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Subject: Public Advocates Office Opening Comments to Draft Resolution T-17680 Operating, LLC on behalf of its affiliate entities Spectrum Pacific West, LLC; Charter Fiberlink CA-CCO, LLC (U-6878-C); and Time Warner Cable Information Services California, LLC (U-6874-C) from the California Advanced Services Fund up to the amount of \$1,377,174.97.

INTRODUCTION

Pursuant to Rule 14.5 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure, the Public Advocates Office at the California Public Utilities Commission submits these Comments on Draft Resolution T-17680 (Draft Resolution), which approves \$1,377,174.97 from the California Advanced Services Fund (CASF) for the grant application of Charter Communications Operating, LLC (Charter) to deploy last-mile coaxial and fiber infrastructure to enable broadband access at speeds of up to 940 megabits per second (Mbps) download and 35 Mbps upload to a total of 279 CASF-eligible households for the Country Squire Mobile Home Park project, the Highland Orchid Drive project, and the Silver Wheel Ranch Mobile Home Park project, in total. The proposed projects will enable broadband access to areas that are currently unserved with no facilities-based wireline or fixed wireless broadband service providers.¹

The Draft Resolution appropriately requires that Charter obtain approval from the owners of the Country Squire Mobile Home Park and the Silver Wheel Ranch Mobile Home Park to build broadband infrastructure on their property prior to approval of funding.² Without such approval,

¹ Draft Resolution T-17680, pages 1 and 2.

² Draft Resolution T-17680, Ordering Paragraph 3, page 15.

the required last mile portion of these projects is not possible and therefore the projects would not be eligible for funding. However, the Draft Resolution recommends approval of Charter's request to not offer a two-year fee-waiver for installation and connection charges³ and a two-year pricing commitment.⁴ Commission Decision (D.)18-12-18 requires CASF grantees to offer a two-year fee-waiver for installation and connection charges, and a two-year pricing commitment.⁵ Granting Charter a two-year fee-waiver for installation and connection charges and a waiver of the two-year pricing commitment represents legal error and is contrary to the intent of the CASF program.

The Commission should rectify this legal error by adopting the following recommendations:

1. Deny Charter's request of the two-year pricing commitment as required under D.18-12-018.⁶
2. Deny Charter's request to reduce the installation and connection charges, required under D.18-12-018,⁷ from two years to three months.

DISCUSSION

1. Deny Charter's waiver request of the two-year pricing commitment required under D.18-12-018.⁸

A two-year pricing commitment is required under D.18-12-018, Appendix 1, Item 11. Charter requested an exemption of the two-year pricing commitment with the justification that it would need to create a separate billing operation for the project areas. The Draft Resolution recommends approval of a waiver of the two-year pricing commitment in light of Charter's commitment to offer a low-income Internet plan for \$14.99 per month and to serve a traditionally lower income segment of the population that resides in mobile home parks.⁹ The Draft Resolution's recommendation to approve Charter's waiver request represents a legal error as it

³ Draft Resolution T-17680, Ordering Paragraph 5, page 15.

⁴ Draft Resolution T-17680, Ordering Paragraph 4, page 15.

⁵ D.18-12-018, Appendix 1, Item 11.

⁶ D.18-12-018, Appendix 1, Item 11.

⁷ D.18-12-018, Appendix 1, Item 11.

⁸ D.18-12-018, Appendix 1, Item 11.

⁹ Draft Resolution T-17680, page 7.

contradicts a requirement for grant applicants under D.18-12-018.¹⁰ Moreover, it violates due process because granting the waiver amounts to a de facto change to the CASF decision without the input of other interested or affected parties. In addition, the following is a list of facts not addressed in the Draft Resolution's recommendation to grant Charter's waiver request:

- a. D.18-12-018 does not provide for an exemption of the two-year pricing commitment based on its low-income program. The low-income requirement is part of the eligibility for additional funding. Because Charter has met this requirement, it will be receiving 10% additional funding for all three projects.¹¹
- b. Granting a waiver can lead to an increase in costs to all Charter customers, served by these CASF projects, who will be without a two-year pricing commitment. This includes participants in the low-income program.
- c. Other companies, who offer a comparable low-income program, are complying with application requirements for a two-year pricing commitment.¹² The Draft Resolution has not offered justification for why Charter should be treated differently.
- d. Charter states that a separate billing operation would need to be established for the project areas should they comply with the two-year pricing agreement.¹³ The Draft Resolution has not demonstrated how creating a separate billing operation would create a unique hardship for Charter that is different from any other company that has applied for a CASF Broadband Infrastructure grant.
- e. Charter has indicated that this waiver is a precondition of its participation in the program and that consumers will be protected from rate increases and benefit from promotions by having the same rates as those available to all of Charter's California customers.¹⁴ If this is the case, then there is no need to grant Charter a pricing commitment waiver as they are already in compliance.

