

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Broadband Policy and Analysis Branch**

**RESOLUTION T- 17410
October 3, 2013**

R E S O L U T I O N

Resolution T-17410 Approval of Funding for the Grant Application of Winterhaven Telephone Company dba TDS Telecom (U-1021-C), from the California Advanced Services Fund (CASF) in the Amount of \$2,063,967 for the Winterhaven Underserved Broadband Project

I. SUMMARY

This Resolution adopts funding in the amount of \$2,063,967 from the California Advanced Service Fund (CASF) for the CASF grant application of Winterhaven Telephone Company dba TDS Telecom (Winterhaven) for its Winterhaven Last Mile Underserved Broadband Project (Winterhaven Project). The Winterhaven Project will extend high-speed internet service to 15.67 square miles covering the Winterhaven Community and other areas of unincorporated Imperial County, including the Quechan Indian Reservation.

II. BACKGROUND

On December 20, 2007, the Commission in Decision (D.) 07-12-054 established the CASF program as a two-year program to provide funds for the deployment of broadband infrastructure in unserved and underserved areas in California.

On September 25, 2010, Governor Schwarzenegger signed Senate Bill (SB) 1040¹ which codified the CASF program and expanded it to include three accounts: (1) the Infrastructure Grant Account, (2) the Consortia Grant Account, and (3) the Revolving Loan Account. The latter two accounts are intended to address the needs that were unmet

¹ Stats. 2010, c. 317, codified at Public Utilities (P.U.) Code § 281.

under the original CASF program. Specifically, the purpose of the Revolving Loan Account is “to finance capital costs of broadband facilities not funded by a grant from the Broadband Infrastructure Grant Account.”² SB 1040 also expanded the CASF fund from \$100 million to \$225 million adding \$100 million to the Infrastructure Grant Account and allocating \$10 million and \$15 million to the Consortia Grant Account and the Revolving Loan Account, respectively.³

On February 1, 2012, the Commission approved D.12-02-015 to implement new guidelines for the Infrastructure Grant and Revolving Loan Accounts. Key provisions of the Decision include:

- A maximum CASF grant award of 70 percent of project costs for unserved areas and 60 percent for underserved areas;
- A definition of an underserved area, “where broadband is available, but no wireline or wireless facilities-based provider offers service at advertised speeds of at least 6 megabits per second (Mbps) downstream and 1.5 Mbps upstream (6 Mbps /1.5 Mbps);” and
- A Revolving Loan Program to provide supplemental financing for projects also applying for CASF grant funding (up to 20% of projects costs, with a maximum of \$500,000), utilizing the same project and applicant eligibility requirements as the Infrastructure Grant Program.

Consequently, on May 10, 2012, the Commission approved Resolution T-17362 which established the application deadlines for the CASF Broadband Infrastructure Grant Account and the Revolving Loan Account as follows:

- October 1, 2012, for unserved areas;
- February 1, 2013, for underserved areas not previously funded by the CASF and hybrid projects that cover both unserved and underserved areas; and,
- A date to be determined for projects in underserved areas where the existing broadband infrastructure was partially funded by a CASF grant.

On February 1, 2013, Winterhaven submitted an application for CASF funding in the underserved areas of Winterhaven and other areas of unincorporated Imperial County, including the Quechan Indian Reservation.

² P.U. Code § 281(e).

³ P.U. Code § 281(b)(1).

NOTICE/PROTESTS

Communications Division (CD) posted the proposed project area map, census block groups (CBGs) and zip codes by county for the Winterhaven Project on the Commission's CASF webpage under "Pending New CASF Applications to Offer Broadband as of February 11, 2013." Communications Division received one challenge, as described below, to the proposed project area.

III. DISCUSSION

This Resolution adopts CD's recommended CASF fund award of \$ 2,063,967 for the Winterhaven Project. This award represents 60% of the total project cost of \$3,439,945. Key project information and a map are shown on pages A-1 through A-3 of Appendix A, respectively.

A. Project Overview

Winterhaven's parent company, TDS Telecom, has been building broadband networks utilizing technologies similar to this project for the past decade. Winterhaven provides both voice and broadband services in this area.

