

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

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

Application

**APPLICATION OF CHARTER COMMUNICATIONS, INC., FOR
REHEARING OF RESOLUTION T-17515**

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I. INTRODUCTION

Pursuant to Rule 16.1, Charter Communications, Inc. (“Charter”), requests rehearing of Resolution T-17515 (the “Resolution”), which was adopted by the California Public Utilities Commission (the “Commission”) on June 9, 2016, and issued on June 10, 2016.

In approving funding of approximately \$190,061 from the Broadband Public Housing Account (“BPHA”) of the California Advanced Services Fund (“CASF”) for 10 public housing properties (the “Properties”) currently served by Charter, the Resolution violates the plain language, and the overall objective, of the CASF.¹ The BPHA, as one of four subsidiary “accounts” 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)(A) (emphasis added); *see also id.* at § 281(a). The statute defines the terms “unserved” and “underserved” with reference to definitions set forth in an identified prior decision of the

¹ This Application for Rehearing addresses the following 10 applications of the 12 approved in the Resolution: the Housing Authority of San Bernardino County (Lynwood and North E. St.), Community Housing Works (Northwest Manors II on E. Mountain St. and Northwest Manors II N. on Raymond Ave.), and Eden Housing, Inc. (Jasmine Square, Monticelli, Rancho Park, Royal Court, Wheeler Manor 650 5th Street, Wheeler Manor 651 6th Street). Charter does not seek rehearing of the two projects currently served by Comcast: the Eden Housing, Inc., projects at Hayward Senior and Warner Creek.

Commission, definitions that refer to the availability of broadband of sufficient speed. Nowhere do those definitions refer to the supposed “affordability” of the service or the percentage of residents who choose to take it. Nowhere do those definitions suggest that BPHA funding may be used to subsidize broadband infrastructure to overbuild the broadband network of a private entity that is already fully serving the community with high-quality broadband.

The Resolution, however, awards funding to publicly supported communities (“PSCs”) that are recognized by the Commission to be completely wired and fully “served” by Charter. In awarding funding in these instances, the Commission adopts new criteria that conflict with the statutory language and intent by examining the extent to which the residents have chosen to take Charter’s service. The Commission interprets what it sees as a low acceptance of Charter’s broadband service as an indication that the service is not sufficiently “affordable.” And based on this finding, and an interpretation of the statute that misinterprets the core principles of the CASF, the Commission awards funding to construct infrastructure that overbuilds Charter’s network. Charter thus seeks rehearing of the Commission’s decision that departs from the statutory requirements in order to subsidize duplicative – while less robust – broadband services to public housing communities that Charter already serves. That Charter has already wired the Properties and makes its service available to all the residents presents an absolute bar to the award of any CASF/BPHA funds.

Granting government funding for entities to overbuild existing broadband infrastructure in public housing was not authorized by the legislature because it would have a perverse effect. Opposite from the overall thrust of the legislation, such an interpretation would ultimately discourage expenditure of private investment by companies like Charter to install broadband infrastructure in those locations in the future. Additionally, funding overbuilding of already

wired and served public housing would divert scarce resources away from the areas where broadband is not available and would thus thwart the statute's general purpose. The grant of funds made pursuant to the Resolution would thus conflict with the central underlying intent of the CASF/BPHA – to ensure that low-income housing residents have access to the same high-quality broadband capability as others do in an increasingly interconnected world. Indeed, because the broadband services proposed by the applicants for funding are far slower than the robust broadband services already provided by private investment, the Commission's policy reflected in the Resolution is almost certain to create contrary results. If left to stand, the Resolution will effectively ensure that the residents of future publicly supported housing communities will be left with inferior and inadequate services in the years ahead. Private companies will have no incentive to deploy broadband networks using private capital when public funds will be granted in a manner that undermines that investment.

This is the first case where the Commission has addressed this important issue. According to the Resolution, Staff has previously approved CASF/BPHA funding in other situations where the public housing was already wired by a private broadband provider.² To the best of Charter's knowledge, however, the Commission has never before addressed in any decision whether such expenditure is consistent with either the underlying statute or good public policy. Charter urges the Commission to act quickly to reconsider its decision in the Resolution; Staff has already relied on the Resolution in processing an additional 25 applications for

² The Resolution cites Resolution T-17506, but in that case, no internet service provider offering broadband service challenged the applicants' request for funding. The Resolution further references 54 challenges from internet service providers that Staff has received in response to applications for funding submitted by wired public housing entities. But in none of these decisions is it apparent that the Staff addressed the authority for or wisdom of the Commission's providing funding for already wired housing facilities. To the contrary, it is clear that the Staff has upheld at least some of these challenges on the grounds that, like Charter here, the challenging internet service provider provides service to existing customers and can provide service to 100 percent of units.

infrastructure funding where, similar to the situations addressed here, Charter already provides broadband service.³

To be clear, Charter agrees that publicly supported housing residents should not be left out of the broadband revolution. And Charter does not object to legislative policies that encourage public subsidies to support investment in unserved areas. Charter's actions – its having fully wired and provided broadband services to the Properties at issue here – speak to its commitment to serve public housing. But Charter does not support the policy reflected in the Resolution to use public funds to overbuild housing communities that are already fully served. That is inconsistent with both the wording of the CASF statute and the important public policy underpinning it.

II. LEGAL FRAMEWORK

Established in 2008, the CASF aims to encourage the deployment of high-quality advanced communications services in California. *See* Cal. Pub. Util. Code § 281. The CASF's overarching objective is “to approve funding for infrastructure projects that will provide broadband access,” *id.* § 281(b)(1), giving “priority to projects that provide last-mile broadband access to households that are unserved by an existing facilities-based broadband provider.” *Id.* § 281(b)(2).

