

Maureen O. Helmer
Partner

June 8, 2016

VIA ELECTRONIC MAIL

Hon. Kathleen H. Burgess
Secretary to the Commission
New York State Public Service Commission
Three Empire State Plaza
Albany, New York 12223-1350

**RE: Joint Petition of Charter Communications, Inc. and Time Warner Cable Inc. for Approval of a Transfer of Control of Subsidiaries and Franchises; for Approval of a Pro Forma Reorganization; and for Approval of Certain Financing Arrangements
Case 15-M-0388**

Dear Secretary Burgess:

On behalf of Charter Communications, Inc. ("Charter"), attached is a Supplemental Statement in Opposition to Mr. Henner's Appeal of the Records Access Officer's Determination, 16-02 along with declarations in support. This filing is being submitted to respond to your May 24, 2016 letter that directed Charter to explain the thrust of its earlier filing and submit additional declarations pertinent to the trade secret analysis.

Respectfully submitted,

/s/ Maureen O. Helmer

Maureen O. Helmer
Laura L. Mona
Counsel for Charter Communications, Inc.

cc: Peter Henner

**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

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Joint Petition of)	
)	
CHARTER COMMUNICATIONS, INC.)	
)	
and)	Case 15-M-0388
)	
TIME WARNER CABLE INC.)	
)	
For Approval of a Transfer of Control of)	
Subsidiaries and Franchises; for Approval of)	
a Pro Forma Reorganization; for Approval of)	
Assignment of 16 Franchises; and for Approval)	
of Certain Financing Arrangements)	
_____)	

**Charter Communications, Inc.’s Supplemental
Statement in Opposition to Mr. Henner’s Appeal of the
Records Access Officer Determination 16-02**

June 8, 2016

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**Charter Communications, Inc.’s Supplemental
Statement in Opposition to Mr. Henner’s Appeal of the
Records Access Officer Determination 16-02**

Charter Communications, Inc. (“Charter”), and its new affiliate Time Warner Cable Inc. (“TWC”) (collectively, “Charter Companies” or “Companies”)¹ respectfully submit this Supplemental Statement in further support of its request for confidential treatment under the State Freedom of Information Law (“FOIL”) of information regarding the number of homes not passed (the “Deployment Data”) and in response to the Secretary to the Commission’s letter dated May 24, 2016. The request for confidential treatment was granted by the Records Access Officer (“RAO”) in Determination 16-02, issued May 4, 2016. Following an appeal by Mr. Peter Henner, the Companies filed a response in opposition to the appeal. This Supplemental Statement addresses concerns raised by the Secretary’s May 24, 2016 letter regarding the trade

¹ Note that while the documents at issue in Mr. Henner’s appeal were submitted by the individual Companies, the Companies officially merged on May 18, 2016 such that this Supplemental Statement is filed on behalf of the newly merged company.

secret analysis, and clarifies the thrust of the Companies' filings with respect to the request for confidential treatment of the Deployment Data. New declarations from Noel Dempsey and James Gregory Mott in support of the two-prongs of the trade secret analysis are attached. Because many of the same factors used to determine whether information is a trade secret are also evaluated in the substantial competitive injury analysis, many of the statements in the previously submitted declarations were meant to provide support for both tests. However, to provide clarity, the new declarations have been organized to show support for each specific prong of the trade secret analysis, with additional information added to support the analysis.

I. BACKGROUND

On February 18, 2016, the Companies filed the Deployment Data with the Commission's Records Access Officer ("RAO"). On March 28, 2016, Mr. Peter Henner, on behalf of his clients, requested an unredacted copy of this filing. On April 1, 2016, the RAO requested that the Companies file a revised redacted version of the data, which the Companies filed on April 4, 2016. In the revised redacted documents, the Companies disclosed the municipality and franchise information, and retained redaction for the Deployment Data. On April 6, 2016, Mr. Henner responded, stating that the latest submission by the Companies was not responsive to his request. On the same day, the RAO advised that the Companies could file a Statement of Necessity in furtherance of the RAO's intention to make a formal determination regarding the Companies' requests for protection from disclosure. On April 20, 2016, the Companies filed their Statement of Necessity along with the supporting declarations of Noel Dempsey, then an employee of TWC, and James Gregory Mott of Charter.

On May 4, 2016, the RAO issued Determination 16-02 and found that the Companies' Deployment Data warranted exception from disclosure as both a trade secret and confidential

commercial information. In granting the Companies' request for continued protection from disclosure, the RAO found that "the Companies make a compelling case for trade secret protection for the information limited to the 'homes not passed' category."² On May 10, 2016, Mr. Henner filed an appeal of the RAO's determination. On May 19, 2016, the Companies submitted a response in opposition to Mr. Henner's appeal, and included the declarations of Noel Dempsey and James Gregory Mott, as previously submitted in the Companies' Statement of Necessity. A copy of the relevant filings and determinations of the Commission's RAO are included in Appendix A.

On May 24, 2016, the Secretary to the Commission filed a response to Charter stating that these declarations did not appear to address the "two-pronged" test for trade secret status, as outlined in the recent *Verizon* decision, and only addressed the "likelihood of substantial competitive injury" test. The Secretary directed Charter to "correct any misapprehension of the thrust of its filing" or supply additional declarations that addressed the trade secret test.

In addition to attempting to gain access to this information through a FOIL request to the Commission, Mr. Henner also submitted a FOIL request to the New York State Empire State Development ("ESD") agency, Broadband Program Office. The ESD RAO allowed the Companies to submit revised redacted documents and a Statement of Necessity to justify confidential treatment of the Deployment Data. On April 20, 2016, the Companies filed with the ESD RAO a true and exact copy of the Statement of Necessity submitted to the Commission, along with true and exact copies of the supporting declarations of Noel Dempsey and James Gregory Mott. Based on that Statement of Necessity and supporting declarations, on May 10, 2016, the ESD RAO issued his determination, finding that the Deployment Data met both the

² RAO Determination 16-02 at 8.

definition of a trade secret and would cause substantial injury to the Companies' competitive position if disclosed, and granted the exception from disclosure of the Deployment Data.

On May 16, 2016, Mr. Henner appealed the ESD RAO's determination, questioning the determination and analysis. On May 25, 2016, the Companies submitted a response in opposition to Mr. Henner's appeal to the ESD RAO. The Companies response was substantially similar to the response in opposition to Mr. Henner's appeal that the Companies submitted to the Commission, and included the same declarations initially filed with the Statement of Necessity that was submitted to both the Commission and ESD.

On May 31, 2016, the ESD Records Access Appeals Officer denied Mr. Henner's appeal finding that the Statement of Necessity and the supporting declarations provided a sufficient showing that the Deployment Data met the trade secret factors and that it also supported the substantial competitive harm analysis. The ESD Records Access Appeals Officer also noted that many of the trade secret factors also support the substantial competitive harm analysis. A copy of the filings and determinations of the ESD are included in Appendix B.

This Supplemental Statement and the supporting declarations reiterate the Companies' position that the number of unserved homes should be granted confidential protection because it includes trade secret and confidential commercial information relative to the Charter Companies' broadband deployment.

II. APPLICABLE LAW

Because the Secretary's May 24, 2016 letter questions only the trade secret test and whether the prior declarations support that analysis, this Supplemental Statement focuses mainly on the trade secret analysis. The "two-prong" analysis of the trade secret test is further discussed below.

As background, the New York State Appellate Division, Third Department's, recent decision in *Verizon v. Public Service Commission* found that Public Officers' Law § 87(2)(d) provides two *alternate* standards, or "tests," to determine whether information should be exempted from public disclosure.³ As such, information will be exempted from disclosure if it is *either* (1) a trade secret; or (2) if disclosure would result in a likelihood of substantial competitive injury, referred to as the "substantial injury test." Therefore, if *either* test is met, the information must be exempted from disclosure. It should be noted that many of the trade secret factors also support the substantial competitive injury test, as was noted by the EDS Records Access Appeals Officer and as further discussed below.⁴

A. Trade Secret

The Third Department's *Verizon* decision laid out a "two-prong" approach to determining the existence of a trade secret. "First, it must be established that the information in question [1] is a 'formula, pattern, device or compilation of information [2] which is used in one's business, and [3] which gives [one] an opportunity to obtain and advantage over competitors who do not know or use it.'"⁵ Each component of this first prong as applied to the Deployment Data and supporting declarations is discussed in detail below. The second prong established in *Verizon* set forth the trade secret factors as follows:

Second, if the information fits this [first prong] general definition, then an additional factual determination must be made 'concerning whether the alleged trade secret is truly secret by considering:

- (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 *Verizon New York, Inc. v. New York State Public Service Commission*, 137 A.D.3d 66 (3d Dep't 2016).

⁴ Letter from Julene Beckford, Associate Counsel and Records Access Appeals Officer, to Peter Henner, regarding ESD FOIL Request #1927 – Appeal, at 5 (May 31, 2016).

⁵ *Verizon*, 137 A.D.3d at 72; Restatement of Torts § 757, comment b.

- (3) the extent of measures taken by the business to guard the secrecy of the information;
- (4) the value of the information to the business and its competitors;
- (5) the amount of effort or money expended by the business in developing the information; [and] (*sic*)
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.’⁶

These trade secret factors are non-exclusive, and not all factors must be established to prove that a trade secret exists.⁷ Many of these same factors are also used in the analysis for whether disclosure would result in substantial competitive injury, as discussed below.

B. Substantial Competitive Injury

The “substantial competitive injury” test, evaluates whether disclosure of the confidential information “would be likely to cause substantial injury to the competitive position of the subject commercial enterprise.”⁸ The RAO’s Determination noted that the Department of Public Service Staff continues to rely on the New York Court of Appeals decision in *Encore College Bookstore v. Auxiliary Service Corporation of the State University of New York at Farmingdale*⁹ to evaluate whether substantial competitive injury would result from disclosure of the confidential information.¹⁰

In *Encore*, the Court of Appeals noted that “whether ‘substantial competitive harm’ exists . . . turns on the commercial value of the requested information to competitors and the cost of acquiring it through other means” and that a showing of actual competitive harm was not

⁶ *Verizon*, 137 A.D.3d at 72-73; Verizon Determination of Appeal at 17; Restatement of Torts § 757, comment b.

⁷ The Commission followed this approach in the Verizon Determination of Appeal noting that “in compliance with the Appellate Division’s decision, the entity resisting disclosure ‘must make a sufficient showing with respect to each of the six factors,’ any trade secret factor that is not established would be deemed to weigh against a finding that the information constitutes a trade secret.”

