

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

Application of Charter Communications, Inc. for
Rehearing of Resolution T-17674

Application No. _____

**APPLICATION OF CHARTER COMMUNICATIONS, INC.
FOR REHEARING OF RESOLUTION T-17674**

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Pursuant to Public Utilities Code § 1731 and Rules 16.1 and 16.2 of the Rules of Practice and Procedure of the California Public Utilities Commission (the “Commission”), Charter Communications, Inc. (“Charter”) requests rehearing of Resolution T-17674, adopted by the Commission on December 6, 2019. On rehearing, Charter requests that the Commission correct an error in Resolution T-17674 whereby California Advanced Services Fund (“CASF”) funding was erroneously granted to overbuild in one census block where Charter timely demonstrated it provides services to subscribers.¹

I. INTRODUCTION

Resolution T-17674 approved funding for the CASF grant application of Cruzio Media, Inc. (“Cruzio”) for its Equal Access Santa Cruz Project in Santa Cruz County (“Project”). Contrary to the CASF rules and policies, the Resolution includes funding for Cruzio’s efforts to serve one census block already served by Charter. Specifically, the Resolution erroneously includes census block 060871216005003 (“Block 5003”) as an unserved census block, denies

¹ This Application for Rehearing is timely under the Commission’s rules. Resolution T-17674 was issued on December 6th. The 30th day from issuance fell on Sunday, January 5, 2020. Under Commission Rule of Practice and Procedure 1.15, the due date is extended in such circumstances until the first day thereafter when the Commission is open to accept filings, in this case Monday, January 6, 2020.

Charter's timely challenge filed June 5, 2019, regarding this block, and does not accurately consider Charter's November 25, 2019 Comments on the draft resolution.

Charter understands why confusion may exist regarding the eligibility of a CASF project to serve this particular block, but ultimately Cruzio should not receive funding given that Charter has active subscribers in Block 5003. Block 5003 represents one portion of a mobile home park where Charter has deployed plant and which Charter serves in its entirety. The mobile home park overlaps two census blocks. Many of the mobile homes to which Charter provides services today are physically located in Block 5003, while some of the mobile home park, including its administrative office, is located in the adjacent census block 060871216005002 ("Block 5002"). Charter has customers in Block 5003 and throughout the mobile home park; however, all of Charter's customers in the mobile home park have the same mailing address as the administrative office, located in Block 5002, with a reference to the customer's specific space number at issue.

Both census blocks were originally included in Cruzio's application and were the subject of Charter's timely challenge. The Resolution, however, grants Charter's challenge with respect to Block 5002, but not Block 5003. This conflicts with the plain language of the CASF rules and its objectives and Charter's understanding of the type of evidentiary proof needed based on discussions Charter had with Staff on this issue prior to filing its challenge. Further, using public funds to subsidize an overbuild of this already served community is unnecessary, wasteful, and contrary to law.

II. LEGAL BACKGROUND

The California legislature adopted the CASF to encourage deployment of high-quality advanced communications services throughout California. *See* Cal. Pub. Util. Code § 281. In 2017, following legislative amendments to CASF, the Commission issued D.18-12-018 to

implement changes to its CASF program. Appendix 1 of D.18-12-018 sets forth the rules, application requirements, and guidelines for the CASF program.

Only areas that are unserved by an existing facility-based broadband provider are eligible for a CASF grant. *See* Cal. Pub. Util. Code § 281(b)(2)(A); D.18-12-018 Appendix 1 at 1. An “unserved” area means a census block for which no fixed facility-based broadband provider offers broadband service at speeds of at least 6 Mbps downstream and 1 Mbps upstream. Cal. Pub. Util. Code § 281(b)(1)(B). The Commission relies on both broadband deployment data and subscriber data to determine if an area is unserved. D.18-12-018 Appendix 1, fn. 7. To deem a census block as served by a provider, the Commission requires deployment data indicating capability of the provider to offer service at or above 6/1 to at least one household in that census block and subscriber data to indicate that it has (or had) at least one subscriber there. *Id.*²

III. FACTUAL BACKGROUND

On May 1, 2019, Cruzio submitted a CASF application for 100 percent funding of \$5,347,147 to deploy last-mile Fiber to the Home (“FTTH”) facilities to enable provision of broadband Internet service to 940 allegedly unserved households and business offices of 13 mobile home parks in the areas of Soquel, Pleasure Point, and Capitola in Santa Cruz County. On May 15, 2019, Staff posted the proposed project area map, census blocks and zip codes for the Project and sent notice regarding the Project to the CASF distribution list.

