

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband, Video and Market Branch**

**RESOLUTION T- 17557
March 2, 2017**

R E S O L U T I O N

Resolution T-17557: Approving additional CASF Funding of up to \$428,220 to Ultimate Internet Access, Inc., (U-7259C) to complete the Helendale Project.

I. SUMMARY

This Resolution approves additional California Advanced Services Fund (CASF) funding of up to \$428,220 to Ultimate Internet Access, Inc., (UIA) in order for UIA to pay prevailing wage labor construction rates, mainly retroactively for work already completed, as mandated by the passage of Assembly Bill 2272 (AB 2272), for its Helendale Project. AB 2272 modified the California Labor Code as of January 1, 2015, to clarify that CASF-subsidized projects are “public works” and therefore subject to prevailing wages.

II. APPLICANT REQUEST

In December 2016, UIA notified Communications Division (CD) staff by e-mail that the total costs related to its CASF grant project awarded in Resolution T-17478 would increase from \$2,309,708 to \$3,023,408 because UIA only recently discovered that the Helendale Project is subject to state prevailing wage laws.¹ Based on this, UIA requested additional funding from the CASF program in order to complete the project and to comply with AB 2272.

III. BACKGROUND

On May 7, 2015, the Commission adopted Resolution T- 17478, approving UIA’s application for a CASF grant of \$1,385,825 to construct the Helendale Project, to extend 1 Gbps (symmetrical download and upload) fiber-to-the-premises broadband infrastructure to 2,279 households in the San Bernardino County community of Helendale. The project had broad public support, as determined by numerous support

¹ This award represents 60 percent of the additional project cost of \$713,700.
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letters, and had potential public safety impacts for Helendale, which is more than 15 miles away from the nearest hospital. The grant represented 60 percent of the then-estimated total project cost of \$2,309,708, with UIA contributing the remaining 40 percent. As of December 31, 2016, UIA estimated that construction on the project is 98 percent complete, with more than 700 customers already in service.

UIA submitted its application to CD for the Helendale Project on December 8, 2014. On September 30, 2014², Governor Brown signed AB 2272, which amended Section 1720 of the California Labor Code, effective January 1, 2015, to explicitly classify CASF projects as “public works,” and therefore subject to prevailing wage laws.

The Commission approved the Helendale project on May 7, 2015. UIA started work on the project shortly thereafter, and discovered in late 2016 that CASF projects are subject to prevailing wage laws. UIA calculated it would require an additional \$713,700 to bring the Helendale project labor costs into compliance with prevailing wage requirements. Based on this estimate, UIA requested 60 percent of this amount in additional funding from the CASF.

IV. DISCUSSION

CD staff notes that prior Commission rulings that established the review process for CASF applications (*i.e.*, D.07-12-054 and Resolution T-17143) do not discuss a process for addressing CASF awardees’ requests for additional funding. However, the Commission has approved additional funding for projects in past resolutions.³ For example, the Commission approved additional funding for projects in Resolutions T-17352, T-17408, and T-17517 where it acknowledged the lack of guidance to address cost overruns and/or requests for additional funding.⁴

In Resolution T-17352, the Commission found it reasonable to approve IP Network’s application for additional CASF funding to cover cost increases, so long as these cost increases resulted from exogenous factors beyond the applicant’s control. Resolution T-

² Office of the Governor (2014, September 30). “Governor Brown issues Legislative Update.” Retrieved from <https://www.gov.ca.gov/news.php?id=18744> on January 27, 2017.

³ See Resolution T-17517, dated May 16, 2016, Conditionally Approving Additional Funding of \$399,853.20 or \$462,978 to Happy Valley Telephone Company to Complete the Olinda Underserved Broadband Project.

⁴ See Resolution T-17352, Approval of Additional Funding for the IP Networks Highway 36 Humboldt-Trinity Counties Project from the CASF amounting to \$1,540,258.40; and, Resolution T-17408, Conditionally Approving Additional CASF funding of up to \$9,928,715 to the California Broadband Cooperative to Complete the Digital 395 Project.

17352 further recommended that the Commission refrain from using CASF funds to reimburse IP Networks for any cost increases resulting from planning and estimation changes that were not caused by additional requirements from another entity.

