

**REDACTED – FOR PUBLIC INSPECTION**

December 14, 2018

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**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Room TW-A325  
Washington, DC 20554

Re: Independent Compliance Officer December 14, 2018 Report (Docket No. WC 16-197)

Dear Ms. Dortch:

Pursuant to Section IX 3(e) and 5 of Appendix B of the Federal Communications Commission's ("Commission" or "FCC") Memorandum Opinion and Order ("Order") in MB Docket No. 15-149<sup>1</sup> and Section 0.459 of the FCC's Rules,<sup>2</sup> Charter Communications, Inc. ("Charter") respectfully requests that the Commission withhold from public inspection and afford confidential treatment to certain portions of the report to be filed by the Independent Compliance Officer ("ICO") on December 14, 2018. The portions of the ICO's report for which Charter seeks withholding and confidential treatment are identified as Highly Confidential in the enclosed version of the ICO's report.

Section 552(b)(4) of the Freedom of Information Act ("FOIA Exemption 4") permits an agency to withhold from public disclosure any information that qualifies as "trade secrets and commercial or financial information obtained from a person and privileged or confidential."<sup>3</sup> Section 0.457(d)(2) of the Commission's Rules allows persons to file a request for non-disclosure when submitting materials that they wish withheld from public inspection.<sup>4</sup>

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<sup>1</sup> Order, App'x B, § IX 3(e), 5.

<sup>2</sup> 47 C.F.R. § 0.459.

<sup>3</sup> 5 U.S.C. § 552(b)(4).

<sup>4</sup> 47 C.F.R. § 0.457(d)(2).

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In accordance with Section 0.459 of the Commission’s rules, Charter submits the following:

**(1) Identification of the specific information for which confidential treatment is sought.**<sup>5</sup> Charter requests confidential treatment of the portions of the ICO’s December 14, 2018 report (“Submission”) identified as Highly Confidential in the enclosure to this letter.

**(2) Description of the circumstances giving rise to the submission.**<sup>6</sup> The ICO will submit the Submission in response to Section IX 3(e) of Appendix B to the Order.

**(3) Explanation of the degree to which the information is commercial or financial, or contains a trade secret or is privileged.**<sup>7</sup> The Submission contains commercially sensitive information that may be withheld from public disclosure under FOIA Exemption 4. The Commission has recognized that, for purposes of Exemption 4, “records are ‘commercial’ as long as the submitter has a commercial interest in them.”<sup>8</sup> In this regard, portions of the Submission contain detailed information regarding Charter’s business practices, data collection and processing, network operations and utilization, interconnection partners, and peering relationships, all of which constitute sensitive “commercial” information that may be withheld under FOIA Exemption 4.

**(4) Explanation of the degree to which the information concerns a service that is subject to competition.**<sup>9</sup> The Submission contains proprietary and non-public information about Charter’s business operations of the type that has fallen under the Highly Confidential category in the proceeding underlying the Order.

**(5) Explanation of how disclosure of the information could result in substantial competitive harm.**<sup>10</sup> Portions of the Submission are confidential because their public release would likely cause competitive harm to Charter. Providing competitors with the portions of the Submission identified as Highly Confidential would expose competitive and operational business information not ordinarily available to the public. The D.C. Circuit has found parties do not have to “show actual competitive harm” to justify confidential treatment.<sup>11</sup> Rather, “[a]ctual

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<sup>5</sup> *Id.* § 0.459(b)(1).

<sup>6</sup> *Id.* § 0.459(b)(2).

<sup>7</sup> *Id.* § 0.459(b)(3).

<sup>8</sup> *Robert J. Butler*, Memorandum Opinion and Order, 6 FCC Rcd 5414 ¶ 12 (1991) (citing *Pub. Citizen Health Research Group v. F.D.A.*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *Am. Airlines v. Nat’l Mediation Bd.*, 588 F.2d 863, 868 (2d Cir. 1978)).

<sup>9</sup> 47 C.F.R. § 0.459(b)(4).

<sup>10</sup> *Id.* § 0.459(b)(5).

<sup>11</sup> *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 (quoting *Gulf & Western Indus. v. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

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competition and the likelihood of substantial competitive injury’ is sufficient to bring commercial information within the realm of confidentiality.”<sup>12</sup>

**(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.**<sup>13</sup> Charter treats the information contained in the Submission as highly confidential; it has submitted this type of information in other proceedings under the Highly Confidential legend and has committed not to publicly disclose this information.

**(7) Identification of whether the information is available to the public and the extent of any previous disclosure of information to third parties.**<sup>14</sup> Charter has not previously disclosed the portions of the Submission identified as Highly Confidential to the public.

**(8) Justification of period during which the submitting party asserts that the material should not be available for public disclosure.**<sup>15</sup> Given the proprietary and non-public nature of the portions of the Submission identified as Highly Confidential, Charter requests that confidential treatment apply indefinitely.

Please let me know if you have any questions.

Sincerely,

/s/ John L. Flynn

John L. Flynn

Enclosure (redacted)

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<sup>12</sup> *Id.*

<sup>13</sup> 47 C.F.R. § 0.459(b)(6).

<sup>14</sup> *Id.* § 0.459(b)(7).

<sup>15</sup> *Id.* § 0.459(b)(8).