The Winterhaven Project will implement VDSL2⁴ technology at its central office as well as at numerous existing and proposed digital loop carrier sites in order to provide high speed internet service over a 15.67 square mile area. The CBGs impacted by the project area are: 060259400001, 060259400002, and 060259400003.

Winterhaven has targeted the area for broadband deployment because of the existence of customer demand and because it determined that the project is economically feasible with the assistance of a CASF grant of \$ 2,063,967, or 60% of project costs, to match Winterhaven's funding of \$1,375,978.

When completed, the project will reach an estimated 961 households at maximum advertised speeds of 25 Mbps/ 5 Mbps, which is above the served threshold of 6 Mbps/ 1.5 Mbps. Winterhaven estimates the project will initially yield 233 potential subscriber households in the proposed area.

⁴ VDSL2 is an access technology that delivers improved high speed internet access capable of voice, video and data streaming, utilizing fiber facilities to the node and copper wire facilities to the customer premise.

The project area includes five anchor institutions which may benefit from this project. They are San Pasqual Valley High, San Pasqual Valley Elementary, Bill M. Manes High, San Pasqual Middle School, and San Pasqual Vocational Academy.

Winterhaven has committed to a broadband pricing plan under the terms shown below for two years, starting from the beginning date of service. Since Winterhaven provides network access to its broadband facilities under the National Exchange Carrier Association, federal tariff, the standalone prices are higher. No customer commitment is required to obtain these recurring monthly rates.

	Standalone Broadband Service Rates	Broadband Service Rates When Bundled with Voice Service
Recurring Monthly Charges:		
Lite (1Mbps/ 0.5 Mbps)	\$39.95	\$29.95
Express (6 Mbps/ 1.5 Mbps)	\$49.95	\$44.95
Turbo (15 Mbps/ 1.5 Mbps)	\$54.95	\$49.95
Extreme (25 Mbps/ 5 Mbps)	\$64.95	\$59.95
Non-recurring Charges:		
Modem (optional)	\$4.95	\$4.95
Shipping and Handling	\$14.95	\$14.95
Installation	Fee Waived	Fee Waived

B. Project Qualification

To qualify for the CASF program, the applicant is required to submit proof that the area is unserved or underserved by submitting shapefiles of the proposed project.

Communications Division reviews the submitted shapefiles and compares them with United States 2010 Census data and the California Interactive Broadband Availability maps, revised July 31, 2012. Once CD finds the areas eligible either as an unserved or underserved areas, CD evaluates all other information submitted by the applicant to determine if the project meets the requirements outlined in D.12-02-015. Other information CD reviews includes: proof of a Certificate of Public Convenience and Necessity (CPCN) from the Commission; descriptions of current and proposed broadband infrastructure; number of potential subscriber households and average incomes; project construction schedule; project budget; proposed pricing and commitment period for new subscribers; and financial viability of the applicant.

As an initial step in the review of Winterhaven's application, CD checked the CBGs submitted in the project application to determine that the project was indeed underserved. The California Interactive Broadband Availability map shows broadband availability at served speeds by a satellite provider, Skycasters, LLC in the Winterhaven Project area. However, as adopted in D.12-02-015, the Commission does not consider satellite broadband service in CASF project evaluation, unless the satellite project is in an area that was previously CASF funded.⁵

Additionally, CD requested greater detail for the project budget and estimated economic life of assets to be funded. Communications Division also obtained a revised pricing plan to determine standalone broadband service rates.

On March 11, 2013, Verizon challenged the application stating that wireless carriers continue to build-out their 4G LTE networks. The challenge was very vague and not detailed enough to identify if the whole project proposal was being challenged or just a specific area. On March 27, 2013, CD staff requested that Verizon clearly identify what area of the project, by census block, it was challenging and to provide the following information: number of subscribers by census block and speed tier, speed tests with a description of how the speed tests were conducted and what tools were used, and the address of the location of where the speed tests were performed to determine if in fact the area is served. Verizon did not provide a response or any further specific information on the challenge and therefore CD staff considers the challenge unsubstantiated. On April 2, 2013, CD staff e-mailed Verizon confirming that no reply was received and that CASF would continue to consider the project eligible for CASF funding. Subsequently, on June 18, 2013, CD issued a letter to the applicant and a copy to Verizon, concluding that the communities in the project area are underserved and eligible for CASF funding. Verizon did not contest the conclusion.

