Mediaone of Greater Florida, Inc., an affiliate of AT&T Broadband LLC a*nd* International Brotherhood of Electrical Workers Local Union No. 177, AFL–CIO. Case 12–CA–21220

September 19, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS SCHAUMBER AND WALSH

On July 11, 2002, Administrative Law Judge George Carson II issued the attached decision. The Respondent and the General Counsel each filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified and to adopt the recommended Order as modified below.

The complaint alleges that three provisions in the Respondent's employee handbook violate the National Labor Relations Act: (1) a provision limiting employees' access to the Respondent's property; (2) a provision limiting employees' solicitation of other employees; and (3) a provision prohibiting employees from disclosing proprietary information outside the Company. The General Counsel alleges that the mere maintenance of each rule violates Section 8(a)(1) of the Act because it would reasonably tend to chill employees in the exercise of their Section 7 rights.

The judge found that the handbook provision prohibiting employees from "entering company property after hours without authorization" violates Section 8(a)(1) of the Act under *Tri-County Medical Center*, 222 NLRB 1089 (1976). The judge also found that the Respondent operated around the clock, and there are no exceptions to that finding.[1] Thus, the rule operates to forbid employees to come onto the property after their shifts have ended but while the Respondent is operating. Under *Tri-County*, supra, the Respondent could not lawfully bar off-duty employees from coming onto the exterior of the property, absent some business justification. There is no justification shown here. Accordingly, the rule is unlawful.[2]

The judge also found that the provision limiting employees' solicitation of other employees violates Section 8(a)(1). For the reasons stated in section I below, we reverse the judge and dismiss this allegation.

The judge further found that the provision prohibiting disclosure of proprietary information outside the Company does not violate Section 8(a)(1). We agree with the judge and dismiss this allegation. Our reasons for so finding are set forth in section II below.

I. NONSOLICITATION RULE

A section of the handbook is entitled "Doing What's Right: Business Integrity and Ethics Policies." That section begins with a title page on page 43 and continues for approximately 35 pages. There is a two-page table of contents for that section entitled, "Business Integrity and Ethics Policies At a Glance." In the "At a Glance" section, each policy is briefly paraphrased and the page number where the full policy can be found is listed. One of the policies paraphrased in the "At a Glance" section (on page 45) involves employee solicitation. That entry reads as follows:

> **Non-Solicitation** 69
>
> You may not solicit employees on company property.
>
> (Bold in original)

On page 69 of the handbook, the pertinent portion of the full policy appears as follows:

> Non-Solicitation
>
> The company firmly believes that to help employees do their jobs effectively, they shouldn't be disturbed or disrupted by solicitors as they perform their duties. You may not solicit another employee in work areas during work time.

The judge found the provision on page 69 to be presumptively lawful. Nevertheless, he found the two provisions together to be unlawful because the material on page 45 too broadly prohibits solicitation during nonworking time, the provision on page 69 does not retract the material on page 45, and there is no basis for employees to infer that solicitation is permitted during nonworking time. The Respondent excepts, arguing, inter alia, that it is not reasonable for an employee to ignore the full explanation of the policy on page 69 or to rely on the table of contents on page 45 as if it were a substantive provision. For the reasons stated below, we agree with the Respondent and reverse the judge.

The parties do not dispute that the provision on page 69, by itself, is valid on its face. See *Our Way, Inc.*, 268 NLRB 394 (1983). The valid rule fully set forth on page 69 is more comprehensive than the material on page 45, which, by contrast, consists of only a subject, a one-sentence summary, and a reference to the full rule on

[1] The Respondent's brief makes a reference to the issue, but the Respondent has filed no exceptions regarding it.

[2] In the absence of a challenge to *Tri-County*, Chairman Battista and Member Schaumber accept it as current Board law.

page 69. The material on page 45 is just one of many entries in that section that refer to other pages of the handbook for fuller explanation of the policies.

