



**Patrick A. Bradford**  
**Partner**  
575 5<sup>th</sup> Avenue, Floor 14  
New York, NY 10017  
O: (917) 744-1225  
pbradford@bradfordedwards.com

August 14, 2024

Hon. Michelle L. Phillips  
Secretary to the Commission  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, NY 12223

**Re: Matter 20-02181- Responses to Brian Ossias' June 14, 2024 Letter and Attachment -Petition of Spectrum New York Metro LLC for an Order of Entry to Upgrade Cable Television Equipment and Facilities Pursuant to Section 228 of the NYS Public Service Law at 29-55 Northern Blvd, Long Island City, NY 11101 owned by QPP, LLC**

Dear Secretary Phillips:

On behalf of my client The Durst Organization, please accept the enclosed submission in response to a June 14, 2024 letter from Brian Ossias of your office. Durst's responses are included as an attachment to this letter. As explained in the attachment, Mr. Ossias granted Durst an extension of time to this date as my office's relocation delayed my receipt of the June 14 letter.

I ask that any future communications about this matter be directed to me at my email and/or new office address (above), and to Michael Rhee, MRhee@durst.org, General Counsel, QPP LLC, c/o The Durst Organization, 1155 Avenue of the Americas, New York, NY 10036.

The Durst Organization has served Petitioner with a copy of this response.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Patrick A. Bradford", written over a horizontal line.

Patrick A. Bradford

Cc: Brian Ossisa (by email)  
Emma E. Marshall, Barclay Damon (Counsel for Petitioner)

Attachment

**STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION**

---

**Response and Opposition to the Petition of Spectrum  
New York Metro, LLC, a subsidiary of Charter Communications, Inc. Matter 20-02181  
for an Order of Entry to the Multi-Dwelling Unit Building located  
at 29-55 Northern Blvd, Long Island City, NY 11101**

---

**RESPONSES TO JUNE 14, 2024 LETTER'S ATTACHMENT**

**PRELIMINARY STATEMENT**

The Durst Organization ("Durst") submits this written response to the June 14, 2024 letter of Brian Ossias, Deputy Director, NYS Department of Public Service, Office of telecommunications to QPP LLP. QPP LLP is a subsidiary of Durst. By telephone conversation on August 1, 2024, Mr. Ossias granted Durst's outside counsel Patrick A. Bradford of Bradford Edwards LLP an extension to August 14, 2024, to respond due to the misdirection of the letter occasioned by the office relocation of Bradford Edwards.

On November 1, 2020, Durst submitted its Response and Opposition to Spectrum's Petition for an order of entry to 29-55 Northern Blvd., Long Island City, NY 11101 (the "Property").<sup>1</sup> Spectrum's Petition sought both inspection and installation rights, all without statutory protections afforded Durst as landlord. In response to DPS's May 30, 2023 and June 5, 2023 orders of limited entry solely for purposes of assessment, Durst permitted Spectrum access to the property. At least as of January 17, 2024, Spectrum advised DPS that it completed its survey, and on July 17, 2024, Spectrum filed an updated report, along with its Scope of Work. Spectrum's SOW still does not explain how they propose to run lines from the core of the building to the building's 958 apartments. As explained below, such a task is now not possible to engineer.

Much has changed since the second quarter of June 2020 when Spectrum (via Charter) first contacted Durst, sending its first notice pursuant to PSL Section 228 on June 22, 2020. The Property is fully constructed and almost all 958 apartments are rented. The Property has two connectivity providers — Verizon (cable) and RCN (cable), along with Natural Wireless (wireless) utilizing all of the available pathways at the Property for the routing of telecommunication cabling to each apartment. Given these facts, it is not possible to have Spectrum's service installed at the Property. Importantly, Spectrum has repeatedly failed to explain how it would install its cable lines within the building's core, run them from the IDF Closet and then into each of the 958 apartments. Spectrum failed to explain this essential engineering requirement in its November 20, 2020 Petition, and in its most recent July 17, 2024 SOW. Simply put, from an engineering point of view, Spectrum was late in time in making its request to be included in the Property. Spectrum knows this all too well. See Charter's Reply to the Response and Opposition filed by QPP LLP, pp. 5-6 ("According to the Landlord, the MDU Property was designed to accommodate up to three cable/high speed internet providers, and the available space has already been taken by other providers at this point. Therefore,...there is not sufficient space to accommodate Charter's infrastructure..."). In its Reply, Spectrum requested expedited review by the DPS. Reply, p. 2 ("Charter respectfully requests expedited treatment on the Petition, as early

---

<sup>1</sup> Spectrum is a subsidiary of Charter Communications, Inc.

as the Commission's December 2020 Session,..."). As a practical matter, Spectrum's request was denied.

