

December 7, 2020

James W. McTarnaghan
JMcTarnaghan@perkinscoie.com
D. +1.415.344.7007
F. +1.415.344.7207

VIA EMAIL AND U.S. MAIL

Robert B. Osborn
Director, Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

**Re: Comments of Charter Communications, Inc. on Draft Resolution T-17715
(Frontier Communications of California, Inc. – Crescent City)**

Dear Director Osborn:

Pursuant to Public Utilities Code Section 311(g) and Rule 14.5 of the Commission's Rules of Practice and Procedure, Charter Communications, Inc. ("Charter") submits the following comments regarding Draft Resolution T-17715 ("Draft Resolution"), which approves funding from the California Advanced Services Fund (CASF) Infrastructure Grant Account for the application of Frontier Communications California, Inc. ("Frontier") for its Crescent City and Smith River Projects. Charter's comments deal exclusively with the Crescent City Project and identify factual and legal errors in the Draft Resolution which should be corrected prior to issuance of a final resolution. As required by the November 13, 2020 Notice of Availability, Charter includes a subject index of recommendation and sets forth specific proposed changes to the Draft Resolution's findings and ordering paragraphs in **Appendix A** hereto including the removal of five census blocks which are currently served by Charter and thus ineligible for CASF Funding. A Table of Authorities is contained in **Appendix B**.

A. Procedural Background

On May 4, 2020, Frontier submitted its application for CASF funding for its Crescent City Project in the amount of \$1,586,885 to provide service to eight census blocks in Crescent City, CA. As is common in CASF applications, the census blocks involved were scattered through the community and consisted of parts of mobile home communities, senior housing and an apartment complex.

On June 8, 2020, Charter submitted a timely challenge to the application and provided evidence showing that it served seven of the eight census blocks. In its challenge, Charter noted that Frontier was proposing to serve census blocks that appeared to be unserved on the Broadband Interactive Map but were in fact served by Charter. Charter's challenge explained this mapping anomaly and provided an explanation of why the home addresses in these multiple dwelling unit

communities were incorrectly assigned to the census block for the community's central office. Specifically, these dwelling units, which are assigned an address consisting of the central office address plus a space or apartment number, are geocoded to the census block in which the complex's central office is located even though the actual homes are located in adjacent census blocks.

At some point between June and September 2020, Commission Staff contacted Frontier and informed them that based on Charter's challenge two of the eight original blocks were deemed served. Frontier then revised its project application on September 23, 2020 to remove those two blocks. In doing so, Frontier reduced its requested funding to \$1,413,293. The revised project consists of the one census block which Charter did not challenge from the original application plus five census blocks which Charter did challenge but Staff did not deem served. These five blocks include one block in the Crescent Senior Estates mobile home community, two blocks in the Northcrest Trailer City mobile home community, and two blocks in the Seawood Village apartment complex.

On November 13, 2020, Communications Division released the Draft Resolution proposing to approve Frontier's revised project application and, if approved by the Commission, would award \$1,413,293 in CASF funding. The Draft Resolution includes a blanket statement that "[t]he proposed project areas are currently unserved, with no facilities-based wireline or fixed wireless broadband service provider."¹ Although the Draft Resolution acknowledged Charter's challenge, and properly removed two census blocks from the original project, there is no explanation provided as to the remaining five census blocks. The rationale for removing the remaining five census blocks is the same justification used on Charter's successful challenge to the other census blocks in Frontier's application, yet for some unexplained reason was not applied in the same manner for these census blocks.

B. Comments

Although Charter appreciates the Commission's attention to Charter's June 8, 2020 challenge to Frontier's initial application and the removal of two of the seven census blocks identified as served, the failure in the Draft Resolution to remove the remaining five census blocks challenged by Charter constitutes factual and legal error. Specifically, as detailed here, it would be factual error for the Commission to find that these census blocks are unserved when, as demonstrated, Charter currently serves customers located within each of these five census blocks. Based on that factual error, it would be legal error for the Commission to grant funds to overbuild in served census blocks given that CASF funding is only available to truly unserved areas.

¹ Draft Resolution, p. 1. *See also*, p. 16, Finding 3.

