

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

Application of Charter Communications, Inc. for
Rehearing of Resolution T-17668

Application No. _____

**APPLICATION OF CHARTER COMMUNICATIONS, INC.
FOR REHEARING OF RESOLUTION T-17668**

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January 21, 2020

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TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. LEGAL BACKGROUND	3
III. FACTUAL BACKGROUND.....	4
IV. ARGUMENT	6
A. The Commission Erred in Granting Frontier Funding to Overbuild Census Block 2007 in which Charter Provides Service.	7
B. The Commission Erred in Approving Funding of an Overbuild in the Six Census Blocks in which Charter Has Deployed Plant but Has No Subscribers	9
V. CONCLUSION.....	10

TABLE OF AUTHORITIES

Page(s)

COMMISSION DECISIONS & RESOLUTIONS

Decision 18-12-018
*Order Instituting Rulemaking to Consider Modifications to the California
Advanced Services Fund (Dec. 20, 2018)*.....3, 4, 9

Resolution T-17668
*Approval of Funding for the Grant Application of Frontier California, Inc.
(U-1002-C), from the California Advanced Services Fund (CASF) up to the
Amount of \$399,701.79 for the Taft Cluster Project Located in Kern County
(Dec. 20, 2019)*1, 4, 5, 6

COMMISSION RULES OF PRACTICE & PROCEDURE

Cal. Pub. Util. Comm. R. Prac. & Proc. 1.151

Cal. Pub. Util. Comm. R. Prac. & Proc. 16.11

Cal. Pub. Util. Comm. R. Prac. & Proc. 16.21

CALIFORNIA STATUTES

Cal. Pub. Util. Code § 2813, 4

Cal. Pub. Util. Code § 281(b)(1)(B)3

Cal. Pub. Util. Code § 281(b)(2)(A)3

Cal. Pub. Util. Code § 17311

Cal. Pub. Util. Code § 17326

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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-17668, issued by the Commission on December 20, 2019. On rehearing, Charter requests that the Commission:

(a) correct an error in Resolution T-17668 whereby California Advanced Services Fund (“CASF”) funding was erroneously granted to overbuild in one census block where Charter timely demonstrated it has subscribers; and (b) reconsider its denial of Charter’s challenge of six additional census blocks in which Charter has deployed plant and is able to serve any households within the blocks but does not currently have subscribers.¹

I. INTRODUCTION

Resolution T-17668 approved funding for the CASF grant application of Frontier California, Inc. (“Frontier”) for its Taft Cluster Project located in Kern County (the “Project”).

¹ This Application for Rehearing is timely under the Commission’s rules. Resolution T-17668 was issued on December 20, 2019. The 30th day from issuance fell on Sunday, January 19, 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 Tuesday, January 21, 2020.

As Charter's primary point of disagreement, contrary to CASF guidelines, the Resolution includes funding for Frontier to overbuild and serve one census block already served by Charter. Specifically, the Resolution erroneously includes census block 060290035002007 ("Block 2007") as an unserved census block, denies Charter's timely filed June 5, 2019 challenge (the "June 5th Challenge") regarding this census 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 because the subscriber's mailing address is in the adjacent census block, however, ultimately Frontier should not receive funding given that Charter has active subscribers physically located in Block 2007. Block 2007 represents one portion of a mobile home park, the Buena Vista Mobile Home Park, where Charter has deployed plant and which Charter serves in its entirety. The mobile home park overlaps three census blocks. Many of the mobile homes to which Charter provides services to subscribers are physically located in Block 2007, while some of the mobile home park spaces, including the central administrative office, are located in the adjacent census block 060290035002008 ("Block 2008") and the remaining spaces are in 060290035002006 ("Block 2006"). Charter has numerous subscribers in Block 2007 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, which is located in Block 2008, with a reference to the customer's specific space number at issue.

Census Block 2007 was originally included in Frontier's application and was the subject of Charter's timely challenge. The Resolution, however, denies Charter's challenge with respect to Block 2007 asserting that Charter's challenge did not demonstrate a subscriber within the block. This rationale conflicts with the plain evidence and explanation Charter provided in its

challenge and conflicts with the plain language of the CASF rules and its objectives. It is also contrary to Charter's understanding of the type of evidentiary proof needed based on discussions that Charter had with Staff on this unique issue prior to filing its challenge. Further, using public funds to subsidize an overbuild of this already well-served community is unnecessary, wasteful, and contrary to law.

