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April 22, 2016

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Lesley Hall
Records Access Officer
Empire State Development
633 Third Avenue, 37th floor
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Christopher Ortiz
Program Counsel
Broadband Program Office
Empire State Development
633 Third Avenue, 37th floor
New York, New York 10017

Re: FOIL Request: Time Warner Cable – Charter Communications broadband franchise
information PSC Case No. 15-M-0388, ESD FOIL No. 1927

Dear Ms. Giliberto, Ms. Hall and Mr. Ortiz:

For the reasons set forth in my previous letter of April 6 to Ms. Giliberto (copy attached), I continue to believe that there are no grounds for Time Warner Cable and Charter Communications (the Companies) to receive confidential treatment and to be permitted to redact the number of unpassed homes from their filing with the Public Service Commission or from the copy of this filing which was submitted to the Broadband Program Office.

I also want to respond to the Statement of Necessity that the Companies submitted on April 20.

I have previously argued that the “Deployment Data” at issue in this request consists only of the number of unserved units within a particular municipality. This is not the “granular” information regarding company operations (cf. Determination of Appeal in Case No. 14-M-0183, *Joint Petition of Time Warner Cable Inc. and Comcast*, p.1, describing “granular” information as the location, total miles, number of passings and estimated completion dates). In response, the Companies acknowledge that this simple number “is exactly the type of information” that they are trying to protect.

The Companies argue that this information is confidential because competitors could use it to identify areas where the Companies are not providing service and the competitors could direct their marketing efforts to those areas. However, as a result of the Merger Order, the Companies will be required to build out these areas in any event, regardless of the activities of their purported competitors. The Companies acknowledge this requirement, but seem to argue that it does not matter because the buildout “will happen over several years.” (Statement of Necessity, p.7). The Merger Order requires that the buildout will begin shortly after the final approval of the merger, and 25% of the units will be connected in each of the four succeeding years.

Obviously, it is a matter of public knowledge that the buildout will occur. The Companies offer no explanation as to how a competitor, knowing that the new merged company will be extending service in a limited amount of time, and that the extension will occur regardless of any activities by the competitor, can use the knowledge of the number of presently unserved units to its benefit.

The Public Service Commission will be conducting further proceedings with respect to the administration of its Merger Order, and these proceedings will presumably be public. In particular, decisions will need to be made: 1) as to the locations of the units to be connected, 2) when the connections will be made, and 3) the relationship between the unserved units identified in the Companies’ February 18 filing and the “underserved” units that are also part of the Merger Order. In addition, units that are not going to be receiving service as a result of the Merger Order (which only covers 145,000 units) will be eligible to benefit from proposals for funding from the Broadband Program Office.

In order to determine these questions, both the Commission and ESD will need to review the data which has been submitted. The Companies acknowledge as much; recognizing the need for DPS staff to have “unfettered access to this data” and in its assertion that “the Companies are working diligently with both the Commission and the BPO to make sure that the regulators can perform their duties seamlessly.” (Statement of Necessity, p.13).

But the duties of both the Commission and the BPO cannot be performed in secret: the municipalities where the Companies hold franchise agreements which stand to benefit from the extension of service, as well as the hundreds of thousands of New Yorkers who are anxiously awaiting the extension of service, have a right to know when or if they are likely to receive it,

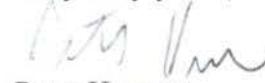
and to participate in the administrative review processes by which the relevant decisions will be made. The Deployment Data is very much a part of that decision making process, and should be available, not only to those entities that formally participate in the administrative proceeding conducted by the PSC, but to the general public that has an interest in it.

Furthermore, in this case, as in the previous proceeding involving Time Warner and Comcast, Case No. 14-M-0183, the Companies have not met their burden of “providing specific and persuasive evidence that the information constitutes a trade secret; instead, [they offered only conclusory allegations without factual support.” (Determination of Appeal, 1/9/15, p.10). Although the Companies have offered affidavits that purport to show the expense incurred in generating the information and their efforts to guard its secrecy, they have not provided any evidence in support of their dubious claim that competitors can use the number of units in a particular municipality to their competitive advantage, especially since the competitors already know that the Companies have a legal obligation to extend service to those municipalities as a result of the Merger Order.

Accordingly, I respectfully urge you to determine that the “Deployment Data”, the number of unpassed housing units in municipalities where the Companies hold franchise agreements is not a trade secret, its disclosure will not cause any competitive injury to the Companies, and to permit access to the unredacted version of the Companies’ February 18, 2016 filing.

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Very truly yours,



Peter Henner

c. Ekin Senlet, Esq.
Maureen Helmer, Esq.