

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of Joint Application of Charter Communications, Inc.; Charter Fiberlink CA CCO, LLC (U6878C); Time Warner Cable Inc.; Time Warner Cable Information Services (California), LLC (U6874C); Advance/Newhouse Partnership; Bright House Networks, LLC; and Bright House Networks Information Services (California), LLC (U6955C) Pursuant to California Public Utilities Code Section 854 for Expedited Approval of the Transfer of Control of Both Time Warner Cable Information Services (California), LLC (U6874C) and Bright House Networks Information Services (California), LLC (U6955C) to Charter Communications, Inc., and for Expedited Approval of a Pro Forma Transfer of Control of Charter Fiberlink CA-CCO, LLC U6878C).

Application 15-07-009
(Filed July 2, 2015)

**RESPONSE OF CHARTER COMMUNICATIONS, INC.
TO MOTION OF PUBLIC ADVOCATES OFFICE TO
COMPEL RESPONSE TO DATA REQUEST**

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Pursuant to Rule 11.1(e) of the Commission’s Rules of Practice and Procedure and the December 24, 2018 e-mail ruling of Administrative Law Judge Bemederfer setting the response date of January 14, 2019, Charter Communications, Inc. (“Charter”) hereby responds to the Motion of the Public Advocates Office (“Cal PA”) to Compel Response to Data Request filed on December 21, 2019 (“Motion to Compel”). As detailed here, Cal PA’s Motion to Compel is unsupported and should be denied. If any discovery is needed, it should be limited to the production offered to Cal PA by Charter in October 2018 as a reasonable compromise subject to the conditions proposed that the materials be kept confidential and used solely for the purpose of verifying the progress report filed by Charter.

I.

BACKGROUND AND SUMMARY

In D.16-05-007, the Commission approved the transfer of control of Time Warner Cable Information Services (California) and Bright House Networks Information Services (California) to Charter subject to various conditions. Of relevance here, Condition 2(h) states:

By December 31, 2019, New Charter shall offer broadband Internet service with speeds of at least 300 Mbps download to all households with current broadband availability from New Charter in its California network. On December 31, 2016 and every year thereafter until December 31, 2019 New Charter shall submit a progress report to the Commission and CAL PA identifying progress made.¹

As detailed in this Response, Charter has fully complied with its reporting obligations to date by submitting progress reports in late December 2016, December 2017, and most recently on December 26, 2018. In each of these progress reports, Charter has provided the Commission and Cal PA with the percentage of households that had current broadband availability from New Charter with download speeds of at least 300 Mbps.² The 2017 Report demonstrated that over

¹ D.16-05-007, p. 71. In contrast to this condition, in the Frontier-Verizon merger decision, the Commission approved a settlement agreement between consumer advocates, including ORA, in which a much more specific progress report was required to be submitted by Frontier including census block data and setting specific milestones on deployment. D.15-12-007, Appendix F, Exh. 1. Such report required information similar to what Cal PA seeks from Charter in its data request related to speed upgrades, not deployment, but no such obligation is found in the Charter decision or in Condition 2(h). In the Frontier merger order, in which interim build-out milestones had to be met during the compliance period, the additional granular reports may have been necessary for Cal PA to demand in order to verify Frontier's compliance with that condition. Here, where no milestones exist for the extension of Charter's plant or for speed enhancements, there is no demonstrated need or relevance for the data sought by Cal PA. Significantly, the Charter conditions were adopted after the Frontier decision reflecting a clear intention by the parties to adopt a different obligation on Charter than was imposed on Frontier.

