PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division Broadband Regional Initiatives RESOLUTION T-17790 June 8, 2023

RESOLUTION

RESOLUTION T-17790: Approves up to \$938,206 in Local Agency Technical Assistance Grant Funding for one tribal broadband planning application submitted during the December 2022 application cycle that would serve the Willow Creek unserved community in Humboldt County.

I. SUMMARY

This Resolution approves Local Agency Technical Assistance grant funding in the amount of up to \$938,206 for the Hoopa Valley Public Utilities District application as listed in Table 1 and described in Appendix B:

Table 1: Summary of Grant Funding

Applicant	Project Name	Project Location	Unserved Households in County ¹	Awarded Amount ²
Hoopa Valley Public	Willow Creek FTTH	Willow	13,071	\$938,206
Utilities District	Deployment Assistance	Creek ³	13,071	ψ930,200
			Total Awards	\$938,206

II. BACKGROUND

As part of the Budget Act of 2021 and Senate Bill (SB) 156 (Stats. 2021, Chap. 84 and 112), the legislature provided, among other things, \$50 million to facilitate completion of the

¹ Estimated based on California End of Year 2020 Residential Broadband Deployment using Federal Funding Account eligibility. Proposed projects will not serve all households in these counties. *See, e.g., dashboard available at* https://public.tableau.com/app/profile/cpuc/viz/EOY2020BB4ALL-Deployment/ByHousehold.

² \$938,306 awarded from the \$5 million tribal set-aside.

³ Located in Humboldt and Trinity counties. The Willow Creek area is off reservation but part of the Hoopa Valley Tribe's aboriginal lands.

statewide broadband middle-mile network and last mile projects, the formation of municipal entities and agreements for financing broadband infrastructure and to fund projects, distribute grants, or fund support costs associated with these projects, among other allowable uses.

On February 25, 2022, the Commission issued Decision (D.) 22-02-026 and authorized a total of \$50 million in funds for the Local Agency Technical Assistance (LATA) grant program, including a \$5 million set-aside for tribes.⁴ In D.22-02-026, the Commission established rules under which technical assistance grants are available to eligible local agencies for reimbursable work products. The Commission also included guidelines for Communications Division (CD) staff to consider submitted applications and to review and approve applications that meet criteria for Ministerial Review.⁵ These criteria include:

- A. Applicant requests a grant not exceeding \$500,000 per local agency per fiscal year.
- B. The Commission has not received a separate application for Local Agency Technical Assistance from an agency with a jurisdiction overlapping that of the subject application during the current application period or within the prior year unless such application(s) was denied.
- C. The application meets all the other requirements of a Local Agency Technical Assistance grant included in Sections 4, 5, 6, and 7 of these Rules.⁶

The Guidelines also state: "[a]applications that satisfy general Application Requirements (Section 6) but do not meet the Ministerial Review funding criteria may only be approved by the Commission via resolution." Additionally, CD staff have the discretion to request an application be considered through resolution.⁸

III. APPLICATION SUMMARIES, DISCUSSION, AND RECOMMENDATIONS

The Commission assigned staff the task of reviewing and approving applications that meet all the criteria for Ministerial Review. Applications that do not meet the Ministerial

⁴ Pub. Util. Code section 281, subdivision (b)(5)(A) specifies activities including but not limited to "[p]roviding technical assistance to local governments and providers" to facilitate deployment of high-

quality advanced communications services to all Californians.

⁵ D.22-02-026, attachment 1, Section 8.

⁶ D.22-02-26, Attachment 1, pp. 7-8.

⁽https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M454/K876/454876393.PDF)

⁷ Id at pp. 7-9.

⁸ Id at p. 9

Review criteria may only be approved by the Commission via resolution. ⁹ CD staff have the discretion to request an application be considered through resolution. ¹⁰

This application received in December 2022 satisfied the general application requirements but did not meet the Ministerial Review criteria and is discussed below:

Hoopa Valley Public Utilities District Grant Award Request Exceeds \$500,000

The Hoopa Valley Public Utilities District (HVPUD) is a sovereign tribal government requesting \$938,206 to fund environmental and biological studies, develop a fiber-to-the-home (FTTH) network design, develop a business feasibility study, and to generate rules, regulations, and legal documents. These work products will assist the HVPUD in bringing FTTH-based broadband service to unserved and underserved locations in the Willow Creek area that will reliably meet or exceed 100 Mbps symmetrical upload and download speeds.

