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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JOHN MCCOY,  
  
Plaintiff,  
  
vs.  
  
CCA HOLDINGS CORPORATION, a  
Delaware corporation doing business in  
California as CHARTER COMMUNICATIONS  
and its successor corporation, CHARTER  
COMMUNICATIONS, INC., a Delaware  
corporation doing business in California as  
CHARTER COMMUNICATIONS (CCI), INC.;  
CHARTER COMMUNICATIONS  
PROPERTIES LLC, a limited liability company  
organized and existing under the laws of the state  
of Delaware and doing business in the State of  
California, and DOES 1 THROUGH 100,  
inclusive,  
  
Defendants.

Case No. CV-11-05054 PSG  
STIPULATED PROTECTIVE ORDER

**1. PURPOSES AND LIMITATIONS**

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties

1 acknowledge that this Order does not confer blanket protections on all disclosures or responses to  
2 discovery and that the protection it affords from public disclosure and use extends only to the limited  
3 information or items that are entitled to confidential treatment under the applicable legal principles. The  
4 parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does  
5 not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set  
6 forth the procedures that must be followed and the standards that will be applied when a party seeks  
7 permission from the court to file material under seal.

8 **2. DEFINITIONS**

9 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or  
10 items under this Order.

11 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated,  
12 stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure  
13 26(c).

14 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as  
15 their support staff).

16 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
17 produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

18 2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or  
19 manner in which it is generated, stored, or maintained (including, among other things, testimony,  
20 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in  
21 this matter.

22 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the  
23 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in  
24 this action.

25 2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel  
26 does not include Outside Counsel of Record or any other outside counsel.

27 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity  
28 not named as a Party to this action.

1           2.9     Outside Counsel of Record: attorneys who are not employees of a party to this action but  
2 are retained to represent or advise a party to this action and have appeared in this action on behalf of that  
3 party or are affiliated with a law firm which has appeared on behalf of that party.

4           2.10    Party: any party to this action, including all of its officers, directors, employees,  
5 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

6           2.11    Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in  
7 this action.

8           2.12    Professional Vendors: persons or entities that provide litigation support services (e.g.,  
9 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or  
10 retrieving data in any form or medium) and their employees and subcontractors.

11          2.13    Protected Material: any Disclosure or Discovery Material that is designated as  
12 “CONFIDENTIAL.”

13          2.14    Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing  
14 Party.

15    **3.     SCOPE**

16           The protections conferred by this Stipulation and Order cover not only Protected Material (as  
17 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,  
18 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or  
19 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections  
20 conferred by this Stipulation and Order do not cover the following information: (a) any information that is  
21 in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain  
22 after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order,  
23 including becoming part of the public record through trial or otherwise; and (b) any information known to  
24 the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a  
25 source who obtained the information lawfully and under no obligation of confidentiality to the Designating  
26 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

1       **4. DURATION**

2               Even after final disposition of this litigation, the confidentiality obligations imposed by this Order  
3 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise  
4 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this  
5 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all  
6 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any  
7 motions or applications for extension of time pursuant to applicable law.

8       **5. DESIGNATING PROTECTED MATERIAL**

9               5.1       Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-  
10 Party that designates information or items for protection under this Order must take care to limit any such  
11 designation to specific material that qualifies under the appropriate standards. The Designating Party must  
12 designate for protection only those parts of material, documents, items, or oral or written communications  
13 that qualify – so that other portions of the material, documents, items, or communications for which  
14 protection is not warranted are not swept unjustifiably within the ambit of this Order.

15               Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be  
16 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or  
17 retard the case development process or to impose unnecessary expenses and burdens on other parties)  
18 expose the Designating Party to sanctions.

19               If it comes to a Designating Party’s attention that information or items that it designated for  
20 protection do not qualify for protection, that Designating Party must promptly notify all other Parties that  
21 it is withdrawing the mistaken designation.

