

September 20, 2023

VIA ELECTRONIC MAIL

Board Secretary
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
P.O. Box 350
Trenton, New Jersey 08625-0350

Re: Application for Municipal Consent – Borough of Ogdensburg

Dear Board Secretary:

On behalf of CSC TKR, LLC (formerly known as Service Electric Cable T.V. of New Jersey) (“Altice”), and pursuant to N.J.A.C. 14:1-12.8, we are providing this letter together with the attached affidavit of Paul Jamieson, Vice President of Government Affairs & Policy for Altice USA, Inc., to substantiate Altice’s request for confidential treatment of the information contained in the map (hereinafter “Map” or “Service Area Map”) submitted as an Appendix to its Application for Municipal Consent to provide services in the Borough of Ogdensburg. As is customary, we have provided a copy of the Application (including the confidential map) to the Office of Cable Television & Telecommunications (“OCTV”). All notices under N.J.A.C. 14:1-12.7 or 12.9 should be provided to **Paul Jamieson, Esq., at Altice USA, Inc., Paul.Jamieson@alticeusa.com.**

As will be described in greater detail below, Altice seeks to maintain the confidentiality of sensitive, trade secret and proprietary commercial information which, if disclosed, could pose a security threat and would also work to the advantage of Altice’s competitors and, therefore, have an adverse impact on Altice’s competitive position. Specifically, Altice requests confidential and proprietary treatment of all the information set forth on the Map.

The Open Public Records Act (“OPRA”), N.J.S.A. 47:1A-1, et seq., sets forth the definition of a “government record”. Excluded from the definition of a “public record” and the concomitant obligation to disclose are “trade secrets and proprietary commercial or financial information obtained from any source” and “information which, if disclosed, would give an advantage to

competitors or bidders.” N.J.S.A. 47:1A- 1.1. The Board has denied requests for the release of information that could unfairly provide an advantage to competitors.¹

In In the Matter of the Request for Solid Waste Utility Customer Lists, the New Jersey Supreme Court reviewed the authority of the Board to order that solid waste companies provide customer lists to the Board. In affirming the Board’s right to the proprietary information, the Court stated:

Even so, we recognize that the lists are of value to appellants, and that the Board should provide adequate safeguards against public disclosure. . . . The Board itself recognized the confidential nature of the lists by providing in the order that "these lists will not be available for inspection or use by other collectors or the public as such public inspection is unnecessary to the Board's purposes in requiring the lists.”

106 N.J. 508, 523-524 (1987) (citation omitted).

It is clear our Legislature, the Board and the New Jersey Government Records Council² have recognized that businesses in New Jersey should not be placed at a competitive disadvantage because of their submission of information to state agencies. As noted, the Legislature specifically excluded “information which, if disclosed, would give an advantage to competitors or bidders” from the disclosure requirements in OPRA. New Jersey’s approach is clear on its face. Adherence to this approach will serve to protect all competitors in the telecommunications market, will allow for fair competition, and will permit regulated entities to disclose information to state agencies in a fair and orderly manner.

N.J.A.C. 14:1-12.8 sets forth criteria for substantiating a claim for the confidential treatment of information. Subsection (a) (6) of the above regulation calls for a description of the harm that would befall Altice should the specified information be disclosed. In his affidavit, Mr. Jamieson provides a clear description of the confidential nature of the Service Area Map. The

¹ See, e.g., Application of Jersey Central Power & Light Co. for Approval of the Power Purchase Agreement Between Jersey Central Power & Light Co. and Freehold Cogeneration Associates, L.P., Docket No. EM92030359, 1994 WL 53504, #2, Order Granting Motion for Protective Order (N.J. B.P.U. Sept. 8, 1994).

² See Government Records Council decision entitled Joseph Belth v. N.J. Department of Banking and Insurance, Complaint No. 2003-29, dated March 8, 2004. In that case, the complainant requested a copy of records that would disclose the financial condition of an insurance company. In its decision, the Government Records Council determined that the Department of Banking and Insurance had met its burden to show that the requested information is exempt under the “advantage to competitors” provision of OPRA and that it properly denied access to the information. The Council reasoned that the information sought pertained to the insurance company’s financial condition which if disclosed would give competitors an advantage.

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Map contains detailed information on the precise location and the extent of the penetration of Altice's plant in the Ogdensburg service area. Jamieson Affidavit, p.1, para. 3.

It is clear the Service Area Map provides sensitive information on Altice's infrastructure. Release of the detailed Map is inherently risky because it contains critical information regarding the structure and location of Altice's facilities. Knowledge of this information would allow hackers and terrorists to target Altice's critical infrastructure, thereby impacting upon public safety and security. Given these risks, continued confidential treatment of the Service Area Map is clearly in the public interest. Jamieson Affidavit, p. 2, para. 4.

The Service Area Map is also highly confidential and proprietary in nature. Access to the Service Area Map would allow competitors to learn important market information about the specific areas where Altice's customers are located or concentrated, along with an understanding of Altice's technical capacity to serve customers. Armed with this knowledge of Altice's capacity to provide service in the Service Area, a competitor would then be able to develop targeted market and investment strategies. Further, with knowledge of the precise locations of Altice's plant, competitors would be able to pinpoint and/or prioritize Altice's network construction plans and to what extent Altice can enhance its offerings. At the same time, competitors could plan their own operations in a manner that would have a serious detrimental impact on Altice's competitive position. In contrast, Altice would not have similar knowledge of its competitors' technical capacity that would allow it to respond effectively to these strategies. Therefore, public disclosure of the Map would be of benefit to Altice's competitors because of its inherent commercial value, causing a potential substantial detrimental impact on Altice's financial position. Jamieson Affidavit, p. 2, para. 5.

In response to the requirements of N.J.A.C. 14:1-12.8 (a) (1) and (2), and as noted by Mr. Jamieson in his affidavit attached hereto, the Service Area Map has not been publicly divulged to the public, nor has it been routinely available to the public. Altice has taken precautions to make sure that the Map does not enter the public domain. Jamieson Affidavit, p 3, para. 6.

In conclusion, it is respectfully submitted that the Service Area Map is not a government record as that term is defined under N.J.S.A. 47:1A-1.1, because it contains proprietary commercial information that is confidential and if disclosed, could have a potential impact on public safety and security and also give Altice's competitors an undue competitive advantage that could have an adverse impact on its financial position. Therefore, the clear prejudice to Altice caused by the release of the Service Area Map, the resulting unfair advantage to competitors and the security concerns referenced in Mr. Jamieson's affidavit, require continued confidential treatment of the Map maintained by the Board in a confidential file.

Norris McLaughlin, P.A.

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Please acknowledge receipt of this cover letter and attachment in accordance with the efilings procedures approved by the Board on March 19, 2020.

Respectfully submitted,

Norris McLaughlin, P.A.

/s/ Vaughn Parchment
Vaughn Parchment, Esq.

cc: Lawanda Gilbert, Esq., Director of the OCTV
Nancy Wolf, Administrative Analyst 4, OCTV
Clerk, Borough of Ogdensburg (ogdensburgnj@gmail.com)
Rob Hoch, Esq., Senior Counsel, Government Affairs, Altice USA