¹⁰ D.18-12-018, Appendix 1, Item 11.

¹¹ Draft Resolution T-17680, Table 6, page 8.

¹² See Frontier Northeast Phase 1 Draft Resolution T-17671, page 7 and Frontier Taft Cluster Draft Resolution, page 9.

¹³ Draft Resolution T-17680, pages 6 and 7.

¹⁴ Silver Wheel – CASF APPLICATION (FINAL 5.01.19), page 4, Project Summary (Distributed Publicly).

Neither Charter's application nor the Draft Resolution provide a basis for determining that, without the waiver, Charter would be at a disadvantage. Waiving a CASF requirement for Charter, while holding other applicants accountable, is not compliant with D.18-12-018, sets a bad precedent going forward, and violates due process by making a de facto change to the CASF decision in granting a waiver without the input of other parties. Due to these factual inconsistencies and legal errors, the Commission should deny the request by Charter to waive the two-year pricing commitment.

2. Deny Charter's requests to reduce the installation and connection charges, required under D.18-12-018,¹⁵ from two years to three months.

A two-year fee-waiver for installation and connection charges is required under D.18-12-018, Appendix 1, Item 11. The Draft Resolution recommends approval of Charter's waiver of the two-year installation fee in light of Charter's commitment to offer a low-income Internet plan for \$14.99 per month and to serve a traditionally lower income segment of the population that resides in mobile home parks.¹⁶ Charter, instead, offers only a three-month low-income plan commitment.¹⁷ Like the two-year pricing commitment waiver discussed above, this recommendation contradicts a requirement for grant applicants under D.18-12-018 and violates due process for other parties' rights to be heard before the Commission makes a change to its rules or processes. Therefore, the Draft Resolution's recommendation to grant Charter's waiver request represents a legal error and must be rectified. In addition, the following is a list of facts that were not addressed in the Draft Resolution's recommendation to grant Charter's waiver request:

- a. D.18-12-018 does not provide for an exemption of the two-year installation fee-waiver commitment based on its low-income program. The low-income requirement is part of the eligibility for additional funding. Because Charter has met this requirement, it will be receiving 10% additional funding for all three projects.¹⁸

¹⁵ D.18-12-018, Appendix 1, Item 11.

¹⁶ Draft Resolution T-17680, page 7.

¹⁷ Draft Resolution T-17680, Ordering Paragraph 5, pages 15 and 16.

¹⁸ Draft Resolution T-17680, Table 6, page 8.

- b. Granting an exemption to reduce the two-year installation fee-waiver commitment to three months will lead to an increase in costs to all Charter customers served by these CASF projects who will be without an installation fee-waiver after a three-month period. This includes participants in the low-income program.
- c. Other companies are complying with application requirements by offering a two-year installation fee-waiver. The Draft Resolution has not offered justification for why Charter's situation is unique and should be treated differently.
- d. The Draft Resolution recommends granting a waiver to reduce installation and connection charges from two years to three months despite Charter's lack of any justification in its application. Allowing Charter to reduce its required fee-waiver commitment from two years to three months, based merely on a request, unjustifiably harms customers.

Due to these factual inconsistencies and legal errors, the Commission should deny the waiver request by Charter to reduce the two-year installation fee-waiver to three months.

CONCLUSION

Based on the discussion above, the Commission should deny Charter's two requests to waive the two-year pricing commitment and reduce the two-year installation fee-waiver to three months.

Please contact Shelly Lyser at shelly.lyser@cpuc.ca.gov or (415) 703-3447 or Tony Tully at tony.tully@cpuc.ca.gov or (415) 703-2385 with any questions regarding these comments.