In these circumstances, we find that employees would reasonably believe that the Respondent's nonsolicitation rule was that set forth on page 69, and would not reasonably rely on the page 45 material as representing the Respondent's solicitation policy. The material on page 45 is clearly not a full explication of the rule. Rather, it is obviously a shorthand summary of the rule, and the employees would not be confused by it. In our view, a reasonable employee would readily disregard the material on page 45 to the extent it conflicted with the fuller explanation of the policy on page 69. While we agree with our dissenting colleague that the material on page 45 would be, by itself, overbroad,[3] that material cannot be read in isolation, particularly in light of the fact that it directs the reader to page 69 where the actual policy is set forth in detail. Contrary to our dissenting colleague, we find that employees would clearly understand that the valid rule on page 69 is the Respondent's sole solicitation policy and the material on page 45 is merely an incomplete and shorthand reference to the complete policy found later in the handbook.[4] We therefore reverse the judge and dismiss this allegation.

II. NONDISCLOSURE RULE

The Respondent's handbook at page 74 sets forth the following rule concerning the disclosure of proprietary information:

> **Proprietary Information**
>
> You're responsible for the appropriate use and protection of company and third party proprietary information, including *information assets* and *intellectual property.* Information is any form (printed, electronic or inherent knowledge) of company or third party proprietary information. Intellectual property includes, but is not limited to:
>
> - business plans
> - technological research and development
> - product documentation, marketing plans and pricing information
> - copyrighted works such as music, written documents (magazines, trade journals, newspapers, etc.), audiovisual productions, brand names and the legal rights to protect such property (for example, patents, trademarks, copyrights)
> - trade secrets and non-public information
> - customer and employee information, including organizational charts and databases
> - financial information
> - patents, copyrights, trademarks, service marks, trade names and goodwill.
>
> While it's not improper for you to use proprietary information in the general course of doing business, you must safeguard it against loss, damage, misuse, theft, fraud, sale, disclosure or improper disposal. Always store proprietary information in a safe place.
>
> You may not use or access the proprietary information of the company or others for personal purposes or disclose non-public information outside the company. Doing so could hurt the company, competitively or financially. . . .
>
> (Bold and italics in original.)

The General Counsel contends that this rule violates Section 8(a)(1) because the provision prohibiting disclosure of "employee information, including organizational charts and databases" can reasonably be read by employees to prohibit discussion among employees about their wages, hours, or working conditions and to forbid disclosure of such information to unions. The General Counsel maintains that this rule would tend to chill employees in the exercise of their Section 7 rights.

The judge dismissed this allegation, finding that this provision would not tend to chill employees in their exercise of Section 7 rights because it cannot reasonably be read to prohibit disclosure of employees' wages, hours, or working conditions. He found it to be reasonably read as prohibiting only disclosure of the Respondent's information assets and intellectual property, which is private business information that the Respondent has a right to protect.

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[3] *J.C. Penney Co.*, 266 NLRB 1223, 1224 (1983) (restrictions on "solicitation in nonworking areas during nonworking time are presumptively invalid").

[4] Our dissenting colleague avers that the presence of two different rules in the handbook creates an ambiguity that must be resolved against the Respondent as the drafter of the handbook. We see no ambiguity. This is not a case in which there are two conflicting rules that do not effectively cure one another. Here, it is clear that there is only one rule, the provision on p. 69, and it does not violate the Act. Thus, *Olathe Healthcare Center*, 314 NLRB 54, 58 (1994), relied on by our dissenting colleague, is distinguishable. In that case, there were two substantive rules in the handbook and the Board considered, but rejected, the respondent's argument that an unlawful rule was cured by the presence of a lawful rule. Here, by contrast, the provision on p. 69 is the only substantive nonsolicitation rule, and there would be no confusion in the minds of employees as to what the Respondent's policy was. Because the material on p. 45 cannot reasonably be read to be a rule at all, employees here, unlike those in *Olathe*, would not be confused by the presence of two conflicting rules.

We agree with the judge. Accordingly, we shall dismiss this allegation of the complaint.

We agree with our dissenting colleague that discussion of wages is part of organizational activity and employers may not prohibit employees from discussing their own wages or attempting to determine what other employees are paid.[5] However, as we stated in *Lafayette Park*, 326 NLRB 824, 826 (1998), enfd. mem. 203 F.3d 52 (D.C. Cir. 1999), quoting *Aroostook County Regional Ophthalmology Center v. NLRB*, 81 F.3d 209, 212 (D.C. Cir. 1996), "to concede this point lends nothing to the analysis in this case, because the rule in question in no way precludes employees from conferring . . . with respect to matters directly pertaining to the employees' terms and conditions of employment."