Discussion and Recommendation. HVPUD's application meets all requirements for ministerial approval except that its request of \$938,206 exceeds the \$500,000 threshold allowed for CD staff approval and is therefore recommended to the Commission for approval.

IV. COMPLIANCE REQUIREMENTS

Grantees are required to comply with all the guidelines, requirements, and conditions associated with the Local Agency Technical Assistance grant funding as specified in D.22-02-026 and this Resolution. Such compliance includes, but is not limited to those requirements listed in Appendix A.¹¹

V. SAFETY CONSIDERATIONS

There are no adverse safety considerations identified by CD staff. The projects which are planned to be implemented by the work products in these applications have the potential to improve communications resiliency and redundancy.

VI. COMMENTS

In compliance with Public Utilities Code section 311, subdivision (g)(1) a Notice of Availability was e-mailed on May 5, 2023, informing all parties on the CASF Distribution List of the availability of the draft of this Resolution for public comments at the

¹⁰ Id at p. 9

⁹ Id.

¹¹ See D.22-02-026, Appendix 1 for a full list of Local Agency Technical Assistance program requirements and guidelines.

Commission's website at http://www.cpuc.ca.gov/. This letter also served to inform parties that the final conformed Resolution the Commission adopts will be posted and available on this same website.

On May 25, 2023, the Commission received comments from Velocity Communications, Inc. (Velocity). On May 30, 2023, the Commission received reply comments from Hoopa Valley Public Utilities District (HVPUD).

Velocity's Comments

Velocity opposes this Resolution on the grounds that the Willow Creek area is currently served at adequate broadband speeds by multiple carriers and therefore HVPUD is ineligible for public funding and planning assistance for broadband under the "federal" LATA rules¹². Velocity submitted documentation showing the area served and a declaration attesting that it provides service in Willow Creek at speeds up to 30 Mbps download and 3 Mbps upload. Velocity also asserts that Tsunami Wireless provides broadband service in the area at speeds up to 25 Mbps download and 5 Mbps upload speeds as advertised on their website. Velocity further claims Frontier is eligible for CAF II Funding to provide broadband in the Willow Creek area. Finally, Velocity opposes the Resolution on the grounds that HVPUD is not authorized to operate outside of the Hoopa Valley tribal areas.¹³ Velocity claims that this Resolution errs legally by failing to explain HVPUD's authority to provide broadband services when the specified service area lies outside of designated tribal lands where HVPUD is authorized to operate.¹⁴

Hoopa Valley Public Utilities District's Reply Comments

In response to Velocity's comments, HVPUD states that Velocity and Tsunami Wireless broadband services do not meet the definition of served. HVPUD states that unserved or underserved households or businesses means one or more households or businesses that are not currently served by a wireline connection that delivers at least 25 Mbps download speed and 3 Mbps upload speed and Tsunami is not offering wireline services. ¹⁴ Specifically, HVPUD states that Velocity only offers wireline services in the Weaverville area, as stated in the footer of its plan pages for fiber and cable ¹⁵ and HVPUD's LATA application is not within the Weaverville area. HVPUD notes that the documentation provided by Velocity is not proper evidence of service to the Willow Creek area. ¹⁶

 14 HVPUD's Reply Comments, pp. 2-4. HVPUD incorrectly cited the Rulemaking (R.) Proceeding number (R.20-08-021) and not the LATA Decision (D.22-02-026).

¹² Velocity incorrectly cites D.22-08-021, Decision Granting Compensation to Utility Consumers' Action Network for Substantial Contribution to Decision 21-01-017, in its comments as the Decision that sets forth the rules for the LATA program, rather than D.22-02-026.

¹³ Velocity Comments on Draft Resolution T-17790 (Velocity Comments), pp. 1-3.