C. Project Evaluation and Recommendation for Funding

Communications Division evaluated the application with respect to the scoring criteria defined in D.12-02-015, Appendix 1, Section VIII (Scoring Criteria). The scoring criteria include: (i) Funds Requested per Potential Customer, (ii) Speed, (iii) Financial Viability, (iv) Pricing, (v) Total Number of Households in the Proposed Area, (vi) Timeliness of Completion of Project, (vii) Guaranteed Pricing Period, and (viii) Low-Income Areas. In addition, five bonus points are added to the score of an applicant who is able to submit local government and community endorsements or letters of support.

⁵ This determination was based on the limited speed capabilities of satellite services, the cost to the consumer, high latency, and unreliability known at the time of the decision, D. 12-02-015 at 13-15. Since that time, like other technologies, satellite services have improved.

The Winterhaven Project had an above average overall score relative to other projects. It also scored particularly high in the low-income areas criterion. The median household income in this area is \$28,566, which is well below the state median of \$61,632.⁶ The project area also encompasses the Fort Yuma Indian Reservation. In fact, the Quechan Indian Tribe, which resides on that reservation, wrote a letter in support of the project because of the importance of broadband to its students, businesses and a planned health care center.

D. Safety Impact

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.

IV. COMPLIANCE REQUIREMENTS

Winterhaven is required to comply with all the guidelines, requirements, and conditions associated with the grant of CASF funds as specified in D.12-02-015. Such compliance includes, but is not limited to:

A. California Environmental Quality Act (CEQA)

The Winterhaven Project is subject to the California Environmental Quality Act (CEQA) review and must follow the requirements listed below.

The applicant must provide the Proponent's Environmental Assessment (PEA) prior to the first 25% payment. The PEA submission should include information on any land crossing sites requiring discretionary or mandatory permits or environmental review pursuant to CEQA (including the type of permit required, the name of the permitting agency/agencies and the Lead Agency if an environmental review is required). Also, the applicants must also agree to identify, prior to the first 25% payment, any other special permits required with a reference to the government agencies which grants these permits.

Winterhaven has provided the Commission with construction plans for the Winterhaven Underserved project area. It consists of implementing VDSL2 technology at the central office location as well as numerous existing and proposed digital loop carrier sites. There

⁶ U.S. Department of Commerce and U.S. Census Bureau, State and County Quick Facts, 2010 (last visited Aug. 19, 2013) <http://quickfacts.census.gov/qfd/states/06000.html>.

will also be about 15 miles of new fiber facility construction. Winterhaven's preferred methods of buried construction are plowing and horizontal boring. Winterhaven plans to do very little, if any, open trenching. If a situation warrants open trenching, Winterhaven will adhere to California Department of Transportation's (DOT) construction manual and the appropriate local municipality's utility guidelines for trenching restoration.

B. Reporting

Grantees must submit quarterly progress reports on the status of the project irrespective of whether grantees request reimbursement or payment. Before full payment of the project, the CASF recipient must submit a project completion report. Progress reports shall use both the schedule for deployment; major construction milestones and costs submitted in the proposals; indicate the actual date of completion of each task/ milestone as well as problems/ issues encountered, and the actions taken to resolve these issues/ problems during project implementation and construction; and identify future risks to the project. Recipients shall also include test results on the download speed and upload speeds on a CBG and zip code basis in the final completion report. Recipients must certify that each progress report is true and correct under penalty of perjury.

C. Submission of Form 477

The Federal Communications Commission (FCC) currently requires broadband providers to biannually submit the Form 477, which includes speed data. While there is an imperfect match between the data that is reported in the Form 477 and to the CASF, Form 477 data will be useful in documenting CASF deployment for the new service area of the carrier. CASF recipients shall submit a copy of their Form 477 data directly to the Commission, under General Order 66-C, when they submit this data to the FCC for a five-year period after completion of the project.⁷

D. Deployment Schedule

The Commission expects Winterhaven to complete the project within 24 months from the start date. If the applicant is unable to complete the proposed project within the 24-month timeframe requirement established by the Commission, it must notify the Commission as soon as it becomes aware of this prospect. The Commission may reduce payment for failure to notify CD's Director and satisfy this requirement.

