

Decision 17-08-015

August 10, 2017

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Charter Communications, Inc.
for Rehearing of Resolution T-17514.

Application 17-01-004
(Filed January 5, 2017)

**ORDER MODIFYING RESOLUTION T-17514,
AND DENYING REHEARING OF RESOLUTION, AS MODIFIED**

I. INTRODUCTION

On December 6, 2016, the Commission issued Resolution T-17514 (or “Resolution”)¹ approving grant funding in the amount of \$1,475,481 from the California Advanced Services Fund (“CASF”) Broadband Public Housing Account (BPHA)² in response to public housing infrastructure grant applications for 35 projects from nine Publicly Supported Communities (“PSC” or PSCs): Community Housing Works (“CHW”) for its Cypress Cove and Mayberry Townhome projects (2 projects); the Central Valley Coalition for Affordable Housing (“CVCAH”) for its Perris Isle Senior project (1 project); the Housing Authority of the County of Kern (“HACK”) for its Arvin FLC, Monterey St., Parkview, and Village Congressional projects (4 projects); the Housing Authority of the County of Santa Barbara (“HACSB”) for its Lompoc Gardens I, Lompoc Gardens II, and Miller Plaza projects (3 projects); Surf Development Company (“Surf”) for its Central Plaza, Leland Park, Palm Grove, and Parkview Apartments (4 projects); the Bannaker Homes, Inc. (“Bannaker”) for its Bannaker Homes project

¹ All Commission Resolutions citations refer to the official Commission PDF versions of the resolutions, which can be found on the Commission’s website: <http://docs.cpuc.ca.gov/ResolutionSearchForm.aspx>

² Any references to “BPHA” always refer to the CASF’s BPHA.

(1 project); the Napa Valley Community Housing (“NVCH”) for its Arroyo Grande Villas, Magnolia Park Townhomes; Mayacamas Village; Napa Park Homes; Oak Creek Terrace, Pecan Court Apartments, Silverado Creek Apartments, The Reserve of Napa, and Villa de Adobe Apartments (9 projects); the People’s Self Help Housing (“PSHH”) for its Dahlia Court I, Dahlia Court II, Isle Vista Apartments; Ladera Street Apartments; Mariposa Town Homes, Rolling Hills Apartments, Storke Ranch Apartments, Victoria Street Bungalows, and Villa La Esperanza projects (9 projects); and EAH Housing (“EAH”) for its Elena gardens and Pollard Plaza projects (2 projects).³

Prior to the issuance of the Resolution, Cox Communications, an Internet Service Provider (“ISP”), submitted a challenge to seven of the nine PSHH projects⁴ on the grounds that the project locations are already in areas that are wired and served by Cox.⁵ In a letter dated July 1, 2016, Commission staff denied these challenges stating that the reasons cited for challenge were not supported by Public Utilities Code section 281(h)⁶ or D.14-12-039.⁷ Of interest, ISP Charter Communications, Inc. (“Charter”) did not submit a challenge to any of the PSC’s proposed projects.

Thereafter, we issued Resolution T-17514 approving the BPHA funding for the 35 BPHA infrastructure grant projects described above. In Resolution T-17514, we found that the 35 projects will be capable of offering internet service speeds of at least 6 mbps download and 1.5 mbps upload for 2,353 living units in these PSCs. (Resolution, p. 1.) We also found that the deployment of broadband in public housing for the sole purpose of offering free or affordable internet access to those who do not subscribe to the

³ For specific details about these projects, see Resolution T-17514, p. 2, Table 1.

⁴ The PSHH projects challenged by Cox Communications include Dahlia Court, Dahlia Court II, Isle Vista Apartments, Ladera Street Apartments, Storke Ranch Apartments, Victoria Street Bungalows, and Villa La Esperanza projects.

⁵ Cox Communication’s Letter dated 4/25/16 to the Commission’s CASF team.

⁶ Subsequent section references are to the Public Utilities Code, unless otherwise specified.

⁷ Commission staff’s Letter dated July 1, 2016, denying Cox challenges to seven of the nine PSHH projects.

existing commercially available service provider will improve public safety by providing enhanced access to government and e-health services. (Resolution, p. 1.)

Charter filed a timely application for rehearing of Resolution T-17514. Therein, Charter attempts to incorporate by reference all of the legal allegations it made in its previous rehearing application of Resolution T-17515, including that Resolution T-17514 violated section 281 and the overall objective of the CASF program set forth in section 281. (Rhg. App., p. 5.)⁸ Charter also seeks rehearing on the grounds that if Charter prevails on the Motion for Stay that it filed concurrently with its previous rehearing application of Resolution T-17515, it will preclude the Commission's award of funds to the properties. No parties filed a response to Charter's application for rehearing.

We have carefully considered all of the arguments presented in the application for rehearing and are of the opinion that good cause has not been established to grant rehearing. However, we make minor modifications to Resolution T-17514, as set forth in the Ordering Paragraphs below, for purposes of clarification. Rehearing of Resolution T-17514, as modified, is denied because no legal error has been demonstrated.