As originally enacted, the CASF was available only to “telephone corporations.” But the law was amended in 2013 to allow an “entity that is not a telephone corporation,” including eligible “publicly supported communities,” to apply for funding through the CASF. The funding for non-telephone company entities is explicitly restricted “to provide access to broadband to an

³ *See* Letter from Robert Wullenjohn, Program Manager, Broadband, Video, and Market Branch, Communications Division, to Lisa Ludovici, Senior Manager, Government Affairs, Charter Communications, Inc. (July 1, 2016).

unserved or underserved household, as defined in commission Decision 12-02-015.” *Id.*

§ 281(e)(3). “Unserved” under that definition is “an area that is not served by any form of wireline or wireless facilities-based broadband, such that Internet connectivity is available only through dial-up service.” Decision (D.) 12-02-015 at 13. “Underserved” is defined as “an area where broadband is available, but no wireline or wireless facilities-based provider offers service at advertised speeds of at least 6 mbps download and 1.5 mbps upload.” *Id.* at 19.

The 2013 amendments also created the BPHA, as part of the CASF, to expand broadband access specifically to residents of publicly subsidized housing. The BPHA was divided into two separate grant programs. The grant program at issue here is an infrastructure fund of \$20 million with the purpose to “connect” existing broadband infrastructure to public housing.⁴ The other, a fund of \$5 million, is to be used to improve adoption of broadband services by residents of public housing. The sponsor of the BPHA legislation, Steven Bradford, Chair of the Assembly Committee on Utilities and Commerce, explained in describing the legislation that the BPHA is intended to meet concerns that some broadband networks had largely ignored public housing and failed to connect broadband infrastructure to these housing facilities. *See* Senate Energy, Utils., & Commc’ns Comm., AB 1299 Analysis, (July 2, 2013).

In the wake of the 2013 amendments, the Commission adopted guidelines to assist its implementation of the BPHA. *See* D.14-12-039 (the “Decision”). The Decision established requirements for applying for a BPHA grant. *See id.* at Appendix B. For infrastructure projects submitted under subsection 281(h)(3), the applicant must “attest to whether or not the property it

⁴ “Not more than twenty million dollars (\$20,000,000) shall be available for grants and loans to a publicly supported community to finance a project to connect a broadband network to that publicly supported community. A publicly supported community may be an eligible applicant only if the publicly supported community can verify to the commission that the publicly supported community 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.” Cal. Pub. Util. Code § 281(h)(3).

proposes to serve under its grant request is wired for broadband Internet service, as defined in Section III, and provide the percentage of units that have broadband service available.” *Id.* at B5-6. A unit is “wired” if “it is possible to subscribe to a commercially available broadband Internet service,” and “[a] unit having such wiring is considered as having broadband service ‘available.’ ” *See id.* at B3. The Guidelines do not suggest that a fully wired facility where broadband service is offered is eligible for BPHA funding. And the Commission has not yet addressed this issue, other than in adopting Staff’s draft of the Resolution in this case.

III. FACTUAL BACKGROUND

Beginning in January 2015, the Properties began applying for funding pursuant to the BPHA’s infrastructure grant programs. The Properties anticipate that they will use BPHA funds to deploy broadband services, in many instances relying on backhaul services from Charter because it has already wired the Properties.⁵ In the case of the Eden Housing units, they anticipate that they will be able to provide services at no cost to residents of the Properties because of BPHA subsidies.

Charter timely objected to the Applications for BPHA funding on the grounds that it has fully wired the Properties for which they sought infrastructure funding.⁶ Charter demonstrated that not only are its high quality and robust broadband services, which vastly exceed the speeds required by the Commission,⁷ available in each residence in the applicants’ facilities, but also that residents can and do subscribe to the broadband service that Charter offers. Because Charter

⁵ *See infra* at n.15.

⁶ Comcast serves the other two facilities and accordingly submitted similar objections.

⁷ Indeed, the minimum speeds of Charter’s services exceed the speeds proposed by the applicants for BPHA funding here. *See infra* at 7, 11-12.

provides these offerings, the Properties do not qualify as either “unserved” or “underserved” within the meaning of the CASF.

Nevertheless, Staff recommended the Commission approve the requests for BPHA funding. In issuing that approval, the Resolution notes that Staff initially upheld challenges from broadband service providers on the ground that the applications sought BPHA funds for housing facilities that were already fully wired. On the other hand, Staff noted that it has recently granted funding in other situations where facilities are wired, although it has apparently never addressed whether granting those applications was consistent with the enabling statute. *See* Resolution at 3 n.5. It appears that the motivation for Staff’s change – from denying funding for properties that are already served by a broadband provider to granting funding – is its realization that, otherwise, the funding might not be used. According to the Commission, almost all applications Staff has received for BPHA funding are for wired housing facilities. *See id.* at 3-4. The Resolution expresses a concern that the BPHA grant program could be rendered irrelevant if applications for wired facilities were deemed ineligible.⁸

Charter lodged additional objections on May 24, 2016, noting that awarding CASF funds in these circumstances would not only be inconsistent with statutory requirements but would create perverse incentives for private broadband providers to leave publicly supported housing unwired in direct contravention of statutory objectives. *See* Letters from Del J. Heintz, Director of State Government Affairs, Charter Communications, Inc., to William Goedecke, Public Utilities Regulatory Analyst, California Public Utilities Commission (May 24, 2016) (attached as Exhibit 1). Indeed, why would any private company invest limited capital to wire and serve

⁸ The Staff did not explain how that fact, if true, would justify its award of funding for projects that were otherwise ineligible. And, of course, it would not. *See infra* at 14.

public housing where the state would provide public funds to overbuild and thereby negate its investment?

The Properties responded to Charter's objections by contending that funding would further the goal of ensuring all California residents have in-home broadband and noted that on average only 25 percent of the residents in the Properties now subscribe to broadband service. The Properties did not offer any proof that a low adoption rate, where it exists, is due to the "affordability" of the service or even attempt to explain the statutory basis for relying on an "affordability" standard in the first place. Nor did they explain the relevance of an "average" percentage of adoption to the merits of an award to any particular Property.

On June 9, 2016, the Commission accepted Staff's draft Resolution without significant changes. In a divided vote, the Commission denied Charter's challenges to the applications and adopted revised review criteria to allow the award of BPHA funds to wired housing facilities.

