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ALTERNATE DRAFT

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division **ALTERNATE RESOLUTION T- 17232**

Carrier Oversight and Programs Branch **December 3, 2009**

R E S O L U T I O N

Resolution T-17232 Funding Approval from the California Advanced Services Fund (CASF) for The California Broadband Cooperative of California's Digital 395 Middle Mile Project Amounting to $19,294,717.

Summary

This Resolution adopts contingent funding for the California Broadband Cooperative of California's Digital 395 Middle Mile project amounting to $19,294,717 from the California Advanced Services Fund (CASF). The amount granted represents 19% of the total project costs to provide broadband service to an underserved area in accordance with Commission Resolution T-17143 and Decision (D.) 09-07-020.

Background

On December 20, 2007, the Commission approved Decision (D.) 07-12-054 which established the two-year CASF program to provide matching funds of up to 40% of the total project costs for the deployment of broadband infrastructure in unserved and underserved areas in California.[1] Resolution T-17143, approved on June 12, 2008, adopts the CASF application requirements, scoring criteria for the award of funds, and a prescribed timeline for other filings and notifications including a projected Commission Meeting date for final approval of award(s).

[1] SB 1193 (Chapter 393, Statutes of 2008) established the California Advanced Services Fund as a new public purpose program.

On July 9, 2009, the Commission adopted D.09-07-020 establishing new schedules and plans for filing, review and approval of an additional round of broadband project requests. This decision also provides the potential for the applicants to seek CASF program funding while pursuing funding for broadband deployment grants issued under the American Recovery and Reinvestment Act (ARRA).[2] Because the federal grants under ARRA can fund up to 80% of the project, the Commission provided applicants in D.09-07-020 the opportunity to seek an additional 10% funding coverage from the CASF leaving only 10% for the applicant to provide. In reducing the amount of funding the Commission commits to projects receiving ARRA funds, the Commission acknowledged that there may be situations where "additional CASF funding" may be warranted.[3] The Commission contemplated situations similar to the CASF applications it had received before from for-profit broadband providers and did not contemplate an application with the unique non-profit financial structure, middle mile open-access network, large number of jobs, and public safety benefits as the Digital 395 Middle Mile project provides to California consumers.

As of October 29, 2009, the CPUC has awarded CASF grants totaling $15.12 M for 30 projects, covering 4,942 square miles and benefiting 41,209 households as follows:

- Unserved - $11.4 M, 16 projects, 4,284 sq. mi. and 32,284 households
- Underserved - $3.8 M, 14 projects, 658 sq. mi. and 8,925 households

Notice/Protests

The Census Block Group (CBG) list appeared by county on the Commission's CASF website page under "UNDERSERVED areas proposed to be served as of July 17, 2009: Census Block Groups (CBGs)." Only two of the 62 CBGs covered by this project were challenged by other service providers.

Discussion

This Resolution adopts contingent funding of $19,294,717 from the CASF for The California Broadband Cooperative's Digital 395 Middle Mile network project in Mono, Inyo, Eastern Kern and North West San Bernardino County.

Inyo Networks originally submitted the Digital 395 CASF application on July 16, 2009 to provide wholesale middle mile broadband/backhaul services to an area of the state that is underserved by middle mile broadband networks with the intent to transfer the project to a non-profit cooperative at some future point prior to completion of the project. However, after the CASF July 17, 2009 deadline had passed, at the urging of the county governments of Mono, Inyo and Kern Counties, they accelerated the creation of a different entity, the

[2] The American Recovery and Reinvestment Act appropriates $7.2 billion for grants and loans to support broadband deployment on a national level. ARRA offers a unique and ground breaking opportunity for California to partner with the federal government and other state agencies in advancing the goal of bridging the digital divide.

[3] D.09-07-020, *mimeo*, at page 11.

non-profit member run and owned organization, the California Broadband Cooperative, Inc. (CBC), of which Inyo Networks is a member, and submitted the ARRA application for the Digital 395 Middle Mile network on August 14, 2009 under that name.

As a result, on September 28, 2009, Inyo Networks requested that their original CASF application for the Digital 395 Middle Mile network be transferred to the non-profit cooperative, the CBC. As a member of the CBC, Inyo Networks will serve as the fiscal agent for the CBC. Inyo Networks submitted its application (A.09-07-023) for a Certificate of Public Convenience and Necessity (CPCN) on July 16, 2009. Therefore, the CBC CASF application is being considered in conjunction with Inyo Networks' CPCN application as this will have a bearing as to whether Inyo Networks can fulfill its role as the fiscal agent for the CBC.

Some of the duties of the fiscal agent include: being responsible for financial transactions, the clarification/verification of expenses incurred related to the CBC Digital 395 Mid Mile project, receiving CASF payments, and ensuring that the CBC files related to the CASF award are accessible to the Commission.

The application states that "the California Broadband Cooperative was created from a community consensus, led by the elected leadership of California's Eastern Sierra Counties, to establish a telecommunications alternative for the area." The application describes California's Eastern Sierra region as "a high cost, rural area that the incumbent LECs were unwilling to invest in because of high construction cost and small market size when compared to larger urban areas. As a result, economic development suffered and where broadband service is available, its residents pay some of the highest prices in the state."

The CASF application for the Digital 395 Network also states: "Once constructed, the Digital 395 Network will be owned and operated by the California Broadband Cooperative Inc., which is a member owned cooperative. Membership is open to all wholesale level customers and prospective members are required to purchase facilities or services in order to join the Cooperative. Potential cooperative members are Government, Education and Medical agencies, Telephone, Wireless, Cable TV, and Internet Service Providers. The minimum service level purchase required is 1.544 mbps. To ensure a level playing field for all members; the Cooperative will operate using a "non-profit" business model with operating policies determined by the Board of Directors. The Board of Directors will be drawn from the membership body and will be elected on the basis of one member, one vote. The Cooperative does not expect to charge an initiation fee for membership although this policy will be subject to the Board of Directors review. Installation charges for services purchased will likely apply."

The total project cost for the CBC Digital 395 Middle Mile network project is $101,494,218, down from the originally submitted $108,400,000 CASF request. The reduction is discussed below. The $101,494,218 cost consists of $25,461,688 in materials and equipment and $76,032,530 comprising the fully loaded installation and labor costs. The applicant requests that CASF funds be used to fund 19% of the total project or $19,294,717, while concurrently

seeking 80% funding through the ARRA program. The project time line in the application shows that the project will be completed within 24 months of the date of approval.

The CBC Digital 395 project proposes to construct a 448 mile 10 Gigabit high capacity fiber optic middle mile / backhaul route along US Highway 395 from Barstow, California in San Bernardino County in the south to the Nevada State line at Topaz Lake in Mono County in the North. The network will establish a future-proof broadband "middle mile" link to over three dozen communities, stimulate broadband edge-out in the local communities, and fill-in wireless voice and data transmission gaps along the well-traversed US Highway 395 corridor. The CBC Digital 395 project will also create route diversity and redundancy between Southern California and Northern Nevada for enhanced communications and public safety, telemedicine and national security.

The CBC Digital 395 middle market network will feature an open access architecture with local points of wholesale interconnection for service providers including Wireless Internet Service Providers (WISPs), that provide last mile broadband and Internet access. The area that the CBC Digital 395 wholesale middle mile network proposes to serve contains 28,127 households, 2,571 businesses, and 168 community anchor institutions, including 74 educational, 12 health care, 11 libraries and 26 public safety entities. The area also contains 41 additional anchor institutions including: two military bases, courthouses, municipal utilities, regional Federal offices for the Bureau of Land Management and the U.S. Forest Service. Besides serving most community anchor institutions, the project will significantly contribute to elevating the broadband subscribership in the project serving area above its current relatively low penetration rate. The Digital 395 project proposed two year price commitments for their wholesale price structure.

The Communications Division (CD) reviewed the project's eligibility by analyzing the required data submitted. These data include, but are not limited to: descriptions of current and proposed broadband infrastructure; Geographic Information System (GIS) formatted Shapefiles mapping the subject areas; assertion that the area is underserved; potential subscriber size and household incomes; project construction schedule; project budget; proposed pricing and commitment period for new subscribers; and financial qualifications of the applicant. In addition, CD reviewed the Shapefiles submitted which mapped the proposed broadband deployment using data from the United States 2000 Census and the revised August 10, 2009 California broadband availability maps among others.

CD performed further verification with the applicant which included two meetings and several teleconferences. The applicant provided additional data and other information that clarified the CBC Digital 395 project proposal. Based on these discussions and CBC's discussions with county officials, CBC reduced the size of the network and reduced their total project cost from $108,400,000 to $101,494,218.

CD conducted its independent review and analysis of this project and found that the CBC Digital 395 network will contain no access infrastructure equipment which transits through any of the served areas. Therefore, the CBC Digital 395 middle mile network will not have the capability to compete with existing or future last mile retail broadband networks.

However, the proposed CBC Digital 395 middle mile network will offer wholesale services to all service providers, businesses and other entities in the serving area, and will not offer any retail services.

The CBC Digital 395 project is subject to California Environmental Quality Act (CEQA) review. Thus, the Commission cannot award a CASF grant for project construction without completing CEQA review. The CBC would be required to comply with all the guidelines, requirements and conditions associated with the granting of CASF funds as specified in Resolution T-17143 including the submission of Form 477 and compliance with CEQA. At this time, the physical components of this project are too speculative for the Commission to conduct meaningful review of the projects potential impacts to the environment. The CBC should provide a Proponent's Environmental Assessment report pursuant to the requirements of Resolution T-17143 as soon as detailed project information is available.

In addition, the receipt of the CASF grant shall be contingent on the CBC receiving an 80% ARRA grant for its Digital 395 middle mile project. If the applicant is not successful in its effort to obtain an ARRA grant or if of the funds granted are less than 80%, then The CBC may request additional CASF funds in accordance with Ordering Paragraph No. 7 of D.09-07-020 which allows "for additional California Advanced Services Fund funding up to a cumulative maximum of 40% of the broadband project cost, or 50% of the requested American Recovery and Reinvestment Act funding that was denied, whichever is less." The granting of additional funds would be contingent on funds still being available in the CASF program.

California Broadband Cooperative should not be required to post a performance bond as the 80% ARRA funding can be regarded as a secure source of capital funds and meets the Commission's capital budget requirement. Further, the withholding of 10% of the award, pending final a audit that the entire scope of work is completed will adequately protect the Commission's interests

The CBC Digital 395 Middle Mile Project Key Information is shown as Appendix A, page A-1 through A-3, the proposed service area is shown in the shapefile in Appendix A, page A-4, and in a statewide map as page A-5.

Payments to CASF Recipients

Submission of invoices and payments to CASF recipients shall be made in accordance with Section IX of Appendix A of Resolution T-17143 and according to the guidelines and supporting documentation required in Resolution T-17143.

Payment for the CBC Digital 395 network shall be submitted through Inyo Networks, the fiscal agent for the CBC, following the process adopted for funds created under Public Utilities 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 CBC to CD	5th of Month 1	20th of Month 1
Payment letters from CD to Information and Management Services Division (IMSD) [4]	On 19th of Month 1	On 4th of Month 2
Invoices submitted from IMSD to State Controller's Office (SCO) for payments	20th through 26th of Month 1	5th through 13th of Month 2

Inyo Networks, the fiscal agent for the CBC, may submit its invoices under Payment Cycle 1 or Payment Cycle 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. SCO requires 14 to 21 days to issue payment from the day that requests are received by SCO.

Because the CBC Digital 395 project would not be built without both a CASF and ARRA grant, the CBC should notify the Director of the CD of the disposition of the ARRA grant application as well as whether the CBC will pursue the project without ARRA funding.

Comments on Draft Resolution

In compliance with PU Code § 311(g), a notice letter was e-mailed on September 29, 2009 informing a) all CASF applicants applying under D 09-07-020 and b) parties on the service list of R.06-06-028 of the availability of the draft of this Resolution for public comments at the Commission's website http://www.cpuc.ca.gov/static/documents/index.htm. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and will be available at this same website.

On October 14, the following organizations filed comments and served them to the parties in the R.06-06-028 proceeding: California Broadband Cooperative and Inyo Networks, Division of Ratepayer Advocates, Senator Roy Ashburn, Board of Supervisors of Mono County, Board of Supervisors of Inyo County, City of Bishop, Town of Mammoth Lakes, Bishop Paiute Tribal Council, Superintendent of Bishop Schools, Mono County Tourism & Film Commission, and Northern Inyo Hospital.

Comments of parties and CD's responses are summarized below:

[4] 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.

1) Increase in CASF funding from 10% to 19%

CBC and Inyo Networks requested a "good-cause waiver" from the CASF maximum grant for 10% of total project cost. As part of this request, CBC pointed out that the application which CBC and Inyo Networks originally submitted requested 19% ($19,249,717) of the total project funding. They cited the following major reasons for their 19% request:

1. CBC's status as a newly formed cooperative does not appeal to private equity funding sources. They believe that the cooperative nature of the organization will serve the public interest, but will not enable private investors or private shareholders to profit from investing in the CBC. CBC's lack of financial history and non-profit status is another significant hurdle in qualifying for private debt financing.

2. CBC believes that without the additional 9% funding, the Digital 395 project would likely not be built.

DRA, in its reply comments opposed CBC's request to raise the Digital 395 Project's CASF grant from 10% to 19% for the following reasons:

1. The Commission has already determined in D.09-07-020 that CASF matching funds are limited to 10% for applicants who also apply for ARRA funding.

2. No party, including CBC, filed a Petition for Modification or Application for Rehearing of D.09-07-020, and that decision therefore binds the Commission.

3. If the Commission were to grant CBC's request, in conjunction with the ARRA's 80% subsidy, Digital 395's subsidy would approximate 100% of total costs. DRA believes that project sponsors must have some level of financial commitment to their projects, so they have an incentive to make them successful.

Nine other organizations from Inyo and Mono counties and State Senator Ashburn served their comments on the Resolution service list. The sentiment of their comments is exemplified by the following comments from The Board of Supervisors of Inyo County:

> "Decision 09-07-020 appears to provide your Commission with the ability to use the CASF to fund 20% of the proposed project cost; however, Resolution T-17232, as submitted, does not recognize the (9%) funding gap of $9,145,295, which remains after an 80% ARRA contribution….The gap cannot be filled through private investments due to the cooperative, non-profit operating model proposed. This funding gap is fatal to this once-in-a lifetime opportunity for the underserved and unserved communities of Mono, Inyo, Eastern Kern and North West San Bernardino counties…. This absolutely is a once-in-a-lifetime opportunity. As a not-for-profit wholesale (cooperative), the (Digital 395) project is different from other proposals….This project will never be built if not

now. It is crucial to close the project's funding gap by revising Resolution T-17232. If the project is not fully funded, the opportunity will perish. Please revise Resolution T-17232 to fund the additional $9,145,295 necessary to make Digital 395 a reality by approving funding in the amount of $19,294,717 from the CASF for the CBC Digital 395 Middle Mile Project."

Discussion of Comments

The Commission, in Decision D.09-07-020, states:

> "Accordingly, based on these maximum funding levels available through ARRA (80%), we (The Commission), shall correspondingly modify the CASF matching requirements to achieve maximum leverage from the ARRA program. Specifically, for CASF applicants concurrently applying for ARRA funding, we shall only require such applicants to match up to 10% of the total project cost. We shall match such qualifying projects with an additional 10% of the project cost from CASF money, with ARRA covering the remaining 80% of the project cost." [5]

D.09-07-020 goes on to say:

> "Otherwise, if an applicant does not seek to qualify for funding under the ARRA criteria, we shall continue to apply the previously adopted matching requirements of 40% of total project cost.
>
> If an applicant receives a CASF matching grant of up to 10% contingent upon approval of an award of matching ARRA funds up to 90%, the actual amount of ARRA funding ultimately awarded may be less than what was requested, depending upon a variety of factors. In such situations where ARRA funds are awarded below the amount that the applicant has requested, we shall permit such applicants to reapply with the Commission for additional CASF funding up to a cumulative maximum of 40% of the project cost, or 50% of the requested ARRA funding that was denied, whichever is less. With this provision, applicants seeking both CASF and ARRA funding will not be disadvantaged in qualifying for the maximum available CASF funding merely because of potential funding limits in the ARRA program." [6]

In addition, OP 4 in D.09-07-020 states:

> "Applicants for CASF grants that are concurrently seeking ARRA funding shall only be required to provide a maximum match of 10% of the project cost. Such projects shall be eligible for matching funds of up to 10% of project cost from CASF money, on the condition that the remaining 80% of project cost is funded by ARRA money." [7]

[5] D.09-07-020, *mimeo* at page 11.
[6] *Id.*
[7] *Id.* at page 21.

However, OP 7 in D.09-07-020 states:

> "In situations where an applicant receives an award of up to 10% matching California Advanced Services Fund funds, but where matching American Recovery and Reinvestment Act funds are awarded below the amount that the applicant requested, such applicants shall be permitted to reapply with the California Public Utilities Commission for additional California Advanced Services Fund funding up to a cumulative maximum of 40% of the broadband project cost, or 50% of the requested American Recovery and Reinvestment Act funding that was denied, whichever is less."

Thus we can determine that if the federal funding opportunity had never occurred and CBC had been able to raise 60% of the required capital they would have been requesting and received $40,597,687 in CASF funding. This is an unlikely outcome in this situation, but illustrates the point that the Commission has committed itself to deploy broadband in unserved areas and this area is not likely to see substantial investment in broadband absent programs like BTOP and CASF. The fact that because of ARRA funding the CASF program is only being asked for half of what it normally would commit to a project like this is meaningful in our decision to fund the 19% of the project costs requested. In addition, we note that had CBC been a for-profit entity and requested Contribution in Aid of Construction (CIAC) that has been approved for other applicants,[8] the total cost of the project would increase to $141,178,455 and a 10% CASF award would need to be increased by as $3,968,424. In addition, as discussed further below, the non-profit status of CBC is significant for not just reducing the initial award, but for the long-term consumer benefits for the consumers served by the middle mile project.

The Commission agrees that a successfully completed Digital 395 Middle Mile Project would be a tremendous asset for our state, and D.09-07-020 contemplates that CASF grants in conjunction with ARRA applications may not be limited to 10%. The Digital 395 Middle Mile Project presents a unique set of circumstances that were not contemplated at the time D.09-07-020 was decided. We believe the once in a lifetime opportunity presented in the Digital 395 Middle Mile Project merit an exception to the CASF process adopted in D.09-07-020 and that the request to fund more than 10% of the project cost should be granted herein. We shall modify the Commission's processes in order to grant this request for increased CASF funding.

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[8] Some applicants have broken out the CIAC cost as a specific line item according to the tax factor established by using Method 5 as set forth in Decision No. 87-09-026 and modified by Decision No. 87-12-028 in OII 86-11-019. The formula used to compute Method 5 includes the following factors: (1) Corporate Tax rate of 35%, California Corporate Franchise Tax rate of 8.84%, and the effect of deducting state income taxes on the Federal Income Tax Return of 3.09%; (2) A discount rate of 12% and a pre-tax rate of return of 18% for 1987 and 17% for 1988 and forward. D.87-09-026, does allow for different methods for calculating CIAC. Most utilities use Method 5, though small water companies and small telephone companies often use Method 2. CIAC contributions have ranged from 21% of the CASF award up to 66% of the CASF award. Based on CBC's filings we can determine that their additional CIAC award would be $3,968,424 had it been a for-profit entity.

We believe that the CBC request that CASF provide up to 19% of the funding for the Digital 395 Middle Mile Project should be approved for the following reasons.

1) D.09-07-020 allowed for funding of non-ARRA applications. While the Commission contemplated that CASF applicants requested more than 10% of the project costs would need to first be denied their additional funding request by NTIA, CBC made a reasonable evaluation that requesting more than 80% from the federal ARRA program would have resulted in the entire project being rejected due to the significant oversubscription of the federal funds available.[9] It was reasonable for CBC to not risk the entire project by requesting additional federal funds first before reapplying to the Commission for additional CASF funding.

   In addition, the scope and scale of this project present a once in a lifetime opportunity to connect an entire region of the state to the digital "superhighway". The CBC was created from a community consensus, led by the elected leadership of California's Eastern Sierra Counties, to establish a telecommunications alternative for the area. Historically underserved by communication providers; California's eastern sierra region is a high cost, rural area that the incumbent providers have been unwilling to invest in because of high construction cost and small market size when compared to larger urban areas. As a result, economic development has suffered and where available, its residents pay some of the highest prices in the state for broadband services.

   The Cooperative's not for profit business model and lack of established financial history has made applying for traditional loan programs nearly impossible thus necessitating a 19% CASF grant match funding request. The loan program offered under the BIP program is a 50-50 grant/loan combination. Unfortunately due to the cost of the project and projected market demand it is not reasonable to believe the Cooperative's business model would be able to support this level of loan leverage without making the service offerings prohibitively expensive. While a lower loan amount of up to 10% could be serviced through operations, there is no private, state, or federal vehicle available to provide a loan of that amount. As noted earlier, requesting greater than an 80% grant from the ARRA program was also evaluated and ruled out because a federal hardship grant request at 90% would be rejected of due to the high demand for grant money.

   In investigating other potential funding sources to fund the remaining 10% match gap CBC consulted with several possible lending sources. Among them were the Rural Telephone Finance Cooperative and the Rural Utilities Services (RUS) Broadband loans and Traditional telephone loan programs. In the case of the RTFC and RUS Telephone loan programs the Cooperative does not qualify as a "Rural Telephone Company" (i.e., dial tone provider) under the current RUS operational definition. While the Cooperative would be eligible for a loan under the RUS Broadband Loan program, that program is

[9] NTIA and RUS received almost 2,200 applications requesting nearly $28 billion in funding for proposed broadband projects, nearly seven times the amount of funds available in this round of funding. *See* NTIA & RUS Press Release of August, 27, 2009, available at http://www.ntia.doc.gov/press/2009/BTOP_BIP_090827.html.

currently in abeyance because they waiting for their loan regulations to be issued. A RUS field representative indicated that the timeframe on reinstating those loan regulations is undetermined. In all cases, the timeframes required to process these loan applications and have the loan commitment in hand were unable to be met due to the short time frame required for the ARRA grant proposal submission.

2) On an ongoing basis the non-profit financial structure of the CBC will ensure consumer benefits are sustained and service remains affordable. The CBC has not applied for funding of any kind before due to their recent incorporation and all work being performed on behalf of the Cooperative (such as the federal and State grant applications and the Cooperative's organization and incorporation) is being done on a voluntary basis.

   Once constructed, the Digital 395 Network will be owned and operated by the CBC which is a member-owned cooperative. Membership is open to all wholesale level customers and prospective members are required purchase facilities or services in order to join the Cooperative. Potential cooperative members are Government, Education and Medical agencies, Telephone, Wireless, Cable TV, and Internet Service Providers. The minimum service level purchase required is 1.544 Mbps. To ensure a level playing field for all members; the Cooperative will operate using an "non-profit" business model with operating policies to determined by the Board of Directors. The Board of Directors will be drawn from the membership body and will be elected on the basis of one member, one vote. The Cooperative does not expect to charge an initiation fee for membership although this policy will be subject to the Board of Directors review.

3) Operated as an open network, The Digital 395 Network will fully comply with the principles in the FCC's Internet Policy Statement. The management of network facilities will not favor or discriminate based on service provider or applications.

   The proposed service offerings on the network are: 1) Dark Fiber Interoffice facilities; 2) Point to Point Transport Service; 3) SONET Transport Service; 4) IP Ethernet Service and 5) Public Internet Access Service. There is no end user service offerings contemplated.

   The intent of the Digital 395 open network design is to seek out interconnection opportunities and serve as many potential wholesale level customer requirements in the service areas as possible. The backbone network routing in the service areas is designed to closely pass as many potential member facilities as possible. Targeted locations included ILEC central offices, CATV headends, Wireless telephone and Internet Service Providers sites, Governmental Agencies, Educational and Medical Facilities. Interconnection with those facilities will be aggressively pursued by the Cooperative.

   The Digital 395 network backbone will provide for 432 fibers. By creating a "fiber rich" environment that nearly any reasonable wholesale customer requirement for dark fiber facilities can be accommodated at a reasonable cost.

The Digital 395 Network will allow interconnection with other carrier facilities at any technically feasible point. Technically feasible points of interconnection include all network nodes, cable storage and splice boxes. Optical interconnection via a meet point splice will be supported and interconnection at SONET standard rates will be supported. Interconnection of Ethernet protocol will be supported subject to negotiation because service provider interconnection standards for this protocol are still under development.

The Digital 395 infrastructure will also allow rack collocation with protected power for interconnecting service provider transmission equipment at the core and aggregation nodes. In addition to the fiber based service providers provisions were also made to ease interconnection with wireless providers. The network nodes will all be equipped with 40′ towers with multiple antenna mounts that will enable wireless signals to be terminated and interconnected onto the fiber optic middle mile facilities.

4) The Digital 395 Project will create over 1,100 jobs. This fulfills a primary objective of the ARRA stimulus grant and a reason why this Commission adopted new funding rules for CASF projects that were requesting ARRA funding. [10] Specifically the Digital 395 project will create 706 direct and indirect jobs and 397 induced jobs as calculated under the ARRA guidelines. In making recommendations to NTIA on projects that will best meet California's broadband goals that included the Digital 395 Project Governor Schwarzenegger said:

> More than 12 percent of Californians are unemployed, while many others are underemployed and finding it necessary to supplement their current incomes. Now more than ever, a fast, reliable Internet connection is essential across the state, as jobs are often posted, filled and performed online. It is clear that the expansion of broadband infrastructure across California could be a key to our economic recovery.
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> A recent study by the Public Policy Institute of California showed that even among those who could have access to broadband in California, some minorities and those with limited English cannot afford the service or have not recognized the potential. California has an opportunity to improve the lives of our urban and rural, low-income residents through increased broadband availability and afford ability. Telecommunications providers in our state have done well in wiring urban areas, but need assistance to expand broadband to the unserved areas of California.
>
> While it is vital to spurring economic development and creating jobs, adding broadband availability beyond the urban cores is also an extremely expensive proposition. This is one area where American Recovery and Reinvestment Act (ARRA) funding can have a direct and profound impact. Broadband providers, nonprofit organizations, community organizations, municipalities and county

[10] D.09-07-020, mimeo at 14

governments have all joined together to develop ARRA projects and programs that will address needs in unserved and underserved areas.

We couldn't agree more and believe that the Digital 395 Project is an exemplary, unique opportunity for California that should not be passed up.

5) In addition to the short and long term economic benefits, the addition of another fiber line in and out of California offers significant public safety benefits that factor into our decision. California currently has fiber routes to the north and east to connect to the rest of the country, the small number of north-south connections has been continual sources of concern for the sustainability of communication traffic should something happen in the state that severs one of the major fiber connections to the rest of the nation. The addition of a fiber line along California's eastern sierra region is a significant geographic diverse route that will add to our ability to maintain communication links in a disaster.

While any one of these factors alone would be significant, taken together, we find the Digital 395 Project is so unique an opportunity consistent with the goals of the CASF as enunciated by the Legislature in SB 1193 (Padilla) that we should deviate from the process laid out in D.09-07-020 and approve the request for CASF funding of 19% of the total costs and the request to modify the payment terms of the CASF to allow payments in $2 million increments.[11] We base this deviation on the fact that the current level available for Small Business Administration (SBA) loans is $2 million, and the SBA program is the likely source for CBC to obtain the initial funding capital to start the project. In addition, the CASF funding may be provided as the initial project payments as the federal funding requirements require that matching funds first be drawn upon before federal funding is utilized.

2) Lack of Transparency & Information

The Division of Ratepayer Advocates' comments are summarized below:

DRA expressed concern about the lack of transparency and detailed information provided with various applications and accompanying resolutions. DRA cites the following examples:

1. CASF Applications should be open and subject to public comment.

2. The Resolutions should better explain the projects and their costs
   a. Project costs vary widely on a per household basis.
   b. Project costs are confusing.

[11] CASF funds may be awarded after the applicant has expended $2 million, and for each $2 million thereafter which will result in at least ten funding awards for CBC instead of the traditional 25% increments.

3. Service connection or service activation fees should be waived for projects built using CASF subsidies.

Discussion of Comments

DRA's comments address transparency concerns involving confidentiality rules in the CASF process that the Commission established in prior decisions and a resolution. Specifically, D.07-12-054 and Resolution T-17143 set forth a CASF process by which carrier data in applications is treated confidentially, and D.09-07-020 extended and clarified those rules to CASF/ARRA applications. Since this resolution, however, addresses the approval of conditional funding for a specific applicant, it is not the proper forum to seek changes in the established CASF/ARRA process or rules. As such, it would be inappropriate and cumbersome to modify CASF/ARRA program rules in this resolution. To the extent DRA remains concerned with transparency, a petition to modify the prior Commission decisions and resolution would be a more appropriate vehicle.