² Certain subjects discussed in this filing pertain to non-jurisdictional products and services. Discussion of non-jurisdictional products and services is not intended as a waiver or concession of the Commission's jurisdiction beyond the scope of Charter's regulated telecommunications and cable video services. Charter respectfully reserves all rights relating to the inclusion of or reference to such information, including without limitation Charter's legal and equitable rights relating to jurisdiction, compliance, filing, disclosure, relevancy, due process, review, and appeal. The inclusion of or reference to non-jurisdictional information shall not be construed as a waiver of any rights or objections otherwise available to Charter in

99% of the households passed that had current broadband availability had speeds of at least 300 Mbps. In fact, in the most recent report filed in December 2018, Charter reported that over 99% of the relevant households had speeds available at **940 Mbps** which vastly exceeds the required speed targets in the merger order. In addition, Charter reported that it anticipates completion of its obligations for the few remaining small service areas³ required to have increased speeds under Condition 2(h) before December 31, 2019. Neither the Commission nor the Communications Division have expressed concern with the reports or the company's progress in meeting the condition presumably because Charter had demonstrated near-completion of the condition two years in advance of the deadline of December 31, 2019.

Notwithstanding Charter's near-completion of the condition and its provision of service at speeds far greater than required, in early 2018, following the submission of the second progress report, Cal PA attempted to obtain additional data which it claimed it needed to "verify" the progress report and submitted its Data Request No. 1. Cal PA, however, provided no reasonable explanation for why this information was necessary given the Company's reported progress to date, the lack of interim milestones in the merger condition itself, or any consumer complaints about broadband internet speeds. Cal PA further failed to connect how receiving the census block data would be useful (let alone necessary) in verifying Charter's fulfillment of

this or any other proceeding, and may not be deemed an admission of relevancy, materiality, or admissibility generally.

³ As previously explained to Cal PA, in California Charter's service areas largely fall within, and are bounded by, its legacy local franchise areas, i.e., cities and counties (and in some cases, specific unincorporated communities within counties), and references to franchise areas in this filing reflect the historical basis for describing Charter's systems and speed enhancement in those areas. Charter upgrades its networks to provide speed enhancements according to those legacy local franchise areas, and in its progress reports where it states that a particular area is receiving the speed upgrades, Charter is representing that the speed is available across the entirety of that served area and to all households, without regard to census block boundaries.

Condition 2(h), which, unlike Frontier’s deployment condition (see *infra* footnote 1), bears no relation to census blocks, but instead obligates Charter to provide 300 Mbps speed to all areas where it provided broadband service at the time the merger decision was issued. Significantly, Condition 2(h) does not establish any milestones or completion dates prior to December 31, 2019, and each progress report submitted by the company demonstrated steady progress in meeting (and even exceeding) the goals established in the merger order. Indeed, the most recent report submitted in December 2018 demonstrated that Charter has service available at download speeds of 940 Mbps to over 99% of the reported households passed.⁴

Charter nonetheless engaged in good faith negotiations with Cal PA staff to provide supplemental information. Specifically, on February 2, 2018, Charter provided Cal PA with supporting documentation listing each franchise area (see *infra*, footnote 3) where it offered broadband availability with the maximum speed available at end of year 2017.⁵ The document showed that Charter was providing speeds of at least 300 Mbps download to over 99% of the households passed by its network and that only a few small rural areas remained to be upgraded.⁶

⁴ Details about this service are broadly marketed to consumers in these areas and more information is available to the public, including Cal PA on www.spectrum.com/internet.html by inputting a street address to determine available speeds. In most franchise areas in California, as highlighted in the December 26, 2018 progress report, consumers have access to “Spectrum Internet Gig” connection service with typical median download speed up to 940 Mbps. The absence of consumer or other complaints about the speed availability provides supplemental support that the company’s advertisements and representations about speed are accurate.

⁵ The February 2nd document is included in Appendix A (Confidential) to Cal PA’s Motion to Compel.

⁶ Charter’s response is included in Appendix A (Confidential) of Cal PA’s motion and consists of a February 2, 218 cover letter addressed to Ana Maria Johnston and a nine-page listing of all franchise areas and the maximum download speeds available to all customers in each community in the franchise area. Notably, there is no obligation on Charter to identify a percentage of households passed with upgraded service and its progress report could simply have noted the number of franchise areas that had been upgraded as compared to the handful of communities in which upgrades remain to be completed by December 31, 2019. Using that approach, Cal PA could have verified the report by checking advertised available speeds in each community. Charter, however, volunteered information on households passed to demonstrate to the Commission the extensive progress already achieved in meeting the condition.