II. DISCUSSION

Charter's application for rehearing fails to comply with the requirements of section 1732,² which requires applicants for rehearing to "set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful or erroneous." (Pub. Util. Code §1732.) It also fails to comply with Rule 16.1(c) of the Commission's Rules of Practice and Procedure, which states that "the purpose of an application for rehearing is to alert the Commission to legal error, so that the Commission can correct it." (Cal. Code of Regs., tit. 20, §16.1, subd. 16.1(c.))

In this case, Charter simply fails to identify and explain any specific legal errors with Resolution T-17514. Instead, Charter attempts to incorporate by reference all

⁸ Charter states that BPHA awards to 35 properties includes \$302,983 to deploy duplicative broadband internet service infrastructure to 434 housing units located at six properties that Charter has already wired and served. (Rhg. App., pp. 3-4.)

² All subsequent section references are to the Public Utilities Code, unless otherwise specified

of the legal arguments it presented in its previous application for rehearing of Resolution T-17515. Specifically, Charter states: “Charter fully incorporates by reference its Application for Rehearing of Resolution T-17515, which sets forth the applicable legal requirements and legislative policy objectives that require the Commission to uphold Charter’s objections to BPHA funding applications by properties it has already fully wired and served (*See Application for Rehearing.*” (Rhg. App., pp. 5-6.)

The burden of proving legal error rests upon the rehearing applicant. It is not sufficient for a party to just identify broad legal principles, or make general statements or arguments. The rehearing application must specifically explain how the law and its arguments apply to the case and the facts in question.¹⁰ Citing to past pleadings in the same or a different proceeding as a substitute for presenting thoroughly articulated factual and legal arguments in a rehearing does not comply with section 1732.¹¹ It also inappropriately shifts the burden to the Commission to determine what exact arguments the rehearing applicant intended to make.¹² Section 1732 neither contemplates nor allows a rehearing applicant to simply piggyback on arguments previously raised by itself or other parties in the same or different proceeding. A party must submit its own standalone document that meets the requirements stated in section 1732.¹³

Moreover, Charter’s rehearing allegation referring to the Motion for Stay it filed concurrently with its rehearing application of Resolution T-17515 fails to comply

¹⁰ *Application of Southern California Edison Company (U338E) for Approval of the Results of Its 2013 Local Capacity Requirements Request for Offers for the Moorpark Sub-Area. Order Modifying D.16-05-050 and Denying Rehearing, As Modified [D.16-12-030] (2016), at pp. 3-4 (slip op.), citing to Application of Channel Islands Telephone Company for Rehearing of Portion of Resolution T-17402 Affirming the Rejection of Resolution T-17382 that Resulted in the Denial of the Rural Telecommunication Infrastructure Grant Program Request for the Channel Islands Telephone Company Grant Project [D.14-06-054] (2014) at pp. 3-4 (slip op.).*

All citations to Commission decisions are to the official pdf versions which are available on the Commission’s website at: <http://docs.cpuc.ca.gov/DecisionsSearchForm.aspx>.

¹¹ D.16-12-030, at p. 4, fn. 7 (slip op.).

¹² *Id.*

¹³ *Id.* at p. 4 (slip op.).

with section 1732 and Rule 16.1 (c). This allegation fails to allege specific legal error in Resolution T-17514. Charter simply argues that if the Commission grants Charter's Motion for Stay, it will preclude award of funds to the properties. (Rhg. App., p. 6.)

Based on the above, we find that Charter's application for rehearing of Resolution T-17514 fails to comply with section 1732 and Rule 16.1(c), and, therefore, is denied. For purposes of clarification, we make minor modifications to Resolution T-17514 as set forth in the Ordering Paragraphs below. These modifications clarify our determination that section 281(h) governs the award of funds.

III. CONCLUSION

For purposes of clarification, we make minor modifications to Resolution T-17514 as set forth in the Ordering Paragraphs below. Rehearing of Resolution T-17514, as modified, is denied because no legal error has been demonstrated.

THEREFORE, IT IS ORDERED that:

1. Resolution T-17514 shall be modified as follows:
 - a. On page 3, delete the first full paragraph starting with "On June 9, 2016" and ending with "properties that are wired." Delete footnote 2.
 - b. On page 6, in the first full paragraph, delete the third and fourth sentences in their entirety, including footnotes 12 and 13. The third sentence starts with "Based on T-17515" and the fourth sentence ends with "buildings that are already "wired." Insert the following:

"In a letter dated July 1, 2016, CD denied these challenges since the reasons stated in the challenges were not supported by P.U. Code §281(h) or D.14-12-039."
 - c. On page 13, in the first sentence of the first full paragraph starting with "In short," after the reference to CASF, insert the following: "Broadband".
2. Rehearing of Resolution T-17514, as modified, is hereby denied.

3. This proceeding, A.17-01-004, is hereby closed.

This Order is effective today.

Dated August 10, 2017, at San Francisco, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners