

01/29/2013

Special Meeting

Item #2a

Information

Technology

CPUC Letter Re: Verizon

Deadline Extension

Request

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28 January 2013

Mr. Paul Clanon
Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
sent via email to pac@cpuc.ca.gov

Re: Comments in response to Verizon's January 24, 2013 untimely filing for an extension in deadline established in Resolution T-17350 to begin offering broadband service to the communities of Crowley Lake And Swall Meadows, emailed to the service list for Resolution T-17330, distributing a letter dated January 22, 2013.

Dear Mr. Clanon:

This comment letter is in response to the January 24, 2013 untimely filing by Verizon requesting an extension of time on a Commission order to provide broadband service to Swall Meadows and Crowley Lake no later than today. Per Rule 16.6, the deadline to file such a request was January 23rd—three business days ahead of the fulfillment date and the day before this second filing was submitted.

Verizon's untimely filing to the T-17330 service list failed to request an extension of time to comply with T-17330—something Verizon did not do in either of its two filings with the PUC last week.

While the untimely filing is ostensibly to provide certificated notice to the service list of parties in the T-17330 proceeding/resolution, it is more significantly an implicit claim that a request for a time extension on T-17350 should apply to T-17330—and that is a fallacious argument. To conflate the requirements for complying with the CASF grant award (T-17350) with the requirements of satisfying the T-17330 order, as Verizon appears to be arguing for, is wrong and misleading.

T-17350, about which Verizon timely filed a request for extension of time to comply on January 22nd, was a resolution approving, with conditions, a CASF grant to Verizon in the amount of \$286,398.45. One of the conditions of approval was that “The CASF fund recipient, Verizon, shall begin offering broadband service to the communities of Crowley Lake and Swall Meadows by no later than January 28, 2013.”

T-17330, on the other hand, was a Resolution to resolve lawlessness on the part of Verizon, for failure to comply with PUC § 320, which requires under-grounding of new aerial lines in the vicinity of designated state scenic highways. As partial mitigation, Verizon accepted an offer by the PUC to provide broadband service to two nearby affected communities by January 28, 2013, i.e., today. This agreement included a deviation permit to allow the illegally placed ariel cable to remain in place, and Verizon to avoid a much more significant fine reportedly 200 times what Verizon was assessed. Verizon has failed to honor and meet its commitment to provide broadband service. No request for an extension of time to comply with this condition of T-117330 was submitted by Verizon.

Final dispensation of this matter has now been pending for six years. (I have been involved from day one.) For the past eighteen months, residents of Swall Meadows and Crowley Lake—about 500 households—have been assured that broadband service would be available on this date. It has not happened, and judging by Verizon's letter, the delay is inexcusable.

What is to be done?

The PUC has the option of extending the time to comply with T-17350, but Verizon has offered no rational basis to do so. A better response, I believe, would be to withdraw the CASF grant for failure to deliver the agreed upon service by the agreed upon date. I am aware that CASF grants normally allow two years for project completion; however, this CASF grant had an earlier completion deadline, coinciding with the deadline in Resolution T-17330. There is no precedent for granting an extension of time to comply with a CASF grant deadline analogous to this one, and so withdrawing this grant award for non-performance is not unreasonable based on the record before us.

While there is reason to speculate that some of the infrastructure that was to be partially funded by the grant may in fact have been installed—and its use diverted to Verizon Wireless for more profitable new cell phone service,— the available non-circumstantial evidence consists solely of assertions made by Verizon in its January 22nd letter, which does not unambiguously claim that any work on the grant-supported project has begun, but does assert that needed backhaul work has been completed.

Withdrawing the grant is fully justified, and may better allow smaller and/or local providers to compete with Verizon for these markets, especially when Verizon's stranglehold on backhaul is eliminated next summer with the lighting up of Digital 395. Verizon must provide the service, per T-17330, so the project will still move forward, even if the grant is withdrawn and the request for an extension of time to comply is denied.