Charter also informed Cal PA that it had provided deployment data to other divisions at the Commission pursuant to processes established by the Federal Communications Commission to share Form 477 data with state Commissions.

Charter reasonably expected that the Commission and Cal PA would have been pleased with the progress made and with Charter's nearly-completed performance of the condition as delivering on the public interest promises made during the Commission's consideration of the merger, being highly beneficial to California consumers and providing a strong signal that the condition would be timely met by December 31, 2019. Instead, in the summer of 2018, Cal PA re-initiated its request for additional data from Charter which Cal PA, without any rational explanation, asserted was necessary to verify the progress report. This discussion ultimately led to Cal PA's submission of Data Request No. 002 on September 20, 2018. This request was substantively identical to Data Request No. 001.

In September and October of 2018, Charter proposed a compromise and offered to provide to Cal PA its confidential information on households passed in each franchise area, rather than by census blocks, with maximum download speeds for each franchise area. Cal PA, however, refused to agree to limit its use of the requested data to verifying Charter's compliance with the merger condition.⁷

By refusing to agree to Charter's compromise offer, and through this Motion to Compel, Cal PA essentially asserts that it can take a limited right to review progress on a merger condition and use that right to demand confidential data regarding a service that is outside the Commission's jurisdiction and then use that data for any purpose whatsoever without even

⁷ See Appendix B (Confidential) to Motion to Compel, Email from Cal PA counsel Peleo sent October 10, 2018 at 4:50 PM.

attempting to provide a rational justification. Respectfully, Charter does not agree and respectfully requests that the Commission denies this fishing expedition. Cal PA demands access to highly confidential information that qualifies as a trade secret under California's Trade Secrets Act and relates only to non-jurisdictional services.⁸ Given that response, Charter submitted objections and responses on October 11, 2018 in which it reiterated its proposed resolution to the issue and provided a response to Data Request 2.2.

From October until December 2018, Cal PA did not contact Charter to address the submission, nor did it provide additional justification for its demand for information unrelated to the progress report or the merger condition. Instead, without any advance notice and late in the afternoon of Friday, December 21, 2018, Cal PA filed three motions. First, it requested that the Commission to reopen the merger proceeding to consider a motion to compel.⁹ Second, it requested the Commission to direct Charter to respond to prior data requests again asserting that it had authority to use such responses for any purpose. Third, it sought leave to file confidential materials under seal as attachments to the Motion to Compel.¹⁰

As detailed in this Response, Charter opposes the efforts to reopen the long-closed proceeding and to require Charter to provide census block level data to Cal PA. Although Cal PA has attempted to present this issue as an important issue, this matter can easily be resolved by either rejecting Cal PA's unprecedented request for unlimited use of confidential information that is on its face unrelated to the merger condition, or alternatively by directing Cal PA to accept the reasonable proposal made by Charter in October 2018, including the

⁸ Cal. Civ. Code §§ 3426–3426.11. The details of Charter's broadband network, particularly the number of households passed are valuable, not known to competitors or otherwise public, and are the subject of Charter's reasonable efforts to maintain its confidentiality.

⁹ Charter is concurrently filing a response stating its opposition to the Motion to Reopen the proceeding.

¹⁰ Charter supports the request to maintain confidentiality.

appropriate conditions to limit the use of data to the sole purpose of verifying the report.¹¹ By doing so, there would be no need to reopen this proceeding or to grant the motion to compel, and this matter can be concluded without further waste of Charter's and the Commission's resources.

II.

RESPONSE

A. Cal PA'S Motion Seeks Unnecessary Relief and Should Be Denied

1. The Data Request Does Not Meet the Relevancy Standard of Rule 10.1 as it Seeks Information Unrelated and Unnecessary to Verify Progress on Meeting Condition 2(h)

In its Motion, Cal PA presents its discovery dispute using the standard for discovery under Commission Rule 10.1 and purports to apply the standard that discovery should be permitted if the "matter either is admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence."¹² Cal PA fails to meet this test for several reasons.