IV. ARGUMENT

The purpose of an application for rehearing is to bring the Commission's attention to a legal or factual error. *See* Cal. Pub. Util. Code § 1732. Section 1732 requires parties filing an application for rehearing to state specifically the ground or grounds on which rehearing is sought. In the instant proceeding, Charter seeks rehearing principally on the ground that the Resolution fails to abide statutorily mandated criteria applicable to the award of BPHA funding and is in conflict with the central underpinnings of the CASF/BPHA program.⁹

A. The Resolution Allocates Funds to Serve Housing Facilities that Are Neither "Unserved" Nor "Underserved" and that Are Not Necessary to "Connect" Any Public Housing Facility and thus Violates California Public Utility Code § 281.

⁹ Charter also seeks rehearing on the grounds set forth *infra* at 15-16 & 16, n.14-16

The Commission's award of funding under the CASF/BPHA must comply with Section 281 of the Public Utilities Code, including Section 281(e), which sets forth the general requirements that apply to all requests for infrastructure funding from the subsidiary accounts, including the BPHA. In spite of the overarching statutory requirements and objectives of the CASF, the Resolution has interpreted the statute to permit it to authorize BPHA funding to a public housing property regardless whether that property is already wired and served by a private broadband provider. Because Resolution's interpretation cannot be reconciled with the statute or its policy objectives, the Commission should accept Charter's application for rehearing and reverse its decision.

1. Grant of BPHA Funding in this Instance Violates the Requirement that Infrastructure Funding Be Used for "Unserved" and "Underserved" Properties.

In reviewing and applying the provisions of a statute, an interpreting body must look to the ordinary and usual meaning of the words of the statute as "construed in their statutory context." *Wolski v. Fremont Inv. & Loan*, 127 Cal. App.4th 347, 351 (2005). It is essential that "[t]he words of a statute must be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other to the extent possible." *Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, 177 Cal. App.4th 47, 54 (2004).¹⁰

¹⁰ Where the Commission has interpreted a governing statute, that interpretation may be helpful but is not binding or authoritative and "may sometimes be of little worth." See *Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal.4th 1, 8 (1998); *New Cingular Wireless PCS, LLC v. Pub. Utils. Comm'n*, 246 Cal. App.4th 784, 809-10 (2016). But here, the Resolution acknowledges that the Commission had not previously addressed and had not imposed any sort of affordability criteria for review of BPHA applications in wired or unwired facilities. Even where the Commission's interpretation warrants some weight, it is not binding where it "fails to bear a reasonable relation to statutory purposes and language." See *Greyhound Lines, Inc. v. Pub. Utils. Comm'n*, 68 Cal.2d 406, 410 (1968).

The Resolution awards BPHA funding in violation of the statutory mandates. There is no question that the publicly supported housing involved in this case is neither “unserved” nor “underserved” within the meaning of Cal. Pub. Util. Code § 281(e)(3). The Resolution admits as much. *See* Resolution at 17. Nevertheless, the Resolution determines that the statutory requirement in Section 281(e)(3) that CASF infrastructure funds be used for “unserved or underserved” projects does not apply to moneys for infrastructure grants awarded under Section 281(h)(3). But the plain reading of the statutory text, as well as the legislative history, provide no support for failing to apply the principal guideline for CASF funding to the BPHA, one of four accounts subject to the overarching structure of the CASF funding program.

The BPHA is a subsidiary “account” of the CASF, not a wholly distinct statute insulated from the CASF mandates. *See id.* § 281(c). CASF funding is collected through a single surcharge mechanism and then allocated through individual accounts, including the BPHA, and all CASF funding runs through one or more of these accounts. *See id.* § 281(d).¹¹ Section 281(e) generally outlines the rules and purposes for availability of all funds under the CASF umbrella. Among these statutory guidelines, the CASF provides that “an entity that is not a telephone corporation shall be eligible to apply to participate in the program administered by the commission pursuant to this section to provide access to broadband to an unserved or underserved household, as defined in commission Decision 12-02-015, if the entity otherwise meets the eligibility requirements.” *Id.* § 281(e)(3). To protect against waste and fraud, these non-telephone companies must meet certain specified requirements, including that the funding must “provide broadband access to households that are unserved or underserved,” *id.*

¹¹ The BPHA obtains funding through two of the accounts established within the CASF: the Broadband Infrastructure Grant Account and the Broadband Infrastructure Revolving Loan Account. *See id.* § 281(d), (h)(7)(A).

§ 281(e)(3)(A), and that any party challenging an application must have the “opportunity to demonstrate actual levels of broadband service in the project area,” *id.* § 281(e)(3)(C).

The statute does not exempt BPHA funding applicants from the requirements of Section 281(e)(3). Indeed, the Commission admits that “Section 281(h)(3) is . . . silent with respect to whether the PSC is [wired] or whether denial of access is the only basis for Public Housing challenges.” Resolution at 9 (bracketed word in original). That Section 281(h)(3) is “silent” as to the requirement that infrastructure funding applications be limited to “served” and “underserved” properties, however, is hardly surprising. Section 281(e)(3)(A) already contains that requirement. And neither the Commission nor Staff has ever articulated a reasonable basis for not applying to BPHA funding the statute’s core objective of providing infrastructure funding to “unserved” and “underserved” communities. The Resolution merely announces, without explanation or analysis, that “unserved and underserved status does not apply to the BPHA,”¹² Resolution at 16. While the Resolution also declares that “the BPHA is to provision funds to connect PSCs to the internet and not to create last mile access,” the Commission offers no reason why “connecting” a PSC to the internet should not be given its commonsense understanding as part of the “last mile access” mentioned in Section 281(e)(3)(A). *Id.*

The legislative history fully supports a reading that applies the requirements of Section 281(e)(3) uniformly to all of the CASF infrastructure development funding, including grants to establish connections to PSCs. *See Wolski*, 127 Cal. App.4th at 353 (holding the intent of the