The engineering realities in the design of the Property which foreclose Spectrum's ability to install its service can be described as follows: (i) The Property has Point of Entry (POE) sleeves from the street into the Property. (ii) The pathways from the POE to the Main Distribution Frame room (MDF) may be shared. (iii) The pathways from the MDF to the Intermediate Distribution Frame (IDF) closets may be shared. (iv) The IDF closets house telecommunications equipment on every third floor. There is an insufficient amount of available wall space in these closets to accommodate and additional provider's equipment. The IDF closets were designed to hold equipment from three telecommunications providers, and there are three. (vi) There is no longer available pathway capacity in the installed pathways from the IDF closets on every third floor to the individual apartments on each closets' three floors. Such pathway capacity from the IDF closets is necessary for a telecommunications provider to install their microduct or service cable to each apartment's media panels. The Property has in-slab pathways installed for telecommunication provider cable and microduct, and all are now fully utilized by the existing three providers.

As noted above, Durst's inability to include Spectrum in this Property is based on engineering realities, and not on any animus toward Spectrum. Spectrum is present in many other Durst owned buildings, including, 1133 Avenue of the Americas, New York, NY; 1155 Avenue of the Americas, New York, NY; 151 West 42<sup>nd</sup> Street, New York, NY; 205 East 42<sup>nd</sup> Street, New York, NY; 655 Third Avenue, New York, 675 Third Avenue, New York, NY; 114 West 47<sup>th</sup> Street, New York, NY; 100 West 31<sup>st</sup> Street, New York, NY and a Durst residential building located at 3-24 27<sup>th</sup> Avenue, Queens, NY (a building constructed as part of the Halletts Point development). Spectrum contacted Durst about installation in the Hallet's Point property in February 2021, while the current Petition was pending. Though construction had started, Spectrum contacted Durst at a time when it was possible to engineer Spectrum's inclusion in said building located at 3-24 27<sup>th</sup> Avenue, Queens, NY. However, as Spectrum well knows, it not possible to include their service in the Property.

In DPS's letters of May 30, 2023 and June 5, 2023 it was stated: "Through this letter, Charter is granted a limited Order of Entry to assess the building to establish an adequate installation plan for your [Durst's] review and consideration." The DPS's letters also state that once Spectrum "will use the information gained from this limited entry to develop an installation plan that it will present to the landlord in order to gain access to install its facilities. This plan, when adequately completed, should include reasonable conditions to protect the safety, functioning, appearance, aesthetics, and integrity of the building." Durst has, in good faith, reviewed Spectrum's SOW plan, and understands it is insufficient due to engineering impossibility. There is no way to install Spectrum's cables and maintain the safety, functioning, appearance, aesthetics and integrity of the building. Spectrum's able engineers surely know this, which likely explains why Spectrum's SOW fails to provide the most essential information - - from an engineering perspective, how Spectrum's cable can be installed in the core of the building. And even if that were possible, how Spectrum can run hundreds of cables from the IT Closet to over 950 apartments. Engineering realities will not permit Spectrum's request for installation. Accordingly, Spectrum cannot comply with PSL Section 228 and the regulations under 16 NYCRR Sections 898.1 *et seq.*

With this preliminary background, Durst responds to PSC's specific questions as follows:

1. The Response states that the Landlord seeks to provide Charter with safe access. Specifically, what has the Landlord done to provide Charter with safe access?

**RESPONSE: The Landlord provided access to Charter to survey, inspect and assess the Property on March 12, 2021 and June 2, 2021.**

2. The Response states that Charter seeks to gain access without an appropriate agreement in place protecting the Landlord's rights and obligations under PSL §228(1)(a)(l) to protect the safety, functioning, and appearance of the premises, and convenience and well-being of the tenants. Is it the Landlord's position that the PSL requires such an agreement?

**RESPONSE: An agreement between Charter and the Landlord was executed on March 3, 2021 for access by Charter. A separate agreement would be needed before Charter can access the Property for purposes of installation. Any such agreement would have to address the practical engineering matters identified above, including Charter's inability to install their cables within the requirements of the PSL.**

3. The Response states that the Landlord disputes only the manner and terms required for safe entry. State specifically what the Landlord considers to be the manner and terms required for safe entry.

**RESPONSE: The manner and terms required for safe entry are those detailed in the PSL. Given the engineering limitations described above, it is not possible for Charter to install its cables, as the Property's capacity is at its limit.**

4. The Response states that the Landlord would grant access in a manner that complies with all healthcare and safety requirements. State specifically all such healthcare and safety requirements.

**RESPONSE: All applicable health and safety laws contained in the PSL and any other laws, including those dealing with construction in an occupied building. PSL §228(1)(a).**

5. The Response states that three telecommunications companies, that were given entry to the property, complied with required protocols but that Charter has not. State specifically all such required protocols and those with which Charter has not complied.

