

APPENDIX A

Table 1: Cal Advocates' Reply Comments filed August 21, 2020

Opening Comments Page No.	Description of Information Redacted	Basis for Confidential Treatment (<i>Asserted by Communications Providers</i>)	Supporting Declaration Accompanying Response to Cal Advocates Data Request 04	Contact Information
<p>P. 8, P. 27</p>	<p>Number of power supplies inside and outside of HFTDs in California</p> <p>Number of batteries sold in California by AT&T, Charter, Comcast & Cox</p>	<p>Trade Secret (Evidence Code 1061, Gov't Code 6254.15)</p>	<p>AT&T: Declaration of Fasil Fenikile in Support of Motion of AT&T for Leave to File Under Seal Confidential Portions of AT&T's Opening Comments on the Assigned Commissioner and Administrative Law Judge's Ruling Requesting Comments on Wireline Provider Resiliency Strategies [Confidential Version]; and Declaration of Jeff Luong in Support of AT&T's Comments on the Assigned Commissioner and Administrative Law Judge's Ruling on Wireline Provider Resiliency Strategies [Confidential Version]</p> <p>Charter: Declaration of Torry R. Somers Seeking Confidential Treatment of Charter Communications Inc.'s August 10, 2020 Responses to PAO Data Request No. 4 in R.18-03-011</p> <p>Comcast: Re: Comcast's Response to R.18-03-011 Public Advocates Office Data Request #4 and Request for Confidential Treatment</p> <p>Cox: Re: Cox's Response to R.18-03-011 Public Advocates Office Data Request #4 and Request for Confidential Treatment</p>	<p>AT&T: Fasil Fenikile Email: ff2659@att.com</p> <p>Charter: James McTarnaghan, Email: JMctarnaghan@perkinscoie.com</p> <p>Comcast: James Tomlinson, Email: JimTomlinson@dwt.com</p> <p>Cox: James Tomlinson, Email: JimTomlinson@dwt.com</p>



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Cal Advocates Supplement to Motions to File Under Seal

P. 12, P. 13	Wireline service provider practices regarding outage notifications	Trade Secret (Evidence Code 1061, Gov't Code 6254.15) Critical infrastructure (6 USC § 29.2(b) & 6 USC § 673(a)(1)(E))	Charter: Declaration of Torry R. Somers Seeking Confidential Treatment of Charter Communications Inc.'s August 10, 2020 Responses to PAO Data Request No. 4 in R.18-03-011	Charter: James McTarnaghan, Email: JMctarnaghan@perkinscoie.com
P. 17, P. 18	Number and percent of headends and hubs owned by Comcast	Trade Secret (Evidence Code 1061, Gov't Code 6254.15) Balancing Test § 6255(a) of California Public Records Act	Comcast: Re: Comcast's Response to R. 18-03-011 & R. 18-12-005 Public Advocates Office Data Request 3 (December 13, 2019)	Comcast: James Tomlinson, Email: JimTomlinson@dwt.com
P. 25-26	Quote from Comcast opening comments	Trade Secret (Evidence Code 1061, Gov't Code 6254.15) Balancing Test § 6255(a) of California Public Records Act	Comcast: Motion of Comcast Phone of California, LLC (U-5698-C) to File Under Seal Specific Information in its Comments on Assigned Commissioner and Administrative Law Judge's Ruling Requesting Comments on Wireline Provider Resiliency Strategies	Comcast: James Tomlinson, Email: JimTomlinson@dwt.com
P. 27	Charter customer satisfaction survey data	Confidential & Proprietary	Taken from "Spectrum. California Customer Satisfaction Survey. Quarter 1, 2020." Marked as "Confidential & Proprietary."	Charter: James McTarnaghan, Email: JMctarnaghan@perkinscoie.com

APPENDIX B

**DECLARATION OF TORRY R. SOMERS
SEEKING CONFIDENTIAL TREATMENT OF
CHARTER COMMUNICATION INC.'S AUGUST 10, 2020
RESPONSES TO PAO DATA REQUEST NO. 4 IN R.18-03-011**

I, Torry R. Somers, declare as follows:

