

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division  
Broadband, Video and Market Branch

RESOLUTION T-17777  
February 2, 2023

RESOLUTION

**Resolution T-17777: Approves modification of the Winterhaven Underserved Broadband Project to remove 139 of the original 961 approved households and a reduction in grant funding of \$181,117 to Winterhaven Telephone Company dba TDS Telecom (U-1021-C).**

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SUMMARY

This Resolution approves a reduction in California Advanced Services Fund (CASF) Broadband Infrastructure Grant Account funding of \$181,117 for the Winterhaven Underserved Broadband Project (Winterhaven Project) approved by Resolutions T-17410 and T-17521. Project grantee, Winterhaven Telephone Company, dba TDS Telecom (U-1021-C) cites the inability to secure right-of-entry permission to the final 139 households of the project, resulting in the reduction of 139 households from the original amount of 961, resulting in 822 households.

BACKGROUND

On October 4, 2013, the Commission adopted Resolution T-17410, conditionally authorizing a CASF grant of \$2,063,967 to TDS Telecom (TDS) to construct the Winterhaven Project, subject to the Commission's completion of CEQA review. The grant represented 60% of the total estimated project cost of \$3,439,945 with Winterhaven contributing the remaining 40% funding of \$1,375,978 from their existing capital budget.

On October 15, 2016, the Commission adopted Resolution T-17521 approving the Final Initial Study/Environmental Assessment and Mitigated Negative Declaration prepared in compliance with the California Environmental Quality Act for the Winterhaven Project; and authorizing the release of California Advanced Services Fund grant monies to Winterhaven Telephone Company dba TDS Telecom (U-1021-C) to construct the Winterhaven Project.

The Winterhaven Project, as approved in Resolution T-17410, was projected to extend broadband VDSL technology to 15.67 square miles covering the Winterhaven Community and other areas of unincorporated Imperial County, including the Quechan Indian Reservation. When completed, TDS estimated the project would reach 961 households at maximum advertised speeds of 25 megabits per second (Mbps) downstream and 5 Mbps upstream.

In June 2021, TDS completed part of the Winterhaven Project, making high-speed broadband internet accessible to 822 households, or approximately 86 percent of the original 961 targeted service households, in a 12.5 square mile area.

In seeking to complete the Winterhaven Project, TDS has not been able to obtain right-of-entry permission to serve 139 households within the Quechan Tribe of the Fort Yuma Indian Reservation. These households are located on federally regulated, allotted tribal parcels, the ownership of which is typically shared by multiple tribal members as a percentage of ownership. Specifically, over several years, TDS has not been able to obtain consent from property owners. This included holding public meetings, sending letters to property owners, hiring consultants to make direct contact by going door-to-door and leaving door hangers. In addition, TDS consulted with CPUC Tribal Liaison Kenneth Holbrook, whose effort were also not successful.

On September 29, 2022, the Communications Division (CD) received a letter<sup>1</sup> from TDS formally requesting a modification in the original scope of the Winterhaven Project, including a reduction in funding of \$181,117.

*Previous Reviews of Requests for a Reduction or Change in Funding*

CASF Program rules and guidelines, along with previously adopted Commission Decisions related to the CASF Program, do not discuss a process for addressing requests for a reduction in project funding. However, on a case-by-case basis the Commission has approved requests for additional Infrastructure Account funding when Staff determined that exogenous factors beyond the applicant's control were the primary reason for cost increases.<sup>2</sup> Such a determination regarding exogenous factors

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<sup>1</sup> TDS Letter to CPUC Director Rob Osborn, *Winterhaven Telephone Company d/b/a TDS Telecom (U-1021-C) Request for Reduction in Grant Funding Resolution T-17410, dated September 20, 2022.*

<sup>2</sup>See Resolution T-17408, California Broadband Cooperative to complete the Digital 395 Project; Resolution T-17557, Ultimate Internet Access, Inc. to complete Helendale Project; Resolution T-17517, Happy Valley Telephone Company to complete Olinda Underserved Broadband Project; Resolution T-17352, IP Networks Highway 36 Humboldt-Trinity Counties Project; and Resolution T-17690, Klamath River Rural Broadband Initiative Project.

beyond the applicant’s control may also support a modification of an award, reducing the number of households served and adjusting the project size.

**DISCUSSION**

TDS has deployed broadband infrastructure to serve approximately 86 percent of the targeted households in the project area and is requesting to reduce their CASF grant funding by \$181,117. This results in a slight increase in the marginal cost (\$2,291) per household, compared to the original budget approved in Resolution T-17410 (\$2,063 per household).

Staff has determined that TDS operated in good faith over several years to obtain right-of-entry permission to the remaining 139 households of the Winterhaven Project. Staff has concluded that it is reasonable to recommend Commission approval of the reduction in funding of \$181,117 and the corresponding reduction of households located in the census blocks listed in Table 1 below. Staff has concluded that the resulting increase described above is reasonable and the project is still worthy of funding.