In Resolution T-17408, the Commission approved cost increases that resulted from exogenous factors, as well as other factors unforeseen by the applicant when it applied. Specifically, the Commission found it reasonable to grant additional funding despite the fact that “some of the cost overruns may be attributed to factors under the CBC’s (the grantees) control, [in addition to the] extraordinary, cultural, historic preservation, and other agency requirements for projects faced [which] contributed to the cost overruns.”⁵ The resolution states, “CBC and its vendors underestimated the environmental and cultural resources review required to construct within the project area. CBC did not anticipate the need to bore along dirt roads graded annually by County authorities. Despite this, CD recommends the Commission consider these cost overruns as allowable.”⁶

Based on these prior resolutions, CD concludes that it is reasonable to consider granting additional funds for UIA in this resolution.

In this instance, UIA did not include prevailing wage cost estimates in its budget proposal. CD staff notes that at the time UIA submitted its CASF application, AB 2272 had not become effective. While at the time of UIA’s application applicants were required sign an affidavit agreeing to comply with all state rules and regulations, there was no specific mention in the CASF application guidelines or the CASF website of the need for CASF-sponsored projects to comply with prevailing wage requirements. There was no guidance provided to UIA from CD staff on compliance with these requirements because AB 2272’s application of prevailing wage to UIA’s project was unclear at the time. Moreover, the Department of Industrial Relations (DIR) is tasked with enforcement authority over prevailing wage issues; accordingly, it was unclear whether verifying compliance with prevailing wage was a CPUC responsibility.⁷

Subsequent to both the effective date of AB 2272 and the approval of the Helendale Project, the CASF website FAQ was modified to incorporate language relating to prevailing wage requirements. CD staff has also changed internal processes to address the need for CASF projects to meet prevailing wage with applicants. For example, going

⁵ See Resolution T-17408, p. 37, Finding of Fact No. 4.

⁶ Id at. pp. 23-24.

⁷ See Labor Code Section 1720(B) which states, “For purposes of this paragraph, the Public Utilities Commission is not the awarding body or the body awarding the contract, as defined in Section 1722.” Further, exemptions to Section 1720 are determined by the DIR.

forward, resolutions granting funds will also include additional language regarding prevailing wage compliance. Had these measures been implemented and a part of the initial resolution granting UIA a CASF grant, UIA would have been on notice that additional steps were needed to comply with the prevailing wage requirement.

In 2016, following advice given in the Frequently Asked Questions section of the CASF website, UIA contacted the Department of Industrial Relations (DIR) to determine whether the Helendale Project was subject to prevailing wage laws. The DIR determined that both this project and the company's Wrightwood Project (also approved by the Commission on May 7, 2015, in Resolution T-17475) are subject to prevailing wage requirements.⁸ In response, UIA calculated that it would require an additional \$713,700 in funding, mainly in retroactive pay for work already completed,⁹ to comply with the prevailing wage requirements for the Helendale project. UIA reported that determining the proper job classification of some workers on the project has been a complex process, requiring outside legal assistance (which is not being charged to the grant) because the DIR's guidance regarding broadband installation was limited.¹⁰

CD finds that unanticipated costs were incurred because UIA did not learn prior to submitting its initial application that this project was subject to prevailing wage laws, and therefore UIA underestimated these costs in its proposed budget. Further, DIR clarified to UIA that prevailing wage requirements apply for CASF projects only after UIA had submitted its CASF grant application and had it approved by the Commission.

V. STAFF RECOMMENDATION

CD recommends UIA be awarded 60 percent of the final documented overage due to meeting prevailing wage rates, or up to \$428,220 (60 percent of UIA's initial estimate), whichever is lower. With the additional award, the total CASF grant to UIA for the Helendale Project would now total \$1,814,045, resulting in a \$795 subsidy per household – less than the mean of just over \$4,216 for all approved last-mile projects.¹¹ Despite the additional funding, the Helendale Project subsidy is significantly lower than the \$8,718 median per-household subsidy of the seven fiber-to-the-premise projects approved between January 1, 2015, and August 1, 2016. This recommendation is based on the

⁸ UIA notified CD that it intends to seek additional funding for its Wrightwood Project approved in Resolution T-17475 at a future date.

⁹ E-mail from UIA CEO Wes Zuber to CD Analyst John Baker, January 9, 2017.

¹⁰ E-mail from UIA CEO Wes Zuber to CD Analyst John Baker, January 19, 2017.

