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**VIA ELECTRONIC MAIL**

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Re: Comments on Draft Resolution T-17548

Dear Mr. Baker:

On behalf of Charter Communications, Inc. ("Charter"), we submit the following comments on the California Public Utilities Commission's (the "Commission's") draft Resolution T-17548 (the "Resolution") proposing to approve Inyo Network, Inc.'s ("Inyo's") application for California Advanced Services Fund ("CASF") moneys to fund its Digital 299 Broadband Project ("Digital 299"). For the reasons detailed below, we request the Commission defer its consideration and approval of the Resolution until Inyo provides, or the Commission discloses, information sufficient to demonstrate Inyo will not use any CASF funds for the construction of facilities in the Charter service areas of Cottonwood and Redding where the project proposes interconnection points and where Charter already provides robust broadband capabilities. Alternatively, Charter requests the Commission expressly condition its approval of the Resolution on Inyo's commitment not to use CASF funds to construct facilities in these or other served areas.

The Resolution proposes to earmark approximately \$41.8 million in CASF funds for Inyo's Digital 299 project. Of this amount, less than \$1.5 million is allocated to provide last-mile connections to 307 households. The remaining \$40.3 million is apportioned for the construction of middle mile infrastructure from Cottonwood, California to points around Humboldt Bay. But Inyo's application materials and the Resolution suggest that Inyo intends inappropriately to use an undisclosed portion of CASF funds to build network facilities, place nodes, and compete in areas fully served by Charter. Specifically, it appears Inyo intends to use CASF funds to build network facilities and place nodes in the fully served communities of Cottonwood and Redding, where Charter already provides broadband speeds of 100 Mbps down and 6 Mbps up, far in excess of the Commission's threshold of 6 Mbps down and 1.5 Mbps up for "served" areas. See Decision Implementing Broadband Grant & Revolving Loan

Program Provisions, D.12-02.015 at 17 (Feb. 1, 2012) (“CASF Decision”). The Digital 299 route includes, for example, a proposed lateral to reach a node placed in the heart of a served area in Redding. Inyo’s proposal indicates that its nodes will facilitate not only interconnection with other middle mile networks, but also will support “local distribution facilities,” Project Summary at 1, which in served areas like Redding and Cottonwood could be used only for the purpose of competing with Charter.

Additionally, both Inyo and the Resolution tout as a significant benefit of the proposed CASF grant Inyo’s anticipated ability to connect up to 117 schools, colleges, research institutions, hospitals, clinics, public safety, tribal lands, and other community anchor institutions. But neither the Resolution nor Inyo identify the locations of the specific institutions it hopes to connect. Based, however, on the scarcity of population centers along much of the proposed Digital 299 route, and the fact that Inyo anticipates serving only 307 underserved households along that route, it seems likely that many, if not most, of the community institutions Inyo hopes to serve are located in served areas like Redding and Cottonwood.

The allocation and use of CASF funds to build facilities designed to compete in served areas would clearly violate CASF’s enabling statute and the Commission’s own guidance. The Broadband Infrastructure Grant Account (“IGA”) of the CASF is intended to supply “funding to provide broadband access” to households that are “unserved” or “underserved.” Cal. Pub. Util. Code § 281(e)(3). Both the statute and the Commission’s rules prohibit the use of limited CASF funding to subsidize the efforts of a competitor to overbuild the broadband network of a private company, like Charter, that is already fully serving an area with high-quality broadband.<sup>1</sup>

Nor can Inyo use CASF funds to overbuild Charter in served areas as part of a middle mile project designed to reach underserved areas. In its CASF Decision, the Commission recognized that while middle mile projects may include facilities “in unserved and underserved – and even served – areas,” the applicant must submit “proof that the backhaul or backbone construction is an indispensable part of their plan to reach unserved and/or underserved communities.” D.12-02-015 at 11; *see also id.*, App. 1 at 3. Applicants proposing to construct middle mile facilities through served areas also must pro-rate construction costs to account for the area in which facilities are to be constructed, and provide “a detailed explanation of the allocation of costs and a full accounting of that allocation at each funding phase of the project.” *Id.*, App. 1 at 3. That pro-ration must exclude from the applicant’s requested CASF grant funds **all** of the costs of constructing facilities in served areas. *See id.* The Commission explained: “if common facilities [costing \$500,000] will be used equally by unserved areas and by communities with broadband today, then the applicant should **only include** \$250,000 in the application for facility

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<sup>1</sup> Charter does not shy from competition and expects to be successful wherever it stands on equal footing with its competitors. But fair competition is undermined if the Commission allows competitors like Inyo to use limited CASF grant monies, which must be used to reach unserved or underserved areas, to subsidize its construction of network facilities in served areas.

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improvement costs.” *Id.* (emphasis added). In other words, all of the costs required to build facilities in served areas must be excluded from a CASF funding request.

The Digital 299 proposal and the Resolution do not disclose sufficient information about Inyo’s construction plans and cost allocation methodology to determine whether the project complies with the statute or Commission rules. For example, it is unclear whether either Inyo or the Commission have properly excluded from Inyo’s proposed grant costs associated with constructing facilities in the areas served by Charter, including in Cottonwood and Redding. Accordingly, the Commission should require Inyo to supplement its application, or it should amend the Resolution, to clearly identify whether costs associated with constructing facilities in served areas have been excluded from the CASF funds earmarked for Digital 299. In addition, and to the extent necessary, the Commission should reduce the amount of any CASF funding allocated to Digital 299 to exclude costs associated with constructing facilities in served areas.

For these reasons, Charter respectfully requests that the Commission defer action on the Resolution until the Commission obtains or discloses additional information related to Inyo’s proposed Digital 299 project, and reevaluates the project considering all relevant statutory obligations and the Commission’s own rules for funding middle mile backhaul. At a minimum, Charter requests that the Commission require Inyo to commit, as a condition of receiving CASF grant funding for Digital 299, that it will not use any CASF funds to construct facilities in served areas.

Sincerely,



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for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP