April 24, 2026

Records Access Officer
Molly Magnis
New York State Department of Public Service
Three Empire State Plaza
Albany, New York 12223-1350

RE: Request for Confidential Treatment of Subscribers and Plant Miles, Village of Parish

Case:

Dear Ms. Magnis:

Pursuant to Public Officers Law ("POL") §§ 87(2), 89(5) and Part 6-1.3 of the Commission's Regulations (16 N.Y.C.R.R. § 6-1.3), Charter Communications ("Charter") respectfully requests confidential treatment for portions of Charter's subscriber and new plant miles ("Confidential Information"). A redacted version of the Confidential Information is being filed with the Secretary of the Commission today.

The Confidential Information includes detailed information regarding Charter's number of subscribers in specific areas, along with locations of Charter infrastructure, as well as Charter's confidential operating reports. The data contained in the Confidential Information will be the basis for Charter's future deployments, service quality improvements, and business plans. As discussed below, the Confidential Information qualifies as a trade secret, which mandates exception from disclosure. In addition, the Confidential Information qualifies as confidential commercial information which, if publicly disclosed, would cause substantial injury to the competitive position of Charter.

Analysis

a. Trade Secret and Confidential Commercial Information Tests:

POL § 87(2)(d) states in relevant part that agencies must deny access to records or portions thereof that are "trade secrets or are derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."[1] The New York State Appellate Division, Third Department, upheld the New York State 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.[2] In its decision, the Third Department affirmed that the "trade

[1] POL § 87(2)(d).

[2] *Verizon New York, Inc. v. New York State Public Service Commission*, 137 A.D.3d 66 (3d Dep't 2016).

secret" and "substantial competitive injury" tests are two alternative standards, such that information satisfying either test must be exempted from public disclosure under FOIL.[3] Charter respectfully submits that the Confidential Information satisfies each of these alternative standards and must therefore be exempted from disclosure.

1. Trade Secret

Relying on the Restatement of Torts definition of a trade secret, the Third Department's *Verizon* decision laid out a "two-prong" approach to determine the existence of a trade secret. "First, it must be established that the information in question is a 'formula, pattern, device or compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it.'"[4] This definition is also found in the Commission's Regulations under 16 NYCRR § 6-1.3(a). For the second prong, *Verizon* laid out the factors enumerated in the Restatement:

> Second, if the information fits [the] general definition, then an additional factual determination must be made concerning whether the alleged trade secret is truly secret by considering:
>
> (1) the extent to which the information is known outside of the business;
> (2) the extent to which it is known by employees and others involved in the business;
> (3) the extent of measures taken by the business to guard the secrecy of the information;
> (4) the value of the information to the business and its competitors;
> (5) the amount of effort or money expended by the business in developing the information;
> (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.[5]

The six factors are non-exclusive, and not all factors must be established to prove that a trade secret exists.[6] Notably, many of these same factors are also used in the analysis for whether disclosure would result in substantial competitive injury, discussed below.

The Confidential Information meets the general definition of a trade secret. Assembled from a variety of sources including internal databases, the Confidential Information is a "compilation of information." The Confidential Information is used in Charter's business to measure, develop strategies for, and plan resources related to its service quality. The Confidential Information gives Charter an advantage over competitors who do not know or use the information because the Confidential Information is used to evaluate and plan for initiatives related to service quality, and to ensure retention of Charter's customers. Therefore, the Confidential Information meets the first prong of the trade secret analysis.

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[3] *Verizon*, 137 A.D.3d at 73.

[4] *Verizon*, 137 A.D.3d at 72.

[5] *Verizon*, 137 A.D.3d at 72-73.

[6] The Commission has followed this approach in its FOIL Determination in Case 14-C-0370, *In the Matter of a Study on the State of Telecommunications in New York State,* Determination of Appeal of Trade Secret Determination, 17 (issued March 23, 2016) ("Thus, in compliance with the Appellate Division's decision, the entity resisting disclosure 'must make a sufficient showing with respect to each of the six factors,' any trade secret factor that is not established would be deemed to weigh against a finding that the information constitutes a trade secret").

Regarding the second prong, the Confidential Information is, indeed, a secret. The Confidential Information is not publicly available, is not readily disclosed in this granular form to the investment community, and is closely guarded internally. Only upper management and necessary Charter employees that have prepared and compiled the Confidential Information have access to it such that internal access is given only on a need-to-know basis. While some aggregated data may be released under certain circumstances, it is only after either a program or initiative has been rolled-out, and even then, not all of the granular detail is disclosed. Thus, the Confidential Information meets factors one, two and three of the secrecy analysis portion of the trade secret test.

