

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



FILED

7-27-16
04:59 PM

Application of Charter Communications, Inc.
for Rehearing of Resolution T-17515.

A. 16-07-003
(Filed July 11, 2016)

**MOTION FOR CHARTER COMMUNICATIONS, INC.,
FOR STAY OF RESOLUTION T-17515**

John L. Clark
Megan Somogyi
Goodin, MacBride, Squeri & Day, LLP
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: jclark@goodinmacbride.com
Email: msomogyi@goodinmacbride.com

Gardner Gillespie
Megan Grant
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 100
Washington, DC 20006
Tel: 202-747-1900
Fax: 202-747-1901
Email: ggillespie@sheppardmullin.com
Email: mgrant@sheppardmullin.com

Dated: July 27, 2016

Attorneys for Charter Communications, Inc.

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

Application of Charter Communications, Inc.
for Rehearing of Resolution T-17515.

A. 16-07-003
(Filed July 11, 2016)

**MOTION FOR CHARTER COMMUNICATIONS, INC.,
FOR STAY OF RESOLUTION T-17515**

I. INTRODUCTION

Pursuant to Rule 11.1 of the California Public Utilities Commission’s (the “Commission”) Rules of Practice and Procedure, Charter Communications, Inc. (“Charter”) files this Motion for Stay of Resolution T-17515 (the “Resolution”). Charter requests that action based on the Resolution, including funding of grants approved by the Resolution and approval of other grant applications under the modifications to the expedited Broadband Public Housing Account (“BPHA”) review process adopted by the Resolution, immediately cease until the later of the effective date of a decision on Charter’s pending Application for Rehearing and/or any follow-on action before the California courts related to or arising out of the Application for Rehearing. The Commission should issue its order granting this Motion for Stay on an expeditious basis in light of the ongoing harm to Charter and other broadband providers due to Commission Communication Division Staff’s (“CD Staff”) continued issuance of decisions under the modified expedited review criteria adopted by the Resolution.

The Resolution, which was adopted by the Commission on June 9, 2016, and issued on June 10, 2016, approved funding of approximately \$190,061 from the Broadband

Public Housing Account (“BPHA”) of the California Advanced Services Fund (“CASF”) for 10 public housing properties (the “Properties”) currently served by Charter. The Resolution also revised Decision (D.) 14-12-039 to enable CD Staff to approve BPHA funding of other projects proposed by public housing properties that are already wired and served by private broadband providers. Because the Resolution violates the plain language, and the overall objective, of the CASF, Charter filed an Application for Rehearing of the Resolution on July 11, 2016.

CD Staff, relying on the Resolution’s revisions to the expedited review authority, has notified Charter that it is rejecting Charter’s challenges to applications for BPHA funding by properties that it recognizes Charter has completely wired and fully serves.¹ To date, it has proceeded to consider and approve funding for projects at 35 properties already served by Charter, overbuilding Charter’s broadband infrastructure. Charter further understands that CD Staff has received a number of additional applications for BPHA funding from other public housing properties that Charter has wired and fully serves, and intends to continue to award BPHA funding to these properties over Charter’s objections, compounding the harm to Charter through its continued and unlawful approval of grant applications under the new policy adopted by the Resolution.

As described in more detail below, the Commission should issue a stay of the Resolution because: (1) Charter is likely to prevail on the merits of its Application for Rehearing of the Resolution; (2) Charter will suffer serious and irreparable harm if the stay is not granted; and (3) the “balance of harm” supports a stay.

¹ The CD Staff provided Charter notice by letter dated July 1, 2016, that it has rejected 35 challenges Charter submitted to applications for BPHA funding by properties that Charter already wired and currently serves. Ten of these challenges are the subject of Charter’s Application for Rehearing of the Resolution, and the remaining 25 are the subject of a separate Application for Rehearing filed on July 26, 2016.

II. THE COMMISSION SHOULD ISSUE A STAY OF THE RESOLUTION UNTIL IT ISSUES A DECISION ON CHARTER’S APPLICATION FOR REHEARING AND/OR UNTIL ANY JUDICIAL APPEAL OF THIS MATTER IS RESOLVED.

In exercising its discretion to issue a stay, the Commission considers the following factors: (1) whether the moving party will suffer serious or irreparable harm if the stay is not granted; (2) whether the moving party is likely to prevail on the merits of the application for rehearing; (3) a balance of the harm to the moving party (or the public interest) if the stay is not granted and the decision is later reversed, against the harm to other parties (or the public interest) if the stay is granted and the decision is later affirmed; and (4) other factors relevant to the particular case. *See Order Granting Stay of 08-01-031* [D.08-04-044]. As discussed below, the Commission should grant the requested stay in this case.