DRA has also raised concerns about the relative costs of this project and has requested a more thorough explanation of costs from the applicant as well as additional cost details. These comments are without merit, as the CASF/ARRA process relies on a competitive bidding process to keep an applicant's costs in check, rather than a cost reasonableness review requiring the applicant to justify details of specific costs to be spent. Under the established CASF/ARRA process, an applicant risks not receiving a CASF/ARRA award if its costs are too high and other carriers bid at lower costs. Notably no other communication provider stepped forward to offer an alternative application to serve the consumers along the route. All other concerns raised by DRA look to address issues with the CASF process in general and will not be addressed in this resolution affecting the review of a single CASF application.

Conclusion

The Commission finds CD's recommended contingent CASF funds award for underserved areas for CBC's Digital 395 Middle Mile project, as discussed in this resolution and summarized in Appendix A, to be reasonable and consistent with Commission orders, and, therefore, adopts such award of 19% of the total project cost, or $19,294,717.

The CBC's contingent funding is based on; (1) Inyo Networks, the fiscal agent, receiving a CPCN, (2) the CBC receiving ARRA funding, and (3) the Commission completing CEQA review. If Inyo Networks is unable to obtain a CPCN, the CBC is unable to receive ARRA funding and as a result will not build the Digital 395 Middle Mile project, then, the CBC should notify the CD Director so that CASF funds may be reallocated to other grants.

Findings

1. The Commission finds Communications Division's (CD) recommended contingent California Advanced Services Fund (CASF) award for the underserved areas for the

Digital 395 Middle Mile network as discussed in this resolution and summarized in Appendix A, to be reasonable and consistent with Commission orders and, therefore, adopts such award. The CASF was implemented by Decision (D.) 07-12-054.

2. The CASF was established as a two-year program that will provide matching funds of up to 40% of the total project costs for the deployment of broadband infrastructure in unserved and underserved areas in California.
3. Resolution T-17143, approved on June 12, 2008, adopts the application requirements and scoring criteria for the award of funds, a prescribed timeline for other filings and notifications including a projected Commission Meeting date for final approval of award(s).
4. As a member of the California Broadband Cooperative, Inyo Networks will serve as the fiscal agent for The California Broadband Cooperative, Inc.
5. Inyo Networks submitted its application (A.09-07-023) for a Certificate of Public Convenience and Necessity (CPCN) on July 16, 2009.
6. D.09-07-020 allows coordination of CASF grants with Federal grants under ARRA. Inyo Networks originally filed this CASF application, but on September 28, requested that it be transferred to the CBC with Inyo Networks serving as the fiscal agent.
7. The applicant is anticipating that ARRA will fund 80% of the total project cost, CASF will award 19% and the applicant will fund the remaining 1%.
8. The total project cost is $101,494,218, with $25,461,688 being materials and equipment and $76,032,530 comprising the fully loaded installation and labor costs. CASF funds will be used to fund 19% of the total project or $19,294,717.
9. The proposed CBC Digital 395 network will only offer wholesale middle mile services in an area that is underserved by middle mile wholesale broadband. Wholesale middle mile broadband services will be offered to all service providers, businesses and other entities in the serving area. No retail services will be offered.
10. CD found that the CBC Digital 395 will contain no access infrastructure equipment which transits through any of the served areas. Therefore, the CBC Digital 395 middle mile network will not have the capability to offer last mile service or to compete with existing or future last mile retail broadband networks.
11. A list of census block groups (CBGs) appeared by county on the Commission's CASF website page under the heading "UNDERSERVED areas proposed to be served as of July 17, 2009: Census Block Groups (CBGs)"
12. The Communications Division (CD) conducted its independent review and analysis of this California Broadband Cooperative project to verify that this is a middle mile project and that it will offer wholesale services to all service providers offering last mile broadband services to retail residential household customers.

13. Resolution T-17143 defines underserved as an area in which broadband is available but no facilities-based provider offers last mile broadband service at a speed of at least 3 mbps download and 1 mbps upload.
14. CD reviewed the application's eligibility in the underserved review phase through the analysis of required data submitted. These data include, but are not limited to: descriptions of current and proposed broadband infrastructure; geographic information system (GIS) formatted Shapefiles mapping the subject areas; assertion that the area is unserved; potential subscriber size and household incomes; project construction schedule; project budget; proposed pricing and commitment period for new subscribers; and, financial qualifications of the applicant.
15. CD reviewed the Shapefiles submitted with the application which mapped the proposed broadband deployment and compared these to maps prepared with data from the United States 2000 Census and the revised August 10, 2009 California broadband availability maps among others.
16. CD reviewed the CBC Digital 395 Middle Mile project, met with the applicant twice, and when necessary, requested additional information to clarify the project proposal. The applicant provided additional data and other information that clarified the CBC Digital 395 project proposal. Based on these discussions and CBC's discussions with county officials, CBC reduced the size of the network and reduced their total project cost from $108,400,000 to $101,494,218.
17. The Digital 395 project is subject to California Environmental Quality Act (CEQA) review. The Commission must complete California Environmental Quality Act (CEQA) review before dispersing CASF funds to Inyo Networks, fiscal agent for CBC for the construction of the proposed facilities. At this time, the physical components of this project are too speculative for the Commission to conduct meaningful environmental review. Inyo Networks or CBC should submit a Proponent's Environmental Assessment (PEA) to Commission staff as soon as the detailed project information is known.
18. CD recommends that the CBC Digital 395 Middle Mile project, contingent on CBC receiving ARRA funding and Inyo Networks receiving Commission approval of its CPCN application (A.09-07-023), be approved as it meets the requirements of CASF and the ARRA programs for funding for providing service to high cost areas that otherwise would not receive broadband service.
19. If the CBC is unable to obtain ARRA funding and does not build the Digital 395 middle mile project, or if Inyo Network is unable to obtain Commission approval of its CPCN application, then the CBC should notify the Director of the Communications Division that the project will not be built so that CASF funds may be reallocated to other grants.
20. CD recommends that the California Broadband Cooperative should not be required to post a performance bond as the 80% ARRA funding can be regarded as a secure source of capital funds and meets the Commission's capital budget requirement. Further, the

withholding of 10% of the award, pending final a audit that the entire scope of work is completed will adequately protect the Commission's interests.