Cal PA's argument that the data request is relevant to D.16-05-007 and A.15-07-009 is inaccurate and its claim that the data sought would be admissible in evidence is unsupported. There is no present need for the data sought nor is there any proceeding in which the material requested could possibly be admissible. On its face, Condition 2(h) does not need to be met until December 31, 2019, and Charter has demonstrated substantial progress. Under Rule 10.1, the

¹¹ Charter is willing to provide such information to Cal PA in order to verify the report and to resolve this dispute. However, Charter's willingness to do so or this filing itself should not be construed in any way as a waiver or a concession by Charter with respect to the Commission's jurisdiction to regulate Charter, impose additional conditions on the merger, or otherwise compel Charter to act (or refrain from acting) with respect to any activities Charter conducts in California that are beyond the scope of the Commission's jurisdiction, including but not limited to Charter's activities related to broadband service or infrastructure.

¹² Motion to Compel, pp. 7-9.

material requested must either be admissible in evidence or reasonably calculated to lead to admissible evidence. Here, Cal PA has completely failed to show how it could properly use the information it seeks as admissible evidence in any proceeding.

Notably, Cal PA's request for information for census block data is completely unrelated to Condition 2(h) which does even not mention census blocks and does not naturally or logically correspond to Charter's service areas.¹³ As discussed further below, census blocks are not the measure of Charter's service territory and are not relevant to determine speed upgrades. Rather, the information that Charter offered (subject to reasonable conditions) to Cal PA, namely, the number of households passed by franchise area, is information that would more than adequately support any legitimate need that Cal PA may believe it has to verify progress reports on speed enhancements. To do so, Charter would simply amend the document provided in February 2018 to show the households passed figure by franchise area.

Indeed, Cal PA's argument that there is a mismatch between census block data and Charter's progress report is flawed and clearly demonstrates the fallacy underlying Cal PA's request for data at the census block level.¹⁴ Specifically, Cal PA claims that it conducted an analysis that indicated that a lower percentage of households had access to increased download speeds than the level that Charter reported. Cal PA's motion acknowledges that its analysis is flawed when it states: "census data was used to determine how many households were in each census block, but not necessarily passed by Charter."¹⁵

¹³ When Charter enhances the broadband speeds in any particular area served, it generally does so across that entire system, such that when one city or county area (or community within a county) is enhanced, all homes passed in said area receive the same speed upgrade. See also, *infra* footnote 3.

¹⁴ Motion to Compel, pp. 4-5.

¹⁵ *Id.*, p. 6

Such analysis is a classic red herring intended to confuse the issue. Rather than measure progress using the approach taken by Cal PA, which does not relate in any way to the obligation set forth in the Condition, Charter appropriately calculated its progress looking at its franchise areas which rarely coincide with census block boundaries.¹⁶ It would not be unusual for Charter to provide service to some households in a census block, but not to all, and there is little correlation between Charter's service area and census block boundaries. Cal PA's analysis drives different, but irrelevant, results.¹⁷ Indeed, there are many instances where Charter serves a partial census block and another provider serves a different or overlapping portion. Accordingly, Cal PA's request for this data would not yield any meaningful insight into Charter's progress with the speed upgrades. The much more useful information (and the actual basis for the calculation of the percentage now above 300 Mbps download speed) is the maximum speed available within in a given service territory (typically described by the company's legacy franchise area which is within a political boundary, such as a city or county, but is not bounded by census block data). Again, this is precisely the information that Charter offered to Cal PA, subject to reasonable conditions, which Cal PA refused to accept.

Overall, Cal PA's statement that "[t]he data request contains only questions that would inform the Public Advocates Office's review of Charter's progress report" is both false and

¹⁶ Charter's approach was explained to Cal PA in informal discussion and then formally in its Response to Cal PA Data Request No. 2.2 included in Confidential Appendix A to Cal PA's Motion to Compel.