The handbook language here does not explicitly prohibit the discussion or disclosure of wages, hours, working conditions, or any other terms and conditions of employment, nor does it forbid conduct that clearly implicates Section 7 rights. See *Super K-Mart*, 330 NLRB 263 (1999). Further, contrary to our dissenting colleague, we do not believe that employees would reasonably read this rule as prohibiting discussion of wages and working conditions among employees or with a union. Although the phrase "customer and employee information, including organizational charts and databases" is not specifically defined in the rule, it appears within the larger provision prohibiting disclosure of "proprietary information, including *information assets* and *intellectual property*" and is listed as an example of "intellectual property." Other examples include "business plans," "marketing plans," "trade secrets," "financial information," "patents," and "copyrights." Thus, we find, contrary to our dissenting colleague, that employees, reading the rule as a whole, would reasonably understand that it was designed to protect the confidentiality of the Respondent's proprietary business information rather than to prohibit discussion of employee wages.[6] "Clearly, businesses have a substantial and legitimate interest in maintaining the confidentiality of proprietary information." *Lafayette Park*, supra, 326 NLRB at 826 (employer rule prohibiting "divulging Hotel-private information to employees or other individuals or entities that are not authorized to receive that information" found lawful*); Super K-Mart*, supra, 330 NLRB at 263, 264 (employer rule stating that "Company business and documents are confidential" and "disclosure of such information is prohibited" found lawful).[7]

In addition, the Respondent has not by any other actions led employees to believe that the nondisclosure provision restricts employees' Section 7 activity. Thus, there is no evidence that the Respondent has enforced the rule against employees for engaging in such activity, that the Respondent promulgated the rule in response to union or protected activity, or even that the Respondent exhibited antiunion animus. See *Lafayette Park Hotel*, supra, 326 NLRB at 826 (relying in part on the absence of such evidence to find that an employer rule did not violate Sec. 8(a)(1)).

In these circumstances, we find that this provision would be understood by employees as protecting from disclosure only the Respondent's proprietary private business information and would not reasonably be construed as restricting discussion or disclosure of employees' own terms and conditions of employment. Accordingly, we adopt the judge's finding that the General Counsel has not met his burden of showing that the maintenance of this provision would reasonably tend to chill employees in the exercise of their Section 7 rights. Accordingly, we dismiss this allegation.

AMENDED CONCLUSION OF LAW

By promulgating and maintaining an unlawfully broad rule prohibiting employee access to "company property after hours without authorization," the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

AMENDED REMEDY

Having found that the Respondent engaged in an unfair labor practice, we shall order it to cease and desist therefrom and to take certain affirmative action to effectuate the purposes and policies of the Act.

Having promulgated and maintained an unlawfully broad rule prohibiting off-duty employees from entering "company property after hours without authorization,"

[5] See, e.g., *International Business Machines*, 265 NLRB 638 (1982); *Pontiac Osteopathic Hospital*, 284 NLRB 442, 465 (1987); *Waco, Inc.*, 273 NLRB 746, 747–748 (1984).

[6] Chairman Battista and Member Schaumber accept the proposition that a handbook provision is unlawful if it expressly restricts Sec. 7 activity. However, they do not necessarily accept the proposition that a provision is unlawful simply because it could be interpreted in an unlawful way, absent evidence that the provision has in fact been so interpreted and applied.

[7] In support of his finding that the employees would reasonably construe this provision to restrict discussion about wages, our dissenting colleague relies, inter alia, on *University Medical Center*, 335 NLRB 1318, 1322 (2001), enf. denied in pertinent part 335 F.3d 1079 (D.C. Cir. 2003). However, that case is factually distinguishable. The rule in issue there consisted of a one-sentence prohibition on the disclosure of "confidential information concerning patients or employees," and lacked any examples clarifying that the rule was limited to protecting the confidentiality of the respondent's proprietary information. Moreover, we note that in denying enforcement in that case, the D.C. Circuit found that a reasonable employee would not believe that a prohibition against disclosure of confidential employee information "would prevent him from saying anything about himself or his own employment."

the Respondent must rescind that rule insofar as it prohibits access to property other than company buildings and working areas, remove it from its employee handbook, and advise the employees in writing that the rule is no longer being maintained.