¹² Staff states in a footnote that the “Charter’s arguments go beyond what was known at the time that D.12-02-015 [the commission decision the statute relies for the meaning of “unserved and underserved”] was approved,” and that because “the BPHA was not envisioned when D.12-02-015 was issued, . . . the Commission could not consider the applicability of unserved or underserved in the context of the BPHA.” Resolution at n.40. But whether the BPHA was envisioned or not at the time when D.12-02-015 was issued, the legislature added the BPHA to the CASF – without modifying the definitions of served and underserved. And those definitions make no reference to “affordability.”

legislature may be relevant to an investigation of statutory meaning when the plain language is ambiguous or uncertain). Section 281(e) was adopted in 2013, at the same time as the BPHA, to expand the eligibility for infrastructure grants to entities that are not telephone corporations but that are “uniquely suited to provide broadband access in the last remaining unserved areas and authorize additional funding for this purpose, thereby advancing state policy to ensure that all Californians are connected.” Senate Energy, Utils., & Commc’ns Comm., Hrg. Comments (April 30, 2013). Reading Subsection 281(e)(3) outside of the statutory guidelines to allow funding to overbuild fully wired and served public housing – as does the Resolution – defies the statutory objectives of expanding the availability of CASF funding where private communications companies are unable or unwilling to do so. In other words, the restriction in Section 281(e)(3) was included to prevent exactly what the Resolution authorizes.

2. ***Section 281(h)(3) Does Not Provide for Funding to Properties that Are Already Served.***

No basis exists for interpreting Section 281(h), which more narrowly addresses the BPHA, to provide for infrastructure funding where the necessary infrastructure already exists. Section 281(h) makes funding available to public housing “to finance a project to **connect** a broadband network to that publicly supported community.” Cal. Pub. Util. Code § 281(h)(3) (emphasis added). Where the community is already “**connected**” to the broadband network, as the Properties are here, there is no justification under the statute for the Commission to award BPHA funding.

The legislative history of the BPHA makes clear that the grant of public money is intended to extend broadband infrastructure, where none exists, to public housing – not to overbuild private infrastructure that is already present. Steven Bradford, Chair of the Assembly Committee on Utilities and Commerce, who introduced the legislation that eventually created the

BPHA, made plain that his concern was largely to connect nearby broadband networks to those public housing structures that had been ignored by broadband providers: “[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.” Senate Energy, Utils., & Commc’s Comm., AB 1299 Analysis, (July 2, 2013) (quoted in D.14-12-039 at A 28). The wording in Section 281(h)(3) – “to connect a broadband network to that publicly supported community” – was intended to meet the concerns noted by Mr. Bradford. To interpret the statute as the Resolution has done – funding overbuilding of the infrastructure of private companies that have themselves already met the statutory objective of connecting broadband to public housing – is plainly inconsistent with the legislative objective.

That legislative objective is disserved not only because the Commission’s policy would reduce the incentive for private companies like Charter to spend private capital to wire the housing themselves. In many – if not most – cases, the subsidized service will be inferior to that provided by broadband providers. In this situation, for example, Charter provides high speed Internet access at advertised speeds of at least 60 Mbps download and 4 Mbps upload – far in excess of the promised speeds of the subsidized Properties. In some cases, the Properties’ proposed speeds do not even meet the Commission’s minimum speeds required for a particular housing to be considered “served.”¹³ It is undebatable, furthermore, that broadband infrastructure investment is not a one-time thing. As uses and applications for broadband

¹³ According to the Resolution, the two projects provided by the Housing Authority of San Bernardino County will offer download speeds of 6 Mbps during peak use hours; the two projects provided by Community Housing Works will offer download speeds of 2 to 2.5 Mbps during peak use hours; and the two projects provided by Eden Housing, Inc., will offer download speeds of 1.5 Mbps during peak use hours. *See* Resolution at 5. Not only are these speeds far inferior to those offered by Charter, but they also fail to meet the Commission’s own minimum requirement to deem a housing facility “served.” *See* D.12-02-015.

increase, as the Internet of Things becomes more of a reality, the speed needed fully to experience the benefits of high-speed broadband will continue to increase. The concern for availability of meaningful broadband to all communities in California is not a static concept; it will require additional investment as time goes on. Will the Commission be required to continue to fund subsidized systems, or will they fall further and further behind the systems operated by private providers? There is good reason for the policy evident in the statute to fund “unserved and underserved” areas but not to ensnare the government in an unnecessary and continual need to fund duplicative broadband systems when private providers, such as Charter, already have made the necessary investments to wire these areas with state of the art broadband infrastructure.

3. *The Commission Here Conflates Sections 281(h)(3) and 281(h)(4).*

In authorizing the infrastructure funding under Section 281(h)(3) in these instances, the Commission has conflated the requirements for “connecting” broadband networks to publicly supported communities with the support for adoption of broadband services by the residents under Section 281(h)(4). Indeed, Staff states that “provisioning of redundant facilities may be akin [to] an ‘adoption’ program given the issue of affordability that arises in public housing.” Resolution at 16. But the funding requested here is to provide infrastructure under Section 281(h)(3), not to increase adoption rates under Section 281(h)(4). Indeed, the Commission did not address in the Resolution why, if its desire is to increase adoption rates, it has not encouraged funding for education and outreach programs to make the residents of the Properties aware of and literate in broadband offerings and opportunities, as provided for D.14-12-039, App. B at B14. The Commission’s BPHA Guidelines demonstrate that it views “adoption projects” under Section (h)(4)(A) as directed toward these purposes. Neither the Commission nor Staff has ever suggested that the funding under Section 281(h)(4) – for “adoption projects” – is eligible to fund

infrastructure. Charter is in full agreement that the broadband adoption fund cannot be used for infrastructure projects such as those involved in this case.