¹⁷ For example, there are census blocks in which Charter's franchise area only includes portions of the census block with the remaining portion of the census block is in an area served by competitors of Charter, such as Cox. In that type of situation, the upgrade obligation only applies to the portion of the census block in which Charter provides service, not the portions where Cox provides service. Other examples include situations in which a building owner of a multi-unit building is not willing to provide access to a competitive provider such as Charter. When Charter upgrades service it does so on a system basis, i.e., the upgrade is completed for the entire franchise area system, not on a household by household basis, and by a service area typically matching the boundaries of a political subdivision, rather than a census block.

misleading.¹⁸ The data request seeks information that is completely unnecessary to review the progress report. Once again, Charter's only obligation to date is to file a progress report showing progress towards the end of 2019 compliance in areas where Charter provided service and the condition is limited to upgrades of download speeds. However, Cal PA's is much broader and includes demand for maximum upload speeds. This request, like the request for irrelevant census block data, is completely unsupported given that Condition 2(h) does not impose any upload speed requirements.¹⁹

Finally, it is critical to note that Charter has offered to provide Cal PA with information that would fully verify the progress reports provided to date subject only to the conditions that such material be kept confidential and not used for any other purpose. It is Cal PA's failure to accept that condition – not Charter's failure to produce information responsive to any legitimate inquiry by Cal PA – that has resulted in this discovery dispute.

2. Cal PA's Data Request is a Thinly Disguised Effort to Obtain Data on Non-Jurisdictional Services Completely Unrelated to the Progress Report to Which Cal PA is Otherwise Ineligible to Receive

As referenced above and explained to Cal PA, Charter calculated the percentage reported in the Progress Report based on its individual service areas (referenced as franchise areas for the reasons already explained) where broadband service was provided at the time of the merger. To verify that report, Cal PA was already provided in February 2018 with a list of franchise areas and the maximum download speed, along with a statement that all households in a franchise area

¹⁸ Motion to Compel, p. 10.

¹⁹ The weakness of Cal PA's argument is underscored by its gratuitous reference to unrelated proceedings before the New York State Public Service Commission. Motion to Compel, p. 7, n. 23. Such proceedings have nothing to do with California, are completely irrelevant to the issue at hand, and wholly fail to support Cal PA's motion.

have access to the maximum speed.²⁰ Given that this is only a progress report and Charter has already completed more than 99% of the condition and is on track to meet the remaining small percent, this information should have been more than adequate to verify that progress was being made. For example, the information provided to Cal PA in February 2018 listed each franchise area by name with corresponding speed and demonstrated that only a few small rural communities remained to be upgraded to at least 300 Mbps. In the October negotiations, Charter offered to provide specific households passed data for each legacy local franchise area, subject to the condition that Cal PA only use the data for the purpose of verifying the progress report.

Cal PA's rejection of this proposal clearly shows that Cal PA is not seeking data responses to verify the progress report and instead is attempting to use the merger condition as a back-door attempt to obtain granular data on non-jurisdictional services not subject to the Cal PA's oversight. Cal PA has never provided any rational justification for the more granular data it seeks nor explained why census block data is even relevant. In fact, the sole reason it provided for demanding the information, the mismatching of data in census blocks, is clearly erroneous. Similarly, Cal PA has not cited to any consumer complaint regarding service upgrades or provided any evidence that Charter will not fully comply with Condition 2(h). Instead, Cal PA appears to want to obtain highly granular data on broadband deployment at the census block level providing even more details than provided to the FCC in Form 477.²¹

²⁰ Charter submitted its progress report for 2018 on December 26, 2018 and incorporated an updated list as of the end of the year.

