

REDACTED – FOR PUBLIC INSPECTION

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VIA ECFS

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

Re: Interconnection and Traffic Exchange Agreements (Docket No. WC 16-197)

Dear Ms. Dortch:

Pursuant to the Federal Communications Commission's ("Commission" or "FCC") Memorandum Opinion and Order ("Order") released in MB Docket No. 15-149 on May 10, 2016, Charter Communications, Inc. ("Charter") hereby files "all existing agreements for the exchange of traffic, between the Company's network that carries Broadband Internet Access Service traffic" and "Interconnection Part[ies]," as defined in the Order, and which utilize interconnection links having an aggregate capacity of 30 Gbps or above. Order, App'x B, § III.4.b.

Charter respectfully requests that, pursuant to Section 0.459 of FCC's Rules,¹ the Commission withhold from public inspection and afford confidential treatment to the aforementioned attachments.

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."² 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.³

¹ 47 C.F.R. § 0.459.

² 5 U.S.C. § 552(b)(4).

³ 47 C.F.R. § 0.457(d)(2).

REDACTED – FOR PUBLIC INSPECTION

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.⁴ Charter requests confidential treatment of:

- (a) Copies of the Internet traffic exchange agreements enclosed with this letter. (the “Submissions”)

(2) Description of the circumstances giving rise to the submission.⁵ Charter submits these Submissions in response to § III.4.b 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.⁶ The Submissions contain 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.”⁷ In this regard, the Submissions, which relate to Charter’s interconnection, peering, transit, and other Internet traffic exchange agreements, as well as its policies and procedures addressing interconnection and such arrangements, contain sensitive financial and business information that constitute commercial information which may be withheld under FOIA Exemption 4.

(4) Explanation of the degree to which the information concerns a service that is subject to competition.⁸ The Submissions contain proprietary and non-public information about Charter’s business operations which 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.⁹ The Submissions are confidential because their public release would likely cause competitive harm to Charter and to other parties to the submitted agreements. Providing competitors and competing vendors with the information contained in the Submissions would expose terms, rates, and other competitive and operational business information not ordinarily available to the public. The D.C. Circuit has found parties do not have to “show actual

⁴ 47 C.F.R. § 0.459(b)(1).

⁵ 47 C.F.R. § 0.459(b)(2).

⁶ 47 C.F.R. § 0.459(b)(3).

⁷ *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)).

⁸ 47 C.F.R. § 0.459(b)(4).

⁹ 47 C.F.R. § 0.459(b)(5).

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competitive harm” to justify confidential treatment.¹⁰ Rather, “[a]ctual competition and the likelihood of substantial competitive injury’ is sufficient to bring commercial information within the realm of confidentiality.”¹¹

(6) Identification of any measures taken by the submitting party to prevent unauthorized disclosure.¹² Charter treats the information contained in the Submissions as highly confidential; it has submitted this 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.¹³ Charter has not previously disclosed the contents of the Submissions to the public.

(8) Justification of period during which the submitting party asserts that the material should not be available for public disclosure.¹⁴ Given the proprietary and non-public nature of the information in the Submissions, Charter requests that confidential treatment apply indefinitely.

Please let me know if you have any questions.

Sincerely,

/s/ John L. Flynn

John L. Flynn

Enclosures (Redacted)

¹⁰ *Pub. Citizen Health Research Grp.*, 704 F.2d at 1291 (quoting *Gulf & Western Indus. v. U.S.*, 615 F.2d 527, 530 (D.C. Cir. 1979)).

¹¹ *Id.*

¹² 47 C.F.R. § 0.459(b)(6).

¹³ 47 C.F.R. § 0.459(b)(7).

¹⁴ 47 C.F.R. § 0.459(b)(8).