The Respondent will also be ordered to post an appropriate notice to employees.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Mediaone of Greater Florida, Inc., an affiliate of AT&T Broadband LLC, Jacksonville, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(a).

"(a) Rescind the rule prohibiting off-duty employees from entering "company property after hours without authorization," insofar as it prohibits access to property other than company buildings and working areas, remove it from its employee handbook, and advise the employees in writing that the rule is no longer being maintained."

2. Delete paragraphs 1(b) and 2(b) and reletter the subsequent paragraphs.

3. Substitute the attached notice for that of the administrative law judge.

MEMBER WALSH, dissenting in part.

I agree with my colleagues that the judge properly found that the Respondent's handbook rule denying employees' access to "company property after hours without authorization" violates Section 8(a)(1). However, contrary to my colleagues, I would also find that the nonsolicitation and nondisclosure provisions of the Respondent's handbook violate Section 8(a)(1) of the Act. In my view, all of these rules are unlawful because they have the reasonable tendency to chill the employees in the exercise of their Section 7 rights. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998), enfd. mem. 203 F.3d 52 (D.C. Cir. 1999).

Nonsolicitation Rule

Standing alone, the nonsolicitation provision on page 69 of the employee handbook, which states, in pertinent part, that employees "may not solicit another employee in work areas during work time," would be presumptively lawful. However, that provision does not stand alone. Rather, it must be read along with the clearly overbroad provision on page 45 of the handbook stating, "You may not solicit employees on Company property."[1] I find, contrary to my colleagues, that the presence of both of these provisions together in the employee handbook would tend to chill the employees in the exercise of their Section 7 rights. Accordingly, I find that the maintenance of these rules violates Section 8(a)(1) of the Act.

My colleagues agree that the provision on page 45 is overbroad. However, they find that because that provision appears in a table of contents section of the handbook entitled, "Business Integrity and Ethics Policies At a Glance," it is not a rule in itself, and therefore it would not chill employees in the exercise of their Section 7 rights. In their view, the provision on page 45 can only be read as a shorthand summary of the Respondent's lawful rule that appears on page 69. Thus, my colleagues claim that employees would readily understand that the page 45 provision was an incomplete and inaccurate reflection of the Respondent's solicitation policy and the employees would therefore feel free to disregard it. I disagree.

I cannot agree with my colleagues' finding that employees would understand that the "At a Glance" section on pages 44 and 45 of the handbook is devoid of meaning and can be ignored. I find that reasonable employees would not so easily disregard the language set forth in a handbook intended to guide their behavior. Those pages contain language purporting to summarize the Respondent's policies, and there is nothing in the handbook informing employees that the summaries appearing in the "At a Glance" section may be incomplete or inaccurate and that they do not in themselves reflect company policy. Absent such a disclaimer, employees may reasonably rely on those summaries and believe that they reflect company policy. Unlike my colleagues, I do not believe that employees would necessarily recognize the language on page 45 as incomplete or inaccurate material that may be disregarded with impunity.

In my view, the presence in the handbook of two different versions of the Respondent's nonsolicitation policy, one lawful and one unlawful, creates an ambiguity that must be resolved against the Respondent as the drafter of the handbook. See *Lafayette Park Hotel*, supra, 326 NLRB at 828. I believe that such an ambiguity would tend to chill the employees' exercise of protected activity because reasonable and cautious employees would be guided by the broader language and would restrict their Section 7 activities in order to be certain not to run afoul of the Respondent's policies. Therefore, I find that the nonsolicitation provisions in the Respon-

[1] *J.C. Penney Co*., 266 NLRB 1223, 1224 (1983) (restrictions on "solicitation in nonworking areas during nonworking time are presumptively invalid").

dent's handbook reasonably tend to chill employees' Section 7 rights and the maintenance of those provisions thus violates Section 8(a)(1). See, e.g., *Olathe Healthcare Center*, 314 NLRB 54, 58 (1994) (unlawful solicitation rule in handbook not cured by presence in handbook of a different lawful solicitation rule).