²¹ Specifically, Form 477 data indicates that a provider serves customers in a given census block but does not provide numbers of households passed. State Commissions are entitled to obtain copies of Form 477s only after entering into agreements to not disclose the highly confidential materials included in the form and agree to adhere to federal standards for communications in order to protect the confidentiality of information provided to the FCC. The FCC and federal courts have recognized the sensitivity of some of the data collected on Form 477s. *See e.g., Modernizing the FCC Form 477 Data Program*, WC Docket No. 11-10, 28 FCC Rcd 9887, 9921-22 (2013); *Local Competition and Broadband Reporting*, CC Docket No. 99-301, Report and Order, 15 FCC Rcd 7717, 7757-62 (2000); *Local Telephone Competition and*

Although (as noted at p. 9, n. 29 of the motion,) Charter provided such information in the merger proceeding for the purpose of evaluating competition, it is not relevant to Condition 2(h) or any other open issue and is not otherwise provided to the Commission.²² Significantly, that data was provided as confidential information for purposes of the merger analysis only.

Cal PA would have the Commission decide that there are no limits to its ability to obtain information from companies or that once information is obtained, it may do whatever it pleases with such information.²³ These statements are incorrect and contrary to sound public policy.

The Commission has recognized that appropriate limitations on the use of documents provided to Cal PA are appropriate.²⁴ Cal PA's citations to case law similarly overstate or misstate its

Broadband Reporting, WC Docket No. 04-141, Report and Order, 19 FCC Rcd 22340, 22352-53 (2004); *Center for Public Integrity v. FCC*, 505 F. Supp. 2d 106 (D.D.C 2007).

The CPUC obtains these forms using such process and also obtains broadband deployment data for purposes of the Broadband maps used for CASF purposes. However, due to the sensitivity on households passed data, the information provided to Communications Division for this purpose does not provide households passed data such as now demanded by Cal PA.

²² Charter again notes that the condition in D.16-05-007, unlike the condition adopted in the Frontier-Verizon merger, does not require that Charter meet milestones or provide granular detail in the progress reports. Cal PA appears to be attempting to rewrite D.16-05-007, Condition 2(h), through these data requests. Such efforts should be rejected as improper and unsupported.

²³ Motion to Compel pp. 8, 9-10.

²⁴ In A.05-11-008, Cal PA (then identified as the Division of Ratepayer Advocates or DRA) sought to compel a utility to produce income tax returns. The Administrative Law Judge granted the request but, over the objections of Cal PA, also placed severe restrictions on Cal PA's access and use of the tax documents:

DRA shall not retain any hard copy copies, shall not share any of this data with other Commission staff not assigned to the relevant portion of this proceeding, nor shall DRA retain any of this data. Specifically, upon issuance of a Commission decision finally resolving any application for rehearing the decision in this proceeding, or after the period to apply for rehearing has expired and no application for rehearing has been filed, DRA shall return all copies to [the utility] or demonstrate to [the utility]'s satisfaction that all copies are permanently destroyed. DRA may not retain any electronic images or any other form of additional copies of this data. DRA may not retain by any other means electronic or paper copies in handwritten or other form any information extracted from these tax forms.

discovery powers. The cases they cite do not relate to Cal PA or the Commission.²⁵ Cal PA has not proffered even a *speculative* basis for its broad, unconditional request for unfettered use of trade secret data, much less good cause.

Moreover, Cal PA's assertion of unlimited discovery powers ignores limits on Cal PA's oversight on non-jurisdictional service and the important protections provided for information on broadband services. Cal PA's reference (at p. 8) to PU Code section 309.5(e) is misplaced as such code section does not provide unlimited and unfettered discovery over non-jurisdictional services and is limited only to information "necessary to perform its duties from any entity regulated by the Commission." Here, despite the merger conditions, broadband service is not subject to Cal PA's oversight and, thus, Cal PA has failed to connect its request to any purpose "necessary to perform its duties." Indeed, as shown, Cal PA's approach of using census blocks is flawed and is not even the approach used by Charter to measure progress. Cal PA's motion, instead, should be denied as a fishing expedition for information that goes well beyond the stated purpose of verifying the Condition 2(h) progress report.

Administrative Law Judge's Ruling on Motions for Reconsideration of February 9, 2006 Ruling, A.05-11-008, pp. 3-4, 6 (Mar. 8, 2006). These restrictions were warranted because the utility's interest in avoiding inadvertent disclosure outweighed Cal PA's interest in convenience. *Id.* at 3.

