

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Application of Charter Communications Inc. for)
Rehearing of Resolution T-17515.)
_____)

Application No. 16-07-003

**RESPONSE OF CALIFORNIA EMERGING TECHNOLOGY FUND
TO APPLICATION OF CHARTER COMMUNICATIONS, INC.
FOR REHEARING OF RESOLUTION T-17515**

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Pursuant to Rule 16.1(d) of this Commission’s Rules of Practice and Procedure, the California Emerging Technology Fund (CETF) hereby files this timely response to the “Application for Rehearing of Charter Communications, Inc. for Rehearing of Resolution T-17515” (Application), filed July 11, 2016, in A.16-07-003.

The mission of CETF is to close the Digital Divide in California and it is publicly accountable to the Legislature through annual reports filed with this Commission. CETF has been implementing a Smart Housing Initiative since 2007 as a key public policy strategy to increase broadband adoption among the lowest-income Californians. CETF is working diligently to ensure broadband connectivity for publicly-subsidized housing, a pivotal strategy to ensure that low-income families and individuals that live in such housing have access to critical tools to better their lives and become more self-sufficient. These disadvantaged Californians are certain to be more disadvantaged and further left behind in this Digital Age without affordable Internet access at home. CETF has adopted the goal of 98% deployment and 80% broadband adoption by 2017.

I. Background and Summary

CETF was an active party as an initiator and advocate for Assembly Bill No. (AB) 1299 (Bradford), the state legislation that established the Broadband Public Housing Account (BPHA) within the California Advanced Services Fund (CASF) to address the need for cost-effective broadband deployment connectivity and broadband adoption in publicly-subsidized, multi-unit attached affordable housing complexes owned by government agencies or non-profit housing organizations. CETF was requested to testify before the Assembly Utilities and Commerce

Committee on March 11, 2013 and April 29, 2013 as to the need for and purpose of AB1299 and, therefore, has historical knowledge about the intent of AB1299. Further, this Outside Counsel to CETF proposed the concept of the California Advanced Services Fund when she served as a member of this Commission and, therefore, has historical expertise regarding the original provisions of the authorizing legislation and the legal interpretations of its provisions. CETF actively participated at this Commission when the regulations were being promulgated to comply with AB1299. CETF filed comments and provided data to this Commission on publicly-supported communities (PSC) in California and on broadband adoption and access therein, and actively participated in workshops conducted by the California Public Utilities Commission (CPUC) across the state. Further, CETF filed Opening Comments, dated May 24, 2016, on Resolution No. T-17515 (Resolution). Resolution T-17515 approved the award of the BPHA grants as consistent with the statute for the CASF Public Housing Account, and with D.12-02-015,¹ and D.14-12-039,² despite the challenges of Charter Communications, Inc. (Charter) and Comcast to the draft Resolution. The grants were appropriate under the law and the Commission's own rules, and there was no legal error.

Further, the Resolution appropriately delegated to Communications Division staff the authority to approve applications through expedited review for properties that are wired. On July 11, 2016, Charter filed an Application of Charter Communications, Inc. for Rehearing of Resolution T-17515, with the Commission.³

CETF files this Response to the Application submitted by Charter to strongly support the Commission's action approving the Resolution, rebut allegations of legal error particularly on the "served" argument of Charter, and to urge denial of the Application.

¹ D.12-02-015, Decision Implementing Broadband Grant and Revolving Loan Program Provisions, in R.10-12-008 (issued Feb. 8, 2012).

² D.14-12-039, Decision Adopting the California Advanced Services Fund Broadband Public Housing Account Application Requirement and Guidelines, in R.12-10-012 (issued Dec. 12, 2014).

³ The Charter Application for Rehearing addresses ten of the twelve applications approved in the Resolution; it does not seek rehearing of the two projects currently served by Comcast Cable.

II. Charter’s Application for Rehearing Fails to Set Forth Any Legal Error, or Unlawful or Erroneous Finding in Resolution T-17515

Pursuant to the Commission’s Rule 16.1(c), Charter must set forth specific unlawful or erroneous portions of Resolution T-17515 that supports its Application for Rehearing. Charter has failed to do so.