22               5.2       Manner and Timing of Designations. Except as otherwise provided in this Order (see,  
23 e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or  
24 Discovery Material that qualifies for protection under this Order must be clearly so designated before the  
25 material is disclosed or produced.

26               Designation in conformity with this Order requires:

27               (a)       for information in documentary form (e.g., paper or electronic documents, but  
28 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix

1 the legend “CONFIDENTIAL” to each page that contains protected material. If only a portion or portions  
2 of the material on a page qualifies for protection, the Producing Party also must clearly identify the  
3 protected portion(s) (e.g., by making appropriate markings in the margins).

4 A Party or Non-Party that makes original documents or materials available for inspection need not  
5 designate them for protection until after the inspecting Party has indicated which material it would like  
6 copied and produced. During the inspection and before the designation, all of the material made available  
7 for inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has identified the  
8 documents it wants copied and produced, the Producing Party must determine which documents, or  
9 portions thereof, qualify for protection under this Order. Then, before producing the specified documents,  
10 the Producing Party must affix the “CONFIDENTIAL” legend to each page that contains Protected  
11 Material. If only a portion or portions of the material on a page qualifies for protection, the Producing  
12 Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
13 margins).

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the  
15 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding,  
16 all protected testimony.

17 (c) for information produced in some form other than documentary and for any other  
18 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or  
19 containers in which the information or item is stored the legend “CONFIDENTIAL.” If only a portion or  
20 portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall  
21 identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate  
23 qualified information or items does not, standing alone, waive the Designating Party’s right to secure  
24 protection under this Order for such material. Upon timely correction of a designation, the Receiving Party  
25 must make reasonable efforts to assure that the material is treated in accordance with the provisions of this  
26 Order.

1       **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2           6.1    Timing of Challenges. Any Party or Non-Party may challenge a designation of  
3 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation  
4 is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant  
5 disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality  
6 designation by electing not to mount a challenge promptly after the original designation is disclosed.

7           6.2    Meet and Confer. The Challenging Party shall initiate the dispute resolution process by  
8 providing written notice of each designation it is challenging and describing the basis for each challenge.  
9 To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the  
10 challenge to confidentiality is being made in accordance with this specific paragraph of the Protective  
11 Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by  
12 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14  
13 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its  
14 belief that the confidentiality designation was not proper and must give the Designating Party an  
15 opportunity to review the designated material, to reconsider the circumstances, and, if no change in  
16 designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to  
17 the next stage of the challenge process only if it has engaged in this meet and confer process first or  
18 establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely  
19 manner.

20           6.3    Judicial Intervention. If the Parties cannot resolve a challenge without court intervention,  
21 the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and  
22 in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the initial  
23 notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not  
24 resolve their dispute, whichever is earlier. Each such motion must be accompanied by a competent  
25 declaration affirming that the movant has complied with the meet and confer requirements imposed in the  
26 preceding paragraph. Failure by the Designating Party to make such a motion including the required  
27 declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality  
28 designation for each challenged designation. In addition, the Challenging Party may file a motion

1 challenging a confidentiality designation at any time if there is good cause for doing so, including a  
2 challenge to the designation of a deposition transcript or any portions thereof. Any motion brought  
3 pursuant to this provision must be accompanied by a competent declaration affirming that the movant has  
4 complied with the meet and confer requirements imposed by the preceding paragraph.

5 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.  
6 Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary  
7 expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the  
8 Designating Party has waived the confidentiality designation by failing to file a motion to retain  
9 confidentiality as described above, all parties shall continue to afford the material in question the level of  
10 protection to which it is entitled under the Producing Party's designation until the court rules on the  
11 challenge.

12 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

13 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
14 produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending,  
15 or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of  
16 persons and under the conditions described in this Order. When the litigation has been terminated, a  
17 Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

18 Protected Material must be stored and maintained by a Receiving Party at a location and in a  
19 secure manner that ensures that access is limited to the persons authorized under this Order.

