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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-28

Dear Judge Wiles:

Enclosed please find the confidential 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-28. DPS-28 sought copies of HIGHLY CONFIDENTIAL documents, reports and due diligence analyses.

Enclosed are ten (10) documents provided in response to DPS-28. These documents include highly sensitive cost, financial and marketing information, as well as highly confidential due diligence information regarding the proposed multibillion-dollar merger between the two companies ("Confidential Information"). The Confidential Information is filed with a blanket request for confidentiality insofar as the entirety of the documents constitutes confidential information. In addition, Petitioners' note that an 11th document encompassed within DPS-28 was previously produced to DPS Staff as Exhibit 25-A and is not subject to any confidentiality request.

Petitioners respectfully request that the Confidential Information be exempted from disclosure on two grounds. First, the Confidential Information was previously confidentially filed with the Federal Trade Commission ("FTC") and the Department of Justice ("DOJ") in compliance with the Hart-Scott-Rodino Act on June 24, 2015. Because federal law expressly prohibits the disclosure by the FTC or DOJ of any materials provided in response to a Hart-Scott-Rodino investigation by the FTC, the Confidential Information is also exempt from disclosure under New York's Freedom of Information Law ("FOIL").

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Second, under Sections 87(2) and 89(5) of the New York State Public Officers Law ("POL"), the Confidential Information qualifies as "trade secret," and disclosure of this information would result in a substantial injury to the competitive position of the Petitioners.

Petitioners also note that certain portions of DPS-28 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

1. Confidential Information is Exempt from Disclosure under Federal Statute

Under Section 87(2)(a) of the POL, confidential information protection is warranted if the information is "specifically exempted from disclosure by state or federal statute." Highly confidential Information was filed by the Petitioners with the FTC and DOJ in compliance with Hart-Scott- Rodino Act, 15 U.S.C. §18(a). In recognition of the confidential and commercially sensitive nature of the information, Congress expressly directed the FTC and the DOJ to refrain from disclosing any information received in response to a Hart-Scott-Rodino filing. 15 U.S.C. §18(h) specifically states that:

> Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding.

S.C. §18(h). *See also* 5 U.S.C. §§ 552(b)(3) and 552(b)(7).

Therefore, the entirety of the Confidential Information must be treated as confidential and exempted from public disclosure under Section (87)(2)(a) of the POL.

2. Trade Secret and the Substantial Competitive Injury Test

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" (emphasis added). The trade secret and substantial competitive injury tests are two separate standards, such that information satisfying either test must be exempted from public disclosure under FOIL. Petitioners respectfully submit that the Confidential Information satisfies both of these standards and must therefore be exempted from disclosure.

With respect to the trade secret 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 cost, financial and marketing 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. In addition, it contains specific forward projections of sales and marketing assumptions that are not made public and which could have significant securities and investment implications.

With respect to the substantial injury test, disclosure of the Confidential Information would cause substantial injury to the competitive position of the Petitioners by exposing their market position. 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. An understanding of the exact factors considered regarding merger decisions could put the Petitioners at a great disadvantage in negotiating transactions in the future.

Wherefore, for the above stated reasons, Petitioners respectfully request that the Commission find that the Confidential Information is entitled to trade secret and confidential treatment under the Commission's rules and is protected from public disclosure.

Respectfully submitted,

__/s/ _ Maureen O. Helmer
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Enclosures: Response to DPS-28

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