1. The Five Remaining Census Blocks Challenged by Charter Are Served

Of the seven blocks originally challenged, the Draft Resolution proposes to grant funding to the following five census blocks:

BLOCK NUMBER	COMMUNITY
060150001041007 (“Block 1007”)	Crescent City Senior Estates
060150001051001 (“Block 1001”)	Northcrest Trailer City
060150001051003 (“Block 1003”)	Northcrest Trailer City
060150001053001 (“Block 3001”)	Seawood Village
060150001055008 (“Block 5008”)	Seawood Village

Each of these five census blocks, along with the two census blocks challenged by Charter that were removed, involve a common situation in which billing addresses in a mobile home community or apartment all share a common address at the complex’s central office which is in a different census block than where the apartment or individual mobile home is physically located. Because of this anomaly, the only census block which the Broadband Interactive Map shows as “served” is the one in which the central office is located. Using Block 1001 and Block 1003 in the Northcrest Trailer City as an example, the central office is in Block 1009 and all addresses in the community have a common address of 1950 Northcrest Drive. However, the actual dwelling units at which service is provided are, in some cases, physically located outside of Block 1009. When these addresses are geocoded, only Block 1009 is shown as “served” on the Broadband Interactive Map because the geocoding process does not identify the actual space in which an individual mobile home is located. Nonetheless, given the existence of service to residents in the blocks in which dwelling units are physically located – in this case in Blocks 1001 and 1003 – the mapping process does not accurately reflect that homes in those blocks are in fact served. Charter understands that CASF staff is aware that this situation exists, yet Staff appears to have overlooked this situation for these five census blocks.

This same situation applies to Block 1007 in Crescent City Senior Estates. In this situation, the mobile home community is in at least two census blocks (Block 1007 and Block 1002). Addresses that correspond to mobile homes located in the part of the community that is within Block 1007 have an address of 650 E. Washington Blvd and a space number but are geocoded to Block 1002 in which the main address exists. Again, this geocoding anomaly should not be used to deem Block 1007 as “unserved” when it is in fact fully served by Charter, yet Staff appears to have overlooked this fact in its evaluation of the challenge.

Finally, Blocks 3001 and 5008 in Seawood Village raise the same factual conundrum. Here, Seawood Village is a larger community in multiple census blocks. Block 3001 is the block in which the central office is located at 1403 Inyo Street. As such, Charter fails to see any reason why Staff would not have deemed this census block as served. Block 5008 reflects the same situation as in the other communities in which the address reflects the central office in Block 3001, not the physical location of the customer receiving the service.

Charter incorporates by reference its June 8th Challenge, including the confidential exhibits thereto, and directs Staff to pages 3-7 for further details. In addition, Attachment A and Attachments B-2, B-3, B-4, B-6 and B-7 included the required evidentiary documentation showing that the five census blocks are served. Charter respectfully submits that it would be factual error for the Commission to find that these census blocks are unserved and requests that Staff reconsider their finding.

2. The Commission Will Commit Legal Error if Funding is Granted to Served Blocks

As demonstrated above and in Charter's June 8, 2020 Challenge, the five census blocks at issue are in fact served by Charter. The draft finding to the contrary represents factual error that should be corrected. To the extent it is not corrected and CASF funding is awarded to Frontier to overbuild Charter's network, the Commission will commit legal error.

The California legislature adopted the CASF to encourage deployment of high-quality advanced communications services throughout California.² 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.³ 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.⁴ To determine whether an area is unserved, the Commission relies on both broadband deployment data and subscriber data.⁵ 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

² See Cal. Pub. Util. Code § 281.

³ See Cal. Pub. Util. Code § 281(b)(2)(A); D.18-12-018 Appendix 1 at 1.

⁴ Cal. Pub. Util. Code § 281(b)(1)(B).

⁵ D.18-12-018 Appendix 1, fn. 7.

indicate that it has (or had) at least one subscriber there.⁶ Notably, nothing in the Cal. Pub. Util. Code Section 281 requires subscribership data to prove that an area is served. In this situation, Charter has demonstrated that the census blocks at issue are in fact served. To the extent that the Commission funds to overbuild in these blocks, the Commission will commit legal error by contravening statutorily mandated criteria for the award of CASF funding in conflict with the program's central objective of funding deployment to unserved areas. In doing so, this will be a waste of scarce public funds to promote overbuilding instead of using CASF funds to serve truly unserved areas.

