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May 4, 2016

RECEIVED

MAY 06 2016

BOARD OF PUBLIC UTILITIES
MAIL ROOM

VIA NEW JERSEY LAWYERS SERVICE

State of New Jersey
Attorney General's Office,
Dept. of Law and Public Safety
PO Box 080
Trenton, New Jersey 08625-0080

Re: In the Matter of the Petition of Time Warner Cable, Inc., Charter Communications, Inc. and Time Warner Cable New York City LLC, for Approval of the Transfer of Control of Time Warner Cable New York City, LLC and Approval of Transaction Financing
Docket No. CM15070770

In the Matter of the Verified Petition of Charter Communications, Inc. and Time Warner Cable Inc., for Approval of the Transfer of Control of Time Warner Cable Information Services (New Jersey), LLC and Approval of Transaction Financing
Docket No. TM15070772

Dear Sir/Madam:

This office represents the National Association of African American-Owned Media ("NAAAOM"), and Entertainment Studios, Inc. ("ESI"). Enclosed herewith please find an application for permission to file an emergent motion, which was filed with the Appellate Division on May 4, 2016. An application for a stay was also filed with the Board of Public Utilities on May 4, 2016.

Thank you for your attention in this regard.

Very truly yours,

HILL WALLACK LLP


Rocky L. Peterson, Esq.

RLP:amo

Case mgmt
C. Vachui
Cable

May 4, 2016

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Enclosures

cc: New Jersey Board of Public Utilities w/encl.
(VIA NEW JERSEY LAWYERS SERVICE)
Stephani A. Brand, Esq. w/encl.
(VIA NEW JERSEY LAWYERS SERVICE)
Dennis C. Linken, Esq. w/encl.
(VIA NEW JERSEY LAWYERS SERVICE)

**Superior Court of New Jersey
Appellate Division
Application for Permission to File Emergent Motion**

To: Appellate Division Emergent Judge

Date: 5/4/2016

From: Rocky L. Peterson

Telephone: (609) 734-6311

The following questions are to be answered by the attorney or self-represented litigant requesting permission to file an emergent motion. This questionnaire is designed to assist the court's determination respecting its further instructions. **COMPLETION OF THIS APPLICATION DOES NOT IN ANY SENSE CONSTITUTE THE FILING OF AN APPEAL OR MOTION.** There is no right to be heard orally on an emergency application. Further instructions will come from the court.

Except by permission of the court, the only documents you may submit with this application are: a copy of the decision being appealed, any opinion or statement of reasons given by the trial judge or agency, and any order or decision denying or granting a stay. A copy of this application must be served simultaneously on both your adversary and the trial judge or agency. No answer shall be filed unless directed by the court.

If the court grants you permission to file an emergent motion and you have not previously filed a motion for leave to appeal or notice of appeal (whichever is applicable), you must simultaneously file one. See njcourts.com for notice of appeal and Court Rules. You must also pay the applicable filing fee (\$50 for a motion for leave to appeal; \$250 for a notice of appeal), direct the charging of an attorney's account with the Superior Court, or file a motion to proceed as an indigent and supporting certification.

Case Name: In the Matter of the Petition of Time Warner Cable, Inc., et al.

Appellate Division Docket Number: (if available): _____

Trial Court or Agency Docket Number: TM15070772; CM15070770

1. What is the vicinage of the matter? (i.e., what judge, in what county or what agency entered the decision?)

Board of Public Utilities

2. a) What is your name, address, including any e-mail address, phone number and fax number?

Rocky L. Peterson; 21 Roszel Road, Princeton, NJ 08540; rpeterson@hillwallack.com; (609) 734-6311; (609) 452-1888.

b) Who do you represent? (i.e., client, yourself)

National Association of African American-Owned Media ("NAAAOM") and Entertainment Studios, Inc. ("ESI").

3. List the names of all other parties and name, address, including any known e-mail address, phone number and fax number of attorney for each.

1. Stefanie Brand; Division of Rate Counsel, 140 East Front Street, 4th Floor, Trenton NJ 08625; (609)-984-1460 (p); (609)-292-2923 (f)

2. Dennis C. Linken, Esq.; Scarinci & Hollenbeck LLC; 1100 Valley Brook Avenue, Lyndhurst NJ 07071; dlinken@sh-law.com; (201)-806-3426 (p); (201)-806-3454 (f).

