

April 24, 2026

VIA ELECTRONIC FILING

Ms. Michelle Zaludek
Records Access Officer
New York State Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Re: Case 23-C-0734 - Verified Joint Petition of Consolidated Communications Holdings, Inc., Berkshire Telephone Corporation, Berkshire Cable Corporation, Consolidated Communications Enterprise Services, Inc., Chautauqua and Erie Telephone Corporation, Chautauqua & Erie Communications, Inc., Taconic Telephone Corporation, and Taconic TelCom Corporation, and Searchlight III CVL, L.P., for Approval of Proposed Transactions Pursuant to Sections 99, 100, and 101 of the New York State Public Service Law

Dear Ms. Zaludek:

Pursuant to the New York State Freedom of Information Law (“FOIL”) (N.Y. Pub. Off. Law §§ 84, et seq. (McKinney)) and Part 6 of the New York State Public Service Commission’s (“Commission”) regulations, Fidium Holdings, LLC (f/k/a/ Consolidated Communications Holdings, LLC) and Consolidated Communications of New York Company, LLC (“CCNY” and together, the “Companies”), by and through their undersigned attorneys, hereby submit this letter in support of their request to protect from public disclosure trade secret, confidential commercial and critical infrastructure information contained in an Excel spreadsheet being filed with the Commission in compliance with the Commission’s Order Granting Joint Petition Subject to Conditions issued on September 24, 2024 in the above referenced proceeding. The spreadsheet contains confidential information related to locations of current and future fiber buildouts by CCNY (the “Confidential Information”).

I. LEGAL STANDARD

The Confidential Information should be protected from public disclosure because it qualifies as trade secret, confidential commercial, and/or critical infrastructure information pursuant to the Commission’s regulations and is thus exempt from disclosure under FOIL. Section 87(2) of the New York State Public Officers Law (“POL”) states in relevant part that agencies may deny access to documents that are: 1) trade secrets; or 2) records submitted to an agency by a commercial enterprise (or records derived from information obtained from a commercial enterprise) and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise. N.Y. Pub. Off. Law § 87(2)(d) (McKinney); Verizon New York Inc. v. New York Pub. Serv. Comm’n, 46 Misc.3d 858, 868 (N.Y. Sup. Ct., Albany Cty. 2014) (“Verizon I”), aff’d 137 A.D.3d 66 (3d Dep’t 2016) (“Verizon II”).

The Commission has also promulgated rules and regulations to implement FOIL. See 16 NYCRR § 6-1.1 et seq. Section 6-1.3 allows a party to seek trade secret or confidential commercial information protection for any records submitted to the Commission. Id. § 6-1.3.

A. Trade Secret Information

The Commission not only has the power, but also the affirmative responsibility to provide for the protection of trade secrets. N.Y. Tel. Co. v. Pub. Serv. Comm'n, 56 N.Y.2d 213, 219-20 (1982). Once an entity establishes that information is trade secret, no further inquiry is required and the record may not be disclosed. See Verizon I at 874.¹

Although the term “trade secret is not defined under FOIL, courts applying New York law generally follow Section 757 of the Restatement of Torts in determining whether information is entitled to protection as a trade secret.” In re Physicians Comm. for Responsible Med. v. Hogan, 29 Misc.3d 1220(A), 10 (N.Y. Sup. Ct. Albany Cnty. Nov. 3, 2010); see also Ashland Mgmt., Inc. v. Janien, 82 N.Y.2d 395, 407 (1993). The Restatement defines a trade secret as “any formula, pattern, device or compilation of information which is used in one’s business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it.” Restatement (First) of Torts §757 (1939) cmt. b. “Whether information is a trade secret depends, in part, upon the ease or difficulty with which the information could be acquired or duplicated by others.” Savannah Bank v. Savings Bank of Fingerlakes, 69 N.Y.S.2d 227, 227 (4th Dep’t 1999).