C. Conclusion

As evidenced by its participation in the program, Charter supports the Commission's objective of using CASF funding for broadband deployment to truly unserved areas. However, Charter opposes use of these scarce funds for overbuilding of already served areas. Accordingly, Charter respectfully requests the Draft Resolution be modified to remove the above-identified five census blocks from the project to avoid overbuilding in served census block and to direct Frontier to indicate whether it desires to proceed with the one unserved block. If Frontier does, the Commission should reduce the funding amount to reflect such removal of the five census blocks.

Sincerely,



James W. McTarnaghan

JWM:clb
Attachments

cc: Louise Fischer, CPUC Communications Division (via email)
Jessica Honeyfield, CPUC Communications Division (via email)
CASF Distribution List (via email)

150382957.5

⁶ *Id.* 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.

APPENDIX A

SUBJECT LISTING OF RECOMMENDATIONS AND PROPOSED REVISED FINDINGS AND ORDERING PARAGRAPHS

SUBJECT LISTING OF RECOMMENDATIONS

1. In order to avoid factual and legal error, the Draft Resolution should be modified to reflect that Census Blocks 060150001041007, 060150001051001, 060150001051003, 060150001053001 and 060150001055008 are already served by Charter and that no funding should be provided to Frontier to overbuild in these census blocks.
2. Frontier should be directed to indicate whether it would move forward with the remaining one census block that is unserved and, if so, to revise the amount of funding requested.

PROPOSED REVISED FINDINGS AND ORDERING PARAGRAPHS

1. Add New Findings of Fact #4 and 5:

4. On December 7, 2020, Charter submitted comments on the draft resolution explaining that a mapping anomaly that frequently occurs in mobile home communities and apartment complexes resulted in certain blocks that are actually served appearing to be unserved. Upon consideration of those comments, we find that Census Blocks 060150001041007, 060150001051001, 060150001051003, 060150001053001 and 060150001055008 are already served by Charter and that no funding should be provided to Frontier to overbuild in these census blocks.

5. To the extent that Frontier wishes to pursue the Crescent River project, it should so indicate to the Communications Division and provide a revised project summary consisting only the one remaining eligible census block.

2. Revise Current Finding of Fact 5:

5. Based on its review, Staff determined that Frontier's Smith River the projects and one census block in its Crescent City project qualify for funding pursuant to D..18-12-018 and its Appendix 1 and recommends Commission approval of CASF funding for Frontier's ~~Crescent City and~~ Smith River Projects up to the amount of \$2,841,7721,428,479. If Frontier decides to pursue its funding request for the one remaining census block in its Crescent City project, it should submit a revised request to the Communications Division.

3. Revise Ordering Paragraph 1:

1. The Commission shall award up to \$1,428,4792,841,772 to Frontier for the ~~Crescent City and~~ Smith River Projects as described herein and summarized in Appendix A of this Resolution, which shall be paid out of the CASF Infrastructure Grant Account in accordance with the guidelines adopted in D.18-12-01 and its Appendix 1, and with the process defined in Appendix C “Payments to CASF Recipients” of this Resolution. If Frontier decides to pursue its funding request for the one remaining census block in its Crescent City project, it should submit a revised request to the Communications Division.

APPENDIX B

TABLE OF AUTHORITIES

	<u>Page(s)</u>
STATUTES	
Cal. Pub. Util. Code § 281	4, 5
Cal. Pub. Util. Code § 281(b)(1)(B)	4
Cal. Pub. Util. Code § 281(b)(2)(A)	4
Cal. Pub. Util. Code § 311(g)	1
COMMISSION DECISIONS	
<i>Order Instituting Rulemaking to Consider Modifications to the California Advanced Services Fund, D.18-12-018 (Dec. 13, 2018)</i>	1
COMMISSION RULES OF PRACTICE AND PROCEDURE	
Rule 14.5	1