

Maureen O. Helmer
Partner

August 7, 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 Response to DPS-38

Dear Judge Wiles:

Enclosed please find the unredacted confidential version of the response of Charter Communications, Inc. (“Charter”) and Time Warner Cable Inc. (“TWC”) (collectively the “Petitioners”) to the Department of Public Service Staff’s interrogatory DPS-38. DPS-38 requested information with regards to the consolidated capital structure of Charter Communications Corporation, or its successor entity, immediately after the proposed merger is consummated. Given the highly sensitive nature of the enclosed documents (“Confidential Information”), it is respectfully requested that portions of the Petitioners’ Response to DPS-38 are treated as confidential commercial and trade secret information and, as such, exempted from disclosure pursuant to 16 N.Y.C.R.R. § 6-1.3 and Sections 87(2) and 89(5) of the New York State Public Officers Law (“POL”). Redacted, public version of the Response to DPS-38 has been shared with the DPS Staff simultaneously with this filing.

The Confidential Information is a “trade secret,” because it includes Petitioners’ sensitive cost and credit information. Additionally, in light of the highly competitive nature of the industries in which the Petitioners compete, disclosure of the Confidential Information would result in a substantial injury to the competitive position of the Petitioners, by providing an advantage to the Petitioners’ competitors and subjecting Petitioners to significant economic and competitive harm.

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.” Thus, 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”). Petitioners respectfully submit that the Confidential Information satisfies each of these alternative standards and must therefore be exempted from disclosure.

a. Trade Secret

With respect to the first alternative test, 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 sensitive credit information with regards to the merger 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.

b. Substantial Competitive Injury

The Confidential Information also 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 corporate and financial strategies, 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.

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Accordingly, Petitioners respectfully request that you find that the Confidential Information contained in the Petition 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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Enclosures: Response to DPS-38

cc: Secretary (via electronic mail without enclosures)
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