20 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the  
21 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or  
22 item designated "CONFIDENTIAL" only to:

23 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees  
24 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this  
25 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto  
26 as Exhibit A;

27 (b) the officers, directors, and employees (including House Counsel) of the Receiving  
28 Party to whom disclosure is reasonably necessary for this litigation and who have signed the

1 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

2 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is  
3 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be  
4 Bound” (Exhibit A);

5 (d) the court and its personnel;

6 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and  
7 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed  
8 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is reasonably  
10 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless  
11 otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition  
12 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court  
13 reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

14 (g) the author or recipient of a document containing the information or a custodian or  
15 other person who otherwise possessed or knew the information.

16  
17 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

18 If a Party is served with a subpoena or a court order issued in other litigation that compels  
19 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that Party must:

20 (a) promptly notify in writing the Designating Party. Such notification shall include a  
21 copy of the subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to issue in the  
23 other litigation that some or all of the material covered by the subpoena or order is subject to this  
24 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the  
26 Designating Party whose Protected Material may be affected.

27 If the Designating Party timely seeks a protective order, the Party served with the subpoena or  
28 court order shall not produce any information designated in this action as “CONFIDENTIAL” before a

1 determination by the court from which the subpoena or order issued, unless the Party has obtained the  
2 Designating Party's permission. The Designating Party shall bear the burden and expense of seeking  
3 protection in that court of its confidential material – and nothing in these provisions should be construed as  
4 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another  
5 court.

6  
7 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION**

8 (a) The terms of this Order are applicable to information produced by a Non-Party in  
9 this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties in  
10 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in  
11 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

12 (b) In the event that a Party is required, by a valid discovery request, to produce a  
13 Non-Party's confidential information in its possession, and the Party is subject to an agreement with the  
14 Non-Party not to produce the Non-Party's confidential information, then the Party shall:

15 (1) promptly notify in writing the Requesting Party and the Non-Party that  
16 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

17 (2) promptly provide the Non-Party with a copy of the Stipulated Protective  
18 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the  
19 information requested; and

20 (3) make the information requested available for inspection by the Non-Party.

21 (c) If the Non-Party fails to object or seek a protective order from this court within 14  
22 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-  
23 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a  
24 protective order, the Receiving Party shall not produce any information in its possession or control that is  
25 subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>1</sup> Absent a  
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27 <sup>1</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality  
28 rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality  
interests in this court.

1 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this  
2 court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material  
5 to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving  
6 Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use  
7 its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or  
8 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such  
9 person or persons to execute the “Acknowledgment and Agreement to Be Bound” that is attached hereto  
10 as Exhibit A.

11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED**  
12 **MATERIAL**

13 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced  
14 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are  
15 those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
16 whatever procedure may be established in an e-discovery order that provides for production without prior  
17 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an  
18 agreement on the effect of disclosure of a communication or information covered by the attorney-client  
19 privilege or work product protection, the parties may incorporate their agreement in the stipulated  
20 protective order submitted to the court.

21 **12. MISCELLANEOUS**

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its  
23 modification by the court in the future.

24 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no  
25 Party waives any right it otherwise would have to object to disclosing or producing any information or  
26 item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right  
27 to object on any ground to use in evidence of any of the material covered by this Protective Order.  
28

1           12.3 Filing Protected Material. Without written permission from the Designating Party or a  
2 court order secured after appropriate notice to all interested persons, a Party may not file in the public  
3 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material  
4 must comply with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed  
5 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue.  
6 Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request  
7 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise  
8 entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal  
9 pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party  
10 may file the information in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise  
11 instructed by the court.

12       **13. FINAL DISPOSITION**

13           Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving  
14 Party must return all Protected Material to the Producing Party or destroy such material. As used in this  
15 subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other  
16 format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned  
17 or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the  
18 same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category,  
19 where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the  
20 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format  
21 reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are  
22 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,  
23 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and  
24 consultant and expert work product, even if such materials contain Protected Material. Any such archival  
25 copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in  
26 Section 4 (DURATION).