**RESPONSE: Charter has failed to produce a Scope of Work plan that explains how it would engineer installation of its cables given the physical limitations of the Property described above.**

6. The Response states that Charter is required to comply with New York State health protocols involving COVID-19. Is it the Landlord's position that COVID-19 protocols are still in place? If so, specifically identify such protocols.

**RESPONSE: The New York State COVID protocols and U.S. recommended COVID protocols are no longer in place.**

7. Exhibit B of the Response includes a letter from Mr. Robert Kessler representing QPP to Mr. Cody Barela representing Charter. According to the letter, QPP believes that there is

not sufficient capacity to accommodate an additional cable/HSIA provider without significant retrofitting of existing infrastructure (i.e., conduit, sheetrock, electrical, etc.) or addition of new infra. QPP further states in the letter that new pathways to resident apartments would require additional cores to be drilled through structural steel, which could compromise the integrity of those structural members. Has QPP conducted any engineering review/assessment of the impact of the retrofitting or additional drilling resulting from Charter's proposed installation of cable facilities? If yes, provide report of such engineering assessment. **RESPONSE: Please review the above preliminary statement. In addition, the cable pathways from each IDF closet to each apartment's media box is through conduit embedded in the concrete deck. Again, these pathways have been exhausted. Further, drilling through structural steel in an occupied building is not feasible, as it will disrupt the residents' quietude, and thus the efficient operation of the building. Because these engineering limitations are evident, no engineering study is needed. And Charter has not put forth any such study, plan or SOW to demonstrate otherwise.**

8. The Response states that Charter says it will bear the entire cost of installation and that the Landlord wants to have that assurance in writing. Is it the Landlord's position that Charter will not put such in writing? Further, in Charter's Notice of intention to Install/Upgrade Cable Television Facilities (NOI) dated June 22, 2020, and its second NOI dated July 17, 2020, Charter indicates that it will bear the cost of the installation and will also indemnify QPP for any damage that may be caused by the installation. Is it QPP's position that the language in Charter's NOIs does not provide assurance in writing? **RESPONSE: Charter has been admitted to the building twice and on July 17, 2024 submitted its SOW. Nothing provided by Charter provides the requested details of how their proposed installation will impact the Property - - not its SOW, or any other submission to DPS or Durst. If Charter provides a detailed installation plan which demonstrates feasibility, something that the engineering says is not possible, then we can assess any such plan. Furthermore, a separate agreement providing indemnification by Charter in favor of Landlord would be needed before Charter can access the Property for purposes of installation.**

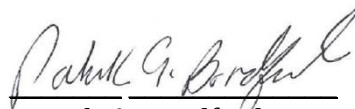
9. The Response states that Charter requests both entry and installation and that these are two separate items. The Response also states that entry and inspection will happen first, after an agreement is signed between Charter and the Landlord providing for all legal requirements. The Response further states that, after entry and inspection, Charter will need to work with the Landlord to effect proper installation pursuant to a further written agreement. Is it the Landlord's position that the two referenced written agreements are required by law? If so, specifically cite such law. **RESPONSE: The legal question is moot. DPS already issued limited orders of entry by letters dated May 31, 2023 and June 5, 2023. Those orders led to an access agreement for Charter's inspection and assessment of the Property. Should the matter proceed to the point where Charter can convince DPS of its ability to install its cables in compliance with all PSL requirements, a second access agreement would certainly be required to cover the full range of possible harm to the Property, residents and relations between the residents and building management.**

10. The Response states that Charter says it will indemnify the Landlord. The Response goes on to state that the Landlord will grant access only after that promise is put in writing (i.e., memorialized in an access agreement). Is it the Landlord's position that Charter will not put such in writing? Further, in Charter's NOI dated June 22, 2020, and its second NOI dated July 17, 2020, Charter indicates that it will bear the cost of the installation and will also indemnify QPP for any damage that may be caused by the installation. Is it QPP's position that the language in Charter's NOIs does not provide assurance in writing? **RESPONSE: Yes. Charter's indemnification in favor of the Landlord would need to be part of an access agreement countersigned by Charter.**

11. The Response states that Charter will need to provide proof of insurance. Is it the Landlord's position that Charter will not do so? **RESPONSE: Yes. And any such insurance would need to cover the full range of possible liability to Landlord.**

12. The Response states that Charter says that installation will be conducted without prejudice to the Landlord's right to just compensation. The Response then states that this promise should be put in writing (i.e., recited in an agreement). Is it the Landlord's position that Charter will not do so? **RESPONSE: Charter must advise and provide a signed agreement regarding the compensation to be made to Landlord.**

August 14, 2024



Patrick A. Bradford, Esq.  
**BRADFORD EDWARDS LLP**  
575 Fifth Avenue, 14<sup>th</sup> Floor  
New York, NY 10017  
Office: (917) 671-9406