II. NONDISCLOSURE RULE

The Respondent's handbook prohibits the disclosure "outside the company" of "employee information, including organizational charts and databases." My colleagues see nothing unlawful about this provision, finding that it does not implicate employees' Section 7 rights. Contrary to my colleagues, I find that the maintenance of this provision violates Section 8(a)(1).

It is well established that discussion of wages, benefits, and working conditions is an important part of organizational and other concerted activity.[2] Although employers may have a substantial and legitimate interest in limiting or prohibiting discussion about some aspects of their affairs, they may not prohibit employees from discussing their own wages and working conditions or attempting to ascertain the wages of other employees.[3] The Respondent's confidentiality rule is overbroad because it is not crafted so that employees would understand that they are not prohibited from compiling wage information on their own or discussing their working conditions with others. The rule could reasonably be construed by employees to prohibit them from discussing information concerning terms and conditions of employment including wages, which they may reasonably perceive to be within the scope of the broad and undefined category, "employee information."

The Board has found similar rules prohibiting the disclosure of "*employee*" information to be unlawful. See, e.g., *Flamingo Hilton-Laughlin*, 330 NLRB 287, 288 fn. 3, 291 (1999) (rule prohibiting revealing "confidential information regarding our customers, fellow employees, or Hotel business" found unlawful); *University Medical Center*, 335 NLRB 1318, 1322 (2001), enf. denied in pertinent part 335 F.3d 1079 (D.C. Cir. 2003) (rule prohibiting "release or disclosure of confidential information concerning patients or employees" found unlawful); *IRIS USA, Inc.*, 336 NLRB 1013, 1014, 1016 (2001) (rule prohibiting the disclosure of trade secrets or confidential information, "whether about [the company], its customers, suppliers, or employees" found unlawful.).

My colleagues rely on *Super K-Mart*, 330 NLRB 263, 266 (1999), and *Lafayette Park Hotel*, supra, in support of their finding that the rule here cannot be reasonably construed to implicate Section 7 rights. First, I note that I agree with the dissents in both of those cases. Second, I find that those cases are distinguishable on their facts. In neither of those cases did the rule explicitly prohibit the disclosure of "employee" information. Here, where the rule explicitly forbids the disclosure of "employee" information, it is reasonable for the employees to be uncertain about which employee information can be disclosed and which cannot. This, I find, is the essence of "chilling."[4] Thus, as stated by Member Liebman in her dissent in *Super K-Mart*, supra, 330 NLRB at 266,

> Confronted with this rule, employees, contemplating discussion of wage and benefit or other information obtained from the Respondent concerning terms and conditions of employment, would have to choose between discussing the information, and risking discipline, or foregoing the discussion and giving up a right protected by the Act. The Act prohibits an employer from forcing employees to make that choice. Either way, their Section 7 rights are infringed, for the threat of discipline obviously interferes with, restrains, and coerces employees in the exercise of a protected right.

In sum, in light of the rule's ambiguity, which must be construed against the Respondent, employees may reasonably believe that protected Section 7 activity is prohibited by this rule. Accordingly, I find that the presence of this rule in the employee handbook would reasonably tend to chill employees in the exercise of their Section 7 rights. Therefore, I conclude, contrary to my colleagues, that its maintenance violates Section 8(a)(1) of the Act.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

[2] See, e.g., *International Business Machines*, 265 NLRB 638 (1982).

[3] *Pontiac Osteopathic Hospital*, 284 NLRB 442, 465 (1987); *Waco, Inc.*, 273 NLRB 746, 747–748 (1984).

[4] My colleagues opine that the rule would not reasonably be construed as restricting employees' discussions about their own wages and working conditions because it appears within the larger provision prohibiting disclosure of "proprietary information" such as "information assets and intellectual property." The location of the provision is insufficient, in my view, to eliminate the ambiguity as to the reach of this rule. As set forth above, I would construe the ambiguity against the Respondent as the drafter of the rule.

