

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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

**RESOLUTION T-17684
February 6, 2020**

RESOLUTION

Resolution T-17684: Approval of funding for the grant application of Northern Valley Catholic Social Service from the California Advanced Services Fund, Broadband Public Housing Account in the amount of \$35,949 for the Woodlands II Project.

SUMMARY

This Resolution approves \$35,949 in funding from the California Advanced Services Fund (CASF) Broadband Public Housing Account (BPHA) to the grant application of Northern Valley Catholic Social Service (NVCSS). The proposed project will construct an inside broadband network with both wired and wireless components in order to connect the planned (not yet built) Woodlands Apartments II Development to broadband Internet services.

BACKGROUND

On June 21, 2018, the California Public Utilities Commission (Commission) issued Decision (D.)18-06-032 which implemented provisions of AB 1665 specific to the CASF Adoption, Public Housing and Loan Accounts.¹ Key provisions of the Decision relevant to this Resolution include:

- BPHA grants can only be awarded to unserved housing developments.²
- An “unserved” housing development is a housing development where at least one housing unit within the housing development is not offered broadband Internet service. A housing unit “is not offered broadband Internet service” if the unit does not have access to a commercially available broadband Internet service, such as Digital Subscriber Line (DSL), a cable modem, or any other technology, available at the unit.³

¹ *Decision Implementing the California Advanced Services Fund Broadband Adoption, Public Housing and Loan Accounts Provisions* [D.18-06-032] (2018), Appendix 2.

² *Id* at p. 1.

³ *Id* at p. 3.

On June 27, 2019, NVCSS submitted a BPHA Infrastructure application, requesting \$45,280 to fund the low-voltage construction and equipment of an inside broadband network with both wired and wireless components in order to connect the planned (not yet built) Woodlands Apartments II Development to broadband Internet services. The address provided on the application (2950 Polk Street) was for the apartment development in the contiguous property.

On August 23, 2019, NVCSS corrected and resubmitted the application. In the amended application, NVCSS provided the correct address for the planned development (2900 Polk Street). The funding request remained the same.

The Woodlands Apartments II Development is a planned low-income housing development in Redding, CA. Woodlands Apartments II is owned by a Limited Partnership (PC Redding Apartments II LP of which NVCSS is the managing general partner).⁴ The housing development will have a total of 20 units (19 low-income units, and one unit for the building manager). NVCSS plans to complete construction by the end of March 2020.

NVCSS is an incorporated nonprofit organization that is currently exempt under section 501(c)(3) of the Internal Revenue Code. It has received public funding to subsidize the construction of low-income housing and is an eligible applicant under the BPHA.⁵ NVCSS provides low-cost or free mental health checkup, housing, vocational, and support services to individuals and families in California's Northern Sacramento Valley. It is operated by the Catholic Church.

NOTICE

On July 12, 2019, Staff posted the proposed project description on the Commission's BPHA webpage⁶ and sent a notice regarding the proposed project to the CASF Distribution List.

On September 3, 2019, Staff posted the proposed project's description for the amended application with the revised address on the Commission's BPHA webpage and sent a

⁴ D.18-06-032, Appendix 2, p. 4 "Non profit housing developers involved in limited partnerships with for profit entities participating may also be eligible, since the IRS considers an exempt organization's participation as a general partner in a limited partnership with for profit limited partners as consistent with the organization's exempt status under Internal Revenue Code Section 501(c)(3)."

⁵ *Id.* at p. 3.

⁶ <https://www.cpuc.ca.gov/General.aspx?id=908>

notice regarding the change of address for the proposed project to the CASF Distribution List.

PROTESTS/CHALLENGES

On July 26, 2019, Charter Communications, Inc. (Charter) submitted a letter challenging the application stating that they already serve the residents at 2950 Polk Street. Charter provided evidence to support their challenge.⁷

Charter submitted a challenge to the amended application on September 17, 2019. In its challenge, Charter's arguments were similar to its first challenge, except that it was prefaced with the following statement, "The corrected application changes the address to a different address in the same apartment complex, 2900 Polk Street. 2900 Polk Street is not constructed yet but will be part of the same Woodlands Apartment development as 2950 Polk Street. However,...the new building is part of a complex where Charter already provides service and stands ready to serve all parts of the complex."⁸

DISCUSSION

In compliance with D.18-06-032, Staff determined NVCSS's Woodlands II project is eligible to receive \$35,949 in CASF BPHA Infrastructure grant funding.

While the project meets all expedited review criteria, Staff recommends that this project be approved via Resolution because the issue of "unserved" for a building that is still under construction was not specifically addressed in the existing BPHA rules.

