

**CONFIDENTIAL PROPRIETARY, COMMERCIAL
AND TRADE SECRET INFORMATION**

May 30, 2014

Via Email

Donna Giliberto
Records Access Officer
New York Department of Public Service
Public Service Commission
Three Empire Plaza
Albany, NY 12223

Re: Request for Confidential Commercial and Trade Secret Status/Exemption from Disclosure for Response of Comcast Corporation and Time Warner Cable to Department Staff's First Set of Interrogatories and Document Requests

Ms. Giliberto:

Enclosed please find the Response of Comcast Corporation ("Comcast") and Time Warner Cable Inc. ("Time Warner Cable") to the First Set of interrogatories and document requests issued by Department of Public Service Staff on May 20, 2014. Given the highly sensitive nature of the information enclosed herein, such information respectfully must be treated as confidential commercial and trade secret information (hereinafter, "Trade Secret Information") and as such be exempted from disclosure pursuant to Sections 87 and 89 of the NY Public Officers Law (POL) and Title 16, Section 6, of the NY Code of Rules and Regulations (NYCRR).

The Public Officers Law permits the Public Service Commission ("Commission"), as a state agency, to deny access to records that are "trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."¹ The Commission's rules further provide that "a trade secret may consist of any formula, pattern, device or compilation of information which is used in one's business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it."² The factors that the Commission considers in determining trade secret status include "(i) the extent to which the disclosure would cause unfair economic or competitive damage; (ii) the

¹ N.Y. Pub. Off. Law § 87(2)(d).

² 16 NYCRR § 6-1.3(a).

extent to which the information is known by others and can involve similar activities; (iii) the worth or value of the information to the person and the person's competitors; (iv) the degree of difficulty and cost of developing the information; (v) the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and (vi) other statute(s) or regulations specifically excepting the information from disclosure."³

The Trade Secret Information satisfies the Commission standard set forth above. In light of the highly competitive nature of the industries in which Comcast and Time Warner Cable compete, disclosure of the Trade Secret Information would cause substantial injury to the competitive positions of Comcast and Time Warner Cable. The existence of competition in the communications industries within which Comcast and Time Warner Cable operate has been well-established in prior Commission proceedings.⁴ This Trade Secret Information includes, *inter alia*, specific details concerning Comcast and Time Warner Cable's current operations, products and services, future business plans, customer and location information, and performance data. If competitors were to obtain this information, they could use such information to modify their own business plans to obtain advantages over Comcast and Time Warner Cable.

In particular, the Trade Secret Information includes, without limitation, data that has never been publicly disclosed, is not known by others, and cannot be developed or duplicated by others. If disclosed, such information would be invaluable to competitors. For example, information concerning competitive intelligence, customer offerings in areas served by competitive offerings, rates, terms and services contained in private contracts, product details, and strategic investment expenditures and plans would, if disclosed, provide those competitors with proprietary information they do not today possess and that would provide such competitors with an unfair competitive advantage in the marketplace, particularly in light of the fact that Comcast and Time Warner Cable do not possess reciprocal information. The Trade Secret

³ 16 NYCRR § 6-1.3(b)(2).

⁴ See, e.g., Case 03-C-1220, Report: Competitive Analysis of Telecommunications in NY; and Case 05-C-0616, Proceeding on the Motion of the Commission to Examine Issues Related to the Transition to Intermodal Competition in the Provision of Telecommunications Services, Statement of Policy on Further Steps Toward Competition in the Intermodal Telecommunications Market and Order Allowing Rate Filings (issued April 11, 2006) and DPS Staff White Paper, "Telecommunications in New York: Competition and Consumer Protection," (issued September 21, 2005); Case 03-C-0971, Proceeding on Motion of the Commission to Consider the Adequacy of Verizon New York Inc.'s Retail Service Quality Improvement Processes and Programs, Ruling on Protective Order and Access by Competitors to Allegedly Confidential Information (February 23, 2007); Matter 09-01904 – 2010 Customer Service Annual Report for All Time Warner Cable New York Cable Systems, Determination of Appeal of Trade Secret Determination (issued August 26, 2011); Department of Public Service Staff, Report on Verizon Service Quality – Second Quarter 2013 (filed Session of August 15, 2013).

Information would be indisputably invaluable to competitors of Comcast and Time Warner Cable and would thus, if disclosed, cause substantial injury to Comcast and Time Warner Cable.⁵

Comcast and Time Warner Cable note that the Response and the information referenced and incorporated therein (which includes numerous exhibits) are being provided on a cooperative basis, subject specifically to the reservation of rights set forth in the Response.

Finally, please note that the exhibits referenced and incorporated into the Response are already on file with your office, as they are the same exhibits that accompanied the Response of Comcast and Time Warner Cable to Department staff's informal information requests, filed May 7, 2014.

Comcast and Time Warner Cable look forward to continuing to work with Department Staff concerning this matter, and would be glad to discuss any aspect of the foregoing. Please do not hesitate to contact the undersigned with any questions or concerns.

Respectfully submitted,

Andrew M. Klein
Counsel for Comcast Corporation

cc: Maureen O. Helmer, Esq., *Counsel for Time Warner Cable Inc.*

⁵ Should any person or entity request the disclosure of the Trade Secret Information, Comcast and Time Warner Cable reserve the right to supplement the demonstration that such information must be exempted from disclosure under applicable law and regulation.