1. I am Vice President, State Regulatory Affairs for Charter Communications, Inc. (Charter), and am authorized to make this declaration on behalf of the regulated entities listed below.
2. Charter is concurrently submitting its Responses to PAO Data Request No. 4 in R.18-03-011 to the Public Advocates Office (PAO) and requests confidential treatment of the responses to **Data Requests No. 4.1, 4.2, 4.3, 4.4, 4.6, 4.7 and 4.9** contained therein. Charter does not request confidential treatment for its responses to Data Requests 4.5 and 4.8
3. This request for confidential treatment is made pursuant to General Order (“GO”) 66-D Section 3.2 and Decision 17-09-023 which requires that parties submitting documents to the California Public Utilities Commission seeking confidential treatment must provide a signed declaration by an officer of the requesting entity.
4. Based on my knowledge, experience, and review of the data submitted by Charter, I make this declaration seeking confidential treatment of the responses identified in paragraph 2 above. These responses contain detailed information about Charter’s network and information detailing internal operating procedures within the company. Such information, if released publicly could provide highly competitively-sensitive data and trade secrets as defined by California Civil Code Section 3426.1 and California Evidence Code Section 1061 and otherwise disclose information regarding Charter’s system not publicly disclosed to the public or competitors. Disclosure of this information would provide access to information that would harm the private economic interests of Charter.

5. The matrix below identifies the data provided, the applicable confidentiality provisions, and the basis for seeking confidentiality.

Description of Data	Applicable Confidentiality Provisions	Basis for Confidentiality
Responses to Data Requests 4.1, 4.2, 4.3, 4.4, 4.6, 4.7, and 4.9	GO 66-D §§ 3.2 & 3.4 Cal. PU Code § 583 Cal. Gov. Code § 6254(k) Cal. Civil Code § 3426.1 Cal. Evidence Code § 1061 Cal. Gov. Code § 6255(a)	<p>The referenced responses contain detailed information regarding Charter’s network facilities (Responses to 4.1, 4.6, 4.7 and 4.9) and detailed information on Charter’s system operations (Responses to 4.2, 4.3, and 4.4). These responses contain information that is not otherwise available to the public. This information contains trade secrets per California Civil Code § 3426.1 and other highly competitively sensitive material which would be harmful to Charter if publicly disclosed. Such information is protected from disclosure und California Gov’t Code § 6254(k) and GO 66-D.</p> <p>In contrast to the direct harm that Charter would suffer from disclosure of the data, there would be no benefit to the public from disclosure of the data. A failure to preserve the confidentiality of the document would discourage compliance with disclosure requirements and undermine the Commission’s ability to perform its duties.</p>

6. To the extent that there is a need to make a contact regarding potential release of information, such contact should be made to Charter’s counsel:

James W. McTarnaghan
 Perkins Coie LLP
 505 Howard Street, Suite 1000
 San Francisco, CA 94105
 (415) 344-7007
jmctarnaghan@perkinscoie.com

7. I affirm and declare under penalty of perjury under the laws of the State of California, including Rule 1.1 of the California Public Utilities Commission's Rules of Practice and Procedure, that, to the best of my knowledge, all of the statements and representations made in this declaration are true and correct.

Executed on this 10th day of August 2020, at El Segundo, California.



Torry R. Somers
Vice President, State Regulatory Affairs

149174148.2

Via Electronic Delivery to: victor.smith@cpuc.ca.gov

August 12, 2020

Victor Smith
Analyst for the Public Advocates Office
California Public Advocates Office
505 Van Ness Avenue
San Francisco, CA 94102

Re: Cox's Response to R.18-03-011 Public Advocates Office Data Request #4 and Request for Confidential Treatment

Dear Mr. Smith:

Pursuant to your request, Cox Communications California, LLC ("Cox") hereby provides the attached response to the data request referenced above.

REQUEST FOR CONFIDENTIAL TREATMENT

Cox has enclosed under seal information for which it requests confidential treatment. This information falls into four categories: (1) information about Cox's power supplies in California ("Power Supply Information"); (2) information about Cox's sales of battery backup device to customers in California ("Backup Battery CPE Information"); and (3) information about Cox's outage tracking processes ("Outage Tracking Information") (collectively, the "Confidential Information").

Cox requests that the California Public Utilities Commission ("Commission") and the California Public Advocates Office ("Cal PA") afford confidential treatment to the Confidential Information pursuant to the California Public Records Act ("CPRA") and California Public Utilities Code Section 583. General Order ("GO") 66-D, Section 3.2 requires information submitters seeking confidential treatment of non-public information outside of a formal proceeding to: (i) designate information as confidential; (ii) specify the basis for confidential treatment under the CPRA or Commission order; (iii) provide a declaration in support of confidential treatment; and (iv) provide contact information of those responsible to monitor and respond to Commission communications regarding the submitted information. This submission addresses all requirements set forth in GO 66-D to seek confidential treatment.