The Confidential Information includes detailed information relative to Charter's customer base and performance metrics that, if disclosed, could be used by competitors to obtain a highly disaggregated level of information that implicitly sets forth important aspects of Charter's operations and customers. Charter has expended a significant amount of time, money, and effort to develop and compile the Confidential Information. If disclosed, competitors would unfairly obtain this information at "quite a bargain" without the same investment as Charter, and would be spared the cost of independently collecting market data and information about Charter's network and operations. Moreover, the Confidential Information would be of significant competitive value to Charter's competitors, since it would be relevant to Charter's ability to respond to and initiate price reductions. Thus, factors four and five are met.

The Confidential Information does not constitute the type of information that competitors make available to each other in the normal course of business and could not be easily replicated without consent from Charter. The Confidential Information could be used to support detailed analyses, on a very granular level, of Charter's cost of doing business. Such information could not be developed independently by competitors, and any estimates developed through publicly available sources or 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. Thus, the Confidential Information meets the sixth trade secret factor to show that the Confidential Information is, and should remain, a secret.

The Commission's regulations, in 16 NYCRR §6-1.3(b)(2)(i), contain an additional factor to be considered—namely, the extent to which the disclosure would cause unfair economic or competitive damage. As described above, disclosure would cause such unfair damage because competitors that gained knowledge of such highly disaggregated information would be able to use such knowledge to compete for customers and enhance their operations at Charter's expense, while nothing would obligate competitors to make similar information about their operations available to Charter.

2. Substantial Competitive Injury

The "substantial competitive injury" test evaluates whether disclosure of the confidential information "would be likely to cause substantial injury to the competitive position of the subject commercial enterprise."[7] In *Encore College Bookstore v. Auxiliary Service Corporation of the State University of New York at Farmingdale* the New York Court of Appeals evaluated whether

[7] Case 15-M-0388 - *Joint Petition of Charter Communications Time Warner Cable for Approval of a Transfer Control of Subsidiaries and Franchises, Pro Forma Reorganization, and Certain Financing Arrangements*, Determination of the Records Access Officer 16-02, at 8 (May 4, 2016) ("Determination 16-02"); 16 NYCRR § 6-1.3(b)(2).

substantial competitive injury would result from disclosure of confidential information.[8] In *Encore*, the Court of Appeals found that whether substantial competitive harm exists turns on the commercial value of the requested information to competitors and the cost of acquiring it through other means.[9] *Encore* remarked that "where [ ] disclosure is the sole means by which competitors can obtain the requested information, the inquiry ends [there]."[10] Notably, much of the trade secret analysis and factors also support the substantial competitive injury test.

As presented above in the analysis of trade secret factors four and five, the Confidential Information has tangible value to Charter that would be severely diminished if the Confidential Information were disclosed. If given free, unfettered access to this information, competitors could tailor their own operations, marketing strategies, and budgets, and attempt to roll-out their own programs prior to Charter or engage in negative marketing campaigns. As presented for trade secret factor six, the only way competitors could access the information in its compiled and granular form as presented in the Confidential Information would be through disclosure or by expending a significant amount of time and money to develop mere estimates of the information contained in the Confidential Information. Therefore, the Confidential Information has significant commercial value to Charter and its competitors, such that if it were disclosed, Charter would suffer substantial financial and competitive injury and unfair economic or competitive damage.

Conclusion

Accordingly, Charter respectfully requests confidential treatment for the Confidential Information, which satisfies both the "substantial competitive injury" and "trade secret" tests under the POL. To protect confidentiality, the Confidential Information must be maintained in the DPS's confidential files and must be provided only to interested members of the Public Service Commission and DPS Staff, and not otherwise be disclosed or made available, either through FOIL or otherwise.

Please do not hesitate to contact the undersigned with any questions regarding this matter at 315-634-6170 or via email at alice.kim@charter.com.

Respectfully submitted,

Alice J. Kim
Senior Director, Government Affairs
Charter Communications

[8] Determination 16-02 at 8, *citing Encore College Bookstores v. Auxiliary Serv. Corp*., 87 N.Y.2d 410 (1995).

[9] *Encore*, 87 N.Y.2d at 420-21.

[10] *Id.* at 420.