Similarly, the Commission defines 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.” 16 NYCRR § 6-1.3(a).²

Factors to be considered by the Commission in determining whether to grant trade secret protection include:

- i) the extent to which the information is known outside of the party’s business;

¹ In this case, the Albany County Supreme Court established that while records submitted to an agency under the confidential commercial information exemption require a showing of substantial injury to the competitive position of the subject enterprise to qualify for the exemption, no such showing was required for trade secret information because disclosure of a trade secret, “by its very nature,” adversely impacts the subject entity and an additional evidentiary showing of harm would be “unnecessary and overly burdensome.” Verizon I at 869. As such, the Albany County Supreme Court held that of the categories of information exempt under FOIL, trade secrets “delineate[] a discrete, stand-alone category deserving of protection from disclosure.” Id. at 868.

The Third Department upheld the Albany County Supreme Court’s decision, holding that once information has been established to be trade secret, “it is wholly unnecessary and overly burdensome to require the entity [requesting protection] to then make a separate showing that FOIL disclosure...would cause substantial injury to its competitive position.” Verizon II at 74.

² Confidential commercial information is not expressly defined in the regulations.

- ii) the extent to which it is known by employees and others involved in the party's business;
- iii) the extent of measures taken by the party to guard the secrecy of the information;
- iv) the value of the information to the party and its competitors;
- v) the amount of effort or money expended by the party in developing the information; and
- vi) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Case 14-M-0183 – Joint Petition of Time Warner Cable Inc. and Comcast Corporation for Approval of a Holding Company Level Transfer of Control, Determination of Appeal (Jan. 9, 2015) (citing Ashland, 604 N.Y.S.2d at 918). As indicated, once a party has established that the information at issue is trade secret, no further evidentiary showing is required. Case 14-M-0183, Determination of Appeal (Jan. 9, 2015).

B. Confidential Commercial Information

POL § 87(2) protects records submitted to an agency by a commercial enterprise and records derived from information obtained from a commercial enterprise and if disclosed, would cause substantial injury to the competitive position of the subject enterprise. Verizon I at 864. The New York Court of Appeals has established a two-prong test for determining whether confidential commercial information may be exempt from disclosure. Encore Coll. Bookstores, Inc. v. Auxiliary Servs. Corp. of the State Univ. of N.Y. at Farmingdale, 87 N.Y.2d 410, 419-421 (1995). First, the party seeking exemption must show the existence of “actual” competition and must establish the extent to which competitors can use FOIL to obtain information without cost.³ Encore, 87 N.Y.2d at 420-21. Second, the party must show that disclosure would likely cause substantial harm to its competitive position.⁴ Id. at 421; see also 16 NYCRR § 6-1.3(b)(2); Verizon I at 868-869. Factors to be considered by the Commission in determining whether disclosure would likely cause substantial competitive harm include:

- i) the extent to which the disclosure would cause unfair economic or competitive damage;
- ii) the extent to which the information is known by others and can involve similar activities;
- iii) the worth or value of the information to the person and the person's competitors;
- iv) the degree of difficulty and cost of developing the information;

³ The Court of Appeals has determined that the party seeking exemption need not establish actual competitive harm; “[r]ather, actual competition and the likelihood of substantial competitive injury is all that need be shown.” Encore, 87 N.Y.2d at 421 (citations omitted).

⁴ As discussed above, this requirement does not apply to a party seeking protection under FOIL's trade secret exemption.

- v) the ease or difficulty associated with obtaining or duplicating the information by others without the person's consent; and
- vi) other statute(s) or regulations specifically excepting the information from disclosure.

16 NYCRR § 6-1.3(b)(2).

Importantly, the competitive harm in question does not have to be limited to the submitting entity. As the Secretary to the Commission has stated:

In order to meet its burden, the party seeking the exemption must present specific, persuasive evidence that disclosure will likely cause it, or *another affected enterprise*, to suffer competitive injury.