²⁵ Cal PA misleadingly cites *Greyhound Corp. v. Superior Court*, 56 Cal. 2d 355 (1961), for the proposition that Cal PA is "entitled to disclosure in discovery as '*a matter of right*.'" Motion to Compel 10 & n.30 (emphasis added). To the contrary, *Greyhound*, which does not involve Cal PA or even the Commission, expressly states that the discovery of documents requires a "prior order" granted upon a "showing of good cause." *Greyhound*, 56 Cal. 2d at 388. Similarly, Cal PA cites *Colonial Life & Accident Insurance Co. v. Superior Court*, 31 Cal. 3d 785 (1982), for the principle that "[d]oubts concerning relevance should usually be resolved in favor of permitting discovery." Motion to Compel 9 & n.27. But *Colonial Life* holds the same as *Greyhound*: the production of "relevant" documents may be compelled only upon a showing of "*good cause*" based on "*specific facts*." *Colonial Life*, 31 Cal. 3d at 790 & n.6 (emphasis added). Again, this case, like *Greyhound*, does not relate in any way to Cal PA or the Commission.

B. If Any Data is Necessary at this Point, Charter's October Proposal, Including with Conditions, Will Provide All that Cal PA Needs to Verify the Progress Report

Charter submits that the data provided to Cal PA in February 2018 is more than adequate to review and evaluate the Progress Report obligation in Condition 2(h) – the only legitimate purpose for any of the data requested. Significantly, Condition 2(h) did not impose any milestones that Charter was required to meet prior to December 31, 2019. The progress reports, including the most recent report submitted December 26, 2018, however, reflect that Charter is already very near completion of its obligation except in limited small rural areas and is providing speeds in excess of the 300 Mbps speed required in all other areas. As noted above, the most recent progress report submitted to the Commission on December 26, 2018 demonstrated that most franchise areas served by Charter in California already have a maximum available speed of 940 Mbps, far eclipsing the 300 Mbps level required by Condition 2(h).

As documented in Charter's response and objections to Data Request 002 (attached to Cal PA's Motion), Charter offered to provide Cal PA with a spreadsheet in Excel format that lists each community in its franchise territory, the maximum download speed in that community at the end of 2017, and the estimated number of households passed in such community also as of the end of 2017. Such information would provide all data necessary to verify the progress report on Condition 2(h). In fact, this data, rather than the census block data requested by Cal PA, was used to prepare the progress report. Although Cal PA agreed that such data production would be adequate, Cal PA refused to agree to the conditions proposed by Charter that "[t]he information provided to Cal PA will be used exclusively for purposes of verifying progress made by Charter in meeting Condition 2(h)..." As noted in the objections submitted over three months ago now, Charter was willing to provide this information if Cal PA changed its position and would accept this condition.

Cal PA mischaracterizes Charter's reasonable condition to limit the use of the data response to the stated purpose by stating that such conditions "would inappropriately limit the Public Advocates Office's broad discovery rights" and further asserts such condition "inappropriately seeks to restrict how the information provided by Charter would be used by the Public Advocates Office."²⁶ In purported support of its position, Cal PA relies on a tautology that Cal PA has broad discovery rights under PU Code sections 309.5 and 314 and therefore has a right to request and obtain any information that it believes is necessary to verify Charter's progress report. Here, as demonstrated, the census block information and upload speeds requested have no use in verifying Charter's progress report revealing Cal PA's "belief" to be a smoke screen for some other still unstated purpose. Given that broadband service is not regulated by the Commission nor subject to Cal PA oversight, the Commission should not support this overly broad interpretation of Cal PA's discovery powers and instead should limit any production here to the Charter proposal with explicit restrictions on Cal PA's use of the data.

III.

CONCLUSION

For the foregoing reasons, Charter respectfully requests that Cal PA's Motion to Compel be denied. If any production is appropriate at this time, Charter's proposed production and conditions thereto described above should be adopted.

²⁶ Motion to Compel, p. 6.

Respectfully submitted January 14, 2019, at San Francisco, California.

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