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Partner

December 10, 2015

VIA ELECTRONIC MAIL

Honorable Ben Wiles
Administrative Law Judge
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

Confidential Treatment Request for Exhibit 58-A Addendum

Dear Judge Wiles:

Charter Communications, Inc. (“Charter”) and Time Warner Cable Inc. (“TWC”) (collectively, “Petitioners”) seek exemption from public disclosure of portions of the attached Exhibit 58-A Addendum.

Portions of Exhibit 58-A Addendum contain confidential information with regards to Petitioners’ customer base in New York at a granular level, as well as Petitioners’ sensitive strategy and marketing information (“Confidential Information”). Petitioners therefore respectfully submit this confidential treatment request to demonstrate that the Confidential Information qualifies as “trade secret,” and also as “confidential commercial information” exempt from disclosure under Public Officers Law (“POL”) §§ 87(2)(d) and 89(5)(a)(1).

Petitioners also note that the portions of Exhibit 58-A Addendum attached pertain to nonjurisdictional products, services and subjects and seek information about subject matter that falls outside of the scope of review permitted under federal and state law for the types of transactions at issue in the above-captioned proceeding. Petitioners respectfully object to all such interrogatories and document requests. However, they are not withholding any information at this time based on such objection. In addition, Petitioners respectfully reserve all rights under federal and state law and nothing in this Response should be construed as a waiver of any right or objections that may otherwise be available to the parties.

Analysis

POL § 87(2)(d) states in relevant part that agencies must 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.” In the recent *Verizon* case, the Albany County Supreme Court held that the “trade secret” and “substantial competitive injury” tests are two alternative standards, such that information satisfying either test must be exempted from public disclosure under New York’s Freedom of Information Law (“FOIL”).¹ Petitioners respectfully submit that the Confidential Information satisfies each of these alternative standards and must therefore be exempted from disclosure.

a. Trade Secret

The Commission’s Regulations define a trade secret as “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.” These regulations set forth six non-exclusive factors for determining whether particular information should be considered to be a trade secret:

1. the extent to which disclosure would cause unfair economic or competitive damage;
2. the extent to which the information is known by others;
3. the value of the information to the possessor of the data and its competitors;
4. the difficulty and cost of developing the information;
5. the difficulty of recreating the data without permission; and
6. whether the data is otherwise exempted by law from disclosure.

The Confidential Information satisfies each of these factors. The information would be of significant competitive value to Petitioners’ competitors, who could use it to tailor their marketing strategies and budgets. The granular data included in the Confidential Information is not generally available to the public nor does it constitute the type of information that competitors make available to each other in the normal course of business. Instead, this information is the product of a significant investment of time, effort and expense by Petitioners that cannot be replicated by others without Petitioners’ consent. This information is held by the Petitioners on a confidential basis and is not disclosed to others except on a confidential basis or as required by law.

¹ *Matter of Verizon New York Inc. v. New York Public Service Commission*, 46 Misc. 3d 858 (N.Y. Sup. Ct., Albany County July 31, 2014) (“Verizon”).

b. Substantial Competitive Injury

The Confidential Information constitutes information obtained from a commercial enterprise, the disclosure of which would cause substantial injury to the competitive position of the subject enterprise by exposing their market position. The Petitioners are both commercial enterprises. Disclosure of the Confidential Information would make it easier for Petitioners' competitors to tailor their marketing strategies and budgets, conferring on them an advantage over Petitioners. The information is not available to those competitors from any other source, and Petitioners do not have access to comparable information from their competitors.

Accordingly, TWC and Charter respectfully request that you find that the Confidential Information contained in the Interrogatory Responses satisfies both the "trade secret" and the "substantial competitive injury" tests under the POL and must be exempted from disclosure under FOIL. To protect the confidentiality of this information, the Confidential Information must be maintained in the Department of Public Service's confidential files and must be provided only to interested members of the Commission and DPS Staff, and not otherwise be disclosed or made available, either through FOIL or otherwise.

Respectfully submitted,

/s/ Maureen O. Helmer

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ES/

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