**Table 1. Census Blocks with Inaccessible Locations**

Census Blocks			
060259400003002	060259400002005	060259400002083	060259400002046
060259400002067	060259400002013	060259400001192	060259400002071
060259400002059	060259400002006	060259400002080	060259400003003
060259400002062	060259400001322	060259400002015	060259400002052
060259400002056	060259400002063	060259400002073	060259400002089
060259400002084	060259400002069	060259400002065	060259400002018
060259400002017	060259400001327	060259400002057	060259400002028
060259400002021	060259400002072	060259400002066	060259400002082
060259400002009	060259400002020	060259400001194	060259400002041
060259400002058	060259400002086	060259400002014	060259400002007
060259400002068	060259400002064	060259400002051	060259400002008
060259400003004	060259400002070	060259400002022	060259400002081
060259400002024	060259400002061	060259400001323	060259400002085
060259400002060	060259400001193	060259400002043	060259400002042
060259400002044			

In a September 29, 2022, letter to the Communications Division (CD), TDS requested permission to terminate the Winterhaven Project at its current deployment and to

reduce its project funding by \$181,117. To date, the Commission has reimbursed TDS \$1,287,286.40 of the original grant of \$2,063,967. TDS requested a final payment for the remainder of the project, less the reduced amount, as noted in Table 2 below.

**Table 2. Summary of Modified Funds for the Winterhaven Project**

<b>Fund Status</b>	<b>CASF Awards/Payments</b>
Total CASF award granted on 10/4/2013	\$2,063,967.00
Total Payments to Date	-\$1,287,286.40
Requested Reduction in Funding	-\$181,117.00
<b>Payment Pending Completion</b>	<b>\$595,563.60</b>

**STAFF RECOMMENDATION**

Staff has determined that TDS’s request to reduce the scope of the Winterhaven project is due to unforeseen factors beyond the control of TDS. Staff finds it reasonable for TDS to reduce the number of households and funding amount of the Winterhaven Project as noted in this Resolution. Staff reviewed the reduced funding request and found TDS’s calculations are consistent with the reduction in the cost of \$181,117 for the unbuilt portion of the project. Staff has concluded that the resulting increase is in the per household cost of the project, described above, is reasonable. Based on this analysis, Staff recommends granting TDS the modification and reduction in grant funding for the Winterhaven project approved by T-17410.

**SAFETY IMPACT**

The Winterhaven Project will play a key role in enhancing public safety in the Winterhaven community and other areas of unincorporated Imperial County. The project will provide reliable broadband service to five educational institutions (San Pasqual Valley High, San Pasqual Valley Elementary, Bill M. Manes High, San Pasqual Middle School, and San Pasqual Vocational Academy) and a health care center.

**COMMENTS**

In compliance with Public Utilities Code, §311(g), a notice letter was emailed on December 9, 2022 informing parties on the CASF Distribution List of this draft Resolution, and of the opportunity for comment, at the Commission’s website at <http://www.cpuc.ca.gov/documents/>. The letter also informed parties that the final

conformed Resolution adopted by the Commission will be posted and available at the same website. The Commission received no public comments.

### FINDINGS

1. The Commission adopted Resolution T-17410 on October 4, 2013, authorizing \$2,063,967 to TDS Telecom (TDS) to construct the Winterhaven Project. The grant represented 60% of the total estimated project cost.
2. On September 29, 2022, TDS submitted its request for modification in the original scope of the Winterhaven Project, including a reduction in funding of \$181,117, due to inability to secure right of entry permissions from 139 households.
3. Based on its review, Staff determined that the inability to obtain right-of-entry permission for 139 households in the project were attributable to factors beyond the control of TDS.
4. Based on its review, Staff determined that the project qualifies for a reduction in the original funding pursuant to Pub. Util. Code section 281 and D. 21-03-006, Appendix A, and recommends Commission approval of a reduction of \$181,117 in CASF funding and to allow TDS to submit its final completion report to the Commission for 822 households served.
5. A notice letter was e-mailed on December 9, 2022, informing all parties on the CASF Distribution List of the availability of this draft Resolution and the opportunity to comment. The draft Resolution was publicized on the Commission's website at <http://www.cpuc.ca.gov>. This letter also informed parties that the final confirmed Resolution adopted by the Commission will be posted and available at this same website.
6. The Commission received no public comments.

### **THEREFORE, IT IS ORDERED that:**

1. The Commission shall approve the modification in project scope and reduced funding of \$181,117 from the original CASF Infrastructure Grant to TDS to complete Winterhaven Underserved Broadband Project in Imperial County.

2. TDS shall comply with all guidelines, requirements and conditions associated with a CASF award, as specified in D.21-03-006 and its Appendix A, and all requirements for this project included in this Resolution, in addition to conditions associated with the CASF funds award as specified in Resolution T-17410 and Resolution T- 17521.
  
3. TDS shall complete the Winterhaven Project as specified in Resolution T-17410 and Resolution T-17521. If TDS fails to complete the project in accordance with the approval granted by the Commission and this Resolution, TDS will be required to reimburse some or all the CASF funds it has received.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a meeting of the Public Utilities Commission of the State of California held on \_\_\_\_\_, the following Commissioners voting favorable thereon:

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Rachel Peterson  
Executive Director