Charter's second point on rehearing is that the Resolution erroneously denies Charter's challenge to six census blocks in which Charter has deployed plant but does not currently have subscribers. As a matter of policy, Charter submits that the Commission should have denied funding to serve these blocks given that plant already exists which could serve the very small number of residents in these primarily rural and agricultural blocks. Granting Frontier funding for these six census blocks is allowing overbuild, through the use of a government subsidy, of an existing provider's facilities where broadband is already offered at speeds much greater than the required 6 Mbps downstream and 1 Mbps upstream.

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). To determine whether an area is unserved, the Commission

relies on both broadband deployment data and subscriber data. 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 Notably, nothing in the Cal. Pub. Util. Code § 281 requires subscribership data to prove that an area is served.

III. FACTUAL BACKGROUND

On May 1, 2019, Frontier submitted a CASF application for 100 percent funding of \$2,561,883.10 to deploy last-mile VDSL.2 facilities that it asserted will enable High Speed Internet access, VoIP and over-the-top (“OTT”) video services to 146 purportedly unserved CASF-eligible households in the Taft, Buttonwillow, Fellows, McKittrick and MacFarland region of Kern 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 Frontier’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 as well as evidence of Charter subscribers. Based on this challenge, Staff directed Frontier to revise its application to remove census blocks already shown as served on the Broadband Map as well as blocks demonstrated by Charter as being served based on documented customer billing information. Resolution T-17668 at 4. Commission Staff properly accepted Charter’s challenge

² As discussed further below, 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.

to Block 2008, which encompasses part of the Buena Vista Mobile Home Park, including its main administrative address at 123 N. 10th Street, Taft, CA 93266, and is served by Charter.³ Commission staff, however, erroneously rejected Charter’s challenge to Block 2007, which encompasses parts of the Buena Vista Mobile Home Park and which is also served by Charter.⁴ Subsequently, Frontier revised its application to remove the blocks that were deemed served by the challenge process but did not remove Block 2007.

The Commission subsequently issued Draft Resolution T-17668, which proposed to grant Frontier funding for a revised proposal to serve a number of census blocks in the Taft Cluster, including Block 2007. On November 25, 2019, Charter submitted timely comments on the Draft Resolution to reiterate that Frontier’s application included the portion of the Buena Vista Mobile Home Park located in Block 2007, 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 2007 and 2008. Nonetheless, the Commission then issued final Resolution T-17668, erroneously finding that the revised “project area is eligible for a CASF Infrastructure grant.” Resolution T-17668 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 16. Accordingly, the Commission should reject funding for Block 2007 because Charter met its burden of showing that it provides service within this Block.

³ See Exhibits Taft-1 and Exhibit Taft-4 to Charter Challenge to the May 1, 2019 CASF Application Filed by Frontier Media (June 5, 2019). The redacted bills provided by Charter depicts the Buena Vista Mobile Home Park main administrative address at 123 N. 10th Street, Taft, CA 93266.

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

Charter also challenged six other census blocks in its June 5th Challenge to the project and provided detailed rationale to deny funding.⁵ In each case, Charter described the unique circumstances with the particular census block (*e.g.*, no or few homes in the census block, agricultural lands, etc.). Notwithstanding this showing, Staff allowed Frontier to include these census blocks in the project area and receive related funding. Charter reiterated its arguments in its November 25th comments on the draft resolution. Staff provided a response in the final resolution but mistakenly asserted that Charter was challenging these blocks for the first time in the comments. Resolution T-17668 at 16. As shown, this is factually inaccurate given that Charter timely challenged these blocks in its initial June 5th Challenge.

Charter respectfully requests that the Commission grant rehearing of Resolution T-17668 and, on rehearing, correct the erroneous denial of Charter's challenge to Block 2007 and of the six census blocks in which Charter demonstrated deployment of plant and the ability to provide services to any potential subscribers. Thus, the seven census blocks addressed herein should be removed from the project area as a matter of law and good public policy.

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, as detailed in Section IV.A. below, Charter seeks rehearing and alleges that its June 5th Challenge of Block 2007 was erroneously denied and, as such, Resolution T-17668 contravenes statutorily mandated criteria for the award of CASF funding and conflicts with the

⁵ Charter's June 5th Challenge, pp. 6-7.

program's central objective by granting CASF funding for a census block where subscribers already have access and receive broadband services.