4. *The Lack of “Unserved” Publicly Supported Communities Does Not Justify Spending BPHA Funds on “Served” Communities.*

Staff’s concern that the funding authorized under Section 281(h)(3) will not find a use if not used to overbuild existing broadband networks in publicly supported communities is not a justification for funding overbuilds. It appears that one of the driving motivations in approving BPHA funding for communities that have already been fully wired and are served is a concern that, if the Commission does not fund those projects, it will not be able to allocate all the funds it is otherwise authorized to award under the BPHA: “By contrast, if staff accepts Charter’s interpretation that if a building in the area is already served by an existing provider and if the building is wired, then staff believes there would be few, if any, eligible BPHA infrastructure projects since staff believes nearly all [publicly supported communities] PSCs are wired.” Resolution at 16. Even if the Resolution’s candid expression of the lack of need for infrastructure funding to “connect” publicly supported housing communities is accurate, it does not justify ignoring statutory requirements. *See Wolski*, 127 Cal. App.4th at 357 (holding that even when an administrative body interprets a statute, where “an alternative reading is compelled by the plain language” of a regulation or statute, the interpretation does not and cannot control); *Stolman v. City of Los Angeles*, 114 Cal. App.4th 916, 930 (2003). The statutory requirements of CASF cannot simply be brushed aside, ignored, or re-written to accommodate an expansive interpretation of the BPHA.

* * *

Because the Resolution misconstrues the plain wording, as well as the legislative history, of the statute, it should be modified on rehearing.

Charter also seeks rehearing of the Resolution's determination that the Staff may approve the award of BPHA funding to overbuild "wired" properties under its delegated authority. *See id.* at 10. Finally, Charter seeks rehearing on the grounds that (i) there is no substantial evidence that Charter's service is not affordable,¹⁴ (ii) there is no substantial evidence that necessary "backhaul" service will be available to each of the Properties to allow the delivery of broadband services,¹⁵ and (iii) the Commission's decision is procedurally improper.¹⁶ While Charter has focused its attention in this Application for Rehearing on the principal and overriding error in the Commission's award of funding to overbuild existing broadband facilities, these other deficiencies are themselves fatal to the Resolution.

B. The Legal Errors in the Resolution are Material.

The misinterpretations and misapplications of law throughout the Resolution are material and result in legal error justifying rehearing. The Resolution's interpretation of the statute and its purpose mandates outcomes that cannot be reconciled with the language and overall objective of the CASF. By contrast, applying an interpretation of the law that comports with statutory language and goals mandates a different outcome here. The Resolution's erroneous application

¹⁴ Even if the "affordability" of existing broadband service were a standard authorized by the statute, which it is not, the rate of adoption of the service is not proof of affordability. Indeed, the average adoption rate relied on by the Commission is not probative of the actual adoption rate in any Property. Finally, the Commission did not look to whether residents in the Properties have access to other providers' services, such as DSL or wireless data services, and the impact of such services on the decisions to take Charter's service.

¹⁵ The Properties propose to purchase Internet backhaul service from Charter, but Charter has advised that it does not and will not offer that service. *See* Exhibit 1. Furthermore, the Staff has noted that it has no evidence that any other source of backhaul is available. *See* Resolution at 17.

¹⁶ The Commission's decision to adopt the Resolution, altering and amending its prior determinations set forth in D.14-12-039, is procedurally improper. The Commission may only "rescind, alter, or amend any decision made by it" after it has given notice to the parties and provided an opportunity to be heard. Cal. Pub. Util. Comm'n § 1708; *see also Cal. Trucking Assn. v. Pub. Util. Comm'n*, 19 Cal.3d 240, 244 (1977). Here, Charter was given only limited opportunity to comment on Staff's recommended decision prior to the Commission's decision to adopt the Resolution and its proposed changes to D.14-12-039. This falls far short of the procedures afforded by notice and comment mechanisms which must be followed, and denies Charter due process. *See* Cal. Pub. Util. § 1708.5.

of law therefore resulted in clear legal error and must be rejected by the Commission on rehearing.

V. CONCLUSION

Charter respectfully requests the Commission grant this application for rehearing and uphold Charter's objections to the applications by the Properties for funding under the BPHA program.

Dated: July 11, 2016

Respectfully submitted,

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Exhibit 1



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VIA E-MAIL

May 24, 2016

William Goedecke
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California Public Utilities Commission
Broadband, Policy and Analysis

RE: Charter Communication Response to Community Housing Works,
Community Housing Works Rebuttal on Public Housing
Infrastructure Grant Application ("Application")

Dear Mr. Goedecke:

Charter has clearly demonstrated that it has wired and makes available robust broadband service to all of the Community Housing Works (CHW) locations included in Resolution T-17515, namely Northwest Manors II (Mountain), Pasadena and Northwest Manor II (Raymond), Pasadena (the "Properties"). We provide our response and further challenge to CHW rebuttal.

The Properties are neither unserved nor underserved, and the units at the various Properties are currently "wired." Charter has already provided redacted copies of customer bills for the complex which prove that the Properties are fully wired and served. Charter's published internet speed for the area, which includes the Properties, starts at 60 Mbps download and 4 Mbps upload. Charter surveyed the speed levels at each complex and submitted the test results with our challenge to the Application. As documented in our initial response, Charter's actual download and upload speeds meet or exceed what's offered in the market.

The Commission is required to follow both its enabling statutes and its own rules and decisions as set forth in D. 12-02-015, and D. 14-12-039. The Commission has defined "unserved" as "an area that is not served by any form of wireline or wireless facilities-based broadband, such that Internet connectivity is available only through dial-up service." D. 12-02-015 at 13. "Underserved" is defined as "an area where broadband is available, but no wireline or wireless facilities-based provider offers service at advertised speeds of at least 6 mbps download and 1.5 mbps upload." *Id.* at 19. If an area is neither "unserved" nor "underserved" according to these definitions, CASF funds may not be used to fund broadband there. Charter has demonstrated in its challenge that the Eden Housing locations are neither "unserved" nor "underserved," and thus CASF funding is not appropriate or permissible.