On June 5, 2019, Charter challenged numerous census blocks included in Cruzio’s application because it provides broadband service and has subscribers at served speeds in those blocks. Such challenge included a list of serviceable addresses in the challenged census blocks

² Charter affirms its position that the presence of a subscriber should not be a determining factor on whether a broadband provider has the ability to provide service because customer churn creates a misleading picture of serviceability. Nevertheless, Charter’s position on this point has no bearing on the instant proceeding because Charter in fact DOES have subscribers in the census block at issue. Further, use of subscriber presence undermines the entire premise limiting funding to “unserved” areas.

as well as evidence of Charter subscribers. Based on this challenge and a related challenge submitted by another provider, Staff directed Cruzio to revise its application to remove 25 of the original 37 census blocks, including blocks shown as served on the Broadband Map as well as blocks demonstrated by Charter and other providers as being served based on documented customer address and billing information. Resolution T-17674 at 4. Commission Staff properly accepted Charter's challenge to Block 5002, which encompasses part of the Castle Mobile Estates mobile home park, including its main administrative address at 1099 38th Avenue, Santa Cruz, CA 95062, and is served by Charter.³ Commission staff, however, erroneously rejected Charter's challenge to Block 5003, which encompasses most of the remainder of the Castle Mobile Estates and which is also served by Charter.⁴ Subsequently, Cruzio revised its application to remove the blocks that were deemed served by the challenge process but did not remove Block 5003.

The Commission subsequently issued Draft Resolution T-17674, which proposed to grant Cruzio funding for a revised proposal to serve the 12 remaining census blocks in the Santa Cruz area, including Block 5003. On November 25, 2019, Charter submitted timely comments on the Draft Resolution to reiterate that Cruzio's application included the portion of the Castle Mobile Estates located in Block 5003, which Charter serves, and further referenced the June 5th Challenge and evidence contained therein which identified serviceable addresses in the block and redacted bills from within both Block 5002 and 5003. Nonetheless, the Commission then issued final Resolution T-17674, erroneously finding "there are no existing facilities-based wireline or

³ See Exhibit Cruzio-4 to Charter Challenge to the May 1, 2019 CASF Application Filed by Cruzio Media (June 5, 2019). The redacted bill provided by Charter depicts the Castle Mobile Estates main administrative address at 1099 38th Avenue, Santa Cruz, CA 95062.

⁴ See Exhibit Cruzio-3 to Charter Challenge to the May 1, 2019 CASF Application Filed by Cruzio Media (June 5, 2019).

fixed wireless broadband service providers in the project area and the area only has access to dial-up.” Resolution T-17674 at 4. Commission Staff provided a response in the Resolution to Charter’s comments on the draft resolution but, as detailed below, appear to have misunderstood the facts concerning the billing address versus service address issues that arise in mobile home park situations, as in this case. *Id.* at 12.

Charter respectfully requests that the Commission grant rehearing of Resolution T-17674 and, on rehearing, correct the erroneous denial of Charter’s challenge to Block 5003.

IV. ARGUMENT

The purpose of an application for rehearing is to bring to the Commission’s attention a legal or factual error. *See* Cal. Pub. Util. Code § 1732. Parties filing an application for rehearing must state specifically the ground or grounds on which rehearing is sought. In the instant proceeding, Charter seeks rehearing and alleges that its June 5, 2019 challenge of Block 5003 was erroneously denied and, as such, Resolution T-17674 contravenes statutorily mandated criteria for the award of CASF funding and conflicts with the program’s central policy objectives in granting CASF funding for a census block containing households served by Charter.

A. The Commission Erred in Granting Cruzio Funding to Overbuild Census Block 5003 in which Charter Provides Service.

In demonstrating Block 5003 as served, Charter submitted deployment data indicating it offers service at speeds far above 6/1 there and subscriber data indicating it has at least one subscriber in the block. This is admittedly a confusing situation that is nonetheless typical for mobile home communities, where many subscribers live in a planned community with bills that list the mobile park’s central administrative office as their address. For the mobile home community at issue here, the administrative office is located at 1099 38th Avenue, Santa Cruz, CA, which is physically located in Block 5002. Each individual mobile home in the community

uses this address, along with a space number for the specific mobile home location. In the June 5th Challenge, the street address of the central administrative office was disclosed; however, to protect consumer privacy, the particular space number that identifies the subscriber in the bill sample for that address provided in Attachment B were redacted.⁵

As detailed in the June 5th Challenge, prior to filing the challenge, Charter raised concerns with Communications Division staff that providing a customer bill with space number included would require Charter to disclose personally identifiable information of a subscriber, potentially in violation of federal and California laws protecting consumer privacy.⁶ To address concerns raised regarding protection of consumer privacy, Communications Division staff agreed that, for the purposes of Charter's challenge, Charter could provide a confidential list of serviceable addresses and a redacted bill from a subscriber that identifies a range of street addresses but without identifying the customer's particular street address. In Attachments A and B to its challenge, Charter provided both a confidential list of serviceable addresses in the challenged census block and a bill from a subscriber with the space number redacted.