¹⁴ Velocity Comments, pp. 1-3

¹⁵ Velocity Communications, Inc. website, May 25, 2023, https://www.velotech.net/fiber/

¹⁶ Velocity Communications, Inc. comment received May 25, 2023, page v.

HPVUD also provides documentation supporting its claim that Velocity does not provide service to the Willow Creek area.¹⁷

HVPUD further notes that Velocity's claim that Frontier's eligibility for CAF II funding to provide broadband in the Willow Creek area impacts HVPUD's LATA grant funding lacks merit. HVPUD notes that the LATA rules do not disqualify CAF II eligible areas from receiving LATA grants. HVPUD further claims that Frontier Communications has failed to invest CAF II funding within the project area for which HVPUD has requested LATA funding. In addition, HVPUD claims that the test for LATA funding is that there be a project designed to provide service to unserved or underserved households and businesses that are designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds. In Finally, HPVUD stated that it is not prohibited from providing services in the Willow Creek area. HVPUD claims that LATA grants are permitted where unserved and underserved households and businesses are located within the State of California. HVPUD further notes that the Tribe is authorized to operate beyond the limits of the Hoopa Valley Reservation and that the Tribal service areas are broad and based on commutable distances from the Reservation and the Tribe has the power to determine the geographic area that HVPUD will serve. II

Staff Responses on Comments and Reply Comments

Taking into consideration both the comments received from Velocity and the reply comments received from HVPUD, CD staff rejects Velocity's request to deny HVPUD's application and recommends that HVPUD's LATA application be approved.

As discussed in this Resolution, CD Staff agrees with HVPUD that its application meets all requirements for LATA grant approval. Specifically, for purposes of the LATA grant program, "local agencies" are eligible applicants. Local agency has the same meaning as provided in the Government Code section 53167(e); local agency means any agency of local government authorized to provide broadband internet access service, including a sovereign tribal government.²¹ HVPUD is a sovereign tribal government and based on the definition of local agency, they are authorized to provide broadband internet service and, therefore, are eligible under program rules.²² Furthermore, for the purpose of LATA grant program, HVPUD's application requests funding for work products which are

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¹⁷ HVPUD's Reply Comments, p. 2.

¹⁸ HVPUD's Reply Comments, pp. 2-3

¹⁹ Ibid

²⁰ HVPUD Reply Comments, pp. 2-4. HVPUD states, that according to findings identified in the Report to the Federal Communications Commission from the Native Nations Communications Task Force, tribal members must be located within a geographic area designated by the Tribe in order to receive services. In the case of reliable and affordable broadband service, the Tribe has the power to determine the geographic area that the HVPUD will serve.

²¹ D.22-02-026, Attachment 1, p. 3

²² Ibid.

reimbursable under current rules, including but not limited to environmental studies, fiber-to-the-home network design, and feasibility studies. Similarly, HVPUD's application requests funding for reimbursable work products that is expected to result in a broadband infrastructure project designed to provide service to unserved households in the Willow Creek area, which upon completion reliably meet or exceed symmetrical 100 Mbps download and upload speeds. The LATA Guidelines state that eligible projects are proposals for reimbursable work products that are reasonably expected to result in broadband infrastructure projects that will be designed to provide service to unserved or underserved households and businesses and that are designed to, upon completion, reliably meet or exceed symmetrical 100 Mbps download speed and upload speeds.²³