In a recommendation that has not been adopted by the Commission, the Commission Staff has set forth the criteria for an applicant, such as Eden Housing, to rebut a challenge. Those criteria relate to whether the services are "available to 100 percent of the residents" and whether residents subscribe to the service. See Draft Staff Report, attached to D. 14-12-039, at A29.

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Clearly, as Charter has demonstrated, Charter's service is "available" to 100 percent of the residents of Eden Housing and residents actually subscribe to the service. Charter has thus met both of the Staff's stated criteria, which should be sufficient to sustain Charter's challenge and deny Eden Housing's grant application.

Eden Housing bases its rebuttal on the fact that less than 100 percent of the residents at the Properties have chosen to take Charter's service, as if this were a reasonable reading either of the Staff's Report or the controlling statute. It is not. First of all, the Staff cannot have meant to suggest that even if the service is "available to 100 percent of the residents" the project can be deemed "unserved" or "underserved" unless every one of those residents chooses to take the service. If the Staff had intended that result, there was no reason to have mentioned its first criterion – that the service is "available" to those residents. Whether or not the service is "available" would be immaterial if 100 percent of those residents must also subscribe to the service for the area to be considered to be "served." But more fundamentally, the Commission has never adopted such a criterion for evaluating whether an applicant can rebut the challenge to a grant application. And that criterion would be inconsistent with the Commission's own definitions of "unserved" and "underserved," which relate to the statutory standards for eligibility for CASF funds. Furthermore, the idea that every customer in every unit of a public housing complex must take an existing provider's services would render the statutory distinctions between served, underserved and unserved meaningless, as virtually no areas of the State would be found to be "served" under that formulation. Eden Housing has thus wrongly conflated the Staff's criteria. Awarding CASF funds on this basis would violate both the statutory program and the Commission's own standards.

CASF was created "in order to spur the deployment of broadband facilities in unserved and underserved areas of California." D. 14-12-039 at 2. Charter is providing high quality broadband services to the residents within these communities, including the residents of the Properties, and Charter invested heavily to upgrade its infrastructure to provide a variety of high quality broadband, communications and entertainment services throughout the areas in question. Public funding is not necessary in this instance to accomplish CASF goals. The law's author made clear that it was intended to address situations where public housing projects are not wired for broadband: "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." Quoted in D. 14-12-039 at A 28. But that is not the case here. Clearly, the Properties are wired and Charter is offering broadband service to the residents. Accordingly, Charter's challenge to the Application should be sustained.

Eden Housing's rebuttal also claims that its residents cannot afford Charter's service. But Charter publicly committed to offering a low cost broadband service with speeds of 30/4 Mbps at a price of \$14.99 per month within twelve months of completion of its acquisition of Time Warner Cable and Bright House Networks. This merger closed May 18th, 2016. Eligible households are those with children in the Federal free or reduced lunch program as well as seniors aged 65 or older receiving social security benefits. In comparison, Charter's low cost broadband program offers a much faster speed than Eden

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Housing proposes to offer its residents. In fact, Charter's low cost broadband service speed far exceeds the State's own definition of broadband.

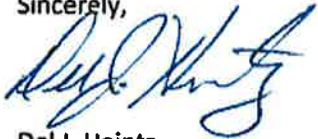
In addition to its low cost broadband program, Charter offers promotions and discounted rates based on a customer subscribing to a bundle of services, such as cable television and telephone. A number of our customers at these locations take advantage of these bundled discounts. Moreover, Charter has a practice of negotiating discounted bulk rates for multiple dwelling units such as these locations. We have no record of a request for information from Eden Housing related to pricing for bulk service agreements. Complete information related to our current pricing for the Properties is available on our website at www.Charter.com.

There is another important factor that the Commission should consider in this matter. Resolution T-17515 indicates that Eden Housing plans to purchase internet "backhaul" service from Charter and distribute it via CAT5e cables to repeater sites and then over a wireless mesh network to residents. Charter is not aware of any contract or estimate provided to Eden Housing or its representatives. In fact, Charter does not offer its internet service for this type of "resale" distribution even if there is no cost to the recipients, and any such unauthorized use would violate Charter's "Acceptable Use" policy.¹ Without a survey and site analysis there is no guarantee, in any event, that the proposed solution is technologically feasible, capable of producing even the minimum bandwidth claimed in the application or that it can be sufficiently funded at the grant amount requested. Furthermore, the scenario proposed by Eden Housing would degrade Charter's product and, therefore its brand and may constitute an unauthorized use of service under California law, as well as company policy.

In conclusion, Charter appreciates the opportunity to respond to Resolution T-17515 and requests that the Commission reconsider CASF's recommendation for use of public funds at these locations. The Properties are receiving broadband services through private investment and these services clearly fit the definition of served under California statute.

Should Eden Housing be interested in Charter service for its residents, we welcome the opportunity to explore potential solutions with them.

Sincerely,



Del J. Heintz
Director of State Government Affairs

¹ Prohibited Activities Using the System, Network, and Service. Any activity or use of the service which violates system or network security or integrity are prohibited and may result in criminal and civil liability. Such violations include, without limitation: reselling or otherwise redistributing the service; disrupting, degrading or otherwise adversely affecting Charter's network or computer equipment owned by Charter or other Charter subscribers; excessive use of bandwidth that in Charter's sole opinion, places an unusually large burden on the network or goes above normal usage. See https://www.charter.com/browse/content/services#/terms_TCR3.



Del J. Heintz
California Director- Government Affairs
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VIA E-MAIL

May 24, 2016

William Goedecke
Public Utilities Regulatory Analyst
California Public Utilities Commission
Broadband, Policy and Analysis

RE: Charter Communication Response to Eden Housing, Inc., Rebuttal
on Public Housing Infrastructure Grant Application ("Application")

Dear Mr. Goedecke:

Charter has clearly demonstrated that it has wired and makes available robust broadband service to all of the Eden Housing Inc., (Eden Housing) locations included in Resolution T-17515, namely Jasmine Square, Morgan Hill; Monticelli, Gilroy; Rancho Park, Hollister; Royal Court, Morgan Hill; Wheeler Manor – 650 5th Street, Gilroy; and Wheeler Manor – 651 6th Street, Gilroy (the "Properties"). We provide our response and further challenge to the Eden Housing rebuttal.