Staff explained that the purpose of the customer bill is to allow Staff to validate service should Staff deem this step necessary. Communications Division staff agreed it would be able to verify speeds available in this range of addresses or specific and check whether it is serviceable

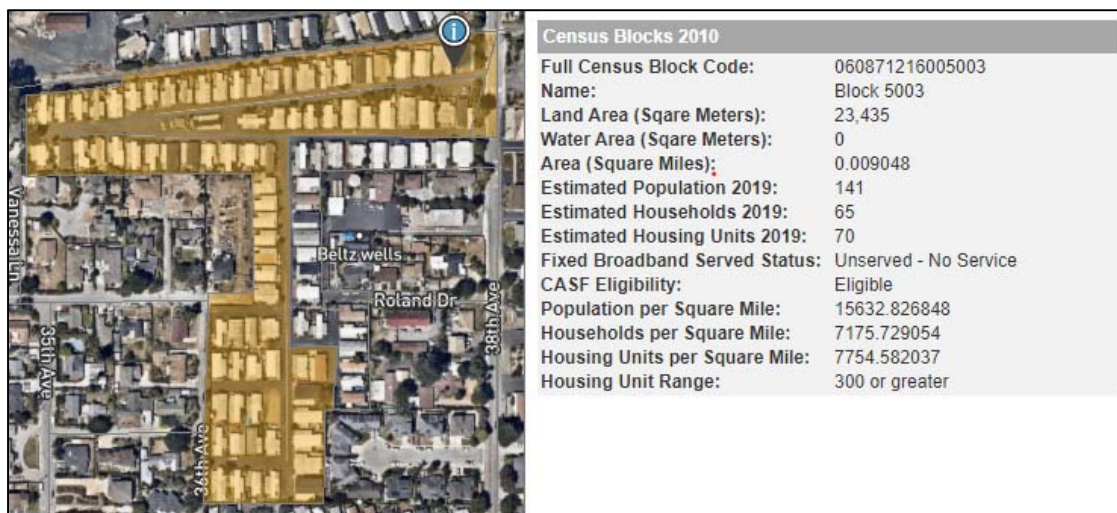
⁵ See Exhibit Cruzio-3 to Charter's June 5, 2019 Challenge. In preparing this Application, Charter discovered that the cover sheet to Attachment B of the June 5th Challenge contained an inadvertent labelling mistake between the specific exhibit and the census block. For purposes of the challenge, Charter included Exhibit Cruzio-3 and Exhibit Cruzio-4 as its evidentiary showing of the existence of subscribers in Blocks 5003 and 5002, respectively. The cover sheet inadvertently mismatched the census blocks with the exhibits. As a courtesy to the Commission, **Exhibit 1** to this Application contains a corrected version of the cover sheet to Attachment B to the June 5 challenge.

Given that Commission Staff appropriately found that Charter serves census block 5002 notwithstanding the mislabeling on the cover sheet, it appears that the error in the cover sheet is not the rationale for the denial of the challenge to Block 5003. Nonetheless, Charter regrets the error in the cover sheet which may have further confused the situation.

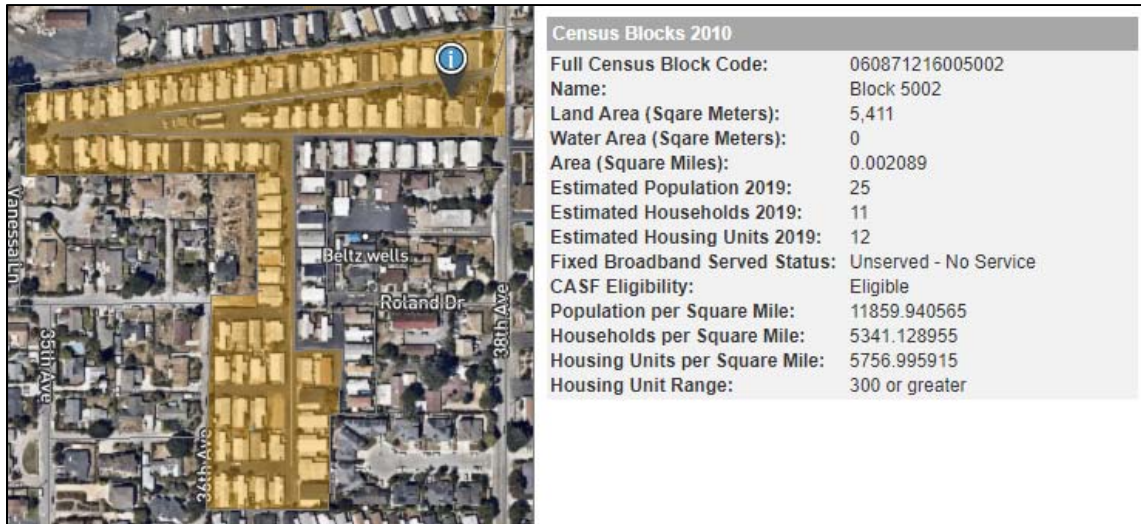
⁶ This conversation occurred on or about May 29, 2019.

