

**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  
REOPEN PROCEEDING**

James W. McTarnaghan  
Anne B. Beaumont  
PERKINS COIE LLP  
505 Howard Street, Suite 1000  
San Francisco, CA 94105  
Tel: (415) 344-7000  
Fax: (415) 344-7050  
Email: [jmctarnaghan@perkinscoie.com](mailto:jmctarnaghan@perkinscoie.com)

Attorneys for CHARTER COMMUNICATIONS, INC.

January 14, 2019

**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  
REOPEN PROCEEDING**

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 Bemserfer 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 Reopen Proceeding filed on December 21, 2019. As detailed here, there is no issue presented by Cal PA to justify reopening the proceeding and its Motion to Compel Response to Data Request (addressed in a separate Response) should be denied.

## I.

### BACKGROUND

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 ORA identifying progress made.<sup>1</sup>

As fully detailed in the Response to the Motion to Compel filed concurrently with 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.<sup>2</sup> Such reports demonstrate that Charter has nearly completed its compliance with this condition—years in advance of the deadline of December 31, 2018—and has vastly surpassed the speed requirements imposed by the condition. Indeed, as highlighted in its last progress report filed on December 26, 2018, Charter reported that it is already making service available at 940 Mbps to over 99% of the relevant households passed as of the end of year 2018. In addition, Charter

---

<sup>1</sup> D.16-05-007, p. 71.

<sup>2</sup> 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 this or any other proceeding, and may not be deemed an admission of relevancy, materiality, or admissibility generally.

reported that it anticipates completion of its obligations for the few remaining small service areas<sup>3</sup> required to have increased speeds under Condition 2(h) before December 31, 2019.

Notwithstanding this positive reporting, in early 2018 following the submission of the second progress report, Cal PA attempted to extract additional data which it claimed it needed to “verify” the progress report – data that is extremely confidential and is not even provided to the FCC. Although Charter disagreed that the granular data demanded by Cal PA was needed to verify the progress report, Charter engaged in good faith negotiations with Cal PA staff to provide information additional information. Specifically, on February 2, 2018, Charter provided ORA with supporting documentation listing each franchise area where it offered broadband availability with information on the maximum speed available in each area at end of year 2017.

Notwithstanding Charter’s near-completion of the condition and its provision of service at download speeds far greater than required, Cal PA initiated communications seeking additional data from Charter which Cal PA flatly asserted was necessary to verify the progress report. Cal PA, however, provided no reasonable explanation for why this information was needed given the 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 in fulfilling the requirement of Condition 2(h), which has 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.

---

<sup>3</sup> 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 (an 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.

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 rejected that compromise because Charter proposed to limit Cal PA's use of the data to verify the progress report and not for any other purpose. To Charter's surprise, Cal PA refused to agree to limit its use of this highly confidential information regarding non-jurisdictional services to the stated purpose, i.e., to verify the progress report, and instead asserted that it could seek data for any use whatsoever—without attempting to provide a rational justification. 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 the data request.

For nearly two and one-half months, Cal PA did not contact Charter to address the submission. Instead, late in the afternoon of December 21, 2018, Cal PA filed three motions. First, it requested that the Commission reopen the merger proceeding to consider a motion to compel. 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.<sup>4</sup> Third, it sought leave to file confidential materials under seal as attachments to the Motion to Compel.<sup>5</sup>

As detailed in this Response and the concurrently filed Response to the Motion to Compel, Charter opposes the efforts to reopen the long-closed proceeding and to require Charter to provide data to Cal PA at the census block level or to submit any information about upload speeds. Although Cal PA has attempted to present this issue as a major one, this matter can easily be resolved by either rejecting Cal PA's unprecedented request for unlimited use of

---

<sup>4</sup> Charter is concurrently filing a response to the Motion to Compel.

<sup>5</sup> Charter supports this request to maintain confidentiality.

confidential information that is on its face unrelated to the merger condition, or alternatively by directing Cal PA to accept the reasonable conditions proposed by Charter in October 2018 to limit the use of households passed by franchise area data to the sole purpose of verifying the report.<sup>6</sup> 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 to Reopen this Proceeding Is Unnecessary to Deny the Motion to Compel**

At pages 2-3 of the Motion to Reopen this proceeding, Cal PA repeats many of the same arguments presented in its Motion to Compel. Such arguments, including assertions concerning an alleged "mismatch" between Charter's and Cal PA's analyses are fully addressed in the concurrently filed Response to the Motion to Compel. As demonstrated there, Cal PA has wholly failed to justify its demands for information not necessary to verify the Condition 2(h) progress report and addressing matters completely unrelated to the condition. For the reasons stated therein, Cal PA's motion to compel must be denied. At minimum, if the Commission believes that any additional information is needed, it need only direct Cal PA to accept the proposal made during the meet and confer process to provide households passed figures by franchise area subject to the reasonable conditions proposed by Charter that such data be kept

---

<sup>6</sup> 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 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.

confidential and that Cal PA restrict its use of such data exclusively to verify the data. The fact that the data request seeks information at the census block level and on upload speeds when the condition itself does not reference census blocks or require any upgrades in upload speeds underscores the apparent intent by Cal PA to use such data on non-jurisdictional services for some other purpose other than to verify the progress reports.

Cal PA fails to explain why it is necessary for the Commission to reopen this proceeding other than to state that doing so would “facilitate the Commission’s consideration of and ruling on” Cal PA’s motion. In fact, Charter submits that reopening the proceeding is not necessary. Cal PA was able to file its motion and ALJ Bemserfer set a response date without opening the proceeding. And Charter is now providing responses. Based on the papers filed, the Commission can easily resolve this matter by either rejecting Cal PA’s unprecedented expansion of its authority, or alternatively by directing Cal PA to accept Charter’s reasonable proposal to provide data with restrictions on its use. Had Cal PA agreed to this proposal in October 2018, it would have already had the information it needs to verify the progress report months ago and these motions would not have been necessary. For these reasons, Charter respectfully requests that the Motion to Reopen the proceeding should be denied.

**B. Cal PA’s Gratuitous References to Actions in New York State Are Completely Irrelevant and Fail to Support its Motion**

Perhaps realizing that its motion lacked any justification, Cal PA (at page 3) makes highly inappropriate and gratuitous references to an unrelated matter now before the New York State Public Service Commission. There is no relevance to that proceeding, and the allegations made in New York, to any matter before this Commission. Cal PA’s transparent effort to suggest that any issue in New York State is somehow reflective on Charter’s performance in California on Condition 2(h) is without merit and wholly unsupported and should be ignored.

action.



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

/s/ James W. McTarnaghan

---

James W. McTarnaghan  
PERKINS COIE LLP  
505 Howard Street, Suite 1000  
San Francisco, CA 94105  
Tel: (415) 344-7007  
Fax: (415) 344-7207  
Email: [jmctarnaghan@perkinscoie.com](mailto:jmctarnaghan@perkinscoie.com)

Attorneys for CHARTER COMMUNICATIONS, INC.