

November 26, 2019

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**VIA EMAIL AND U.S. MAIL**

Cynthia Walker  
Director, Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

**Re: Charter Communications Operating, LLC Reply to Public Advocates Office  
Opening Comments to Draft Resolution T-17680**

Dear Director Walker:

Pursuant to the November 1, 2019 Notice of Availability of Draft Resolution T-17680, Charter Communications Operating, LLC (“Charter”) respectfully submits its Reply to Comments filed by the Public Advocates Office (“PAO”) on November 21, 2019. Charter also timely submitted opening comments on the resolution to correct technical errors and advocate for 100% funding of the Highland project.

**I. PAO’S COMMENTS ARE BOTH UNTIMELY AND WITHOUT MERIT AND  
ITS CHANGES IN THE DRAFT RESOLUTION SHOULD BE REJECTED**

PAO’s comments seeks revision of the Draft Resolution’s grant of waivers requested by Charter of the CASF Program’s typical obligation to offer fixed rates and waive installation fees for a two-year period. As detailed here, PAO’s opposition is both untimely as PAO has not previously raised this issue and without merit because the Commission is clearly empowered to grant the requested waivers.

By way of background, Charter was strongly encouraged by Commissioner Guzman Aceves and Communications Division Staff to participate in the CASF program to further the provision of broadband service in unserved areas. Charter timely filed its CASF Applications on May 1, 2019 and included a request for waiver of the CASF program requirements that a provider set fixed rates for a 24-month period and waive installation fees after the initial three months.

Charter fully supported the need for such waivers in its applications noting that it offers uniform rates across its California footprint and would need to modify its billing system to provide special, fixed rates for the CASF projects. With regard to the shortened period during which installation fees would be waived, Charter noted that it expected that most customers would sign up in the first three months and accordingly would benefit from waiver of installation fees but that after that Charter would charge the same fees as applicable to all other customers. Charter noted that Commission grant of these waivers was a precondition to its participation in the CASF

program. Charter's applications were served on PAO and the project summaries were disseminated broadly to the CASF Service lists

Under the CASF Guidelines, any interested party can challenge the proposed project within 21 calendar days of the notice being served on the CASF Distribution group. One challenge was submitted by Frontier leading to the withdrawal of the proposed project in Perris, CA. No challenges were filed by any party with respect to the three remaining projects, including the requested waivers, now addressed in the draft resolution. PAO did not submit a challenge or indicate in any form that it opposed the waiver requests made by Charter. PAO's opposition should have been made in May 2019 and is now untimely.

In any event, PAO's position is substantively without merit. Its argument asserts that it: (a) was legal error for the Commission to grant the waiver because it contradicts a requirement for grant applicants under D.18-12-018; and (b) was a violation of due process to grant the amount since the waiver "amounts to a de facto change to the CASF decision without the input of other interested or affected parties."<sup>1</sup> Neither of these points are justified.

First, D.18-12-018 indicates that compliance with the pricing commitment and waiver of installation fees is but *one* indicator for "what constitutes a 'good' project" but does not state that the Commission lacks authority to determine that a project merits funding if each and every component is not met.<sup>2</sup> Rather, the Commission makes clear in the decision that it retains the authority to determine funding on a case-by-case basis, citing PU Code sec. 281(f)(13).<sup>3</sup> Moreover, the CASF Guidelines provide that the Commission is empowered to approve applications not meeting all criteria but must do so, as was done here, using a Resolution rather than Staff ministerial review.<sup>4</sup> In this case, the draft Resolution carefully considers Charter's rationale for the waiver and grants the waiver on a case-by-case basis.<sup>5</sup>

Second, PAO's due process argument is misplaced. PAO asserts without any support that granting waivers here is a de facto change in the CASF decision without the input of other interested parties. This is not accurate. By granting waivers here, the Commission has appropriately considered Charter's request on a case-by-case basis and has made clear that it is not changing the decision.<sup>6</sup> Instead, the Resolution correctly finds that Charter justified this case-by-case waiver and indicated that the Commission will consider any future waiver requests on a case-by-case basis. Of course, as noted above, all interested parties had ample opportunity to respond to the initial request for waiver when Charter submitted its applications in May but

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<sup>1</sup> PAO Comments, pp.2-3

<sup>2</sup> D.18-12-018, p. 63

<sup>3</sup> D.18-12-018, p. 7.

<sup>4</sup> CASF Guidelines, p. 27.

<sup>5</sup> Draft Resolution, pp. 6-7.

<sup>6</sup> Draft Resolution, p. 7.

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failed to do so. Similarly, no other party commented on the requested waiver at any point during the pendency of Charter's applications.

Further, the Commission maintains the discretion to waive various requirements under appropriate circumstances. The Commission has exercised such discretion in numerous instances and has broad discretionary powers.<sup>7</sup> Such discretion in this case is wholly appropriate. Charter employs uniform pricing, which means that subscribers in the most rural of Charter's service areas already get the benefit of the same prices that are offered to customers in Charter's most competitive areas, including for installation.

PAO also includes a list of other arguments purportedly supporting its position on pp. 3-4 of its Comments and then repeats these points on pp. 4-5. These arguments show a misunderstanding of Charter's services. For example, PAO asserts that a waiver would lead to an increase in costs to all Charter customers without a two-year pricing commitment. This argument misses the point that customers in the Charter CASF project areas will have access to broadband services at the same price as all other California customers in Charter's footprint.

## II. CONCLUSION

Charter has worked hard to identify projects suitable for the CASF funding, which will not be developed absent funding, and appreciates the efforts of the Communications Division and the Commission to grant minor waivers necessary to make the projects viable for a company like Charter with standard prices for all California consumers within its footprint. PAO's opposition, both untimely and without merit, does not warrant change in the draft resolution and would be counter-productive to the goal of increasing participation in CASF projects. Here, appropriate discretion has been exercised to accommodate the reasonable waiver requests made by Charter.

Sincerely,



James W. McTarnaghan

cc: Phillip Enis, CPUC Communications Division (via email)  
Dorris Chow, CPUC Communications Division (via email)  
CASF Service List (via email)

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<sup>7</sup> See e.g., Resolution G-3543; Resolution SX-126 in which the Commission granted waivers on a case-by-case basis as warranted by the specific circumstances presented.