⁸ 16 NYCRR § 6-1.3(b)(2).

⁹ *Encore College Bookstores v. Auxiliary Serv. Corp.*, 87 N.Y.2d 410 (1995).

¹⁰ RAO Determination 16-02 at 8.

required but “[r]ather, actual competition and the likelihood of substantial competitive injury is all that need be shown.”¹¹ The *Encore* court also noted that “where [] disclosure is the sole means by which competitors can obtain the requested information, the inquiry ends [there].” It should be noted that the ESD Records Access Appeals Officer also recognized that “if the release of the information through FOIL is the only way that competitors can access the information at issue, then the competitive injury analysis ends.”¹²

Under 16 NYCRR Section 6-1.3(b)(2), the Commission delineated factors to determine whether confidential commercial information “would be likely to cause substantial injury to the competitive position of the subject commercial enterprise.”¹³

Factors to be considered include, but are not necessarily limited to:

- (i) the extent to which the disclosure would cause unfair economic or competitive damage;
- (ii) the 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.¹⁴

Factors (ii), (iii), (iv), and (v) of the competitive injury analysis overlap with trade secret factors (1), (4), (5), and (6), respectively. As such, the Companies’ declarations in support of the Statement of Necessity were meant to provide statements that satisfied both the trade secret and

¹¹ *Encore*, 87 N.Y.2d at 421 (internal quotes omitted).

¹² RAO Determination at 5.

¹³ 16 NYCRR § 6-1.3(b)(2).

¹⁴ 16 NYCRR § 6-1.3(b)(2).

competitive injury tests. The specific factor or way in which the declarations support each test, prong, or analysis was further explained in the Statement of Necessity, which is attached here in Appendix A.

III. SUPPLEMENTAL STATEMENT

To provide further clarity, new declarations of Noel Dempsey and James Gregory Mott are being submitted as part of this supplemental response. The new declarations have been organized by the two prongs of the trade secret analysis. The evaluation of the two prongs are discussed in more detail below.

It should be noted that because the Secretary felt that the prior declarations largely went to the substantial injury test, the new declarations do not address the substantial injury test and it is not discussed as part of this Supplemental Statement. The Companies respectfully request that if the Secretary has further questions regarding the substantial injury test that are not addressed by the prior declarations or filings, that the Companies be allowed to submit supplemental declarations or statements for that specific purpose.

A. The First Prong: General Definition of a Trade Secret

1. Formula, Pattern, Device, or Compilation of Information

The Deployment Data includes the number of unserved homes in the TWC and Charter franchise areas in New York. The Deployment Data constitutes a “compilation of information” because it consists of a wide array of information that has been combined to give insight into the Companies’ existing broadband deployment and future plans. The information was compiled from a number of sources and databases, including a significant analysis of TWC and Charter’s service territory maps, GIS databases, United States Census Bureau housing units data and data

obtained from the National Telecommunications & Information Administration (“NTIA”). Dempsey Declaration ¶¶ 5-6; Mott Declaration ¶¶ 6-7.

Both TWC and Charter’s data was created based on field walks, desktop surveys, field surveys, and special algorithms. Dempsey Declaration ¶ 6; Mott Declaration ¶ 7. Specifically, the Deployment Data was compiled through mapping of Census Bureau housing units data blocks and NTIA broadband provider service level data blocks against each Company’s proprietary GIS database and other data inputs to derive the number of unserved housing units. Dempsey Declaration ¶¶ 5-6; Mott Declaration ¶¶ 6-7. The data from these individual sources, including the county, municipal type (village, town or city), specific franchise area, and the number of homes not passed, was used to then calculate the total number of homes not passed for each individual franchise area, and then consolidated into one table as was filed with the Commission, and as was transmitted to Mr. Henner in redacted form. Dempsey Declaration ¶ 6; Mott Declaration ¶ 7.

The combination of these various data sources into one, consolidated table clearly meets the first component of the first prong because the data is a “compilation of information.” Moreover, similar information regarding deployment data has been found by the Commission to be a compilation of information.¹⁵

2. Used in One’s Business

The Deployment Data is used by the Companies to develop short and long term business and marketing strategies as well as prioritize and sequence plans for facilities investment.

¹⁵ See Case 14-M-0183, *Joint Petition of Time Warner Cable Inc. and Comcast Corporation for Approval of a Holding Company Level Transfer of Control*, Determination of Appeal, at 3 (Issued January 9, 2015) (finding that the number of passings was a compilation of information).

Dempsey Declaration ¶¶ 7-8; Mott Declaration ¶ 8. Therefore, the Deployment Data is clearly relevant to and used in both Companies' businesses.

3. Which Gives [One] An Opportunity To Obtain And Advantage Over Competitors Who Do Not Know Or Use It

The Deployment Data gives the Companies “an opportunity to obtain advantage over competitors who do not know or use it” because the information is based on internal databases that are not publicly known or available and provides the Companies with insight into which homes in its franchises would be prime candidates for deployment of services, marketing efforts to that extent, and overall strategic business plans to extend service. Dempsey Declaration ¶¶ 5, 8-10; Mott Declaration ¶¶ 6, 8-11. As the Companies are in constant competition with numerous other providers, the confidential information allows the Companies to better plan future deployments and facilities investments thereby giving the Companies an advantage over competitors who may seek to expand their own service territories to acquire new customers. Dempsey Declaration ¶¶ 9-10 ; Mott Declaration ¶¶ 9-10.