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT promulgate or maintain rules prohibiting you from entering company property after hours without authorization to the extent that such rules apply to areas other than company buildings and working areas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our rule that prohibits you from entering "company property after hours without authorization" to the extent that the rule prohibits your presence in areas other than company buildings and working areas, WE WILL remove that rule from our employee handbook, and WE WILL advise you in writing that the rule is no longer being maintained.

MEDIAONE OF GREATER FLORIDA, INC. AN AFFILIATE OF AT&T BROADBAND LLC

Ananyo "Tito" Basu, Esq., for the General Counsel.
Seth H. Borden and *Eric P. Simon, Esqs.*, for the Respondent.

DECISION

GEORGE CARSON II, Administrative Law Judge. This case was submitted by stipulation dated May 16, filed on May 23, 2002. The charge, filed on December 5, 2000, was amended on February 15 and November 28, 2001, and January 30, 2002. The complaint issued on January 31, 2002. The complaint alleges that the Respondent violated Section 8(a)(1) of the National Labor Relations Act by promulgating and maintaining certain rules relating to employee conduct. The Respondent's answer denies any violation of the Act. I find that the Respondent's rules relating to plant access and solicitation do violate the Act as alleged in the complaint.

On the entire record, and after considering the briefs filed by the General Counsel and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Mediaone of Greater Florida, an affiliate of AT&T Broadband LLC, a Florida corporation, is engaged in the provision of cable television, telephone, and internet service at various locations including the greater Jacksonville, Florida, area. From those business operations, during the past 12 months, the Respondent derived gross revenues in excess of $1,000,000. In conducting its business, the Respondent advertised various national brand products. The Respondent admits, and I find and conclude, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent admits, and I find and conclude, that International Brotherhood of Electrical Workers Local 177, AFL–CIO (the Union), is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Introduction

The parties have stipulated that, in January 2001, the Respondent promulgated and since January 2001, "has maintained in force and effect an Employee Handbook . . . at all of Respondent's facilities in the United States." The handbook is designated as Exhibit 8.

The complaint, in paragraph 4(a), (b), and (c), refers to three separate provisions of the employee handbook (the handbook), and alleges that, by maintaining those provisions, the Respondent is "interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act."

There is no evidence that any of the provisions alleged in the complaint were promulgated in response to employee organizational activity nor is there any evidence of enforcement of the rules. Nevertheless, "[w]here the rules are likely to have a chilling effect on Section 7 rights, the Board may conclude that their maintenance is an unfair labor practice, even absent evidence of enforcement. *Lafayette Park Hotel*, 326 NLRB 824, 825 (1998).

B. Facts, Contentions, and Findings

1. The no-access rule

Subparagraph 4(a) of the complaint alleges that the Respondent has violated the Act by maintaining a prohibition on "entering company property after hours without authorization." The foregoing prohibition, appearing on page 21 of the handbook, is set out in a list of "Category One-Performance Issues" that include various other examples of prohibited conduct such as violating the smoking and tobacco use rule and reporting for work improperly dressed. No additional explanation regarding the prohibition upon access is contained in the handbook.

The applicable test for valid no-access rules is set forth in *Tri-County Medical Center*, 222 NLRB 1089 (1976), which explains that a no-access rule concerning off-duty employees is valid only if it (1) limits access solely with respect to the interior of the plant and other working areas; (2) is clearly disseminated to all employees; and (3) applies to off-duty employees seeking access to the plant for any purpose and not just to those employees engaging in union activity, and that except where justified by business reasons, a rule which denies off-duty employees entry to parking lots, gates, and other outside nonworking areas will be found invalid. See also *Timken Co.*, 331 NLRB 744, 752 (2000); *Eagle-Picher Industries*, 331 NLRB 169, 175 (2000). The stipulation cites no "business reasons" justifying the rule.