⁷ *Approval of the California Advanced Services Fund (CASF) Application Requirements and Scoring Criteria for Awarding CASF Funds* (2008) Cal. P.U.C. Res. No. T-17143 at 4.

E. Execution and Performance

Communications Division and the CASF grant recipient shall determine a project start date after the CASF grant recipient has obtained all approvals. Should the recipient or Contractor fail to commence work at the agreed upon time, the Commission, upon five days written notice to the CASF recipient, reserves the right to terminate the award.

In the event that the CASF recipient fails to complete the project in accordance with the terms of approval granted by the Commission, the CASF recipient must reimburse some or all of the CASF funds that it has received.

The CASF grant recipient must complete all performance under the award on or before the termination date of the award.

F. Performance Bond

The Commission does not require a performance bond if the applicant certifies that the percentage of the total project costs it is providing comes from its capital budget and is not obtained from outside financing. In its application, Winterhaven certified that 40% of the total project costs it is providing will come from its existing capital budget. Therefore, a performance bond is not required for this project.

G. Price Commitment Period

The minimum required price commitment period for broadband service to all households within the project area is two years. Winterhaven guarantees the price of service offered in the project area for two years.

H. Project Audit

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

The recipient's invoices will be subject to a financial audit by the Commission at any time within three years of completion of the work.

I. Providing Voice Service

Winterhaven currently provides voice services, which meet the FCC standards for E-911 service and utilize battery backup. Winterhaven will continue to provide voice services.

V. PAYMENTS TO CASF RECIPIENTS

Submission of invoices from and payments to Winterhaven shall be made in accordance with Section IX of Appendix A of D.12-02-015 and according to the guidelines and supporting documentation required in D.12-02-015.

Payment to Winterhaven shall follow the process adopted for funds created under P. U. Code § 270. The following table describes the timeline for processing CASF payments.

Event	Payment Cycle 1 (Day/ Month)	Payment Cycle 2 (Day/ Month)
Invoices due from Winterhaven, to CD	5 th of Month 1	20 th of Month 1
Payment letters from CD to Information and Management Services Division (MSD) ⁸	On 19 th of Month 1	On 4 th of Month 2
Invoices submitted from IMSD to State Controller's Office (SCO) for payments	20 th through 26 th of Month 1	5 th through 13 th of Month 2

Winterhaven may submit its invoices under Payment Cycle 1 or 2.

If any date in this payment schedule falls on a weekend or holiday, that date will be advanced to the next business day, but the remaining dates in the payment schedule will remain unchanged. The State Controller's Office (SCO) requires 14- 21 days to issue payment from the day that requests are received by SCO.

VI. COMMENTS ON DRAFT RESOLUTION

In compliance with P.U. Code § 311(g), a notice letter was emailed on September 3, 2013, informing all applicants filing for CASF funding, parties on the service list of R.06-06-028, and 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 will be available at this same website.

⁸ The above schedule is contingent on the CASF recipient submitting clear, complete, and error-free invoices to CD. Additional time to process payments may be necessary if CD finds problems with the submitted invoices.