A. The BPHA Program Does Not Have Requirements that the Households Be “Unserved” Or “Underserved” to Receive a Grant.

Charter’s primary argument is that the BPHA is intended to supply funding for broadband **access** to households that are “unserved” or “underserved” – citing Section 281(e)(3)(A) of the Public Utilities Code – and that the BPHA program inappropriately looks at “affordability” of the service or the percentage of residents who choose to take it. Charter further alleges that the BPHA program is subsidizing broadband infrastructure in “served” (or already wired) affordable housing complexes (or publicly-supported communities or PSCs) and thus is essentially “overbuilding” Charter’s existing broadband network.⁴

CETF strongly disagrees with Charter’s interpretation of the CASF BPHA statute. Charter relies on Section 281(e)(3)(A) – a portion of the statute that preexisted years before the BPHA program was implemented – that apply to the initial CASF program, the Broadband Infrastructure Grant Account. This section does not apply to the unique BPHA program, contained in Section 181(h), where no such “unserved” or “underserved” requirement is set forth.

The PSCs for which the funds were requested are indeed “wired” or “served” by the incumbent cable/broadband provider, a fact which was clearly set forth in the Resolution and is uncontroverted.⁵ The BPHA program seeks to bring Internet access *to the door* of each affordable housing unit, because the incumbent-provided Internet service offered in the affordable housing complex is unaffordable to about 75% of the residents. The PSCs are

⁴ Application, at 1-2.

⁵ Resolution T-17515, at 7 and 10. The Communications Division found that nearly all public housing application locations received by it to date for the BPHA program are wired or served. (Resolution, at 3.) The Commission has previously approved BPHA applications for projects where the locations are “wired.” (Resolution, at 3.) This is because being “wired” or “served” does not make a PSC ineligible under the two eligibility rules set forth above which emanate from the statute and the Commission’s rules for the BPHA program.

partnering with Internet Service Providers to bring free or low cost (\$10-\$20 range) *wireless Internet access* to each affordable housing unit, which is the thrust of this unique program for unconnected Internet households in PSCs. The fact that the incumbent has a wire to the curb of the affordable housing unit does not make its service “available” to the unconnected low-income tenants within that cannot afford it.

The projects being funded by the BPHA program do not seek to overbuild the incumbents’ broadband networks in the PSC. This would be wasteful and expensive. Generally, the PSCs and its partner are installing low-cost electronic equipment that complement or leverage existing broadband connectivity to the property, as opposed to overbuilding with a brand new network. For example, PSCs in partnership with a new Internet Service Provider may purchase Internet connectivity on a wholesale basis from an existing broadband provider, strategically wire a community computer room, and provide wireless routers to provide affordable wireless Internet service to housing units of unconnected residents.

As noted above, its statutory source, Charter inappropriately cites a portion of the statute that does not apply to the BPHA program – Section 281(e)(3)(A). This section applies to the Broadband Infrastructure Grant Account program, which was put in place in 2012 by D.12-02-015, two years before the BPHA was passed by the legislature in 2014. The appropriate section of the law that contains the BPHA program requirements is found in PU Code Section 281(h).

As clearly noted by the Commission in the Resolution on page 9, the rules governing applicant eligibility under the BPHA are contained in Public Utilities Code Section 281(h)(2).

There are only two prongs to the test:

- (1) The first prong is the Commission’s eligibility requirements and program requirements. Section 281(h)(2) states, “moneys in the BPHA shall be available for the commission to award grants and loans pursuant to the subdivision to an eligible publicly supported community if that entity otherwise meets eligibility requirements and complies with the program requirements established by the commission.” (Resolution, at 9.)
- (2) The second prong is contained in Section 281(h)(3) which states that a PSC may be eligible for CASF BHPA grant funding only if it has not “denied a right of access to any broadband provider that is willing to connect a broadband network to the facility for which the grant or loan is sought.”

In the instant factual cases in the Resolution, the PSC applicants met the first prong, which were the eligibility requirements and program requirements established by the

Commission for the BPHA program in D.14-12-039. (Resolution, at 7.) This first prong is not a factual issue in dispute.