CD staff disagrees with Velocity's contention that the Willow Creek area is served and is ineligible for LATA funding. Per D.22-02-026, unserved and underserved households and businesses are "one or more households or businesses that are not currently served by a wireline connection that reliably delivers at least 25 Mbps download speed and 3 Mbps of upload speed" (emphasis added).24 In its comments, Velocity states Tsunami Wireless provides broadband services to Willow Creek.²⁵ However, Tsunami only provides fixed wireless broadband service to Willow Creek.²⁶ In addition, Velocity also claims to provide broadband speeds of 30 Mbps download and 3 Mbps upload.²⁷ However, on Velocity's website, both "High Speed Cable Internet" and "High Speed Fiber,"29 are footnoted to show that these services are only available in Weaverville and "High Speed Wireless Internet" is only available in the Willow Creek area. 30 Therefore, neither Tsunami nor Velocity provide wireline broadband service to the Willow Creek area. Furthermore, the map provided in Velocity's comments shows that portions of the Willow Creek area are both served and unserved. ³¹ However, as noted in HVPUD's reply comments, Velocity's map is filtered on "Fixed Consumer Served Status." This filter includes non-wireline technologies such as fixed wireless.³² Staff confirmed HPVUD's methodology that the California Interactive Broadband Map should filter for "Wireline Consumer Served Status- No Legacy Tech" to show only wireline broadband technologies.³³ Staff verified that the correctly filtered map shows that the Willow Creek

²³ LATA Guidelines, Attachment 1 to D.22-02-026, p.p. 1 and 4.

²⁴ D.22-02-026, Attachment 1, p.1, footnote 2.

²⁵ Velocity Comments, p. 2.

²⁶ As noted on its website: https://tsunami-wireless.com/

²⁷ Velocity Comments, p. 2.

²⁸ https://www.velotech.net/hscableinternet/

²⁹ https://www.velotech.net/fiber/

³⁰ http://www.velotech.net/content/coverage/coverage.html. The footnote on the map also states

[&]quot;Velocity does not guarantee coverage in all areas shown."

 $^{^{\}rm 31}$ Velocity Comments, Exhibit 1, from the California Interactive Broadband Map:

https://www.broadbandmap.ca.gov/
³² California Interactive Broadband Map FAQs:

https://www.broadbandmap.ca.gov/documents/FAQs%202023%20CA%20Interactive%20Broadband%20Map.pdf, p.3

³³ Ibid.

area has wireline broadband speeds less than 25/3Mbps throughout the area. 34 Therefore, per D.22-02-026, the Willow Creek area is unserved and is eligible for LATA funding.

Staff also disagrees with Velocity's contention that CAF II eligible areas are disqualified from receiving LATA grant funds because Velocity failed to provide any rule which would support this contention. Therefore, because the Willow Creek area is eligible for CAF II does not exclude it from the LATA program.

Staff further disagrees with Velocity's contention that HVPUD is ineligible for a LATA grant on the grounds that HVPUD is not authorized to operate outside of the Hoopa Valley tribal area. As discussed above, HVPUD meets the eligibility requirements for a LATA grant; HVPUD is a local agency with eligible reimbursable work products, and the proposed grant will be used where unserved and underserved households are located and will meet or exceed the 100Mbps download and upload speeds required for LATA grants. Therefore, per the LATA program rules, HVPUD is eligible to request reimbursement for "costs related to the development of broadband network deployment project to benefit *unserved* Californians" (*emphasis* added) in the Willow Creek area.³⁵

Finally, HVPUD provided notice through an email to CD Staff on May 5, 2023, that the LATA grant request does not include Trinity County and that Trinity County should be removed from this Resolution. On May 22, 2023, HVPUD provided updated map shapefiles reflecting the change as the original shapefiles provided with the application included Trinity County. Therefore, Trinity County has been removed from the service area and this draft Resolution has been updated to reflect the change.

FINDINGS

- In December 2022, the Communications Division received an application for Local Agency Technical Assistance grant funding from the Hoopa Valley Public Utilities District.
- 2. Based on its review, CD staff determined the application met general program eligibility for Local Agency Technical Assistance but exceed ministerial approval and thus the Commission may consider approval of the application via resolution.
- Hoopa Valley Public Utilities District's grant, if approved, would fund environmental and biological studies, developing a fiber-to-the-home network design, business feasibility study, and generate rules, regulations, and legal documents.

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³⁴ California Interactive Broadband Map, https://www.broadbandmap.ca.gov/ only "Wireline Consumer Status - No Legacy Tech" filer on the Broadband Availability by Census Block layer.