VII. FINDINGS

1. On May 10, 2012, the Commission approved Resolution T-17362 which established the application deadlines for the CASF Broadband Infrastructure Grant Account and the Revolving Loan Account as follows: October 1, 2012, for unserved areas; February 1, 2013, for underserved areas not previously funded by the CASF and hybrid projects that cover both unserved and underserved areas; and, a date to be determined for projects in underserved areas where the existing broadband infrastructure was partially funded by a CASF grant.
2. Winterhaven filed an application for CASF funding for its Winterhaven Project on February 1, 2013. The Winterhaven Project will improve speeds by implementing VDSL2 technology at its central office as well as at numerous existing and proposed digital loop carrier sites over a 15.67 square mile area. The CBGs impacted by the project area are: 060259400001, 060259400002, and 060259400003.
3. Communications Division posted the proposed project area map, CBGs and zip codes by county for the Winterhaven Project on the Commission's CASF webpage under "Pending New CASF Applications to Offer Broadband as of February 11, 2013." Communications Division received one challenge from Verizon Wireless, which challenged this project by asserting that it provided internet service in this area at served speeds. However, Verizon did not respond to CD staff inquiries to validate its challenge, and therefore CD staff considers the challenge unsubstantiated.
4. Communications Division reviewed and analyzed data submitted for the Winterhaven Project CASF grant application to determine the project's eligibility for CASF funding. These data include, but are not limited to: proof of a CPCN from the Commission; descriptions of current and proposed broadband infrastructure; geographic information system (GIS) formatted shapefiles mapping the project areas; assertion that the area is underserved; number of potential subscriber households and average incomes; project construction schedule; project budget; proposed pricing and commitment period for new subscribers; and financial viability of the applicant.
5. Communications Division reviewed the submitted shapefiles, which mapped the proposed broadband deployment using United States 2010 Census data and the California Broadband Availability Maps, revised July 31, 2012. These Maps helped to verify the existence or nonexistence of broadband service areas and broadband speeds, where available.

6. Based on its review, CD determined that the project qualifies for funding under D.12-02-015 and recommends Commission approval of CASF funding for Winterhaven's project.
7. Winterhaven is not required to post a performance bond because 40% of the total project cost will be financed through Winterhaven's existing capital budget.
8. Winterhaven is required to comply with all guidelines, requirements, and conditions associated with the granting of CASF funds as specified in D.12-02-015 and must submit the FCC Form 477, as specified in T-17143.
9. The Commission finds CD's recommendation to fund Winterhaven's project as summarized in Appendix A to be reasonable and consistent with Commission orders and, therefore, adopts such recommendation.
10. A notice letter was emailed on September 3, 2013 informing all applicants filing for CASF funding, parties on the service list of R.06-06-028, and 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.
11. The Commission must complete CEQA review prior to disbursing CASF funds for construction activities.

THEREFORE, IT IS ORDERED that:

1. The Commission shall award \$ 2,063,967 from the CASF to Winterhaven for the Winterhaven Project as described herein and summarized in Appendix A of this Resolution.
2. The program fund payment of \$ 2,063,967 for this underserved project shall be paid out of the CASF fund in accordance with the guidelines adopted in D.12-02-015, including compliance with CEQA.
3. Payments to the CASF recipient shall be in accordance with Section IX of Appendix A of D.12-02-015 and in accordance with the process defined in the "Payments to CASF Recipients" section of this Resolution.
4. The CASF fund recipient, Winterhaven, shall comply with all guidelines, requirements and conditions associated with the CASF funds award as specified in D.12-02-015 and must submit the FCC Form 477, as specified in Resolution T-17143.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on October 3, 2013. The following Commissioners approved it:

PAUL CLANON
Executive Director

APPENDIX A
Resolution T – 17410
Winterhaven Telephone Company Winterhaven Project
Key Information

<i>Project Name</i>	Winterhaven Telephone Company Winterhaven Project
<i>Project Plan</i>	Implementation of VDSL2 technology at its central office as well as at numerous existing and proposed digital loop carrier sites
<i>Project Size (in square miles)</i>	15.67
<i>Download/ upload speed (in Mbps)</i>	25 Mbps/ 5 Mbps
<i>Location</i>	Imperial County
<i>Community Name</i>	Winterhaven and Quechan Reservation
<i>CBGs/ Household Income</i>	060259400001/ \$ 28,566
	060259400002/\$ 19,508
	060259400003/\$ 35,541
<i>Zip Codes</i>	92222
	92283
<i>Estimated Potential Subscriber Size Households/ Subscribers</i>	961
<i>Deployment Schedule (from Commission approval date)</i>	24 months
<i>Proposed Project Budget</i>	
<i>Total</i>	\$3,439,945
<i>Amount of CASF Funds requested (60%)</i>	\$2,063,967
<i>Internally funded (40%)</i>	\$1,375,978

Resolution T – 17410
Winterhaven Telephone Company Winterhaven Project
Maps