As to the second prong, the fact that Charter is already offering service in each PSC (Resolution at 7) shows *prima facie* it was not denied a right of access to the facility for which the BPHA grant or loan is sought. Thus, given both prongs for applicant eligibility for a BPHA grant were met under Section 281(h), the Commission properly granted the applications at issue, and should uphold its decision forthwith.

B. The BPHA Statute and Legislative History Clearly Indicates that Wired PSCs Are Eligible.

Charter claims that Section 281(h)(3) does not justify provision of infrastructure funding where the necessary infrastructure already exists. (Application, at 12.) The legislative history proves otherwise. In the Senate Energy, Utilities and Communications Committee Legislative Briefing Memo, dated April 25, 2013, for the July 2, 2013 hearing on AB1299, it states on page 1, at paragraph five, “This bill makes a publicly supported housing community eligible for a broadband adoption grant *if the residential units have existing broadband service*, and authorizes grant recipients to contract with other nonprofit or public agencies to help implement the broadband adoption program . . . “ (emphasis added) Further at page 3, Paragraph 2 under “Comments” of the same Briefing Memo, it states:

“2. Served But Not Connected. From the beginning, the CASF’s first priority has been to help fund broadband infrastructure in areas of the state without any broadband service (unserved), and secondly in areas where broadband service is not available at benchmark speeds deemed adequate to participate in the modern digital economy (underserved). The overall goal of CASF is to bring adequate broadband service to all Californians. *This bill is consistent with that goal but brings a new twist to the program in order to help connect public housing residents in locations that would not otherwise be eligible for CASF funding because they are “served” by the broadband provider.* As stated by the author, a broadband cable running to the street or curb does not bring Internet access to public housing residents if the building’s individual units are not wired for broadband. This bill also authorizes use of CASF fund specifically for broadband adoption projects, which CASF does not currently authorize.”

(Emphasis added)

The quoted language clearly indicates without a doubt that the Legislature knew that the public housing locations were “served” which undercuts the primary argument made by Charter in its Application that Section 281(e)(3)(A) applies to the BPHA program.

Further, D.14-02-039 adopted rules where funding for both unwired and wired PSCs is allowed; hence there is no legal error in the grants contained in the Resolution. In the Commission’s above-referenced decision, it noted that the Communications Division staff recommended “the Commission prioritize awards so that PSCs that are not wired for broadband will receive priority over PSCs that are already wired, *although both may be eligible for CASF funds.*” (D.14-02-039, at 9 (emphasis added).) Further, at page A-28 of Appendix A (Staff Report Proposing Rules to Implement Program Changes to the California Advanced Services Fund Initiated by AB1299) of D.14-02-039, the Staff Report states:

Recommendation 6. Based on Finding 14, staff recommends the Commission prioritize those PSCs which are not wired for broadband. For purpose of the CASF Public Housing Account, a unit is considered “wired” if broadband Internet at any speed is available for purchase from a commercial provider, including Digital Subscriber Line (DSL) service through a phone line. Thus, as detailed further in Section 10.1 on Timelines, PSCs without wiring will receive priority over PSCs which already have wiring, but *both entities are eligible for these funds.* . .

D.14-02-039, Appendix A, at page A-28 (emphasis added).

Thus, the fact that the PSC is “served” is irrelevant to eligibility for a CASF BPHA grant.

Finally, the Commission should reject Charter’s related argument that the Commission has exceeded its statutory authority just to spend funds quickly before such funds must be returned to the general CASF fund coffers. (Application, at 9-14, 15.) The Commission properly acted within the authority granted by the Legislature, and this allegation is false.

C. The Problem Is Not that the PSC is Already Wired; The Barriers Are Lack of an Affordable Offer, Digital Literacy, Lack of Electronic Equipment, and More.

As clearly stated in the Resolution, the BPHA program was uniquely designed by the Legislature to address the many barriers to broadband adoption low-income families and individuals residing in PSCs face. The retail rate offered by the existing Internet Service Provider (whether it be the cable incumbent or a telephone incumbent) is unaffordable by 75% of low-income families living in the PSCs.