4. What is the nature of the emergency?

The BPU approved a merger between Time Warner Cable, Inc. and Charter Communications, Inc. which has a discriminatory impact upon minority-owned media companies. Once this merger is consummated, this case will become moot and this Court will be incapable of granting relief. The BPU must be required to re-open this matter so that NAAAOM and ESI may present evidence of the impact of this merger.

5. What is the irreparable harm, and when do you expect this harm to occur?

Without a stay of the decision of the Board of Public Utilities, Charter Communications and Time Warner Cable will begin to take steps to consummate their merger, and the BPU may not be able to undo the merger without exorbitant cost and burden on all parties involved. Once this merger occurs, minority-owned media will inevitably be shutout from participation in the marketplace, as Charter Communications has a pattern and practice of being unwilling to do business with minority-owned media companies.

6. What relief do you seek?

A stay of the decision of the Board of Public Utilities and for the Board to hold a public hearing so that evidence of the discriminatory impact of this merger may be presented.

7. Do you have a written order or judgment entered by the trial judge or a written agency decision?
You must attach a copy of the order, judgment or decision.

See the attached.

8. a) Have you filed for a stay before the trial court or agency?

A letter was sent to the Division of Rate Counsel on April 27, 2016, but no response has yet been received. An application for a stay was sent to the BPU on May 4, 2016. The Attorney General's Office has also been sent a copy of this application for emergent relief.

b) If so, do you have a court order or agency decision denying or granting same?

Attach a copy of any such order or decision. Before you seek a stay from the Appellate Division, you must first apply to the trial court or agency for a stay and obtain a signed order or decision or other evidence of the ruling on your stay application. (Court Rules 2:9-5 and 2:9-7)

No.

9. If you did not immediately seek a stay from the trial court or agency, or if you did not immediately file this application with the Appellate Division after the trial court or agency denied your stay application, explain the reasons for the delay.
10. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees?
If so, the decision is not final, but rather interlocutory, and leave to appeal must be sought. (Court Rules 2:2-4 and 2:5-6)
11. If the order or agency decision is interlocutory (i.e., not final), are you filing a motion for leave to appeal?
12. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?
13. If the order, judgment or agency decision is final, have you filed a notice of appeal?
Yes.
14. What is the essence of the order, judgment or agency decision?
The agency decision has approved of the merger between Time Warner and Charter, finding that positive benefits would flow to customers and that the transaction was in accordance with law, in the public interest, had a likelihood of creating positive benefits, and that there would be no adverse impact on the financial integrity of the affected New Jersey companies.

15. a) Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeal proceedings? If so, which judge or part?
N/A
- b) Have the merits briefs been filed in this matter? If so, has the matter been calendared to a part of the Appellate Division?
N/A
16. a) Have you served simultaneously a copy of this application on both your adversary and the trial judge or agency?
Yes
- b) If so, specify method of service.
New Jersey Lawyers' Service.
17. a) Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?
N/A
- b) If so, when will the transcript(s) be available?
N/A

18. Please give a brief summary of the facts of your case.

By way of a Petition dated July 2, 2015 and filed on July 7, 2015, Charter Communications, Inc. ("Charter"), Time Warner Cable, Inc. ("TWC") and Time Warner Cable New York City, LLC ("TWCNYC") initiated a proceeding before the Board of Public Utilities seeking approval for Charter to acquire control of TWCNYC. Charter, TWC, and Time Warner Cable Information Services (New Jersey), LLC filed a separate verified Petition requesting approval of the proposed transfer of control of TWCIS, an indirect subsidiary of TWC, to a subsidiary of Charter, CCHI, LLC. In both matters, Charter, TWC, TWCNYC, and TWCIS (collectively referred to as the "Petitioners") also requested from the Board for approval for financing related to the proposed transfers of control.

Despite knowledge of the continuation of institutionalized racism from Charter - one of the nation's largest media companies - the BPU has approved the transaction without investigating or holding a public hearing. The BPU's action totally disregarded the valid concerns raised by NAAAOM and ESI regarding this continuing practice of discrimination in contracting for television channel carriage. Charter has a record of refusing to do business with 100% African American-owned media companies, and its proposed merger with Time Warner Cable will neither promote diversity nor be in the public interest, and will facilitate racial discrimination in contracting in violation of law.

19. What legal citation (i.e., statute, regulation, court case) is most important for the proposition that you are likely to prevail on appeal?

