b.

RSA 95-A:5,IV allows for exemption from disclosure records that are confidential or commercial in nature. FirstLight has taken steps to keep its network deployment confidential, and where it is deployed goes to the heart of its commercial competitive ability.

The Commission has found that utilities have a privacy interest in network and circuit maps and has granted them confidential treatment. *In re New Hampshire Regulated Utilities -- October 2011 Snow Storm*, Order Granting Requests for Confidential Treatment, Order No. 25,457 at 8 (Jan. 18, 2013) (system circuit maps contain sensitive commercial information that warrants protection); *In re Union Telephone Company — Petition for Approval of an Alternative Form of Regulation*, DT 11-024, Order on Petition and Motion for Confidential Treatment, Order No. 25,235 at 17-19 (June 15, 2011) (carrier has developed its facilities to benefit its business and competitive harm could befall it should the extent and capabilities of its facilities be revealed in such an explicit manner as on detailed network maps).

Likewise, the extensive and aggregate nature of the List of Locations would provide competitors with at least as much information about the locations of FirstLight’s facilities as the network maps that the Commission previously has found worthy of protection.

Discussion

In determining whether to grant confidential treatment under RSA 91-A:5,IV to information submitted to the Commission, the Commission employs a three-step test:

The New Hampshire Supreme Court and the Commission apply a three-step balancing test to determine whether a document, or the information contained within it, falls within the category of “confidential, commercial, or financial information” under RSA 91-A:5, IV. Under that test, the Commission first inquires whether the information involves a privacy interest and then asks if there is a public interest in disclosure. Finally, the Commission balances those competing interests and decides whether disclosure is appropriate. Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted.

In re Pennichuck East Utility, Inc. — Petition for Authority to Issue Long Term Debt, DW 14-321, Order *Nisi* Approving Long Term Debt and Granting Motion for Confidential Treatment, Order No. 25,758, at 5 (January 21, 2015) (internal citations omitted).

The first factor, whether a privacy interest exists, is satisfied in this case. FirstLight has a strong privacy interest in protecting a list containing specific and precise locations of its facilities throughout the state. FirstLight routinely keeps this information confidential and takes steps to protect the information in the normal course of business, even within the company. The List of Locations was compiled specially for this filing and has not been disclosed outside the company. Development and compilation of this list took significant time and effort and the use of sophisticated computer mapping software and data.

Similar to a network map, which the Commission has afforded protection from disclosure, FirstLight’s List of Locations presents specific and detailed information concerning the locations of FirstLight facilities. The precise latitude and longitude information contained in the List of Locations would enable third parties to identify the locations of FirstLight’s facilities with pinpoint accuracy, and could be used to recreate a network map. Further, unlike the individual filings this notification process was designed to replace for historic deployments, this filing comprehensively compiles in one document precise, highly granular information concerning FirstLight’s facilities throughout the state. Disclosure of the List of Locations would present comprehensive and valuable information about FirstLight’s facilities deployment

to its competitors and other third parties. Armed with this information, competitors would have a far easier time crafting tailored responses to FirstLight's offerings, with resulting competitive harm to FirstLight.

The detailed and comprehensive information on FirstLight's List of Locations is not publicly available. While FirstLight does display a network map on its website, that map presents a limited view of FirstLight's service area, and only provides cursory information as to the locations where FirstLight has a presence. The map includes nothing like the precise latitude and longitude coordinates of specific facilities that is contained in the List of Locations, and would not allow a competitor to pinpoint the locations of particular FirstLight facilities and customers.

Step two of the analysis requires the Commission to assess whether there is a public interest in disclosure of the materials. There is no public interest to be served by disclosure of the FirstLight's List of Locations. The objective of the disclosure statute is to allow citizens to understand "the conduct and activities of its government." *In re Pennichuck East Utility*, Order No. 25,758, at 5. Nothing about the workings of the government may be learned from disclosure of the information here. The List of Locations is being filed pursuant to RSA 371:17-b. That statute provides that upon a filing of such a list, "no further inquiries or investigations by the commission shall be undertaken." Therefore, there are no governmental activities to observe, and citizens will learn nothing about the workings of the government if this information were released. "Disclosure should inform the public of the conduct and activities of its government; if the information does not serve that purpose, disclosure is not warranted." *Pennichuck East Utility*, at 5; *Unitil Corp. and Northern Utilities, Inc.*, Order No. 25,014, 94 NH PUC 484, 486 (2009).

Even if there were some modicum of benefit to the public from the disclosure of this information (which FirstLight asserts there is not), any such benefit would be far outweighed by the competitive harm to FirstLight from the release of this comprehensive list containing precise geographic locations of numerous facilities in the state. Under the Commission's balancing test, the scales tip clearly on the side of treating this information as confidential.

Conclusion

For the foregoing reasons, the Commission should grant confidential treatment to the List of Locations attached to the accompanying request for licenses.

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