Details of Staff analysis are explained in the following sections:

- I. Project Eligibility
- II. Funding Determination
- III. Compliance Requirements
- IV. Payment to CASF Recipients

I. Project Eligibility /Disposition of Charter's Challenge

In its application, NVCSS attested that the Woodlands Apartments II Development is an "unserved" housing development.

⁷ Charter Challenge to NVCSS BPHA Application, July 26, 2019

⁸ Charter Challenge to Corrected NVCSS BPHA Application, September 17, 2019

Charter claims that the Woodlands Apartments II Development is an extension of an existing apartment development on a contiguous property and claims that it already serves the project location since it serves the existing development (2900 Polk Street).

Staff disagrees with Charter for the following reasons:

First, the apartment development on the contiguous property was constructed in 2016. The Woodlands Apartments II Development is a new construction owned by a different legal entity.⁹ It will be managed separately than the existing apartment development. Since property ownership and management are different than the apartment development on the contiguous property, Staff concludes that the Woodlands Apartments II Development is not an extension of the existing housing development.¹⁰

Second, the building is under construction and not wired for broadband Internet and, therefore, no unit is being offered a broadband Internet service per D.18-06-032. Staff determined that the Woodlands Apartments II Development is “unserved.”

Third, the applicant acquired a different contract from Charter to serve the Woodlands Apartments II Development than the Charter contract for service on the contiguous property. The contract with Charter for Woodlands Apartments II is to bring the circuits to the minimum point of entry.¹¹ All internal wiring would be done by NVCSS.

Therefore, Staff concludes that the Woodlands II project meets all the requirements stated in the Guidelines¹² and recommends denying Charter’s challenge.

II. Funding Determination

Staff determined that NVCSS’s initial proposal met the program’s objective but the cost per unit was high compared to the cost per unit for previously approved BPHA projects with similar technology. Staff asked NVCSS to revise its proposal. NVCSS negotiated with its suppliers and contractors and reduced its request to \$35,949. Staff considers this reasonable, given that NVCSS will be using the latest technology and higher caliber equipment. The proposed project includes the installation of two technologies

⁹ The existing apartment complex (‘The Woodlands’) is owned by PC Redding Apartments Limited Partnership of which NVCSS is a general partner.

¹⁰NVCSS stated (in an email from Stephanus Malaihollo, December 17, 2019) that the Woodlands Apartments II Development is completely separate from the existing apartment development on the contiguous property as it is a different entity, has different investors and funding not tied to the previous development.

¹¹ D.18-06-032, Appendix 2, p. 3. “A ‘minimum point of entry’ (MPOE) is either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings.”

¹² D.18-06-032, Appendix 2, pp. 14-16.

combined, a Switched Ethernet network and Wi-Fi (this would be atypical for approved BPHA projects).

III. Compliance Requirements

NVCSS is required to comply with all the guidelines, requirements, and conditions associated with the grant of CASF funds as specified in D.18-06-032. Such compliance includes, but is not limited to the following:

A. California Environmental Quality Act (CEQA)

All CASF grants are subject to CEQA requirements unless the projects are statutorily or categorically exempt pursuant to the CEQA Guidelines.

Given that the activity of the installation of network equipment and inside wiring for the purpose of network installation at the Woodlands Apartments II Complex is to occur during building construction, the activity is covered by the common sense exemption that CEQA does not apply when there is no possibility that the activity in question may have a significant effect on the environment.¹³

B. Execution and Performance

NVCSS must complete all the project activities under the award requirements on or before 12 months from the date this Resolution is approved. If NVCSS is unable to complete the proposed project within the 12-month time frame requirement, NVCSS must notify the Director of Communications Division as soon as it becomes aware of this possibility. If such notice is not provided, the Commission may reduce payment from the awarded grant for failure to satisfy this requirement.

In the event that NVCSS fails to complete performance in accordance with the terms of the Commission's approval and as set forth in this Resolution, the applicant must reimburse some or all of the CASF funds it has received.

Material changes in the entries for the application, such as discontinuing operation or bankruptcy, or change of name (DBA), change of address, telephone fax number or email address should be reported by letter of the CPUC Director of Communications Division.

¹³ CEQA Guidelines § 15061(b)(3)

C. Project Audit and Reporting Requirements

See Appendix A.

IV. Payments to CASF Recipients

The Commission may reimburse NVCSS expense in accordance with, and within the time specified in California Government Code § 927 et seq. Details are in Appendix B.

COMMENTS ON DRAFT RESOLUTION

In compliance with Public Utilities Code, § 311(g), a notice letter was emailed on January 3, 2020, 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 at <http://www.cpuc.ca.gov/PUC/documents/>. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and available on this same website.

