

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Programs Branch**

**RESOLUTION T- 17229
October 29, 2009**

R E S O L U T I O N

Resolution T-17229 Funding Approval for the Inyo Networks Inc., Last Mile Project, from the California Advanced Services Fund (CASF), Amounting to \$2,247,308.

Summary

This Resolution adopts contingent funding for the Inyo Networks, Inc. (Inyo) Last Mile project, amounting to \$2,247,308 from the California Advanced Services Fund (CASF). The amount granted represents 10% of the project costs plus cost for Contribution in Aid of Construction (CIAC) to provide broadband service to underserved areas 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 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). Resolution T-17143 also directed interested applicants seeking funding for unserved and underserved projects, to file their project proposals and funding requests beginning July 24, 2008 and August 25, 2008, respectively.

On July 9, 2009, the Commission issued D.09-07-020 establishing new schedules and plans for the 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

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

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.

As of September 24, 2009, CASF funding of \$12.6 million has been granted for 28 projects covering 4,318 square miles, benefiting 32,943 potential households. \$11.6 million has been approved for 16 unserved area projects covering 4,284 square miles to benefit 32,284 households, while \$1 million has been approved for 12 underserved area projects covering 34 square miles, to benefit 659 households.

Notice/Protests

The Census Block Group (CBG) list for the Inyo Last Mile project appeared by county on the Commission's CASF website page under "(1) UNDERSERVED areas proposed to be served as of July 17, 2009: Census Block Groups (CBGs)." Challenges were filed on eight (8) of the proposed CBGs. Communications Division (CD) staff also issued nine (9) challenges. CD proceeded to review and analyze these project areas to verify that they were indeed underserved as of the applicants' filing date.

Discussion

This Resolution adopts contingent funding of \$2,247,308 for the Inyo Last Mile project in Inyo, Kern, Mono, and San Bernardino counties. This project is described in detail in Appendix A, pages A-1 and A-2. Maps of the proposed Inyo Last Mile project can be found on page A-3 and A-4 of Appendix A.

Inyo submitted its Last Mile application on July 17, 2009. The total project cost is estimated at \$22,473,077, of which 10%, or \$2,247,308, is being requested from CASF as a match to their 80% ARRA fund request. This Last Mile project proposes a combination of underground fiber-to-the-premise and WiMax technology to serve customers in underserved areas, along a sparsely populated corridor along U.S. Highway 395 east of the Sierra Nevada mountain range.

The total proposed project of 205.93 square miles surrounds underserved areas of 6,202 households. For the communities of Independence, Big Pine, and Lone Pine in Inyo County, Inyo proposes fiber-to-the premise construction to 1,609 residences, with broadband service at speeds of up to 100 mbps download and up to 100 mbps upload. For the remaining communities in Mono, Kern, and San Bernardino Counties, Inyo proposes WiMax wireless technology to serve customers at up to 10 mbps through shared channels over a 10 kilometer radius. Inyo proposes to offer high-speed internet access service using both

² The American Recovery and Reinvestment Act (ARRA) 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.

technologies. Inyo estimates that the project would be completed within 24 months from the beginning of construction expected to start upon approval of this resolution.

Inyo asserts that this area has been historically underserved by the region's Local Exchange Carriers (LECs). They describe California's Eastern Sierra region as a high cost rural area in which the incumbent LECs were unwilling to invest in broadband infrastructure because of high construction cost and small market population, resulting in diminished scale economies when compared to larger urban areas. As a result, economic development suffered, and where available, its residents pay some of the highest prices in the state for broadband services.

Inyo has proposed a two-year initial monthly price of \$24.99 for internet service, and will require a two year commitment from customers to waive the proposed \$89.99 installation/service connection fee.

For qualification purposes under the CASF program, underserved areas are defined as areas where broadband is available but no facilities-based provider offers service at speeds of at least 3 mbps download and 1 mbps upload. CD reviewed this project's eligibility through analysis of the required submitted data. These data include, but are not limited to: proof of Certificate of Public Convenience and Necessity (CPCN) registration; 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 broadband deployment proposed using United States 2000 Census data, the January, 2008, Broadband Task Force Report (BBTF) including its on-line maps, and the revised August 10, 2009, California Broadband Task Force (CBTF) maps, among others. CD conducted its independent review and analysis of the Inyo Last Mile project to verify that the areas proposed to be served by Inyo did not coincide with areas shown as served and not underserved on the updated broadband availability maps. Of the 35 CBGs in this proposed project, 8 were formally challenged and CD staff identified 9 additional CBGs as already served. Inyo then resubmitted their proposal, after withdrawing 17 proposed CBGs and recalculating project costs based on the withdrawal. Inyo resubmitted a proposal to serve 18 CBGs, under the recalculated costs. CD determined that the CBGs covering the proposed area are qualified as underserved as defined in Resolution T-17143.

When necessary, CD performed verification with applicants, which included requests for additional data and/or other communication with applicants in order to clarify their project proposals. CD has determined that the Inyo Last Mile project is an underserved broadband area and eligible to receive CASF funding.

Inyo has filed an application for a CPCN with the Commission. Approval of this CPCN is pending. In accordance with Appendix A, IV.13, "Performance Bond Documentation" of

Resolution T-17143, Inyo should be required to post a performance bond equal to the total amount payable under this CASF award, or 10% of the project cost, and provide a copy of the bond to CD in accordance with the existing CASF funding rules.

Inyo should 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 the California Environmental Quality Act.

This project consists of two components: (1) fiber-to-the-premise construction to 1609 houses and businesses in the communities of Independence, Big Pine and Lone Pine; and (2) WiMax wireless services to various locations in the Counties of Mono, Inyo, and Eastern Kern County.

For the fiber-to-the-premise technology, Inyo selected a Gigabit Passive Optical Network (G-PON)³ to serve these locations based on two key factors: (1) its capacity to meet all foreseeable future bandwidth requirements in towns that are currently at their physical expansion limits, and (2) its ability to deliver high bit rate subscriber services over long distances using un-powered PON elements between the central office and the subscriber premise. With its ability to reach customers up to 20 miles from the central office, this architecture is ideally suited for rural deployment scenarios.

With respect to factor (1) above, nearly all parcels have structures and the community is surrounded by government lands or lands owned by the LA Department of Water and Power (who acquired water rights in the region during the early 1900s); the communities are at full growth limits. To the extent a broadband investment is to be made in these communities, capacity should be created that will support the community for the next 50 to 100 years. Given the urban-like density of the proposed deployment areas, this should be a land-line solution.

Regarding factor (2) above, local officials requested that network deployments use “green technology” wherever possible and also have the capacity in the future to serve applications that may exist outside the communities. In particular, Caltrans has expressed interest in “Intelligent Highway” services along U.S. Highway 395 to remotely monitor and communicate road conditions. This technology would enable sections of the Mid-Mile cable that are adjacent to the communities to be used for these and similar purposes.

The WiMax wireless technology uses point-to-multipoint architecture that will operate in the 3.6 Mhz. non-exclusive licensed frequency spectrum that the network is designed to deliver, up to 10 Mb service over a 10 kilometer radius. Configured in much the same way as a traditional cellular network, the wireless overlay network base stations will be primarily collocated on 40-foot towers along the fiber optic route and provide edge-out

³ A G-PON is a point-to-multipoint, fiber to the customer premise network architecture in which a single optical fiber can serve multiple customer premise. The PON configuration reduces the amount of fiber and central office equipment required, compared to point-to-point architectures.

capabilities required to deliver service to outlying, low density areas. The 3650-3700 Mhz spectrum was recently opened by the FCC to non-exclusive licensing for fixed WiMax and base stations in order to encourage broadband development in rural areas. A preliminary review of the proposed coverage areas along the fiber optic route indicates that this area remains unfilled. Inyo believes this frequency offers the best combination of non-interference, coverage range and non line of sight antenna requirements.

The proposed wireless overlay design incorporates two standard base station/antenna alternatives depending upon the subscriber density. The small design will support up to 30 subscribers and incorporates a single sector antenna design. The larger design will support up to 100 subscribers and utilizes a three sector antenna design. The 3.65 Mhz frequency spectrum will allow the use of indoor antenna for subscribers self installation enabling lower cost deployments.

This project is the only proposal submitted for this underserved area of California prior to the adoption of D.09-07-020. As such, this project will provide for an improved network that will deliver internet access to thousands of potential new subscribers, deliver broadband at faster speeds, and create a self-sufficient, sustainable capacity infrastructure for Inyo. The Inyo Last Mile project is, therefore, recommended for approval and award of CASF funding.

This project is subject to the California Environmental Quality Act (CEQA). The Commission must complete CEQA review before disbursing CASF funding to Inyo for construction of the project. To date the company has completed archeological and biological surveys that the United States Bureau of Land Management and the California Departments of Transportation and Fish and Game have reviewed. Inyo continues to identify any other special permit requirements and will provide those with a cross-reference to the government agencies from which the permits will be or have been required for this project in compliance with all other guidelines, requirements, and conditions associated with the granting of CASF funds as specified in T-17143 including the submission of FCC Form 477.

Payments to CASF Recipients

Submission of invoices from and payments to Inyo 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 to Inyo shall essentially follow 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 Inyo Networks, Inc. to CD	5 th of Month 1	20 th of Month 1
Payment letters from CD to Information and Management Services Division (IMSD) ⁴	On 19 th of Month 1	On 4 th of Month 2
Invoices submitted from IMSD to State Controller's Office (SCO) for payments	20 th through 26 th of Month 1	5 th through 13 th of Month 2

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

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

Comments on Draft Resolution

In compliance with PU Code § 311(g), a notice letter was emailed on September 29, 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.

The Commission's Division of Ratepayer Advocates (DRA) submitted comments on October 14, 2009. 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 (see p. 9, footnote 6). 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.

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.

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. Additionally, DRA recommended that the Commission require applicants to waive proposed installation and service activation fees for CASF-approved projects. These comments are without merit, as the CASF/ARRA process relies on a competitive bidding process to keep an applicant's costs and proposed installation fees in check, rather than a cost reasonableness review requiring the applicant to justify details of specific project costs and proposed installation fees. 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. The applicant assumes the same risk in proposing installation and service activation fees. 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 in the Inyo Last 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. Inyo's contingent funding is based on (1) receiving a CPCN, (2) receiving ARRA funding, and (3) the Commission's completion of CEQA review. If Inyo is unable to obtain (1) a CPCN, or (2) ARRA funding, and as a result will not build the Last Mile project, then Inyo Networks, Inc. should notify the CD Director that the project will not be built so that CASF funds earmarked for Inyo may be reallocated.

Findings

1. 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). T-17143 directed interested applicants seeking funding for underserved projects to file their project proposals and funding requests beginning July 24, 2008.
4. On July 9, 2009, the Commission issued D.09-07-020 approving a new CASF schedule and plan for an additional round of broadband projects that would complement broadband grants awarded under the federal government's American Recovery and Reinvestment Act (ARRA). While retaining the 40% matching grant process, the Commission in this Decision authorized providers an option of seeking a 10% grant from the CASF concurrent with efforts to seek an 80% grant from the ARRA fund.

5. A list of census block groups (CBGs) 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)." The Communications Division (CD) proceeded with its independent review and analysis of this project area to verify that it was underserved as of the applicant's filing date.
6. Inyo Networks, Inc., filed an application on July 17, 2009, and was the only applicant for this area prior to the adoption of D.09-07-020.
7. Underserved areas are defined as areas which are not served by any form of facilities-based broadband or where Internet connectivity is available only through dial-up or satellite service.
8. CD reviewed the Inyo Networks, Inc., Last Mile project eligibility through the analysis of required data submitted. These data include, but are not limited to: proof of Certificate of Public Convenience and Necessity (CPCN) registration; 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.
9. Shapefiles, which mapped the broadband deployment, were reviewed by CD using sources including, but not limited to, the United States 2000 Census data, the January, 2008, Broadband Task Force Report, and the revised August 10, 2009, California Broadband Task Force map, among others. These maps helped to verify the existence or non-existence of broadband service areas and broadband speeds, where available.
10. Communications Division verified this project and, when necessary, requested additional information and/or meetings with the applicant to clarify its project proposal. Of the 35 CBGs in this proposed project, 8 were formally challenged and CD staff identified 9 additional challenges as discussed in Finding 10. Communications Division determined that the CBGs covering the proposed area are qualified as underserved as defined in Resolution T-17143.
11. Communications Division conducted an independent review and analysis of the Inyo Networks, Inc. proposal, which included discussion with Inyo regarding their proposal. Inyo then resubmitted their proposal, withdrawing their proposal within 17 CBGs while recalculating project costs based on the withdrawal. Inyo resubmitted a proposal to serve 18 CBGs, under recalculated costs.
12. After its review, Communications Division determined the Inyo Networks, Inc. Last Mile project application for underserved areas covering 18 CBGs as eligible to receive funding under CASF.
13. Inyo Networks, Inc.'s application for a CPCN remains pending.

14. Inyo Networks, Inc. should be required to post a performance bond equal to the total amount payable under this CASF award, or 10% of the project cost, and provide a copy of the bond to CD in accordance with the existing CASF funding rules.
15. Inyo Networks, Inc.'s proposed project consists of two components: (1) fiber-to-the-premise construction to 1,609 houses and businesses in the communities of Independence, Big Pine and Lone Pine; and (2) WiMax wireless services to various locations in the Counties of Mono, Inyo, and eastern Kern County.
16. Inyo's CASF funding is contingent on (1) receiving a CPCN, (2) receiving ARRA funding, and (3) the Commission's completion of CEQA review.
17. The Commission can neither approve nor disburse the first 25% payment and Inyo cannot conduct ground breaking activities until the Commission has completed California Environmental Quality Act (CEQA) review.
18. Inyo Networks, Inc. should comply with all guidelines, requirements, and conditions associated with the granting of CASF funds as specified in Resolution T-17143 including the submission of FCC Form 477.
19. A notice letter was emailed on September 29, 2009, informing a) all applicants filing for underserved areas 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 available at this same website.
20. The Commission's Division of Ratepayer Advocates (DRA) submitted timely comments on October 14, 2009. The comments are addressed in this Resolution.
21. The contingent CASF award for Inyo for underserved areas in the Inyo Last Mile project and as discussed in this resolution and summarized in Appendix A, is reasonable and consistent with Commission orders.
22. If Inyo is unable to obtain (1) a CPCN, or (2) ARRA funding, and will not build the Last Mile project, then Inyo Networks, Inc. should notify the CD Director that the project will not be built so that CASF funds earmarked for Inyo may be reallocated.

THEREFORE, IT IS ORDERED that:

1. The California Advanced Services Fund shall award contingent funding of \$2,247,308 from the California Advanced Services Fund to Inyo Networks, Inc., for the Last Mile project to provide service in underserved areas as described in the Discussion section and summarized in Appendix A of this Resolution. The award is contingent on Inyo Networks, Inc. receiving (1) a CPCN, and (2) an ARRA grant for 80% of the total estimated project cost.

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2. Inyo Networks, Inc. shall post a performance bond equal to the total amount payable under this CASF award, or 10% of the project cost, and provide a copy of the bond to CD within five business days after the effective date of this resolution.
3. Inyo Networks, Inc. shall comply with all guidelines, requirements, and conditions associated with the CASF funds award as specified in Resolution T-17143 and D.09-07-020.
4. Inyo Networks, Inc. shall notify the Director of the Communications Division of the disposition of its (1) application for a CPCN, and (2) ARRA application for the Last Mile project.
5. If the Inyo Networks, Inc. Last Mile project will not be completed then Inyo Networks, Inc. shall notify the Director of the Communications Division so that the CASF funds earmarked for Inyo may be reallocated.
6. The program fund payment of \$2,247,308 for this 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 in conformance with the California Environmental Quality Act
7. Payments to Inyo Networks, Inc. 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.