A second option, perhaps less elegant than withdrawing the grant for non-performance, is to impose what might be considered a completion-bond penalty. By reducing rather than withdrawing the grant, the first-year pricing and service guarantees would remain in place, a benefit to consumers. I would recommend \$2,000 per day; anything less is unlikely to spur Verizon to prompt action. Under this scenario, if Verizon took the full 84 days they have requested, their grant reimbursement would

be reduced by \$168,000, from \$286,388 to \$118,388. But if, for example, the work is completed and service is in place ten weeks sooner, on February 11th, the grant reimbursement would only be reduced by \$28,000, to \$258,388. Facing a \$2,000 per day penalty for delay in completion, Verizon will have a strong incentive to provide the service sooner rather than later.

The CPUC and the public has already been burned by Verizon's multiple assurances that the deadline would be met. In retrospect, a completion bond penalty would have been advantageous; going forward nothing short of serious financial repercussions can be expected to move this project expeditiously to completion.

Verizon had more than adequate advance notice that consequences would accompany a failure to meet today's completion deadline. As the PUC unequivocally declared in T-17350, "If Verizon fails to provide broadband service to the communities in question, it risks facing Commission proceedings for violating Resolution T-17330." Those proceedings, which are distinct from T-17350, should commence in the very near future.

The parties to the deliberations over Verizon's violation of PUC § 320 have not been offered an opportunity to weigh in on a request for extension of time to comply with the T-17330 order to provide broadband service by today's date, as Verizon has made no such request, and the deadline to do so has come and gone.

The penalty for this failure to deliver service as agreed to and ordered in Resolution T-17330 should be significant. Perhaps eliminating or reducing the CASF grant will be determined to be penalty enough, assuming quality service is provided in the very near future; or, in the alternative, if the grant deadline is extended without repercussions to Verizon, then I would argue for a \$5,000 per day penalty (the law allows, as I read it, for up to a \$20,000 a day penalty to be imposed) for each day after today until broadband service is available in Swall Meadows and Crowley Lake.

To conclude, after reviewing the evidence and arguments before you, I urge you to find that Verizon has offered no rational basis for approval of the request for an extended delay in compliance with T-17350, and accordingly you should deny Verizon's request for an extension of time beyond the January 28, 2013 date stipulated in the approved CASF grant award resolution, and either withdraw the grant, or else reduce the grant by \$2,000 per day until the project is completed and operational. Proceedings on the failure to comply with the separate order in T-17330 can be held as soon as the project is completed. I plan to participate.

Sincerely,



STEPHEN KALISH

cc: Felix Robles (via email)
Tom Glegola (via email)



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January 29, 2013

Mr. Paul Clanon
Executive Director
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
via email to pac@cpuc.ca.gov

RE: Response to Verizon's request for an extension in deadline established in T-17350

Dear Mr. Clannon:

The Mono County Board of Supervisors is reiterating the January 23, 2013 letter sent by County staff Nate Greenberg regarding Verizon's request for an extension to the Crowley Lake/Swall Meadows Broadband project.

As stated in the original letter, the County feels that Verizon's request for a time extension in order to meet the commitments set forth in Resolution T-17350 are unreasonable, unnecessary, and should be denied. The County and residents of the communities of Crowley Lake and Swall Meadows have been anticipating availability of DSL service through Verizon for eighteen months, and have been told multiple times that the project was on track.

The County again requests the CPUC consider the issues and comments raised by the County and its residents regarding this request, and carefully evaluate their decision in light of these. Should the CPUC decide to grant Verizon the request for an extension, we feel it is important that appropriate penalties are imposed on them. The purpose of the penalties should not only indicate the CPUC and County's displeasure to Verizon, but also be structured in such a way that they benefit the customers in the service areas that are being impacted by these actions. Though financial penalties may be appropriate or customary, they do not directly benefit the County or its residents.

As previously suggested, requiring Verizon to provide service to community of Paradise is one such penalty that would benefit county residents. Additionally, requiring Verizon to increase the bandwidth to Mammoth would alleviate current capacity issues in that community, including the ability for providers to take on new customers.

We appreciate the Commission's attention to this matter and look forward to hearing your decision.

Sincerely,

Larry Johnston
Vice Chair