The Properties are neither unserved nor underserved, and the units at the various Properties are currently "wired." Charter has already provided redacted copies of customer bills for the complex which prove that the Properties are fully wired and served. Charter's published internet speed for the area, which includes the Properties, starts at 60 Mbps download and 4 Mbps upload. Charter surveyed the speed levels at each complex and submitted the test results with our challenge to the Application. As documented in our initial response, Charter's actual download and upload speeds meet or exceed what's offered in the market.

The Commission is required to follow both its enabling statutes and its own rules and decisions as set forth in D. 12-02-015, and D. 14-12-039. The Commission has defined "unserved" as "an area that is not served by any form of wireline or wireless facilities-based broadband, such that Internet connectivity is available only through dial-up service." D. 12-02-015 at 13. "Underserved" is defined as "an area where broadband is available, but no wireline or wireless facilities-based provider offers service at advertised speeds of at least 6 mbps download and 1.5 mbps upload." *Id.* at 19. If an area is neither "unserved" nor "underserved" according to these definitions, CASF funds may not be used to fund broadband there. Charter has demonstrated in its challenge that the Eden Housing locations are neither "unserved" nor "underserved," and thus CASF funding is not appropriate or permissible.

In a recommendation that has not been adopted by the Commission, the Commission Staff has set forth the criteria for an applicant, such as Eden Housing, to rebut a challenge. Those criteria relate to whether

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the services are "available to 100 percent of the residents" and whether residents subscribe to the service. See Draft Staff Report, attached to D. 14-12-039, at A29.

Clearly, as Charter has demonstrated, Charter's service is "available" to 100 percent of the residents of Eden Housing and residents actually subscribe to the service. Charter has thus met both of the Staff's stated criteria, which should be sufficient to sustain Charter's challenge and deny Eden Housing's grant application.

Eden Housing bases its rebuttal on the fact that less than 100 percent of the residents at the Properties have chosen to take Charter's service, as if this were a reasonable reading either of the Staff's Report or the controlling statute. It is not. First of all, the Staff cannot have meant to suggest that even if the service is "available to 100 percent of the residents" the project can be deemed "unserved" or "underserved" unless every one of those residents chooses to take the service. If the Staff had intended that result, there was no reason to have mentioned its first criterion – that the service is "available" to those residents. Whether or not the service is "available" would be immaterial if 100 percent of those residents must also subscribe to the service for the area to be considered to be "served." But more fundamentally, the Commission has never adopted such a criterion for evaluating whether an applicant can rebut the challenge to a grant application. And that criterion would be inconsistent with the Commission's own definitions of "unserved" and "underserved," which relate to the statutory standards for eligibility for CASF funds. Furthermore, the idea that every customer in every unit of a public housing complex must take an existing provider's services would render the statutory distinctions between served, underserved and unserved meaningless, as virtually no areas of the State would be found to be "served" under that formulation. Eden Housing has thus wrongly conflated the Staff's criteria. Awarding CASF funds on this basis would violate both the statutory program and the Commission's own standards.

CASF was created "in order to spur the deployment of broadband facilities in unserved and underserved areas of California." D. 14-12-039 at 2. Charter is providing high quality broadband services to the residents within these communities, including the residents of the Properties, and Charter invested heavily to upgrade its infrastructure to provide a variety of high quality broadband, communications and entertainment services throughout the areas in question. Public funding is not necessary in this instance to accomplish CASF goals. The law's author made clear that it was intended to address situations where public housing projects are not wired for broadband: "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." Quoted in D. 14-12-039 at A 28. But that is not the case here. Clearly, the Properties are wired and Charter is offering broadband service to the residents. Accordingly, Charter's challenge to the Application should be sustained.

Eden Housing's rebuttal also claims that its residents cannot afford Charter's service. But Charter publicly committed to offering a low cost broadband service with speeds of 30/4 Mbps at a price of \$14.99 per month within twelve months of completion of its acquisition of Time Warner Cable and Bright House Networks. This merger closed May 18th, 2016. Eligible households are those with children in the Federal free or reduced lunch program as well as seniors aged 65 or older receiving social security benefits. In comparison, Charter's low cost broadband program offers a much faster speed than Eden

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Housing proposes to offer its residents. In fact, Charter's low cost broadband service speed far exceeds the State's own definition of broadband.

In addition to its low cost broadband program, Charter offers promotions and discounted rates based on a customer subscribing to a bundle of services, such as cable television and telephone. A number of our customers at these locations take advantage of these bundled discounts. Moreover, Charter has a practice of negotiating discounted bulk rates for multiple dwelling units such as these locations. We have no record of a request for information from Eden Housing related to pricing for bulk service agreements. Complete information related to our current pricing for the Properties is available on our website at www.Charter.com.

There is another important factor that the Commission should consider in this matter. Resolution T-17515 indicates that Eden Housing plans to purchase internet "backhaul" service from Charter and distribute it via CAT5e cables to repeater sites and then over a wireless mesh network to residents. Charter is not aware of any contract or estimate provided to Eden Housing or its representatives. In fact, Charter does not offer its internet service for this type of "resale" distribution even if there is no cost to the recipients, and any such unauthorized use would violate Charter's "Acceptable Use" policy.¹ Without a survey and site analysis there is no guarantee, in any event, that the proposed solution is technologically feasible, capable of producing even the minimum bandwidth claimed in the application or that it can be sufficiently funded at the grant amount requested. Furthermore, the scenario proposed by Eden Housing would degrade Charter's product and, therefore its brand and may constitute an unauthorized use of service under California law, as well as company policy.

In conclusion, Charter appreciates the opportunity to respond to Resolution T-17515 and requests that the Commission reconsider CASF's recommendation for use of public funds at these locations. The Properties are receiving broadband services through private investment and these services clearly fit the definition of served under California statute.