In approving the transfer of control of Time Warner Cable to Charter, without addressing Charter's discriminatory conduct and its impact on a large portion of American society, the BPU has violated, and continues to violate, ESI's equal protection rights under the United States Constitution, the anti-discrimination provisions of the New Jersey Constitution, N.J. Const. art. I, §§1 and 5, and the New Jersey Law Against Discrimination, N.J.S.A. 10:5-4, 12. The BPU, like all state governmental entities in New Jersey, has an affirmative obligation to enforce these anti-discrimination laws and to assure that its own actions do not foster racial discrimination. See, e.g., *Sellers v. Philip's Barber Shop*, 46 N.J. 340, 347(1966) (Board of Barber Examiners); *In re Township of Warren*, 132 N.J. 1, 25 (1993) (Council on Affordable Housing.) The BPU actions facilitate Charter's continuing racial discrimination in contracting in violation of 42 U.S.C. § 1981.

By signing below, I certify that this application is made in good faith, and not for any improper purpose such as to harass or to cause unnecessary delay or expense. I further certify that the factual statements contained in this application are true to the best of my knowledge.

Date: MAY 4 2016

Rocky Peterson

Print/Type Name of Attorney or Self-Represented Litigant

Kerry Petz

Signature of Attorney or Self-Represented Litigant

**Superior Court of New Jersey
Appellate Division**

Disposition on Application for Permission to File Emergent Motion

Case Name: In the Matter of the Petition of Time Warner Cable, Inc., et al.

Appellate Division Docket Number: (if available): _____

Trial Court or Agency Below: Board of Public Utilities

Trial Court or Agency Docket Number: TM15070772; CM15070770

DO NOT FILL IN THIS SECTION – FOR COURT USE ONLY

I. The application for leave to file an emergent motion on short notice is **Denied** for the following reasons:

- The application on its face does not concern a threat of irreparable injury, or a situation in which the interests of justice otherwise require adjudication on short notice. The applicant may file a motion with the Clerk's Office in the ordinary course.
- The threatened harm or event is not scheduled to occur prior to the time in which a motion could be filed in the Clerk's Office and decided by the court. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.
- The applicant did not apply to the trial court or agency for a stay, and obtain a signed court order, agency decision or other evidence of the ruling before seeking a stay from the Appellate Division.
- The application concerns an order entered during trial or on the eve of trial as to which there is no prima facie showing that the proposed motion would satisfy the standards for granting leave to appeal.
- The timing of the application suggests that the emergency is self-generated, given that no good explanation has been offered for the delay in seeking appellate relief. Due to the delay, we cannot consider a short-notice motion within the time frame the applicant seeks, without depriving the other party of a reasonable time to submit opposition. And the magnitude of the threatened harm does not otherwise warrant adjudicating this matter on short notice despite the delay. If the applicant promptly files a motion with the Clerk's Office it shall be forwarded to a Panel for decision as soon as the opposition is filed.
- Other reasons:

J.A.D. _____
Date

Superior Court of New Jersey
Appellate Division

Disposition on Application for Permission to File Emergent Motion

Case Name: In the Matter of the Petition of Time Warner Cable, Inc., et al.

Appellate Division Docket Number: (if available): _____

Trial Court or Agency Below: Board of Public Utilities

Trial Court or Agency Docket Number: TM15070772; CM15070770

DO NOT FILL IN THIS SECTION – FOR COURT USE ONLY

II. The application for leave to file an emergent motion on short notice is **Granted** on the following terms:

A. By no later than _____, one copy of the motion for emergent relief must be delivered to the chambers of Judges _____ and _____, and to all counsel/self-represented litigants. Copies must also be sent to the trial judge or agency whose decision is being appealed. If this is a newly-filed appeal, one copy each of the notice of appeal or motion for leave to appeal, and any indigency motion, must also be delivered to the judges and all counsel/self-represented parties.

The applicant must file the original and one copy of the motion for emergent relief with the Clerk of the Appellate Division in Trenton, by no later than the day after those papers are due to the judges' chambers, _____. If the matter is not yet pending in the Appellate Division, the applicant must, on that same schedule, file with the Clerk's Office, attention Emergent Applications Unit, the original and one copy of a notice of appeal or motion for leave to appeal, together with the required fees or a motion to proceed as an indigent. [Note: This schedule anticipates that copies may be faxed to the judges' chambers and to adversaries, but they must be overnight mailed or hand delivered to the Clerk's Office. Failure to file with the Clerk's Office or to submit the required fees may result in dismissal of the appeal and vacating of any stays granted.]

B. Opposition must be served and filed by no later than _____.

C. Other terms:

J.A.D. _____ Date