¹¹ Up through August 1, 2016. Excludes rescinded projects.

change in law to CASF projects initiated by AB 2272, which clarifies the applicability of prevailing wage to CASF-funded projects.

VI. SAFETY IMPACT

Approval of this resolution will help assure the completion and operation of the Helendale Project. Resolution T-17478, which originally approved this project, noted that the CASF program encourages the deployment of broadband throughout the State which can enable the public to access Internet-based safety applications, access to emergency services, and allow first responders to communicate with each other and collaborate during emergencies. As the Governor's Broadband Task Force stated in its 2007 report, ubiquitous broadband will play a key role in enhancing public safety operations and applications in law enforcement, disaster relief, traffic management, and virtually every other aspect of public safety.

The unincorporated town of Helendale is outside of the main population centers in the Victor Valley with available hospitals and medical centers 15 miles away in Victorville or 20 miles away in Barstow. Telephone and broadband allows access to these facilities and providers and can be a critical factor in health and safety emergencies. Additionally, voice service provided as a part of the Helendale Project will meet all safety standards, including battery backup, E911 data and access to local PSAPs.

VII. COMMENTS ON DRAFT RESOLUTION

In compliance with PU Code §311(g), a notice letter was emailed on January 27, 2017, informing all parties on the CASF Distribution List of the availability of the draft of this Resolution for public comments at the Commission's documents website at <http://www.cpuc.ca.gov/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available at the same website.

VIII. FINDINGS

1. Ultimate Internet Access, Inc., (UIA) submitted an application for the Helendale Project on December 8, 2014, which predates the implementation of AB 2272. At the time the company was unaware of the upcoming need for CASF-sponsored projects to meet prevailing wage requirements, and UIA did not account for them in its initial project budget.

2. Assembly Bill 2272 amended Section 1720 of the California Labor Code, as of January 1, 2015, to clarify and explicitly classify CASF projects as “public works,” and therefore subject to prevailing wage laws.
3. Resolution T-17478 (issued May 5, 2015) authorized a CASF grant of \$1,385,825 to UIA to construct the Helendale Project. Prevailing wages were not accounted for in the resolution.
4. The Department of Industrial Relations is tasked with the responsibility of determining the general prevailing wage in accordance with specified standards and the DIR has enforcement authority over prevailing wage issues.
5. UIA consulted with the Department of Industrial Relations, and was informed that the Helendale Project is subject to prevailing wage laws. UIA subsequently calculated that the additional labor costs attributable to meeting state prevailing wage laws would total \$713,700.
6. UIA contacted CD in December 2016, noting that the expense of meeting prevailing wage laws raises financial and legal concerns for its relatively small company and requested an increase in its grant amount of \$428,220 (60 percent of UIA’s estimate of \$713,700 in additional labor costs).
7. CD staff determined that the lack of prevailing wages in UIA’s application budget was due in part to the unclear status of CASF projects as “public works” at the time UIA submitted its application, and UIA did not foresee that it was subject to prevailing wage laws at the time it applied for CASF funding.
8. The Commission has in the past approved requests for additional funding to cover cost increases, both for exogenous costs and those that may have been under the grantee’s control.
9. A notice letter was e-mailed on January 27, 2016, informing all parties on the CASF distribution list of the availability of the draft of this Resolution for public comments at the Commission’s website <http://www.cpuc.ca.gov/PUC/documents/>. This letter also informed parties that the final confirmed Resolution adopted by the Commission will be posted and available at this same website.

THEREFORE IT IS ORDERED THAT:

1. The Commission shall award additional funding of up to \$428,220 from the CASF infrastructure grant account to UIA in order to for the company to meet its obligation to comply with the prevailing wage law and complete the Helendale Project.
2. UIA must provide CD with complete documentation of the cost overruns outlined in this request.
3. The Commission shall reimburse UIA in accordance with the payment guidelines adopted in Resolution T-17478, which includes documentation and verification of the cost overruns.
4. UIA shall comply with all guidelines, requirements, and conditions associated with the CASF funds award as specified in Resolutions T-17478 and T-17557.
5. UIA shall complete the Helendale Project with the scope specified in Resolution T-17478. If UIA fails to complete the project in accordance with the approval granted by the Commission and this Resolution, UIA will be required to reimburse some or all of the CASF funds it has received.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 2, 2017. The following Commissioners approved it:

TIMOTHY J. SULLIVAN
Executive Director