A. Designation of the Information as Confidential

In its response, Cox marked the Confidential Information with headers and brackets indicating that it is confidential.

B. First Legal Basis for Confidential Treatment – Trade Secret

The CPRA protects against disclosure that is prohibited under state law, including the California Evidence Code, which is the only state law expressly spelled out in the code subsection.¹ The California Evidence Code protects against public disclosure of a “trade secret.”² A trade secret is defined in California law as:

information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³

The Confidential Information meets both elements of the definition of a trade secret, and the Commission has routinely granted requests for confidential treatment of comparable information.⁴

Independent Economic Value from Nondisclosure

As detailed below, disclosure of any of the Confidential Information would decrease Cox’s competitive advantage in the highly competitive communications marketplace.

- Nondisclosure of the Power Supply Information has independent economic value because disclosure of this information would benefit Cox’s competitors by giving them specific non-public information about the technical characteristics of, and operational details about, Cox’s network.
- Nondisclosure of the Backup Battery CPE Information has independent economic value because disclosure of this information would benefit Cox’s competitors by giving them specific non-public information about Cox’s efforts to market backup battery CPE devices to its customers.
- Nondisclosure of the Outage Tracking Information has independent economic value because disclosure of this information would benefit Cox’s competitors by giving them

¹ Cal. Gov. Code § 6254(k) (“this chapter does not require the disclosure of ... (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.”) (emphasis added).

² Cal. Evid. Code § 1060 (protecting against disclosure of trade secrets). *See, e.g., Lion Raisins, Inc. v. USDA*, 354 F.3d 1072, 1080-81 (9th Cir. 2004) (where information collected by agency would allow competitor to “infer critical information about its competitors’ volume, market share, and marketing strategy,” agency appropriately refused to produce in response to Freedom of Information Act request).

³ Cal. Civ. Code § 3426.1(d).

⁴ *See, e.g.,* D.14-12-037 (protecting as trade secret business methodologies and facility operation information) and D.16-12-013 (granting motion for confidential treatment of data used for revenue, rates, and cost forecasting, in part, on the basis of trade secret privilege).

specific non-public information about Cox’s internal processes and software systems used to detect, monitor and record network outages, many of which are Cox-developed, proprietary systems. Disclosure of this Outage Tracking Information also could assist bad actors trying to circumvent outage detection while attempting to sabotage the Cox network.

Cox’s Efforts to Maintain Secrecy

In the normal course of business, Cox makes significant efforts to guard and not disclose information about the Power Supply Information, the Backup Battery CPE Information, and the Outage Tracking Information.

Thus, the Power Supply Information, the Backup Battery CPE Information, and the Outage Tracking Information are trade secrets because they (i) have independent economic value from their nondisclosure and (ii) are closely guarded by Cox to maintain its secrecy. The CPRA directly protects against disclosure of trade secrets, and the Commission has previously ruled that trade secrets are entitled to confidential treatment.⁵

C. Second Legal Basis for Confidential Treatment – Balancing Test

Section 6255(a) of the CPRA protects against disclosure of information where “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure.”⁶ Here, Cox is providing the Confidential Information to the Public Advocates Office in response to a data request as part of a rulemaking proceeding. Cox is not aware of any significant public interest benefits that would be derived from the public disclosure of this information. On the other hand, as explained above, public disclosure of the Confidential Information would *harm* the public interest by reducing the benefits derived from a competitive communications marketplace. Thus, the public interest served by not disclosing the Confidential Information clearly outweighs the public interest served by its disclosure.

D. Declaration

The request for confidential treatment is supported by the attached declaration of Mark A. DiNunzio, Cox’s Director, Regulatory Affairs.

⁵ Moreover, the U.S. Supreme Court recently clarified that a movant need not prove “substantial competitive harm” to receive confidential treatment of commercial or financial information under analogous provisions of the federal Freedom of Information Act (“FOIA”). *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019). Instead, “where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of [FOIA].” *Id.* Cox clearly has met that standard here.

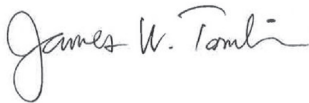
⁶ Cal. Gov. Code § 6255(a); *see also Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 1073 (2006) (ruling that, under Section 6255, proposals for lease of hangar facility at public airport were exempt from disclosure during negotiation period to ensure benefits of competition which “assure the best social, environmental, and economic result for the public.”).

E. Contact Information

Questions about Cox's request for confidential treatment should be directed to James W. Tomlinson at (213) 633 - 6872 or jimtomlinson@dwt.com.