FINDINGS

1. NVCSS submitted an application for BPHA funding for its Woodlands II project on June 27, 2019. NVCSS amended its application and resubmitted the Woodlands II project with a corrected address on August 23, 2019.
2. NVCSS's application proposes the construction of an inside broadband network with both wired and wireless components in order to connect the planned (not yet built) Woodlands Apartments II Development to broadband Internet.
3. On July 12, 2019, Staff posted a project summary of the Woodlands II project. The summary was posted on the Commission's Broadband Public Housing Account webpage, under the CASF webpage. On September 3, 2019, Staff posted a project summary of the Woodlands II project with a revised project address.
4. Charter submitted a challenge for both the initial application and the revised application on the basis that it serves the project location. Given that the Woodlands II Apartment Development is not fully constructed, that the development is not an extension of any previous apartment development and that Charter has not demonstrated that it is offering broadband Internet service at the project location, Staff denies Charter's challenge.

5. Based on its review, Staff determined that the project qualifies for funding under D.18-06-032 and recommends Commission approval of CASF funding for NVCSS's Woodlands II project.
6. A notice was emailed on January 3, 2020, informing all applicants filing for CASF funding and parties on the CASF distribution list of the availability of the draft of this Resolution on the Commission's website at <http://www.cpuc.ca.gov/PUC/documents/>.

THEREFORE, IT IS ORDERED that:

1. The Commission shall award a grant of \$35,949 to Northern Valley Catholic Social Service (NVCSS) for the Woodlands II project as described herein.
2. The program fund payment of \$35,949 shall be paid out of the CASF Public Housing Account in accordance with the guidelines adopted in D.18-06-032, and with the process defined in Appendix B of this Resolution, "Payments to CASF Recipients".
3. NVCSS shall comply with all guidelines, requirements and, conditions associated with a CASF award, as specified in D.18-06-032, and this Resolution.
4. If NVCSS fails to complete the project in accordance with the CASF guidelines and requirements outlined in D.18-06-032, and the terms in this Resolution, NVCSS must reimburse some or all of the CASF funds that it has received.
5. NVCSS must complete and execute the consent form (to be sent to NVCSS after this Resolution is adopted) agreeing to the conditions set forth in this Resolution and return it to the CASF Staff within 30 calendar days from the date of the adoption of this Resolution. Failure to submit the consent form within 30 calendar days from the date of this Resolution's adoption, the Commission will deem the grant or award to be null and void.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on February 6, 2020. The following Commissioners approved it:

ALICE STEBBINS
Executive Director

APPENDIX A

Audit and Reporting Requirements

Project Audit

The Commission has the right to conduct and enforce any necessary audit, verification, quality check, and discovery during and after the project implementation to ensure that CASF funds are spent in accordance with Commission approval.

NVCSS invoices will be subject to a financial audit by the Commission at any time within three years of completion of the project.

Project Reporting Requirements

NVCSS must submit a project status report six months after the project award date if the project has not been completed, irrespective of whether NVCSS requests reimbursement or payment. The project status report shall include the deployment schedule with major milestones, and it shall indicate the planned and actual completion date of each project task/milestone as well as any problems or issues encountered during implementation and the actions taken to resolve these issues/problems during project implementation and construction. NVCSS must certify that each project status report is true and correct under penalty of perjury.

NVCSS must submit a project completion report describing the total project cost, including engineering, planning, design, material costs, and an assessment of the average speed the internet service is delivering to a resident as per the grant requirements during the peak hours of 7 p.m. to 11 p.m. NVCSS must include the screenshots of CalSPEED speed test results in its completion report.

NVCSS must certify that each project status and completion report is true and correct under penalty of perjury.

NVCSS is required to operate and maintain the broadband network for five years after it has been successfully installed. After installation, for a five year period, NVCSS must submit timely reports for every project awarded on a biennial basis showing the following three Key Performance Indicators: the average monthly percentage of uptime, the average monthly number of individual devices that access the system and average amount of data transferred over the network.¹⁴

¹⁴ D.18-06-032, Appendix 2, pp. 17-18.

APPENDIX B

Payments to CASF Recipients

Payment to NVCSS will be made upon project completion and the submission of a project completion report. NVCSS may request payment for expenditures incurred during the first six months if NVCSS submits a six month progress report and certifies that the progress report is true and correct under penalty of perjury.

Payment will be based upon receipt and approval of invoices/other supporting documents showing the expenditures incurred for the project in accordance with the CASF funding submitted by NVCSS in their application.

Payment to NVCSS will be made in accordance with, and within the time specified in California Government Code § 927 et seq. The Commission generally processes payments within 20-25 business days, including Communications Division and Administrative Services review. The State Controller's Office (SCO) requires an additional 14-21 business days to issue payment from the day that requests are received by SCO from the Administrative Services.¹⁵

¹⁵ D.18-06-032, Appendix 2, page 19 for full listing of payment requirements.