through Charter’s website (www.spectrum.com).⁷ Despite the Communications Division staff’s agreement about how Charter would identify its customers, the Resolution erroneously identifies Block 5003 as unserved without addressing the evidence that Charter provided.

For ease of description, screen shots of both Block 5003 and Block 5002 are included below as they appear in the Broadband Map (as of January 4, 2020). The shaded area reflects most of the Castle Mobile Estates located in Blocks 5002 and 5003. The administrative office and several mobile home spaces are located in Block 5002, while Block 5003 contains most other mobile home spaces, including numerous spaces directly across the street from spaces in Block 5002. The entire community is accessed from 38th Avenue, visible to the right. Again, each of the mobile homes in the community have a common address of 1099 38th Avenue along with a space number. This is the case even though none of the individual mobile homes in Block 5003 and most in Block 5002 are not even physically located on or even close to 38th Avenue.



⁷ For example, on Attachment A of the June 5th Challenge, 1099 38th Avenue, Space 35, Santa Cruz, CA 95062-4433 was identified as a serviceable address in Block 5003. One need only go to www.spectrum.com and input that address to see that Charter offers services up to 940 Mbps download speed at that location. Further, Charter provided redacted bills for 1099 38th Avenue in its June 5th Challenge.



With its challenge, Charter first provided a list of serviceable addresses for Block 5003.⁸ Then, Charter included redacted a customer bill (Exhibit Cruzio-3) which depicts the address 1099 38th Avenue, Santa Cruz, CA 95062-4459.⁹ The last four digits of the zip code distinguish this bill as a customer in Block 5003 as opposed to Block 5002.¹⁰

Charter believes there may have been a misunderstanding with Staff regarding Charter’s comments to the Draft Resolution, specifically, the comment that “[t]he address and corresponding subscriber information depicted in Exhibit Cruzio-4 were initially included to substantiate Charter’s challenge to [Block 5002] but apply equally to [Block 5003] as part of the same mobile home community.”¹¹ Charter did not intend to suggest that the redacted bill for a

⁸ See Attachment A to Charter Challenge to the May 1, 2019 CASF Application Filed by Cruzio Media (June 5, 2019).

⁹ As noted above, the cover sheet to Attachment B inadvertently matched this exhibit with another census block in the June 5th Challenge.

¹⁰ See Attachment B, Exhibit Cruzio-3 to Charter Challenge to the May 1, 2019 CASF Application Filed by Cruzio Media (June 5, 2019). Separate documentation to support the challenge to Block 5002 was included in Attachment B, Exhibit Cruzio-4 containing a redacted bill for a subscriber with the address of 1099 38th Ave, Santa Cruz, CA 95062-4406. Charter also included a list of serviceable addresses in Block 5002 on pages 5-6 of Attachment A of the June 5th Challenge. As explained above, all the addresses in Block 5002 and 5003 are for 1099 38th Avenue plus a space number.

¹¹ Charter Comments on Draft Resolution T-17674 (November 25, 2019) at 2.

subscriber in Block 5002 could demonstrate that Charter has subscribers in Block 5003.¹²

Rather, Charter meant to refer Staff to its initial filing and highlight that it had provided the same type of information to substantiate having a subscriber in Block 5003 as it had for Block 5002, yet the Commission only acknowledged Block 5002 as served. The result of this error is that Cruzio will receive CASF funds to overbuild in a census block where Charter already has subscribers and provides high speed broadband services, in direct contradiction of the CASF program rules and public policy.¹³ This is a particularly perplexing outcome given that Charter has deployed plant and serves multiple customers located in both Block 5002 and 5003. In addition, because these customers are part of a single mobile home community, since Block 5002 is deemed served and ineligible for funding, the Applicant will not likely (and should not) be able to serve the mobile home park in Block 503 either given that this is part of single MDU-type account.