A. The Second Prong: The Trade Secret Factors

Factor 1: The Extent To Which The Information Is Known Outside Of The Business:

This data is not otherwise publicly available, and is not disclosed to the investment community. Dempsey Declaration ¶ 11; Mott Declaration ¶ 12. Only high-level, aggregated data is provided to the investment community. Dempsey Declaration ¶ 11; Mott Declaration ¶ 12. While some granular data may be provided, it is only after the conclusion of construction. Dempsey Declaration ¶ 11; Mott Declaration ¶ 12.

Factor 2: The Extent To Which It Is Known By Employees And Others Involved In The Business:

Only upper management, outside consultants who developed the datasets, and limited TWC and Charter employees that have prepared and compiled the Deployment Data have access to the information. Dempsey Declaration ¶ 12, Mott Declaration ¶ 13. After compilation of the information, employees only have access on a need-to-know basis for implementation of the marketing plans or to plan time and materials for the physical deployment. Dempsey Declaration ¶¶ 12-13; Mott Declaration ¶¶ 13-14. While Charter relies on an outside vendor (Frontier) to assist with preparing the Deployment Data, Charter's contract with Frontier contains comprehensive terms ensuring that Charter's confidential, proprietary, and trade secret information is handled properly and not disclosed to third parties. Mott Declaration ¶ 13.

Factor 3: The Extent Of Measures Taken By The Business To Guard The Secrecy Of The Information:

After the information is compiled, employees only have access on a need-to-know basis for strategic, facilities and network planning and development and implementation of marketing plans. Dempsey Declaration ¶ 13; Mott Declaration ¶ 14. The Companies employ a variety of measures to restrict access to sensitive and confidential information. TWC uses password-protected shared document libraries, restricts access to information by job description and category, and requires all employees to participate in annual training to ensure compliance with data protection practices. Dempsey Declaration ¶ 13. Charter restricts the information to a small group of individuals who interact with Frontier during the course of their work. Mott Declaration ¶ 14. As noted above, Frontier is bound to guard the secrecy of the information by way of its contract with Charter. Mott Declaration ¶ 13-14.

Factor 4: The Value Of The Information To The Business And Its Competitors:

The Deployment Data is valuable to the Companies' competitors because if they were given access to this data, they would gain free information that the Companies compiled at their own cost and effort. Dempsey Declaration ¶¶ 10, 14; Mott Declaration ¶¶ 10-11, 15. Competitors would be able to use this information to identify markets that present significant opportunities. Dempsey Declaration ¶ 14; Mott Declaration ¶ 10, 15. Armed with that cost and effort-free information, the competitors could engage in "red lining" or "cherry-picking" hot spots and build their own networks only in the most lucrative and low-risk markets. Dempsey Declaration ¶¶ 10, 14; Mott Declaration ¶ 11. Access to this data would enable incumbent providers to better prevent competitive entry, as it would inform them of areas where TWC and Charter are actively looking to expand their footprint. Dempsey Declaration ¶¶ 10, 14; Mott Declaration ¶ 11. The information is extremely valuable to the Companies as it was the result of a costly, complex, and time-consuming process that has intrinsic and immeasurable value because it is used to determine future strategic plans of the Companies. Dempsey Declaration ¶¶ 14-15; Mott Declaration ¶¶ 8, 15.

Factor 5: The Amount Of Effort Or Money Expended By The Business In Developing The Information:

Compilation of the Deployment Data was a costly and complex endeavor which involved significant financial and employee resources. Dempsey Declaration ¶¶ 14-15; Mott Declaration ¶¶ 15-16. The information was derived from number of databases, which the Companies incurred significant expenses to develop and maintain. Dempsey Declaration ¶ 5-6, 15; Mott Declaration ¶ 6-7, 16. Over the past 10 years, TWC has been updating its plant records into a single GIS system to enable it to more efficiently and effectively drive intelligent network

expansion in effort that exceeded a cost of \$128 million. Dempsey Declaration ¶ 15. Similarly, in addition to retaining the services of Frontier to develop the underlying data, Charter has expended millions of dollars and considerable man-hours over the past several years to develop and maintain the data Frontier relied on to generate the Deployment Data. Mott Declaration ¶ 16.

Factor 6: The Ease Or Difficulty With Which The Information Could Be Properly Acquired Or Duplicated By Others:

As both of the declarations filed by the Companies discussed in detail, much of the information was developed from the Companies' internal databases, and it would be extremely costly, complex, time-consuming and extraordinarily difficult for others to duplicate the information. Dempsey Declaration ¶¶ 5-6, 16; Mott Declaration ¶¶ 6-7, 17. At best, anyone attempting to replicate the Deployment Data would only be able to achieve rough estimates without expending a tremendous amount of time and money by, for instance, conducting a visual assessment of every mile of outside plant deployed in the system. Dempsey Declaration ¶ 16; Mott Declaration ¶ 17. Therefore, the Deployment Data could not be easily replicated without access to the confidential information.