Case 13-01288 - In the Matter of Financial Reports for Lightly Regulated Utility Companies, Determination of Appeal of Trade Secret Determination at 11 (Aug. 13, 2014) (emphasis added) (citing Markowitz v. Serio, 11 N.Y.3d 43, 51 (2008)).

C. Critical Infrastructure Information

POL Section 89(5) states in relevant part that a person or entity who submits records to any agency may identify those records or portions thereof that may contain critical infrastructure information, and request that the agency that maintains such records except such information from disclosure. N.Y. Pub. Off. Law § 89(5)(a)(1-a) (McKinney 2020). Critical infrastructure is defined as the systems, assets, places or things, whether physical or virtual, so vital to the state that the disruption, incapacitation or destruction of such systems, assets, places or things could jeopardize the health, safety, welfare or security of the state, its residents or its economy. N.Y. Pub. Off. Law § 89(5) (McKinney 2020). The Commission's regulations also allow critical infrastructure information to be protected from public disclosure. 16 NYCRR § 6-1.3(b)(3).

II. ARGUMENT

The Confidential Information provides sensitive information related to current and future fiber buildouts of CCNY's broadband network, including potential addresses to be covered by the buildouts. This information should be protected as trade secret information because it reveals the Companies' business strategy and focus with respect to broadband buildout. Specifically, the Confidential Information could be used as the basis for planning infrastructure investment and deployment and organizing and launching marketing initiatives before competitors have the chance to deploy their own services at the buildout locations. In addition, the Confidential Information is not publicly available, is not readily disclosed and has not been shared with persons outside of the Companies and/or their affiliates except for such agents, counsel and other individuals with a legitimate business need to know and act upon the information and who are under an obligation to hold such information in confidence or who have agreed to keep it confidential. If disclosed, the Confidential Information would be valuable to competitors because it would provide insight into where, when and at what cost the Companies may expand their footprint. In addition, 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 the Companies. Accordingly, the Confidential Information should be protected as trade secret information.

In addition to constituting trade secret information, the Confidential Information should also be protected as confidential commercial information because its release would expose the Companies to an unreasonable risk of harm to its competitive position. Disclosure of this information, which, as noted above, is not generally available to the public and does not constitute the type of information that competitors make available to each other in the normal course of business, would allow competitors to unfairly ascertain details regarding the Companies' broadband program. Furthermore, disclosure of this information would confer a significant economic advantage on these competitors because they would have information about the Companies that they would not have about their competitors. If given access to this information, competitors could tailor their own networks, operations, marketing strategies, and budgets, for example by identifying specific individual targets for sales contacts for competitive services either through direct mail or telemarketing, to the detriment of the Companies. Therefore, the Confidential Information has significant commercial value to Companies and its competitors, such that if it were disclosed, Companies would suffer substantial financial and competitive injury. Accordingly, the Confidential Information should be protected from disclosure as confidential commercial information.

Finally, the Commission has recognized that utility infrastructure is a critical component in maintaining national security and sustaining the economy, and that it is important to safeguard public utility assets. See Case 02-M-0953 - Proceeding on Motion of the Commission as to Telephone and Energy Utility Arrangements for Safeguarding the Security of their Physical Equipment and Cyber Systems, Order Directing Further Action (Sept. 30, 2003). Information that provides specific details regarding utility infrastructure constitutes critical infrastructure information. In this instance, the Confidential Information provides details of CCNY's broadband buildout, including specific locations identified by address. This information should be protected because someone with malicious intent could pinpoint locations to cause damage to the fiber network and to cause significant disruptions of service, thereby jeopardizing the health, safety, welfare or security of the state, its residents and/or the economy.

II. CONCLUSION

In summary, the Confidential Information must be protected from public disclosure because it constitutes trade secret, confidential commercial and/or critical infrastructure information.

Should you have any questions regarding this filing, please contact us.

Respectfully submitted,



Brian T. FitzGerald
Gregory G. Nickson

Enclosure

cc: Scott Brooks (via e-mail w/o confidential enclosures)
Michael Shultz (via e-mail w/o confidential enclosures)