

Maureen O. Helmer  
Partner

February 18, 2016

**VIA ELECTRONIC MAIL**

Records Access Officer  
Donna Giliberto  
New York State Department of Public Service  
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**  

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**Case 15-M-0388**

**Request for Confidential Treatment**

Dear Ms. Giliberto:

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”), Time Warner Cable, Inc (“TWC”) and Charter Communications, Inc. (“Charter”) (the “Companies”) hereby request confidential treatment of the enclosed broadband franchise information showing unserved and underserved areas (collectively the “Confidential Information”). Both redacted and unredacted versions are attached. A copy of this request along with redacted versions of the Confidential Information is being provided to the Secretary of the Commission. Unredacted versions of the Confidential Information and a separate request for confidential treatment are being provided to the NYS Broadband Program Office.

The Companies respectfully request that the Commission grant protection for the attached Confidential Information because it includes trade secret and confidential commercial information relative to TWC and Charter’s deployment of broadband including granular information regarding the number of unpassed homes. Disclosure of the Confidential Information would provide an advantage to the Companies’ competitors and a competitive loss to the Companies, and subject the Companies to significant economic and competitive harm. The Companies, 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).

### 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.” The New York State Appellate Division, Third Department, recently upheld the Albany County Supreme Court’s ruling in *Verizon v. New York State Public Service Commission* which found that trade secret records submitted to an agency are exempt from public disclosure under New York’s Freedom of Information Law (“FOIL”), and do not require an additional showing of substantial competitive injury.<sup>1</sup> In its decision, the Third Department affirmed 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 FOIL.<sup>2</sup> The Companies 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 Confidential Information is a compilation of information used in the Companies’ business which provides the Companies a competitive advantage. The Confidential Information is very valuable, is not publicly available, and could not practicably be duplicated without the Companies’ consent or

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<sup>1</sup> *Verizon New York, Inc. v. New York State Public Service Commission*, 46 Misc. 3d 858 (N.Y. Sup. Ct., Albany Co. July 31, 2014), *aff’d by Verizon New York, Inc. v. New York State Public Service Commission*, No. 521107, slip op 00239 (3d Dep’t Jan. 14, 2016).

<sup>2</sup> *Verizon*, No. 521107, slip op 00239, at \*9 (3d Dep’t Jan. 14, 2016).

without great expense. Disclosure of the Confidential Information would cause the Companies to suffer economic and competitive harm, and would provide the Companies' competitors an unfair economic or competitive advantage.

The Confidential Information includes detailed information regarding unserved and underserved homes, as opposed to aggregated data, and is only available to the Companies. The Confidential Information not only reflects a significant investment of the Companies' time and effort, it could be used by competitors to obtain a highly disaggregated level of information that implicitly sets forth important aspects of the Companies' deployment, improvement and investment plans, if disclosed. Therefore, public disclosure of the Confidential Information would cause economic harm to the Companies and its customers in that competitors could unfairly obtain this information at "quite a bargain" without the same investment as the Companies. Moreover, the information included in the Confidential Information would be of significant competitive value to the Companies' competitors, since it would be relevant to the Companies' future plans for broadband deployment.

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. The Confidential Information could not be replicated without consent from the Companies. Therefore, the information provides an opportunity for a competitive advantage to the Companies, if kept confidential. Conversely, disclosure of the Confidential Information would confer a competitive advantage to the businesses competing with the Companies.

Finally, the information included in the Confidential Information can be used to support detailed analyses, on a very granular level, of the Companies' cost of doing business as well as future business plans. Such information could not be developed independently by the Companies' competitors, and any estimates developed through publicly available or data from third-party sources, if possible at all, would be expensive and burdensome to assemble, and less accurate than the data provided in the Confidential Information.

***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 Companies are commercial enterprises. Disclosure of the Confidential Information would make it easier for the Companies' competitors to tailor their marketing strategies and budgets, conferring on them an advantage over the Companies. The information is not available to those competitors from any other source, and the Companies do not have access to comparable information from their competitors.

**Conclusion**

Accordingly, the Companies respectfully request that you find that the Confidential Information satisfies both the "trade secret" and the "substantial competitive injury" tests under

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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**

Maureen O. Helmer  
*Counsel for Time Warner Cable, Inc. and  
Charter Communications, Inc.*

cc: Secretary (with Redacted documents via electronic mail)