The Respondent notes that its rule does not prohibit employees from remaining after work or reporting early, and it argues that a reasonable interpretation of the rule means that access is prohibited when there is "no active business being conducted on the premises," that the rule "merely says that employees may not enter the Company's premises in the middle of the night." The stipulation does not establish that the facility is

closed "in the middle of the night" or that no employees report to work or leave work during that period. The rule does not specify what constitutes "after hours" or whose hours are being referred to. Although the stipulation does not specify the shifts or reporting times of employees, the handbook, at page 30, refers to changes in "regular shifts" and "scheduled hours" in order to serve customers, language that assumes the existence of multiple shifts and fluctuating work schedules. Thus, it would appear that some personnel are present throughout each 24-hour period, even "in the middle of the night," to assure that there is no interruption in the cable television, telephone, and internet services that the Respondent provides. Thus, a reasonable employee would read the rule as a prohibition upon "entering company property after [his or her] hours without authorization." The rule, as written, restricts entry to all company property, not just buildings and work areas. At best, the term "after hours" is ambiguous and "any ambiguity in the rule must be construed against the Respondent as the promulgator of the rule." *Lafayette Park Hotel*, supra at 828.

The rule, as written, prohibits employee access to all company property "after hours without authorization," and it thereby unlawfully denies employees access, to "parking lots, gates, and other outside nonworking areas." *Tri-County Medical Center*, supra. The stipulation sets forth no business justification for the unlawfully broad restriction. By maintaining an unlawfully broad no-access rule the Respondent has violated Section 8(a)(1) of the Act.

2. The no-solicitation rule

Subparagraph 4(b) of the complaint alleges that the Respondent has violated the Act by informing its employees: "You may not solicit employees on company property." The foregoing statement appears on page 45 of the handbook in an index titled "Business Integrity and Ethics Policies at a Glance." The index includes over 20 entries that are listed alphabetically and include insider trading, nondiscrimination, no solicitation, and protecting company assets. Under the index entry "Non-Solicitation," which is in bold typeface, is a short statement in regular typeface stating: "You may not solicit employees on company property." Page 45 is an index. The page reference for nonsolicitation is page 69. The rule set out on page 69, standing alone, is presumptively valid. It prohibits solicitation by employees "in work areas during work time." The rule appearing on page 69 is not alleged to violate the Act.

The Respondent argues that it would not be reasonable for employees to read the prohibition upon solicitation on company property on page 45 and "ignore the full explanation" as set out on page 69 and "assume" that employees must conduct themselves by what they read "from the book's table of contents." Although the more extensive discussion on page 69 informs employees that they may not solicit their fellow employees "in work areas during work time," it does not retract the prohibition against solicitation on company property set out on page 45. *Our Way*, 268 NLRB 394 (1983), held that "rules prohibiting solicitation during working time are presumptively lawful because such rules *imply* that solicitation is permitted during nonworking time, a term that refers to the employees' own time." [Emphasis added.] Thus, the rationale of *Our Way* is that employees may *infer* that conduct that is not prohibited is permitted. In this case, there is no basis for an inference that solicitation is permitted on company property during nonworking time because the employees have already been informed on page 45 that there is to be no solicitation on company property. Rather than negating the prohibition set out on page 45, the rule on page 69 emphasizes that there is to be no disruption of employees as they perform their duties. Thus, the rule on page 69 reinforces the prohibition set out on page 45. That prohibition is all inclusive. There is no statement in the rule on page 69 that makes clear to employees that they may solicit their fellow employees on company property when not on work time.

Maintenance of an unlawfully broad no-solicitation rule, even in the absence of evidence of enforcement, inhibits employees from engaging in otherwise protected organizational activity and violates the Act. *Olathe Healthcare Center*, 314 NLRB 54, 58 (1994). The Respondent's policies at no point make clear that employees are permitted to engage in solicitation on company property during nonworking time. By maintaining an unlawfully broad no-solicitation rule prohibiting solicitation "on company property," the Respondent has violated the Act.