Sincerely,

/s/ Ana Maria Johnson

Ana Maria Johnson
Program Manager
Communications and Water Policy Branch

cc: Phil Enis, Communications Division

Attachment A

Public Advocates Office Redline of Draft Resolution T-17680

SUMMARY

This Resolution ~~grants~~~~denies~~ Charter's requests for waivers of the two-year pricing requirement, ~~but~~and rejects Charter's requests for a waiver of installation and connection charges for a two year period after completion of the projects. Moreover, the funding approval is contingent upon Charter obtaining approval from the owners of the Country Squire Mobile Home Park and the Silver Wheel Ranch Mobile Home Park to build broadband infrastructure on their property.

II. Minimum Performance Criteria

	CASF Performance Criteria	Proposed Projects
Pricing	Price commitment for two years after completion of the project	<u>Current plans offers 2 year commitment</u>

Charter has requested a waiver of the requirement for a two-year commitment to a broadband pricing plan. Charter has also requested relief from the requirement that installation charges be waived by the provider for a two-year period. Charter proposes to limit the installation charges waiver to the first three months following completion of construction. Charter cites an undue burden based on establishing a separate billing operation, for 24 months, to meet these requirements. ~~While~~The Commission has specifically ordered these requirements in D.18-12-018, therefore, Staff recommends ~~approval of~~~~denying~~ a waiver of the two-year pricing commitment and installation charges, ~~in light of Charter's commitment to offer a low-income Internet plan for \$14.99 per month and to serve a traditionally lower income segment of the population that resides in mobile home parks. In future applications the Commission will consider requests for waivers of rules on a case-by-case basis.~~

Charter's current nationwide pricing plans for broadband services are provided in Table 4 below and in Appendix A of this Resolution. ~~While Staff has recommended granting Charter a waiver of the two-year pricing commitment, if pricing plans change going forward, Charter should not exceed its California wide pricing for similar broadband services in the project areas for two years after completion of the project.~~

FINDINGS

- ~~Based on Charter's service to mobile home park residents, its commitment to offer low-income pricing below \$15 per month and other factors described in this resolution, Staff recommends that the Commission grant Charter's request for waiver from the requirement of a two-year pricing commitment, pursuant to the eligibility criteria in D. 18-12-018, but require that, if pricing plans change going forward, Charter not exceed it's California wide pricing for similar broadband services in the project areas for two years after completion of the project. Granting a waiver to Charter would be legal error as it contradicts a requirement for grant applicants under D.18-12-018 and violates due process rights for other parties to be heard before the Commission makes a change to its rules or processes. Additionally, Charter has indicated that consumers will be protected from rate increases and benefit from promotions by having the same rates as those~~

available to all of Charter's California customers. Therefore, granting a waiver of the two-year price commitment is not necessary.

7. ~~Based on Charter's service to mobile home park residents, its commitment to offer low-income pricing below \$15 per month and other factors described in this resolution, Staff recommends that the Commission grant Charter's request for waiver of the requirement that their installation charges be waived for a two-year period, and approves Charter's proposal to limit the installation charges waiver to the first three months following completion of construction. Granting a waiver to Charter and holding other CASF applicants accountable, despite having similar low-income programs, would violate due process rights for other parties to be heard before the Commission makes a change to its rules or processes.~~

THEREFORE, IT IS ORDERED that:

4. The Commission ~~grants~~denies Charter's request for waiver from the requirement of a two-year pricing commitment. ~~, pursuant to the eligibility criteria in D. 18-12-018, but requires that, if pricing plans change going forward, Charter not exceed its California-wide pricing for similar broadband services in the project areas for two years after completion of the project. In future applications the Commission will consider requests for waivers of rules on a case-by-case basis. Charter shall comply with all guidelines, requirements and conditions associated with a CASF award, as specified in D. 18-12-018, Appendix 1, Item 11.~~
5. The Commission ~~grants~~denies Charter's request for waiver of the requirement customer installation charges be waived for a two-year period. ~~, and approves Charter's proposal to limit the installation charges waiver to the first three months following completion of construction. In future applications the Commission will consider requests for waivers of rules on a case-by-case basis. Charter shall comply with all guidelines, requirements and conditions associated with a CASF award, as specified in D. 18-12-018, Appendix 1, Item 11.~~