IV. CONCLUSION

Based on the detailed declarations submitted here and in the prior filings, analysis of the two-prongs of the trade secret test clearly show that the Deployment Data is indeed a trade secret. As such, the RAO's Determination to grant protection from disclosure should not be disturbed. The RAO carefully described the issues and facts presented by both parties, and evaluated those issues and facts against the proper legal standards. In so doing, the RAO correctly determined that the Deployment Data qualified as a trade secret as well as met the

substantial competitive injury test such that disclosure would provide an advantage to the Companies' competitors to the detriment of the Companies. Both standards and tests being met, the Deployment Data should not be disclosed, and Mr. Henner's appeal should be denied.

Dated: June 8, 2016

S/

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Case 15-M-0388

DECLARATION OF NOEL DEMPSEY

Purpose and Background

1. My name is Noel Dempsey and I am a Vice President with Charter Communications, Inc. ("Charter"). Prior to May 18, 2016, when Charter completed its acquisition of Time Warner Cable Inc. ("TWC" or the "Company"), I was the Group Vice President in the Department of Network Expansion and Outside Plant Design at TWC. I was appointed to that position in April 2013. My responsibilities include outside plant expansion, construction, activation and design for residential and commercial services. I have more than twenty years of experience in the cable industry and I have held positions in the Regional Engineering Operations and Regional Network Engineering departments at TWC prior to my recent position.

2. I submit this Declaration in connection with the Supplemental Statement submitted in further support of the Charter Response in Opposition to the Appeal of Mr. Peter Henner, submitted in the above-referenced proceeding with regards to the request for confidential treatment of the broadband deployment information (“Deployment Data”), as submitted on behalf of TWC. My declarations are limited to the Deployment Data for TWC only. This is my second declaration regarding this matter.

3. I have been advised that, on February 18, 2016, the Deployment Data was previously submitted to the Commission and the Broadband Program Office with much of the information redacted, and that the subsequent April 8, 2016 submission released all information with the exception of the detailed number of homes not passed, the information at issue here. The TWC Deployment Data contains the number of homes not served, or not “passed,” by TWC in each municipality in New York by franchise.

4. The purpose of this Declaration is to explain how the TWC Deployment Data is a trade secret that, if disclosed, would give unfair advantage TWC’s competitors to the detriment of TWC.

PRONG ONE: THE TRADE SECRET GENERAL DEFINITION

a. **Formula, Pattern, Device, or Compilation of Information**

5. The TWC Deployment Data was compiled by TWC through a process that incorporates information from multiple data sources and geographic information systems (“GIS”). Pursuant to this process, TWC combines internal data and data from publicly available sources to create a proprietary data resource that it uses to analyze potential opportunities, such as potential residential and commercial passings, and to evaluate and plan strategic and speculative builds that may correspond to a significant residential, commercial or combined revenue opportunity.

Data sources include information drawn from (i) TWC’s internal resources, such as TWC’s GIS database; and (ii) public resources, such as the United States Census Bureau housing units data and data obtained from the National Telecommunications & Information Administration (“NTIA”) that TWC acquires, combines and analyzes at its own expense for its own purposes.

6. The creation of TWC’s internal data is a multi-step process, including but not limited to, field walks, desktop surveys, field surveys and the development of special algorithms. The Deployment Data that was sent to the Commission includes the output of an analysis conducted by a team of GIS engineers and TWC’s internal and consulting data analysts. This effort required mapping of the Census Bureau housing units data blocks, NTIA broadband provider service level data blocks to TWC’s proprietary GIS service area environment and other data inputs necessary to ultimately derive the number of unserved housing units in TWC’s current franchise footprint outside of New York City.

b. Used in One’s Business

7. The Deployment Data results from TWC’s detailed analysis of existing and potential service territories and is an important tool that the Company may use to define its short and long term business strategy and prioritize its plans for facilities investment. As such, the Deployment Data has tangible value, in terms of the financial and operational investment TWC has made to create the data and the competitive and strategic insight that the data provides to TWC.

8. TWC uses the Deployment Data to develop strategic business plans for future deployment, including sequencing of deployment for the most efficient use of manpower, resources, and money, and to target specific geographic areas for marketing strategies.

c. *Opportunity to Obtain Advantage over Competitors Who Do Not Know or Use It*

9. While the Deployment Data represents homes that are not yet served by TWC, there are other providers in these areas with which TWC faces fierce competition.¹ With the near ubiquitous availability of Satellite, wireless providers, competitive service providers and incumbent carriers, TWC is in constant competition with numerous other providers. As such, the data has tangible financial and strategic value to TWC's competitors. If allowed access to the data, TWC's competitors would receive a tangible financial benefit, in terms of being spared the cost of independently collecting market data and information about facilities deployment. TWC's competitors would also receive competitively valuable insight into TWC's basis for strategic decision-making involving the Company's future investments, facilities construction and marketing plans. Clearly, if the situation were reversed, TWC's competitors would be loath to release such information to TWC and other competitors.

