California Emerging Technology Fund
Summary of Response Brief November 12, 2015
Charter Communications Acquisition of Time Warner Cable
and Advance/Newhouse Partnership – Bright House Networks
(MB Docket 15-149)

Charter's reply brief is both unresponsive and unrealistic. Charter is unresponsive to the recommendations by CETF and other partners to invest in a tangible public benefit to increase broadband adoption among disadvantaged populations and appears to be turning their back on low-income consumers. The reference to expanding the fledgling Bright House effort is a token gesture. Furthermore, Charter is ignoring the reality of precedents in previous proceedings in which public benefits were volunteered by the applicants or imposed by the Federal Communications Commission (FCC) and the California Public Utilities Commission (CPUC). For example:

- FCC required AT&T to provide discounted DSL service to 100,000 households as a condition of approval of the SBC acquisition in 2005. And, the CPUC directed the capitalization of CETF as a statewide nonprofit with the mission to close the Digital Divide in California, resulting in increasing broadband adoption from 55% to 79% statewide and founding of the California Telehealth Network, School2Home, and Smart Housing Initiative as well as expansion of the California Advanced Services Fund to support deployment.

- FCC accepted the voluntary agreement by Comcast to establish the affordable broadband program called Internet Essentials (IE) at approximately $10 per month for families with students who qualify for the National School Lunch Program or Free-or-Reduced Lunch Program (FRLP) as a public benefit contribution in conjunction with the acquisition of NBCUniversal. Comcast since then has continued, expanded, and improved the IE program.

- CPUC Administrative Law Judge (ALJ) issued a Proposed Decision (PD) on the Comcast-Time Warner Cable (TWC)-Charter corporate consolidation requiring Comcast to expand IE to all low-income customers and to achieve 45% sign-ups by eligible households by investing at least $275 per household for outreach and digital literacy, including to engage community-based organizations (CBOs), schools and libraries as "trusted messengers" to reach disadvantaged communities in-language and in-culture. The CPUC ALJ PD would have resulted in 1.5 low-income households being connected at home with high-speed Internet service and all of the funds invested by Comcast would have been returned to the company in less than 3 years from new customers subscribing to IE.

- FCC required AT&T in purchasing DirecTV to offer affordable broadband at $10 per month (for 10 Mbps downstream) for 4 years. This groundbreaking affordable offer will result in millions of low-income customers across the country having the opportunity to participate in the digital economy.

- Frontier voluntarily entered into a Memorandum of Understanding (MOU) with CETF to increase broadband adoption for 200,000 low-income households in California and to offer affordable broadband at $13.99 throughout the new service areas as a condition in their purchase of the Verizon wireline network. Frontier also will provide 50,000 Internet-enabled computing devices (compatible with the needs of students and school districts to close the "homework gap") and will contribute $3 million to support CBOs to assist with outreach and digital literacy. Frontier also made significant broadband deployment public benefit commitments to upgrade service to more than 327,000 underserved locations and to reach 107,000 unserved households that were valued as an offset to higher broadband adoption requirements.

New Charter should be making similarly "appropriate, fair and comparable" voluntary public benefit commitments. Although the FCC is in the process of considering a Broadband Lifeline Program (WC Dockets No. 11-42, 09-197, 10-90), there is a need for broadband companies to offer an affordable subscription for all low-income households and to assist with outreach and digital literacy until a FCC program is operational. The FCC conditions applied to AT&T in the acquisition of DirecTV are a reasonable minimum and assure a 4-year interim period as a transition to a universal Broadband Lifeline program. CETF strongly encourages the FCC to require New Charter to offer an affordable broadband rate and to invest in achieving increases in broadband adoptions by setting a goal for new low-income households to be enrolled and by capitalizing an independent fund to support CBOs to assist with outreach, digital literacy and subscriptions to achieve that goal.

The question then becomes how to quantify a broadband adoption goal for enrolling unconnected low-income households and the amount of a public benefit contribution that is "appropriate, fair and comparable" in light of the voluntary public benefit contributions and regulatory requirements delineated above for other companies. In our initial filing, CETF relied upon the expertise of the independent CPUC ALJ and his Proposed Decision for the Comcast-TWC-Charter deal as a reasonable approach and objective benchmark to determine an "appropriate, fair and comparable" public benefit by New Charter. CETF provided detailed census data and analysis to support the recommendation for an independent fund of $285 million in California which remains a justifiable condition of approval for the pending corporate consolidation. However, instead of simply refusing to consider the CETF recommendation, it is incumbent upon the applicant to propose an alternative methodology that it thinks will be "appropriate and fair" and that can be applied in a "comparable" manner to all pending corporate consolidations with transparency and accountability. The following information provides additional data and alternative lenses for the FCC and the applicant to determine an "appropriate, fair and comparable" public benefit contribution for broadband adoption by New Charter.

In California, New Charter will have 2,312,454 low-income households (under $40,000 annual income) in its service areas (529,956 Charter + 1,680,827 TWC + 91,671 Bright House). That is 72% of all of the low-income households in AT&T service areas, 165% of all the low-income households in Comcast service areas, and 235% of the number in Frontier (post acquisition of the Verizon wireline network). And, the Charter-TWC-Bright House corporate consolidation will result in a service area with 64% of the low-income households that would have been in the proposed Comcast-TWC-Charter combined territory. In addition, today Charter has market capitalization that is 348% of Frontier.

These comparisons suggest that a reasonable goal for New Charter is to increase broadband adoption by 696,000 – 960,000 low-income households in California and to invest sufficient resources and capital to engage CBOs, schools and libraries to assist them in achieving this goal.

CETF set forth recommendations to increase broadband adoption among disadvantaged populations based on best practices derived from extensive on-the-ground experience, including the need to invest approximately $275 per adoption to engage CBOs, schools and libraries as “trusted messengers” to reach disadvantaged low-income households. The rationale for this figure was well documented and the independent CPUC ALJ incorporated that figure into his Proposed Decision on Comcast, validating the veracity of CETF and the validity of the approach.

However, CETF and our partners also are open to considering other equally effective approaches if the applicant is sincere about commitments to achieve explicit goals. CETF actively supports the promulgation of public-private partnerships as a public policy foundation for closing the Digital Divide by harnessing the discipline and innovation of the private sector with the expertise and cultural competency of those working on behalf of the public sector. CETF respectfully continues to invite Charter to consider the goals and thrust of the CETF recommendations and propose a reasonable and significant public benefit for broadband adoption.