B. Funding an Overbuild in This Situation Clearly Contravenes the Purposes of CASF

Although the Commission adopted challenge rules focused on carrier demonstrations that subscribers exist in a given block, D.18-12-018 contemplates situations in which exclusive

¹² See Staff's "disagree[ment] with Charter claim that the confidential exhibits submitted in the challenge for one census block can apply to another." Draft Resolution T-17674 at 12. Staff may have been misled by reply comments submitted by the Central Coast Broadband Consortium ("CCBC") in which CCBC inaccurately asserted that Charter was relitigating its challenge. Charter notes with concern that CCBC did not serve its opening or reply comments on the service list to the proceeding and Charter was unaware of these comments until the final resolution was issued. Accordingly, Charter was not provided with a meaningful opportunity to address this inaccuracy. In any event, comments on the draft resolution were the first opportunity that Charter had to oppose the erroneous conclusion by Staff that Block 5003 was unserved, and Charter appropriately used its procedural rights to comment on the draft resolution to demonstrate that Staff's underlying premise that Block 5003 remained unserved was in error. Similarly, this was not, as suggested by CCBC, a "late" challenge given that Charter submitted a timely challenge on June 5th containing all information needed for Staff to find that Block 5003 was not eligible for CASF funding.

¹³ Ironically, Cruzio will likely face the same problem as Charter when it seeks to use its funding in Block 5003 since any customer which it may attempt to serve will have the address of 1099 38th Avenue located in Block 5002.

reliance on subscriber data could result in unnecessary overbuilding and waste of CASF funding. The Commission recognized that subsidizing an actual overbuild with limited public CASF monies should be reviewed more carefully, and that the challenge process provided a mechanism to address “[c]oncerns that using subscriber data to validate the level of broadband deployment may lead to overbuilding of networks...”¹⁴

With its challenge, Charter demonstrated, at a minimum, that there are numerous spaces at Castle Hill Mobile Estates within census block 5003 that are at least *serviceable* by Charter.¹⁵ Beyond this demonstration, as discussed above, Charter has subscribers at many of these spaces already and has shown, to the best of its ability after consultation with Staff regarding privacy concerns and the common billing address at the administrative office, that it has subscribers in both Block 5002 and 5003. As such, public subsidy to overbuild this already served community is unnecessary, wasteful and contrary to law. Moreover, such waste of funding is contrary to the purpose of CASF and unjustifiably deflects much needed funding from truly unserved areas.

V. CONCLUSION

Charter respectfully requests that the Commission grant this application for rehearing and, on rehearing, uphold Charter’s challenge to approval of CASF funding to serve Census Block 5003 already served by Charter. Cruzio’s grant of funding should be revised to reflect the exclusion of Block 5003 and be limited to the remaining 11 census blocks. In doing so, the Commission would correct an error in the Resolution to an admittedly confusing situation in which all addresses in the mobile home community, whether in Block 5002 or in Block 5003

¹⁴ D.18-12-018, p.12.

¹⁵ See Attachment A to Charter Challenge to the May 1, 2019 CASF Application Filed by Cruzio Media (June 5, 2019).

share the common address of the central administrative office which is physically located in Block 5002.

Respectfully submitted,

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January 6, 2020

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Exhibit 1

**Corrected Cover Sheet to Attachment B
of
June 5, 2019 Charter Challenge**

ATTACHMENT B

CRUZIO – EQUAL ACCESS SANTA CRUZ

CENSUS BLOCK	BILL PACKET EXHIBIT # ¹
060871216005002	CRUZIO-1
060871216005003	CRUZIO-2
060871218002021	CRUZIO-3
060871218002014	CRUZIO-4

CORRECTED VERSION:

CENSUS BLOCK	BILL PACKET EXHIBIT #
060871218002014	CRUZIO-1
060871218002021	CRUZIO-2
060871216005003	CRUZIO-3
060871216005002	CRUZIO-4

¹ Each packet consists of three documents: (i) a redacted bill; (ii) a map showing the general location of the subscriber; (iii) a screenshot from www.spectrum.com using the actual subscriber's address and showing the services available at that location. For subscribers located in mobile home parks, the street address is shown on the bill with the particular number of the mobile home space redacted. For subscribers with traditional street addresses, a range of addresses is shown on the map using the smallest range possible to avoid disclosure of the subscriber's specific location.