10. If given access to these data, TWC's competitors would gain a significant unfair advantage, not only because they would gain free information that TWC compiled at its own cost and effort, but also because they could use that information to identify markets that present significant opportunities with little or no competition. Armed with this cost and effort-free information, TWC's competitors could engage in "red lining" or "cherry-picking" hot spots and build their own networks only in the most lucrative and low-risk markets. Additionally, access to this data would enable incumbent providers to better prevent competitive entry, as it would inform them of areas where TWC is actively looking to expand its footprint. Tipping off incumbent competitors gives them the opportunity to initiate marketing campaigns and otherwise lock in their customers to long term contracts to discourage TWC from entering their service

¹ For a complete list of the TWC's competitors in the franchise areas outside of New York City, please refer to Dempsey Declaration, Exhibit 1.

areas. This could materially change the penetration rate assumptions on the Company's build plan if the potential customers were all locked into contracts.

PRONG TWO: THE TRADE SECRET FACTORS

a. Factor 1: Extent to Which Information Is Known Outside of the Business

11. The Deployment Data is not publicly available, and is not disclosed to the investment community. TWC generally does not provide investors anything other than high-level data concerning the aggregate number of homes passed by its network. While TWC has provided certain more granular data concerning passings and deployment in connection with its participation in the ConnectNY program, that data is very different from the Deployment Data, particularly because it is provided only after the conclusion of construction.

b. Factor 2: Extent To Which Information Is Known by Employees and Others Involved in the Business

12. Within TWC, only TWC employees and vendors who have prepared and compiled the information and only TWC management who are involved in strategic planning and high-level business decisions have access to the Deployment Data. In fact, these data sets in their uncompiled formats are available only to certain teams within TWC. These data sets in their compiled forms are available only to market development and network expansion designers. Otherwise, data sets are compiled only for specific reasons, for example, in this instance, to respond to a Commission request.

c. Factor 3: Measures Taken By the Business to Guard the Secrecy of the Information

13. After compilation of the information, employees only have access on a need-to-know basis for strategic, facilities and network planning and development and implementation of marketing plans. TWC takes the protection of the Deployment Data very seriously and, in fact,

employs a variety of measures to restrict access to sensitive and confidential information, including the use of password-protected shared document libraries, restricting access to information by job description and category, and also by requiring all employees to participate in annual training to ensure compliance with data protection practices.

d. Factor 4: Value of Information to the Business and Its Competitors

14. Compilation of the information was a costly and complex endeavor. As mentioned above, a number of database and information resources are used to develop the information, not to mention the combined efforts of a variety of TWC organizations and outside contractors. If competitors were to obtain TWC's Deployment Data, they could identify and target their resources to invest and market in areas where TWC is competitively vulnerable or conversely, refrain from targeting certain areas where TWC is competitively strong. In the long term, this will result in market balkanization, as competitors could avoid the cost and risk of independent market analysis and simply pick and choose only the most ripe market opportunities. Moreover, TWC's competitors could use the Deployment Data to gauge the success of TWC's market penetration such that competitors would use that information to develop competitive strategies or in negative marketing campaigns.

e. Factor 5: Amount of Effort and Money Expended to Develop the Information

15. TWC has invested significant financial and employee resources to procure this data and continues to incur costs to maintain these data assets. For the past 10 years, TWC has been investing in updating its plant records to ensure that they are spatially accurate and consolidated into a single GIS system that enables the Company to analyze, manage and present spatial and geographic data to drive intelligent network expansion. TWC's financial investment in this effort exceeds \$128 million dollars.

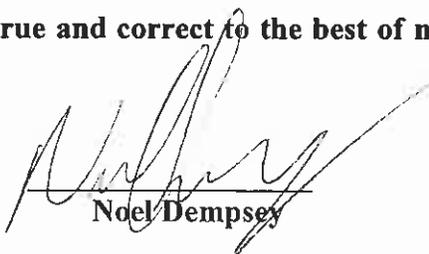
f. Factor 6: Ease or Difficulty With Which the Information Could be Properly Acquired or Duplicated by Others

16. Because much of the information was developed from TWC databases, it would be extremely costly, complex, time-consuming and extraordinarily difficult for others to duplicate the information. At best, anyone attempting to replicate the Deployment Data would only be able to achieve rough estimates without expending a tremendous amount of time and money by, for instance, performing a visual assessment of every mile of outside plant deployed in the system.

Conclusion

17. In sum, in my judgment, the Deployment Data is a trade secret that, if disclosed, will harm TWC as (a) it will allow competitors to benefit from TWC's own costly efforts to develop data, thus reducing the competitors' costs as compared with TWC's; and (b) it will provide guidance on how to compete against TWC more effectively. In either case, the result will be competitive harm to TWC in terms of lost customers, lost revenues, and lost investments.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.


Noel Dempsey

June 8, 2016

DEMPSEY DECLARATION - EXHIBIT 1

ALTERNATIVE PROVIDERS IN TWC FRANCHISE AREAS OUTSIDE OF NYC

Adams CATV Inc.
Deposit Telephone Company, Inc.
Alteva Hometown, Inc.
Frontier Communications Corporation
Armstrong Telephone Co of New York
Atlantic Broadband (Penn), LLC
Berkshire Cable Corp.
Berkshire Telephone Company
Cablevision Lightpath, Inc.
Cogent Communications Group
Level 3 Communications, LLC
Light Tower Fiber LLC
Verizon New York Inc.
Cassadaga Telephone Corporation
Castle Cable TV, Inc.
Champlain Telephone Company
Charter Communications Inc.
Chautauqua & Erie Telephone Corporation
Chazy & Westport Telephone Corporation
Citizens Telephone Company of Hammond, NY
Comcast of New York, LLC
Crown Point Network Technologies, Inc.
CSC Holdings, Inc.
Delhi Telephone Company
MTC Cable
Delhi Telephone Company
DFT Local Service Corporation
Dunkirk and Fredonia Telephone Company
Edwards Telephone Company, Inc.
Empire Long Distance Corporation
Empire Telephone Corp.
Fiber Technologies Networks, L.L.C.
Finger Lakes Technologies Group
Haefele TV Inc.
Keene Valley Video, Inc.
Mid-Hudson Cablevision, Inc.
Margaretville Telephone Co Inc
MegaPath Corporation
MTC Cable
Newport Telephone Company, Inc.
Nicholville Telephone Company, Inc.

