



Central Coast Broadband Consortium

Ms. Cynthia Walker
Director
Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

December 2, 2019

Subject: Central Coast Broadband Consortium Reply Comments on Draft Resolution T-17674 Approval of funding for the grant application of Cruzio Media, Inc. (U-7150-C), from the California Advanced Services Fund (CASF) up to the amount of \$2,445,153 for the Equal Access Santa Cruz Project for unserved areas in Santa Cruz County.

Introduction

Per California Public Utilities Commission (CPUC) Resolution T-17529, the Central Coast Broadband Consortium (CCBC) is the California Advanced Services Fund (CASF) consortia grant recipient representing Monterey, San Benito and Santa Cruz Counties. The CCBC is a party to Rulemaking 12-10-012 and respectfully submits these reply comments to the Comments of Charter Communications Operating, LLC (Charter) on Draft Resolution T-17674, dated November 25, 2019, which opposes funding the Cruzio Equal Access Santa Cruz project as proposed by the Draft Resolution. Our comments are being provided to everyone on the designated service list.

Discussion

1. Accepting Charter's improper late challenge to the Equal Access Santa Cruz project would have a baleful effect on CASF project development throughout California.

Precedents set by the Commission in regards to this project may be applicable to projects anywhere in the State. As detailed below, Charter's attempt to re-litigate its challenge to the Equal

Access Santa Cruz project via the resolution comment process is improper. If allowed, it would set a precedent that would impede, if not completely prevent, the fulfilment of the statutory responsibility of Regional Broadband Consortia “to facilitate deployment of broadband services by assisting infrastructure applicants in the project development or grant application process¹”.

2. To grant Charter’s request for *another bite at the apple* would be a violation of CPUC Decision 18-12-018.

D-18-12-018 was the product of an exhaustive review of the CASF infrastructure grant program, and arrived at well balanced findings and orders that built on past successes and addressed shortcomings. The principal shortcoming was the practice of allowing entities limitless opportunity to challenge proposed grants that inconvenienced their business models, without regard for 1. the harm such challenges did to disadvantaged communities, 2. for the disruption caused to the CASF program as a whole or 3. for the merits of the objections. Such challenges resulted in delays lasting, in some cases, for multiple years and rendered vital projects untenable. Project proposals underwent many rounds of revisions, sometimes without consultation with the applicant, right up until the night before a Commission vote.

The solution adopted by D-18-12-018 to this serious problem was to establish a clear, finite and fair process for public review of project applications and for challenging the eligibility for CASF funding for any area proposed. D-18-12-018 states:

An entity challenging a CASF Infrastructure Grant application must submit its complete challenge no later than 21 calendar days from notice of the application being served on the CASF Distribution List...Incomplete challenges or challenges filed after the deadline will be denied.

Further, Appendix 1 of D-18-12-018 states:

The Commission has delegated to Communications Division Staff the authority to uphold or deny a challenge.

¹ California Public Utilities Code § 281(g)(1).

Charter provided timely notice of its challenge to the Equal Access Santa Cruz project on June 5, 2019. CPUC staff reviewed that challenge, along with objections submitted by other entities. That review concluded with a determination to partially allow and partially disallow Charter’s challenge, with the resulting changes to the Equal Access Santa Cruz project posted on the Commission’s website on October 1, 2019.

D-18-12-018 prohibits further litigation of census block eligibility for the Equal Access Santa Cruz project.

3. Re-litigating census block eligibility for the Equal Access Santa Cruz project would contravene Public Utilities Code § 281.

Public Utilities Code § 281 (hereafter “Section 281”) states²:

The goal of the [California Advanced Services Fund] program is, no later than December 31, 2022, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region, as identified by the commission on or before January 1, 2017. The commission shall be responsible for achieving the goals of the program.

The achievement of this goal is completely dependent on voluntary action by project applicants, incumbent and independent service providers alike. These applicants must spend time and money, often amounting to hundreds of thousands of dollars, to prepare and process CASF infrastructure grant proposals. When faced with this significant expense, applicants must weigh it against the probability of success. Previously, the unlimited challenge opportunities afforded incumbent service providers acted as a significant barrier to independent project development. The experience of project applicants who hazarded this process convinced some to never attempt it again. After witnessing these travails, other independent service providers refused to participate in the program.

D-18-12-018 was wisely crafted to prevent *de facto* discrimination against independent service providers because their participation in the CASF program is essential to achievement of the program’s

² California Public Utilities Code § 281(b)(1)(A)

goals. Contravening D-18-12-018 by allowing Charter to re-litigate its opposition to the Equal Access Santa Cruz project would, in turn, contravene the Commission's responsibility to achieve those goals, as required by Section 281.

4. Charter was afforded ample opportunities to address both gaps in its service area and its objections to the Equal Access Santa Cruz project.

Consistent with the requirements of Section 281 and D-18-12-018, Charter was given the opportunity to block funding of independent CASF-funded infrastructure in its service territory by properly filing notice of its intent to upgrade or extend its broadband infrastructure and/or service in unserved areas by January 15, 2019. Although Charter did not comply with the requirements of this "Right of First Refusal" privilege, it did submit a "Notice of Planning Deployment of Broadband Passings" by the deadline. The census blocks approved by staff for funding of the Equal Access Santa Cruz project were not included in the areas described in this Notice.

As described above Charter was notified of the areas under consideration for CASF funding for the Equal Access Santa Cruz project twice, once when the original application was submitted and once when the revised application was posted. Charter exercised its right to challenge census block eligibility in the former instance. In the latter instance, although a similar challenge would have been improper, Charter had an opportunity to call attention to any technical errors that might have occurred. It failed to do so.

Charter's eleventh hour attempt to re-litigate its opposition to the Equal Access Santa Cruz project is not justified by any measure of fairness. The Commission afforded Charter ample opportunity to protect its interests and there is no basis – in fact, law or equity – to grant consideration of Charter's comments.

Conclusion

The CCBC again thanks staff for its timely and professional review of the Equal Access Santa Cruz Project grant application, and for a well drafted resolution. We urge the Commission to deny the improper challenge filed by Charter and to adopt Resolution T-17674 in its current form.

Sincerely,

/s/ Stephen A. Blum

Stephen A. Blum
Executive Team Member
Central Coast Broadband Consortium
3138 Lake Drive
Marina, California 93933
steveblum@tellusventure.com