21. The Commission is deviating from the CASF process adopted D.09-07-020, and providing notice of that change along with an opportunity for others to comment on the proposed change given the unique non-profit financial structure, middle mile open-access network, large number of jobs, and public safety benefits the Digital 395 Middle Mile project provides to California consumers.
22. The Commission is also modifying the payment terms of the CASF to allow payments in $2 million increments for CBC. CASF funds may be awarded after CBC has expended $2 million, and for each $2 million thereafter which will result in at least ten funding awards for CBC instead of the traditional 25% increments.
23. The Commission is also modifying the payment terms for CBC to provide CASF funding may as the initial project payments as the federal funding requirements require that matching funds first be drawn upon before federal funding is utilized.
24. If the ARRA grant is not received or if the grant is for less than 80% then the CBC could request additional funds in accordance with Ordering Paragraph No. 7 of D.09-07-020. The granting of further funding would be contingent on funds still being available in the CASF program.
25. A notice letter was emailed on November 3, 2009 informing: a) all CASF applicants filing under D 09-07-020 and, b) parties on the service list of R.06-06-028 of the availability of the draft of this Resolution for public comments at the Commission's website http://www.cpuc.ca.gov/static/documents/index.htm. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and will be available at this same website.
26. A notice letter was emailed on November 3, 2009 informing: a) all CASF applicants filing under D 09-07-020 and, b) parties on the service list of R.06-06-028 of the availability of the draft alternate of this Resolution for public comments at the Commission's website http://www.cpuc.ca.gov/static/documents/index.htm. This letter also informed parties that the final conformed Resolution adopted by the Commission will be posted and will be available at this same website.
27. The Commission finds CD's recommended contingent CASF award for underserved areas for the CBC Digital 395 Middle Mile project as discussed in this resolution and summarized in Appendix A to be reasonable and consistent with Commission orders and hereby adopts such award.

THEREFORE, IT IS ORDERED that:

1. The Commission shall award contingent funding of $19,294,717 from the California Advanced Services Fund to Inyo Networks, fiscal agent for the California Broadband Cooperative for its Digital 395 Middle Mile project to provide service in an underserved area, as described in the discussion portion and Appendix A of this Resolution. The award is contingent on 1) Inyo Networks receiving Commission approval on it CPCN application (A.09-07-023), 2) the California Broadband Cooperative receiving an ARRA grant for 80% of the total estimated project cost, and 3) the Commission completing CEQA review.
2. The California Broadband Cooperative shall not be required to post a performance bond for its Digital 395 Project.
3. The California Broadband Cooperative Digital 395 Middle Mile project shall comply with all guidelines, requirements and conditions associated with the CASF funds award as specified in Resolution T-17143, D.09-07-020, and CEQA.
4. The California Broadband Cooperative may request payments in $2 million increments from CASF instead of the 25% increments specified in Resolution T-17143 and D.09-07-020.
5. The California Broadband Cooperative may request payments from CASF as initial project payments as the federal funding requirements require that matching funds first be drawn upon before federal funding is utilized.
6. The California Broadband Cooperative shall notify the Director of the Communications Division of the disposition of 1) its ARRA application for the Digital 395 Middle Mile project, and 2) Inyo Networks' application for a CPCN and work with the Commission's staff to complete CEQA review of the project.
7. CBC shall submit a Proponent's Environmental Assessment (PEA) to Commission staff as soon as the detailed project information is known.
8. If the CBC Digital 395 Middle Mile project will not be completed, then the California Broadband Cooperative shall notify the Director of the Communications Division so that the committed CASF funds may be reallocated for other grants.
9. The program fund payment of $19,294,717 for the Commission-approved underserved project shall be paid out of the CASF fund in accordance with the guidelines adopted in Resolution T-17143 and D.09-07-020 and Resolution T-17233.
10. Payments to Inyo Networks, Inc, fiscal agent for the California Broadband Cooperative for The California Broadband Cooperative Digital 395 Middle Mile project, shall be in accordance with Section IX of Appendix A of Resolution T-17143 and in accordance with the process defined in the "Payments to CASF Recipients" section of this Resolution.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on December 3, 2009. The following Commissioners approved it:

_____

PAUL CLANON
Executive Director

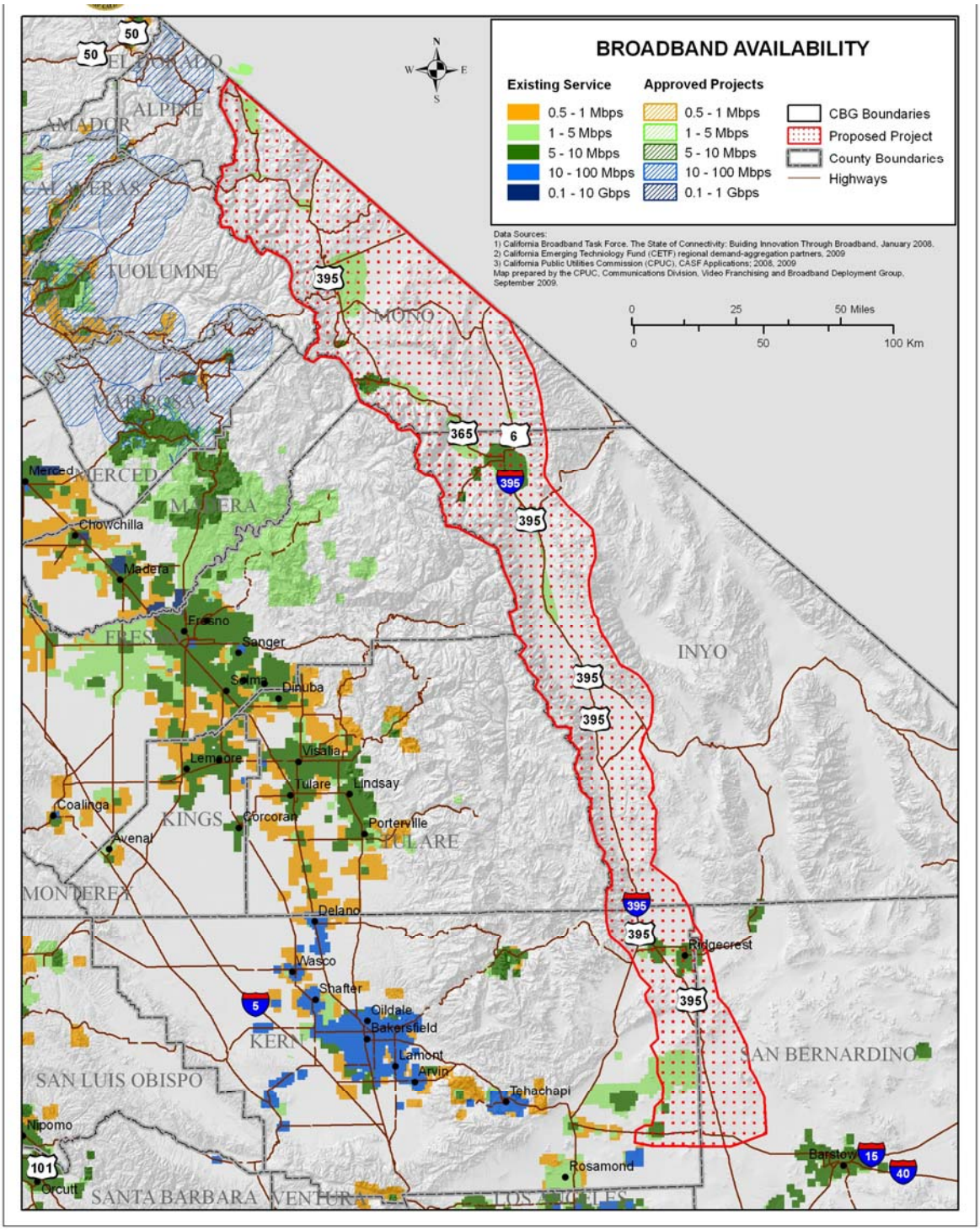
APPENDIX A
Resolution T- 17232
The California Broadband Cooperative -
Digital 395 Middle Mile Network Key Information

1	***Project ID***	California Broadband Cooperative Middle Mile	
2	***Project Name***	Digital 395 Middle Mile	
3	***Project Plan***	The CBC Digital 395 is a proposed 448 mile network that would provide wholesale middle mile broadband / backhaul network between Northwest Mono County, at the Nevada border, down through Inyo and Kern Counties, terminating at Barstow in Northwest San Bernardino County.	
4	***Project Size (in square miles)***	965	
5	***Download speed***	100 mbps up to Gigabit Ethernet	
6	***Upload speed***	100 mbps up to Gigabit Ethernet	
7	***Location***	Mono, Inyo and Eastern Kern Counties, North Eastern San Bernardino	
a)	***Community Name***	Topaz, Coleville, Bridgeport, Mono Lake, June Lake, Crowley Lake, Benton, Mammoth Lakes, Bishop, Big Pine, Independence, Lone Pine, Cartago / Olancha, Boron, China Lake, Ridgecrest, Inyokern, Johannesburg, Kramer Junction, Red Mountain	
b)	***CBGs / Household Income***		
		60510001001	$31,125
		60510001002	$38,929
		60510001003	$36,281
		60510001004	$45,500
		60510001005	$48,214
		60510001006	$54,597
		60510001007	$40,278
		60510002001	$55,417
		60510002002	$47,277
		60510002003	$45,278
		60510002004	$36,429
		60510002005	$34,375
		60270001001	$27,716
		60270001002	$61,042
		60270002001	$59,886
		60270002002	$31,635
		60270003001	$57,469
		60270003002	$56,354
		60270004001	$26,591
		60270004002	$25,878
		60270004003	$27,525
		60270004004	$32,308
		60270005001	$34,250
		60270005002	$37,946
		60270006001	$23,750
		60270006002	$31,150
		60270006003	$21,346

		60290056001	$41,250
		60290056002	$47,963
		60290056003	$21,136
		60290052027	N/A
		60290052028	N/A
		60290053001	$38,393
		60290053002	N/A
		60290053003	$16,484
		60290054011	$28,550
		60290054012	$35,481
		60290054013	$70,721
		60290054014	$74,911
		60290054015	$48,462
		60290054021	$31,221
		60290054022	$61,071
		60290054023	$72,067
		60290054031	$42,267
		60290054032	$35,320
		60290054033	$71,447
		60290054034	$46,250
		60290054035	$14,102
		60290054041	$41,699
		60290054042	$50,574
		60290054043	$56,899
		60290054044	$32,250
		60290055011	$43,269
		60290055012	$87,094
		60290055013	$22,981
		60290055014	$34,732
		60290055015	$61,711
		60290055016	$31,346
		60290055031	$28,542
		60710116001	$28,821
		60710116002	$28,821
		60710089012	$36,602
c)	***ZIP Codes***	96133	
		96107	
		93517	
		93541	
		93529	
		93546	
		93514	
		93512	
		93513	
		93526	
		93545	
		93549	
		93282	
		93240	
		93527	

		93559	
		93505	
		93501	
		93516	
8	***Estimated Potential Subscriber Size***		
a)	***Households***	28,127	
9	***Deployment Schedule (from Commission approval)***	24	
10	***Proposed Project Budget***		
	CASF (19%)	$19,294,717	
	CIAC	N/A	
	Amount of CASF Funds Requested	$19,294,717	

APPENDIX A
Resolution T- 17232
The California Broadband Cooperative -
Digital 395 Middle Mile Network Shapefile



APPENDIX A

Resolution T- 17232

Statewide Proposed Project Map for The California Broadband Cooperative - Digital 395 Middle Mile Network