Slic Network Solutions, Inc.
Northland Networks
Oneida County Rural Telephone Co.
Ontario Telephone Company Inc.
Oriskany Falls Telephone Corp
Pattersonville Telephone Company
Port Byron Telephone Company
Primelink, Inc.
Slic Network Solutions, Inc.
Southern Cayuga County Cablevision, LLC
State Telephone Company, Inc.
Taconic Telephone Corporation
The Middleburgh Telephone Co
Township Telephone Company, Inc.
Trumansburg Telephone Company, Inc.
Westelcom Network
Vernon Telephone Company, Inc.
Windstream Corporation

**BEFORE THE
NEW YORK PUBLIC SERVICE COMMISSION**

_____)	
Joint Petition of)	
)	
CHARTER COMMUNICATIONS, INC.)	
)	
and)	Case 15-M-0388
)	
TIME WARNER CABLE INC.)	
)	
For Approval of a Transfer of Control of)	
Subsidiaries and Franchises; for Approval of)	
a Pro Forma Reorganization; for Approval of)	
Assignment of 16 Franchises; and for Approval)	
of Certain Financing Arrangements)	
_____)	

DECLARATION OF JAMES GREGORY MOTT

Purpose and Background

1. My name is James Gregory Mott, and I am the Group Vice President of Field Operations Engineering for Charter Communications, Inc. (“Charter”). My business address is 6399 South Fiddlers Green Circle, Greenwood Village, Colorado 80111. I am responsible for design, construction, and maintenance of Charter’s approximately 210,000 miles of plant, including Charter’s New York State systems. I have held this position since November 30, 2015. I hold a B.A. in geology from The Colorado College, and a Master of Science in Engineering from the University of Michigan, Ann Arbor.

2. I have more than 18 years of experience in the cable industry, and prior to my current position I was Vice President of Field Engineering for Charter’s Northeast Region and had

responsibility for approximately 35,000 miles of plant in that region. Prior to joining Charter, I was Senior Vice President of ISP, Construction, and Critical Systems at Cablevision Systems Corporation in Bethpage, New York, where I was also responsible for plant design and construction. Previously I served as Area Director of Technical Operation and Engineering at Comcast Cable Communications, Inc. in Millersville, Maryland, where I was responsible for all technical operations.

3. I submit this Declaration in connection with the Supplemental Statement submitted in further support of the Charter Response in Opposition to the Appeal of Mr. Peter Henner, submitted in the above-referenced proceeding with regards to the request for confidential treatment of the broadband deployment information (“Deployment Data”) submitted on behalf of Charter and Time Warner Cable Inc. (“TWC”). This declaration addresses the Deployment Data for Charter only. This is my second declaration submitted in this matter.

4. The Charter Deployment Data contains an estimate of the number of homes not served, or not “passed,” by Charter’s broadband-enabled network in each municipality in New York served by Charter’s Plattsburgh System. I have been advised that, on February 18, 2016, the Deployment Data was submitted to the New York Public Service Commission (“Commission”) and the Broadband Program Office with much of the information redacted. Subsequently, on April 8, 2016, Charter and TWC submitted the Deployment Data in a manner that made public all of the information in the document with the exception of the detailed number of homes not passed, the information at issue here.

5. The purpose of this Declaration is to explain how the Charter Deployment Data is a trade secret that, if disclosed, would give unfair advantage to competitors to the detriment of Charter. The Charter Deployment Data was compiled at Charter’s direction with the assistance of a

vendor, Frontier GeoTek, Inc. (“Frontier”), and incorporates information from multiple data sources and geographic information systems (“GIS”).

PRONG ONE: THE TRADE SECRET GENERAL DEFINITION

a. Formula, Pattern, Device, or Compilation of Information

6. I am informed and believe that in preparing the Charter Deployment Data, Frontier drew from data sources including (i) Charter’s internal resources, such as its GIS database; and (ii) public resources, such as the United States Census Bureau housing unit data and data obtained from the National Telecommunications & Information Administration.