The Resolution stated that PSCs submitted documentation that an average of 25% of the residents in the project locations subscribe to available ISP services.⁶ From the mouths of the PSC administrators themselves, the Housing Authority of the County of San Bernardino (HACSB), Community Housing Works (CHW) and Eden Housing, Inc. (Eden) all asserted that although the units may have wiring to support broadband Internet service, most residents do not subscribe to that service "because they cannot afford the services." (Resolution, at 7.) The affordability point is consistent with CETF's experience after promoting and running broadband adoption programs in California including in affordable housing complexes for nine years. Some of the reasons that the majority of PSC residents do not subscribe to existing Internet service offers include:

- (1) residents cannot afford the market price, typically \$30-\$65 in the state;
- (2) discounted Internet programs have narrow eligibility, such as Comcast Internet Essentials, which is primarily offered only to low-income families with K-12 aged children in the free or reduced national free lunch program;
- (3) the application process is difficult for low-income families to navigate to qualify for low-cost broadband offers, establish eligibility, and actually hook up the necessary equipment to provide the service;⁷
- (4) low-income households often cannot afford the lack of equipment such as a computing device, printer or wireless router; and
- (5) distrust of corporate broadband providers by PSC residents, who are concerned about being upsold plans they cannot afford.

Charter recently committed, as a condition of its merger with Time Warner Cable (TWC), to offer a discounted broadband service to low-income families whose K-12 children participating in the federal free or reduced lunch program, as well as a second category of seniors, age 65 or older that are receiving Supplemental Security Income benefits. Charter declined, however, to make its discounted broadband program available to other low-income households, including those without K-12 children, those without a senior citizen aged 65 or older, and those with people with disabilities or disabled veterans. As a result, it is reasonable for the applicants HACSB, CHW and Eden to conclude that existing low-cost broadband offers

⁶ Resolution, at 7.

⁷ Resolution, at 14.

by the current Internet Service Provider fall short of inclusion of all low-income households residing in the PSC and more needs to be done.

Further, the Commission’s staff found after research when developing the guideline and rules for the BPHA that broadband service at \$25 or higher was deemed “unaffordable” for residents of the PSCs. The CD staff noted: “many potential grantees [PSCs] are unable to charge residents for broadband Internet service as part of their agreements with HUD, and TCAC. These entities prohibit PSCs from charging more than a predetermined amount as a condition of living at the PSC. While they cannot charge mandatory broadband Internet service fees, they could charge optional fees. Additionally, as noted in the Section 6.4.1 of this report, PSC residents will purchase broadband Internet connectivity only if it is affordable. In general, staff found that PSC residents believed that paying less than \$10 per month was optimal, in line with the monthly prices under Comcast’s Internet Essentials Program while paying above \$25 was generally not affordable.” D.14-29-039, at A-28 (page 71 of the .pdf file). Thus, even if an incumbent Internet service provider already provides service to the PSC, offerings of over \$25 are unaffordable to the majority of the residents, hence there is a need for the BPHA grant to bring a low cost (below \$25/month) or even free Internet service offering to low-income residents of the PSCs.

D. The Commission Properly Granted Staff Delegated Authority to Award BPHA Funding to ‘Wired’ Properties.

Finally, the Commission should reject Charter’s argument that this Commission overstepped its bounds in granting the Communications Division Staff delegated authority to approve BPHA awards, where the applicants met the two-pronged requirements of the BPHA program, even if such awards are in PSCs “served” by incumbents.⁸ Under the plain language of Section 281(h), grants are allowed if the two eligibility prongs are met. Further, the legislative history of the Act⁹ makes clear that the Legislature was well aware that grants would be made in “served” PSCs and thus, the granting of delegated authority in these circumstances was reasonable and consistent with legislative intent.

⁸ Application, at 16.

⁹ See Section B above where the legislative history is set forth on this point.

WHEREFORE, CETF respectfully requests for the reasons set forth above that this Commission dismiss the Application for Rehearing of Charter and uphold its Resolution which was correctly approved under the law and the Commission's own rules and regulations governing the BPHA.

Respectfully submitted,

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