³⁵ D. 22-02-026, Attachment 1, p. 1

- 4. Velocity submitted comments on the Resolution on May 25, 2023, opposing the approval of HPVUD's LATA grant request. HPVUD submitted reply comments on May 30, 2023.
- 5. The scope of work of this project seems feasible, and the listed costs are within the budget ranges of comparable projects seen in previous applications; CD staff recommends approval of this application.
- 6. A notice letter was e-mailed on May 5, 2023, informing all applicants filing for CASF funding, parties on the CASF distribution list of the availability of the draft of this Resolution for public comments at the Commissions website found here at www.cpuc.ca.gov.

THEREFORE, IT IS ORDERED that:

- 1. The Local Agency Technical Assistance application for the Hoopa Valley Public Utilities District as described in Ordering Paragraphs 3 through 6 and Appendix B is approved.
- 2. This Resolution approves Local Agency Technical Assistance grant funding in the amount of up to \$938,206 for the Hoopa Valley Public Utilities District application as follows:

Applicant	Project Name	Project Location	Unserved Households in County ³⁶	Awarded Amount ³⁷
Hoopa Valley Public	Willow Creek FTTH	Willow	13,071	\$938,206
Utilities District	Deployment Assistance	Creek		
			Total Awards	\$938,206

3. This LATA award is based on the description of the project as described herein and are predicated on commitments to provide the reimbursable work products as expressed in the grantee's application and in compliance with all guidelines,

³⁶ Estimated based on California End of Year 2020 Residential Broadband Deployment using Federal Funding Account eligibility. Proposed projects will not serve all households in these counties. *See, e.g.,* dashboard *available at* https://public.tableau.com/app/profile/cpuc/viz/EOY2020BB4ALL-Deployment/ByHousehold.

³⁷ \$938,306 awarded from the \$5 million tribal set-aside.

requirements and, conditions associated with the award, as specified in D.22-02-026, and this Resolution.

- 4. Grantees must comply with all guidelines, requirements and conditions associated with the Local Agency Technical Assistance program, including those in D.22-02-026 and its Attachment 1, and Appendix A to this Resolution.
- 5. By receiving LATA grant funding, grantees agree to comply with the terms, conditions and requirements of the grant and thus submit to the jurisdiction of the Commission regarding disbursement and administration of the grant.
- 6. Grantees must complete and execute the consent form agreeing to the conditions set forth in this Resolution within 30 calendar days from the date of the award. Failure to submit the consent form within 30 calendar days from the date of the adoption of this Resolution will deem the grant null and void.
- 7. If the grantees fail to complete the project in accordance with the terms outlined in D.22-02-026 and this Resolution, they must reimburse some or all the Local Agency Technical Assistance funds it has received.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a
conference of the Public Utilities Commission of the State of California held on
, the following Commissioners voting favorable thereon:
RACHEL PETERSON
Executive Director

APPENDIX A Compliance Requirements

A. Award Acceptance

Upon a funding application's approval, the grantee must submit the following documents:

- Consent Form: Grantees must sign and submit a Consent Form within 30 calendar days from the date of the award. Failure to submit the Consent Form within 30 calendar days from the date of the award letter will deem the grant null and void.
- Government Agency Taxpayer ID Form: A State of California standardized form
 that is needed for tax purposes. The form is required in order to receive payment
 from the State of California, and information provided in this form will be used by
 the Commission to prepare Information Returns (e.g., Internal Revenue Service,
 Form 1099.

B. Contractor Reporting

Grantees must comply with Pub. Util. Code section 281, subdivision (l)(1) contractor reporting requirements if they are using a licensed contractor or subcontractor to undertake a contract or subcontract in excess of twenty-five thousand dollars (\$25,000) to perform work on the project funded or financed by CASF. Licensed contractor or subcontractor means any contractor that holds a California state license through the contractor's state license board (https://www.cslb.ca.gov/). Please refer to the Local Agency Technical Assistance website for reporting templates and instructions.