7. Preparation of the Deployment Data required both effort and expense, as Frontier had to evaluate the boundaries of Charter’s franchise areas as compared to its deployed network plant, mapping Census Bureau data blocks, and evaluating other data inputs necessary to ultimately derive the estimated number of unserved housing units in Charter’s current Plattsburgh System franchise footprint. Charter also incurs expense associated with developing and maintaining the underlying non-public data upon which Frontier relied. For example, creation of Charter’s internal data is a multi-step process, including but not limited to, field walks, desktop surveys, field surveys and the development of special algorithms.

b. Used in One’s Business

8. The Deployment Data results from Charter’s detailed analysis of its existing and potential service territories and is an important tool that Charter will use to define its short and long term business strategy and prioritize its plans for facilities investment in the near future. As such, the Deployment Data has tangible value, in terms of the financial and operational investment Charter has made to create the data and the competitive and strategic insight that the data provides to Charter.

c. Opportunity to Obtain Advantage over Competitors Who Do Not Know or Use It

9. The Deployment Data has tangible financial and strategic value to Charter's competitors. There are a number of other providers in Charter's Plattsburgh service area that compete with Charter for voice, broadband, and video customers. The two major satellite video providers (Dish and DirecTV) provide near ubiquitous service throughout the area. The four major wireless carriers (Verizon, AT&T, T-Mobile, and Sprint), and resellers operating on their networks, also offer competitive voice and broadband services throughout most of the area. Incumbent local exchange carriers (and, in the enterprise market, competitive local exchange carriers) compete with Charter for wireline and broadband customers. This means that Charter is in constant competition with numerous other providers across all of its lines of service.

10. If allowed access to the data, Charter's competitors would receive a tangible financial benefit, gaining insight into where Charter does and does not currently offer broadband service. The Deployment Data, if made public, would give Charter's competitors a road map to develop strategic business plans for future deployment, including sequencing of construction for the most efficient use of manpower, resources, and money, and to target specific geographic areas for marketing strategies. Competitors could—and given the opportunity would—identify and target their resources to invest and market in areas where Charter is competitively vulnerable or conversely, refrain from targeting certain areas where Charter is competitively strong.

11. Charter's competitors would also benefit by avoiding the significant cost of independently collecting data and information about Charter's deployment of facilities. Competitors could avoid the cost and risk of independent market analysis and simply focus on the easiest market opportunities.

PRONG TWO: THE TRADE SECRET FACTORS

a. Factor 1: Extent to Which Information Is Known Outside of the Business

12. The Deployment Data is also not publicly available and it is not disclosed to the investment community. While Charter does provide investors high-level data concerning the aggregate number of homes passed by its network, that data is not specific to a particular system or municipality, and reflects the number of new residential passings and new commercial buildings only after the conclusion of construction.

b. Factor 2: Extent To Which Information Is Known by Employees and Others Involved in the Business

13. Charter ensures that the Deployment Data is made available within the company only to those who need to access the data to perform their job functions. Only Charter management who are involved in the strategic planning and high-level business decisions have access to the Deployment Data. To the extent Charter relies on an outside vendor (Frontier) to assist with preparing the Deployment Data, I am informed that Charter's contract with Frontier contains comprehensive terms ensuring that Charter's confidential, proprietary, and trade secret information is handled properly and not disclosed to third parties.

c. Factor 3: Measures Taken By the Business to Guard the Secrecy of the Information

14. As noted above, only Charter management who are involved in the strategic planning and high-level business decisions have access to the Deployment Data. It is not accessible to other Charter employees and is maintained on a “need to know” basis. With respect to information shared with Frontier, such information is not shared outside of small group of individuals within Charter who interact with Frontier in the course of their work. In addition, I am informed that Charter's contract with Frontier contains comprehensive terms ensuring that Charter's

confidential, proprietary, and trade secret information is handled properly and not disclosed to third parties.

d. Factor 4: Value of Information to the Business and Its Competitors

15. Because preparation of the Deployment Data requires access to information available only to Charter or Frontier, it would be costly, complex, time-consuming, and extraordinarily difficult for others to duplicate the Deployment Data. Even to replicate rough estimates of the Deployment Data, a third party would have to expend a tremendous amount of time and money by, for instance, performing a complete visual assessment of every mile of outside plant deployed in the Plattsburgh System. The third party would then have to develop a methodology for matching Charter's defined franchise areas to U.S. Census data and then calculating the number of unserved homes based on all of this information.

e. Factor 5: Amount of Effort and Money Expended to Develop the Information

16. Charter has expended significant resources and employee effort to develop and maintain the data required to derive the Deployment Data. In addition to the expense associated with retaining Frontier, Charter has expended millions of dollars and devoted considerable amounts of employee time over the past several years to develop and maintain the data resources Frontier relied upon in generating the Deployment Data.

f. Factor 6: Ease or Difficulty With Which the Information Could be Properly Acquired or Duplicated by Others

17. Because preparation of the Deployment Data requires access to information available only to Charter or Frontier, it would be costly, complex, time-consuming, and extraordinarily difficult for others to duplicate the Deployment Data. Even to replicate rough estimates of the Deployment Data, a third party would have to expend a tremendous amount of time and money by, for instance, performing a complete visual assessment of every mile of outside plant

deployed in the Plattsburgh System. The third party would then have to develop a methodology for matching Charter's defined franchise areas to U.S. Census data and then calculating the number of unserved homes based on all of this information.

Conclusion

18. In my opinion, the Deployment Data is a trade secret that, if disclosed, will harm Charter because (a) it will allow competitors to benefit from Charter's own costly efforts to develop data, thus reducing the competitors' costs as compared with Charter's; and (b) it will provide a road map on how to compete against Charter more effectively. In either case, the result will be competitive harm to Charter in terms of lost customers, lost revenues, lost investments, and lost future business opportunity.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.



James Gregory Mott

June 8, 2016