3. The nondisclosure rule

Subparagraph 4(c) of the complaint alleges that the Company has prohibited employees from "discuss[ing] and/or disclos[ing] employee information," citing pages 74 and 75 of the handbook. The index, on page 45, includes a policy relating to "Protecting Company Assets." At page 73, the handbook sets out this policy as it relates to protecting "Physical Property." At pages 74 and 75, the handbook sets out the policy regarding "Proprietary Information" as follows:

> You're responsible for the appropriate use and protection of company and third party proprietary information, including *information assets* and *intellectual property*. [Emphasis in the original.] Information is any form (printed, electronic or inherent knowledge) of company or third party proprietary information. Intellectual property includes, but is not limited to:
>
> - business plans
> . . . .
> - trade secrets and non-public information
> - customer and employee information, including organization charts and databases
> - financial information
> - patents, copyrights, trademarks, service marks, trade names and goodwill
>
> While it's not improper for you to use proprietary information in the general course of doing business, you must safeguard it against loss, damage, misuse, theft, fraud, sale, disclosure or improper disposal. Always store proprietary inform[ation] in a safe place.
>
> You many not use or access the proprietary information of the company or others for personal purposes or disclose non-public information outside the company . . . .

The complaint alleges a prohibition against "discuss[ing] and/or disclos[ing] employee information." The provisions

appearing on pages 74 and 75 of the handbook at no point refer to discussion. The prohibition against disclosure specifically relates to "*information assets* and *intellectual property*," proprietary information. The General Counsel, citing *Flamingo Hilton-Laughlin*, 330 NLRB 287 (1999), and *University Medical Center*, 335 NLRB 1318 (2001), argues that the Respondent has prohibited "disclosure of information about employees" and that employees "reasonably would understand" the provisions relating to disclosure to include information regarding their "terms and condition of employment." I disagree. Unlike the cases cited by the General Counsel, and similar cases such as *IRIS U.S.A., Inc.*, 336 NLRB 1013 (2001), the Respondent's rule at no point uses the term "confidential" or refers to keeping information about employees confidential. The policy herein relates to "*information assets* and *intellectual property*" of the Company, "private business information" that the Company has every right to protect. See *Super K-Mart*, 330 NLRB 263, 264 (1999). The examples of intellectual property relating to employees that are given are "private business information," organization charts and databases. The General Counsel's argument requires dissecting the policy relating to protecting proprietary information by lifting the term "employee information" from the entry that refers to "customer and employee information, including organization charts and databases" and coupling it with the term "disclosure" which is included in the affirmative requirement that employees "must safeguard it [proprietary information] against loss, damage, misuse, theft, fraud, sale, disclosure or improper disposal." A reasonable reading of the foregoing policy makes clear that employees are obligated to protect the Respondent's proprietary information from improper disclosure. They are not to sell or disclose private business information such as customer lists or employee databases. The policy at no point refers to confidential employee information or to wages, hours, or working conditions. The rule does not relate to or curtail the right of employees to discuss matters relating to their wages, hours, or working conditions. As in *Super K-Mart*, supra, "employees reasonably would understand from the language of the . . . [foregoing] provision that it is designed to protect the Respondent's legitimate interest in maintaining the confidentiality of its private business information, not to prohibit discussion of wages or working conditions." The rule herein "does not implicate employee Section 7 rights." *Lafayette Park Hotel*, supra at 826. I shall recommend that this allegation be dismissed.

CONCLUSION OF LAW

By maintaining an unlawfully broad rule prohibiting employee access to all company property "after hours without authorization" and by maintaining an unlawfully broad rule providing that employees "may not solicit employees on company property" the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having promulgated and maintained unlawfully broad rules prohibiting off-duty employees from entering company property without authorization and from prohibiting employees from "solicit[ing] employees on company property," must rescind those rules insofar as they prohibit access to property other than company buildings and working areas and prohibit solicitation other than during working time.

The Respondent will also be ordered to post an appropriate notice.

On these findings of fact and conclusion of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, Mediaone of Greater Florida, an affiliate of AT&T Broadband LLC, Jacksonville, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Promulgating and maintaining a rule prohibiting employees from entering company property after hours without authorization to the extent that the foregoing rule applies to areas other than company buildings and working areas.

(b) Promulgating and maintaining a rule prohibiting employees from soliciting employees on company property.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the rule that prohibits employees from entering company property after hours without authorization to the extent that the rule prohibits their presence in areas other than company buildings and working areas.

(b) Rescind the rule that prohibits employees from soliciting employees on company property.

(c) Within 14 days after service by the Region, post at its facilities in Jacksonville, Florida, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2001.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.