C. Execution and Performance

The grantee must complete the project within the 24-month timeframe. If the grantee is unable to complete the proposed project within the required 24-month timeframe, it must notify the Commission or the Director of Communications Division as soon as it becomes aware of this prospect. The Commission reserves the right to reduce or withhold payment for failure to satisfy this requirement. The grantee, after accepting the award as outlined in Section A of this Appendix, must complete all performance on the project before the termination date in accordance with the terms of approval granted by the Commission. In the event that the grantee or contractor fails to complete the work in accordance with the approval granted by the Commission, and as described in the contract, the local agency must reimburse some or all the funds that it has received.

The Commission has the right to conduct any necessary audit, verification and discovery for work proposed or completed under the technical assistance for local agencies to ensure CASF funds are spent in accordance with Commission rules and with the terms of approval granted by the Commission.

D. Project Completion

Upon completion of the technical assistance and before final payment, the applicant must provide a signed completion form stating that the technical assistance work has been completed, and a copy of each reimbursable work product's final report(s), plan(s), studies, etc., produced under the scope of the contract.

E. Payment

Payment will be made directly to the local agency as the grant recipient. Local agency grantees may request partial reimbursement if they complete one or more of the approved reimbursable work products prior to completion of other reimbursable work products approved in the same grant authorization. Payment will be based upon receipt and approval of an invoice(s) submitted by the local agency showing the expenditures incurred for the reimbursable work product, along with the final reimbursable work product and the completion reporting. The invoice(s) must be supported by documentation including but not limited to the actual cost of labor and any other expense that will be recovered by the grant. Any portion of the award used to reimburse a local agency for administrative costs associated with securing or completing a reimbursable work product must be submitted with an itemized accounting of such costs demonstrating the total requested for reimbursement does not exceed 15 percent of the total authorized award.

If the grantee or contractor fails to complete the work within the 24-month timeline, the grantee must notify the Commission or Director of Communications Division as soon as they become aware that they may not mee the project deadline. The Commission may withhold or reduce payment if the grantee fails to notify the Commission or Director of Communications Division.

If any portion of reimbursement is found to be out of compliance, grantees will be responsible for refunding any disallowed amount along with appropriate interest rates determined in accordance with applicable Commission decisions.

F. Project Changes

Grantees must communicate in writing to Communications Division Director regarding any changes to the substantive terms and conditions underlying Commission approval of the grant (such as changes to a reimbursable work product contract, work plan, or budget) at least 30 days before the anticipated change. Substantive changes may require approval by either the Communications Division Director or by Commission resolution before becoming effective.

G. Record Retention

Grantees are required to maintain records such as files, invoices, and other related documents for five years after final payment. Grantees shall make these records and invoices available to the Commission upon request and agree that these records are subject to financial audit by the Commission at any time within the five years after the final payment made to the grantee.

APPENDIX B Hoopa Valley Public Utilities District LATA Application Key Information

Project Title	Willow Creek FTTH Deployment Assistance
Project Summary	This project will assist the Hoopa Valley Public Utilities District (HVPUD) generate network design and business plans and perform an environmental permitting study for bringing FTTH-based broadband service to unserved and underserved locations in the Willow Creek area that will reliably meet or exceed 100/100 Mbps speeds.
Type of Local Agency	Sovereign Tribal Government
Project Location	Willow Creek (Humboldt County)
Amount Requested	\$938,206
Project Timeline	24-months
Reimbursable Work Product(s)	 Willow Creek FTTH Feasibility Analysis (\$110,400) Environmental Permitting- Year 1 (\$221,278) Grant Application Assistance (\$34,500) Pre-Construction Advisory and Compliance- Year 1 (\$143,750) Legal Assistance (\$63,250) Pre-Construction Advisory and Compliance- Year 2 (\$143,750) Environmental Permitting- Year 2 (\$221,278)
Impact Summary: How the proposed technical assistance grant supports broadband infrastructure deployment to unserved and/or underserved households and businesses at speeds of at least 100 Mbps upload and download	The proposed LATA grant will assist the HVPUD in completing environmental and biological studies, developing the fiber-to-the-home network design, completing the final business feasibility study, and generating rules, regulations, and legal documents. When complete, this FTTH network will enable services of 100/100 Mbps and greater speeds to all locations included in the service area.