Additionally, as detailed in Section IV.B. below, as a matter of sound public policy, the Commission should reverse its grant of CASF funding to the six additional census blocks in which Charter has demonstrated deployment but does not have current subscribers due to the limited number of households in these largely rural and agricultural blocks.

A. The Commission Erred in Granting Frontier Funding to Overbuild Census Block 2007 in which Charter Provides Service.

In demonstrating Block 2007 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, yet the physical location of the service is another address, and in the case of Block 2007, in a different census block from where the bill is sent. For the mobile home community at issue here, the administrative office is located at 123 N. 10th Street, Taft, CA which is physically located in Block 2008. 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 was redacted.⁶

⁶ See Exhibit Taft-1 to Charter's June 5th Challenge.

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 a 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.⁷ To address such privacy concerns, Communications Division staff agreed that, for the purposes of Charter's challenge, Charter could provide a confidential list of serviceable addresses that identifies a range of street addresses, and a redacted bill from a subscriber, but without identifying the customer's particular 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.⁸

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 through Charter's website (www.spectrum.com).⁹ Despite the Communications Division staff's agreement about how Charter would identify its customers, the Resolution erroneously identifies Block 2007 as unserved without addressing the evidence that Charter provided demonstrating it

⁷ This conversation occurred on or about May 29, 2019.

⁸ Attachment A lists over 100 individual mobile home spaces in Block 2007 all of which have the same address of 123 N. 10th Street, Taft, CA along with the individual space number. In addition, the current Interactive Broadband Map correctly identifies Charter as providing high speed broadband service in Block 2007. The specific address in the redacted bill for Block 2007 is included in the range of addresses Charter provided as part of its June 5th Challenge.

⁹ For example, on Attachment A of the June 5th Challenge, 123 N. 10th Street, Space 11, Taft, CA 93268-2652 was identified as a serviceable address in Block 20007. One need only go to www.spectrum.com and input that address to see that Charter offers services at speeds starting at 30 Mbps download speed at that location. Further, Charter provided redacted bills for 123 N. 10th Street in its June 5th Challenge. Exhibit Taft-1.

has subscribers in the census block at issue. Accordingly, to correct this legal, factual and policy error, the Commission should deny funding for Block 2007.

B. The Commission Erred in Approving Funding of an Overbuild in the Six Census Blocks in which Charter Has Deployed Plant but Has No Subscribers

Although the Commission-adopted challenge rules focus on carrier demonstrations that subscribers exist in a given block, D.18-12-018 contemplates situations in which exclusive 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....”¹⁰

With its challenge, Charter demonstrated that there are six census blocks in the Project Area in which Charter has deployed plant, capable of providing speeds far greater than 6/1 but, due to the fact that the land at issue is largely agricultural land with no or very few actual homes, Charter does not (and in certain cases cannot) have a current subscriber.¹¹ With its deployed plant already in these blocks, these households have access to Charter services. As such, public subsidy to overbuild in these areas 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. If permitted to proceed with these six census blocks, Frontier

¹⁰ D.18-12-018, p.12.

¹¹ See June 5th Challenge, pp. 5-6. Please note that Charter also included Block 2008 in this discussion. Block 2008 was removed from the project area and is no longer at issue. The six remaining census blocks at issue are: 060290033042923; 060290035001081; 060290046041029; 060290047012006; 060290047012033; and 060290047021022. As identified in the challenge, census block 060290035001081 has no homes in it and consists of completely undeveloped land. As such, this block, with no households passed, cannot logically be seen as a census block eligible for funding. The other blocks are sparsely populated with a mere handful of households in total all of which could be served by Charter using existing plant without grant of any public funding.

is being given a governmental subsidy to construct and offer services, to a very limited number of households that are already capable of subscribing to broadband services from Charter.

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 2007 already served by Charter. Frontier's grant of funding should be revised to reflect the exclusion of Block 2007. In doing so, the Commission would correct an error in which all addresses in the mobile home community, whether in Block 2007 or in Block 2008, share the common address of the central administrative office which is physically located in Block 2008.

In addition, Charter respectfully requests, as a matter of sound public policy, that the Commission grant Charter's challenge to the six other identified census blocks in which Charter has deployed plant and is able to serve the limited households in these largely agricultural areas.

Respectfully submitted,

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January 21, 2020

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