Should Eden Housing be interested in Charter service for its residents, we welcome the opportunity to explore potential solutions with them.

Sincerely,



Del J. Heintz
Director of State Government Affairs

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VIA E-MAIL

May 24, 2016

**William Goedecke
Public Utilities Regulatory Analyst
California Public Utilities Commission
Broadband, Policy and Analysis**

**RE: Charter Communication Response to Housing Authority of the
County of San Bernardino, Rebuttal on Public Housing
Infrastructure Grant Application ("Application")**

Dear Mr. Goedecke:

Charter has clearly demonstrated that it has wired and makes available robust broadband service to all of the Housing Authority of the County of San Bernardino (HACSB) locations included in Resolution T-17515, namely 1470 Lynwood and 4181 North E Street in San Bernardino (the "Properties"). We provide our response and further challenge to the HACSB rebuttal.

The Properties are neither unserved nor underserved, and the units at the various Properties are currently "wired." Charter has already provided redacted copies of customer bills for the complex which prove that the Properties are fully wired and served. Charter's published internet speed for the area, which includes the Properties, starts at 60 Mbps download and 4 Mbps upload. Charter surveyed the speed levels at each complex and submitted the test results with our challenge to the Application. As documented in our initial response, Charter's actual download and upload speeds meet or exceed what's offered in the market.

The Commission is required to follow both its enabling statutes and its own rules and decisions as set forth in D. 12-02-015, and D. 14-12-039. The Commission has defined "unserved" as "an area that is not served by any form of wireline or wireless facilities-based broadband, such that Internet connectivity is available only through dial-up service." D. 12-02-015 at 13. "Underserved" is defined as "an area where broadband is available, but no wireline or wireless facilities-based provider offers service at advertised speeds of at least 6 mbps download and 1.5 mbps upload." *Id.* at 19. If an area is neither "unserved" nor "underserved" according to these definitions, CASF funds may not be used to fund broadband there. Charter has demonstrated in its challenge that the Eden Housing locations are neither "unserved" nor "underserved," and thus CASF funding is not appropriate or permissible.

In a recommendation that has not been adopted by the Commission, the Commission Staff has set forth the criteria for an applicant, such as Eden Housing, to rebut a challenge. Those criteria relate to whether the services are "available to 100 percent of the residents" and whether residents subscribe to the service. See Draft Staff Report, attached to D. 14-12-039, at A29.

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Clearly, as Charter has demonstrated, Charter's service is "available" to 100 percent of the residents of Eden Housing and residents actually subscribe to the service. Charter has thus met both of the Staff's stated criteria, which should be sufficient to sustain Charter's challenge and deny Eden Housing's grant application.

Eden Housing bases its rebuttal on the fact that less than 100 percent of the residents at the Properties have chosen to take Charter's service, as if this were a reasonable reading either of the Staff's Report or the controlling statute. It is not. First of all, the Staff cannot have meant to suggest that even if the service is "available to 100 percent of the residents" the project can be deemed "unserved" or "underserved" unless every one of those residents chooses to take the service. If the Staff had intended that result, there was no reason to have mentioned its first criterion – that the service is "available" to those residents. Whether or not the service is "available" would be immaterial if 100 percent of those residents must also subscribe to the service for the area to be considered to be "served." But more fundamentally, the Commission has never adopted such a criterion for evaluating whether an applicant can rebut the challenge to a grant application. And that criterion would be inconsistent with the Commission's own definitions of "unserved" and "underserved," which relate to the statutory standards for eligibility for CASF funds. Furthermore, the idea that every customer in every unit of a public housing complex must take an existing provider's services would render the statutory distinctions between served, underserved and unserved meaningless, as virtually no areas of the State would be found to be "served" under that formulation. Eden Housing has thus wrongly conflated the Staff's criteria. Awarding CASF funds on this basis would violate both the statutory program and the Commission's own standards.

CASF was created "in order to spur the deployment of broadband facilities in unserved and underserved areas of California." D. 14-12-039 at 2. Charter is providing high quality broadband services to the residents within these communities, including the residents of the Properties, and Charter invested heavily to upgrade its infrastructure to provide a variety of high quality broadband, communications and entertainment services throughout the areas in question. Public funding is not necessary in this instance to accomplish CASF goals. The law's author made clear that it was intended to address situations where public housing projects are not wired for broadband: "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." Quoted in D. 14-12-039 at A 28. But that is not the case here. Clearly, the Properties are wired and Charter is offering broadband service to the residents. Accordingly, Charter's challenge to the Application should be sustained.

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Re: Rebuttal to Housing Authority of the County of San Bernardino Grant Application

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In addition to its low cost broadband program, Charter offers promotions and discounted rates based on a customer subscribing to a bundle of services, such as cable television and telephone. A number of our customers at these locations take advantage of these bundled discounts. Moreover, Charter has a practice of negotiating discounted bulk rates for multiple dwelling units such as these locations. We have no record of a request for information from Eden Housing related to pricing for bulk service agreements. Complete information related to our current pricing for the Properties is available on our website at www.Charter.com.

There is another important factor that the Commission should consider in this matter. Resolution T-17515 indicates that Eden Housing plans to purchase internet "backhaul" service from Charter and distribute it via CAT5e cables to repeater sites and then over a wireless mesh network to residents. Charter is not aware of any contract or estimate provided to Eden Housing or its representatives. In fact, Charter does not offer its internet service for this type of "resale" distribution even if there is no cost to the recipients, and any such unauthorized use would violate Charter's "Acceptable Use" policy.¹ Without a survey and site analysis there is no guarantee, in any event, that the proposed solution is technologically feasible, capable of producing even the minimum bandwidth claimed in the application or that it can be sufficiently funded at the grant amount requested. Furthermore, the scenario proposed by Eden Housing would degrade Charter's product and, therefore its brand and may constitute an unauthorized use of service under California law, as well as company policy.

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Del J. Heintz

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