A. Charter Is Likely to Prevail on the Merits of its Application for Rehearing.

The Resolution cannot be reconciled with either the language of Section 281 of the Public Utilities Code or the important public policy goals the statute was enacted to redress. *See, e.g., Application for Rehearing.* The CASF is intended to provide funding for the deployment of broadband services to households that are “unserved” or “underserved.” Cal. Pub. Util. Code § 281(e)(3)(A). Whether a household is “unserved” or “underserved” turns on the availability of broadband that meets minimum speed requirements. But in reliance on a supposed “affordability” standard that exists nowhere in the statute, the Resolution awards funding to properties that have applied for BPHA funding to overbuild broadband networks already fully serving the properties with high-quality broadband services and modifies D.14-12-039 to authorize CD Staff to approve similar BPHA funding applications on an expedited basis. In creating this new standard for approving applications for BPHA funding, the Resolution completely ignores limits on CASF funding set by the statute and permits funding for properties that are not eligible for broadband infrastructure funding under the statute.

This outcome also undercuts the CASF's policy to ensure that funds are available to build out broadband infrastructure to connect unserved and underserved households that might otherwise be passed over. The properties at issue here, however, have not been passed over and have available high-quality broadband that surpasses by many multiples both the Commission's minimum speed requirements and the proposed levels of service that will be offered by the projects at the properties. Awarding funds to these projects not only diverts BPHA funds from projects that would achieve statutory purposes, but also has the perverse effect of discouraging private broadband providers from making private investment to install broadband infrastructure in exactly the locations that the legislature worried would be passed over by private broadband providers.

B. Charter and the Public Will Suffer Serious and Irreparable Harm if the Stay Is Not Granted.

If the Commission does not grant a Stay, CD Staff has demonstrated it will continue to approve applications for BPHA funding under the authority of the Resolution and to award grants.² BPHA funding is a scarce and finite resource, and the projects that CD Staff has already approved are slated to receive more than \$750,000 in BPHA funding. Should these funds be disbursed, the properties will spend the money to undertake their proposed projects, and it is extremely unlikely that any spent funds will be recovered if the Commission overturns the Resolution. This misapplication of funds will deprive properties that meet applicable CASF and BPHA criteria from access to funds necessary to connect and serve households that do not have adequate broadband access, and interfere with broadband providers like Charter that are already providing broadband service to households in the properties.

² To date, CD Staff has denied 35 challenges lodged by Charter to proposed broadband projects at properties that it already wired and currently serves. Additional applications for projects at properties that Charter similarly wired and serves are currently pending.

Moreover, so long as CD Staff continues to act on its new authority, Charter and other broadband providers, CD Staff, and the Commission will continue to expend valuable resources to address the same, or similar, issues arising out of the fundamental questions raised in the Application for Rehearing. Staying the CD Staff's authority to act on the basis of this new authority will streamline the Application for Rehearing and related proceedings and conserve scarce resources.

C. While Charter and the Public Will Suffer Serious Harms if the Stay Is Denied, No Other Party Will Suffer Harms if the Stay Is Granted.

In stark contrast to the serious and irreparable harms that would befall Charter and the public absent a Stay, the only harm to the other parties – here the properties that have applied for funding – is to delay their receipt of funds so that they may begin construction on their proposed broadband infrastructure projects. If the Commission and the courts, as applicable, affirm the Resolution, these slight delays will cause minimal harm to the properties' plans to build and deploy broadband infrastructure. And there will be no harm to the households residing in the properties in the interim because Charter already offers broadband service to all units in each of the properties.

III. CONCLUSION

For all of the foregoing reasons, the Commission should grant a stay of the Resolution until the merits of Charter's challenge can be resolved either through its Application of Rehearing of the Resolution or by a judicial appeal. Charter further respectfully requests an expedited Order on this Motion for Stay in light of the pending applications by a number of properties and CD Staff's continued actions on these applications based on the authority of the Resolution.

Respectfully submitted July 27, 2016 at San Francisco, California.

GOODIN, MACBRIDE,
SQUERI & DAY, LLP
John L. Clark
Megan Somogyi
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321
Email: jclark@goodinmacbride.com
Email: msomogyi@goodinmacbride.com

By /s/ John L. Clark
John L. Clark

Gardner Gillespie
Megan Grant
Sheppard Mullin Richter & Hampton LLP
2099 Pennsylvania Avenue NW, Suite 100
Washington, DC 20006
Tel: 202-747-1900
Fax: 202-747-1901
Email: ggillespie@sheppardmullin.com
Email: mgrant@sheppardmullin.com

Attorneys for Charter Communications, Inc.

3146/009/X183849.v1