If you have any questions regarding this response, please contact me either by phone at (213) 633-6872 or by email at jimtomlinsomn@dwt.com

Very truly yours,

A handwritten signature in cursive script that reads "James W. Tomlinson".

James W. Tomlinson
Counsel for Cox Communications California, LLC

Via Electronic Delivery to: victor.smith@cpuc.ca.gov

August 12, 2020

Victor Smith
Analyst for the Public Advocates Office
California Public Advocates Office
505 Van Ness Avenue
San Francisco, CA 94102

**Re: Comcast's Response to R.18-03-011 Public Advocates Office Data Request #4
and Request for Confidential Treatment**

Dear Mr. Smith:

Pursuant to your request, Comcast Phone of California, LLC ("Comcast") (U-5698-C) hereby provides the attached response to the data request referenced above.

REQUEST FOR CONFIDENTIAL TREATMENT

Comcast has enclosed under seal information for which it requests confidential treatment. This information falls into three categories: (1) information about Comcast's power supplies in California ("Power Supply Information"); (2) information about Comcast's sales of battery backup device to customers in California ("Backup Battery CPE Information"); and (3) information about Comcast's outage tracking processes ("Outage Tracking Information") (collectively, the "Confidential Information").

Comcast requests that the California Public Utilities Commission ("Commission") and the California Public Advocates Office ("Cal PA") afford confidential treatment to the Confidential Information pursuant to the California Public Records Act ("CPRA") and California Public Utilities Code Section 583. General Order ("GO") 66-D, Section 3.2 requires information submitters seeking confidential treatment of non-public information outside of a formal proceeding to: (i) designate information as confidential; (ii) specify the basis for confidential treatment under the CPRA or Commission order; (iii) provide a declaration in support of confidential treatment; and (iv) provide contact information of those responsible to monitor and respond to Commission communications regarding the submitted information. This submission addresses all requirements set forth in GO 66-D to seek confidential treatment.

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The CPRA protects against disclosure that is prohibited under state law, including the California Evidence Code, which is the only state law expressly spelled out in the code subsection.¹ The California Evidence Code protects against public disclosure of a “trade secret.”² A trade secret is defined in California law as:

information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) [d]erives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy.³

The Confidential Information meets both elements of the definition of a trade secret, and the Commission has routinely granted requests for confidential treatment of comparable information.⁴

Independent Economic Value from Nondisclosure

As detailed below, disclosure of any of the Confidential Information would decrease Comcast’s competitive advantage in the highly competitive communications marketplace.

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- Nondisclosure of the Backup Battery CPE Information has independent economic value because disclosure of this information would benefit Comcast’s competitors by giving them specific non-public information about Comcast’s efforts to market backup battery CPE devices to its customers.
- Nondisclosure of the Outage Tracking Information has independent economic value because disclosure of this information would benefit Comcast’s competitors by giving

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them specific non-public information about Comcast’s internal processes and software systems used to detect, monitor and record network outages.

Comcast’s Efforts to Maintain Secrecy.

In the normal course of business, Comcast makes significant efforts to guard and not disclose information about the Power Supply Information, the Backup Battery CPE Information, and the Outage Tracking Information.

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D. Declaration

The request for confidential treatment is supported by the attached declaration of John A. Gutierrez, Comcast’s Senior Director – Government Affairs.

⁵ Moreover, the U.S. Supreme Court recently clarified that a movant need not prove “substantial competitive harm” to receive confidential treatment of commercial or financial information under analogous provisions of the federal Freedom of Information Act (“FOIA”). *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019). Instead, “where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is ‘confidential’ within the meaning of [FOIA].” *Id.* Comcast clearly has met that standard here.

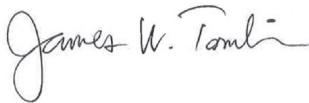
⁶ Cal. Gov. Code § 6255(a); *see also Michaelis, Montanari & Johnson v. Superior Court*, 38 Cal. 4th 1065, 1073 (2006) (ruling that, under Section 6255, proposals for lease of hangar facility at public airport were exempt from disclosure during negotiation period to ensure benefits of competition which “assure the best social, environmental, and economic result for the public.”).

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If you have any questions regarding this response, please contact me either by phone at (213) 633 - 6872 or by email at jimtomlinson@dwt.com

Very truly yours,

A handwritten signature in cursive script that reads "James W. Tomlinson".

James W. Tomlinson
Counsel for Comcast