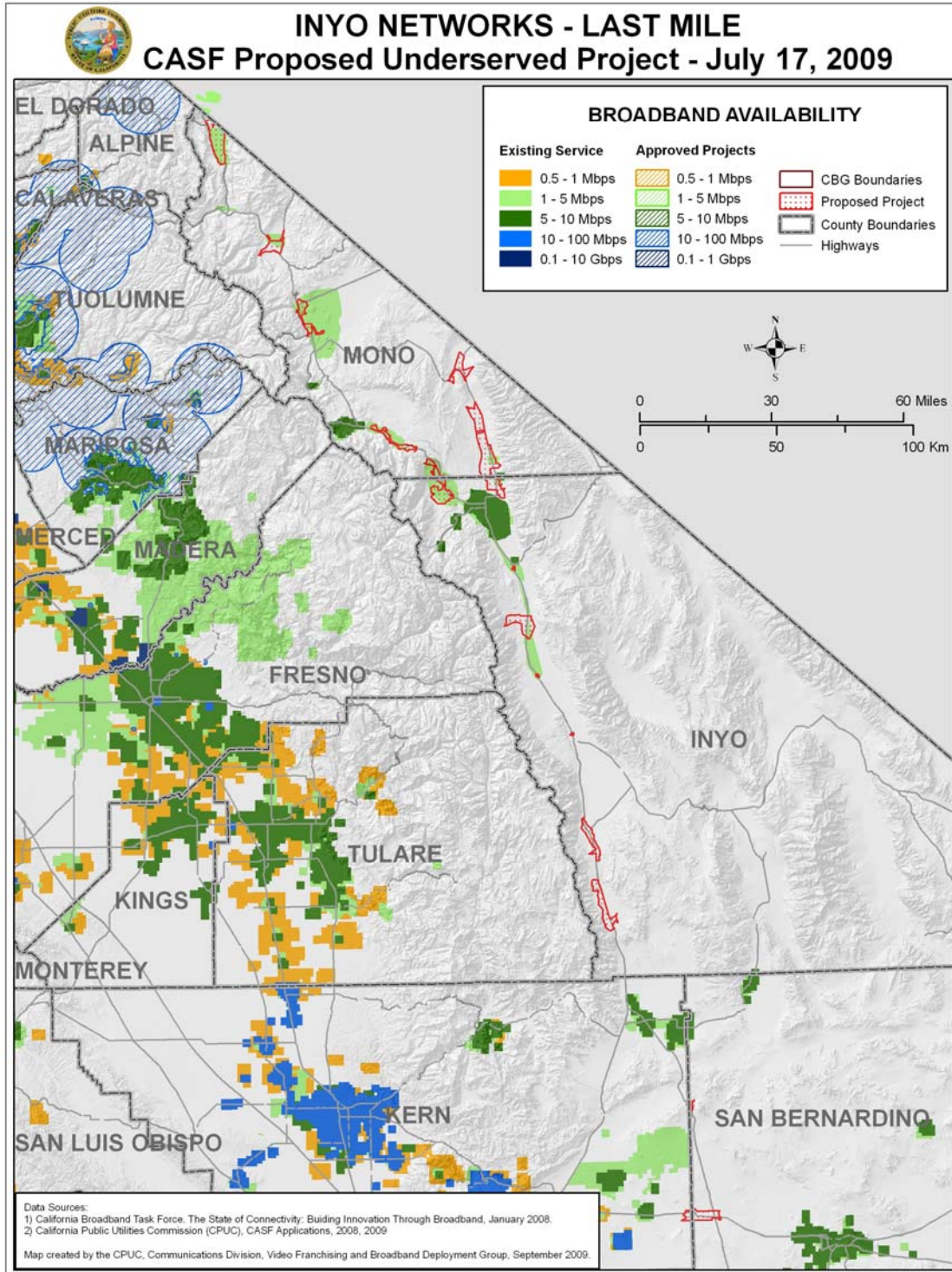
APPENDIX A
Resolution T- 17229
Inyo Networks, Inc. Last Mile Project, Key Information

Inyo Networks, Inc., Last Mile			
1	Project ID	308	
2	Project Name	Inyo Networks Last Mile	
3	Project Plan	(1) Fiber-to-the-premise construction to 1,609 residences and businesses in the communities of Independence, Big Pine and Lone Pine; and (2) WiMax wireless services to various locations in Mono and Inyo counties, and eastern Kern County.	
4	Project Size (in square miles)	205.93	
5	Download speed	Fiber-to-premise "downstream data rates over 700 Mb to each subscriber can easily be achieved" WiMax : up to 10 mbps shared channel, depending on channel loading) over a 10 kilometer radius.	
6	Upload speed	Fiber-to-premise over 38 mb possible.	
7	Location	Mono, Inyo, Kern, and San Bernardino Counties	
a)	Community Names	Topaz, Coleville, Bridgeport, Mono Lake area, Benton Lake Area, Big Pine, Independence, Lone Pine, Cartago/Olancha, Boron, Kernville (and area surrounding), Onyx, Wofford Heights, Weldon, South Lake, Mesa Mountain, Lake Isabella, Red Mountain, Mojave (outskirts), California City.	
b)	CBGs / Household Income		
#		CBG	Income
1		60510001001	\$31,125
2		60510001002	\$38,929
3		60510001003	\$36,281
4		60510001004	\$45,500
5		60510001006	\$54,597
6		60510001007	\$40,278
7		60270005001	\$34,250
8		60270005002	\$37,946
9		60270006001	\$23,750
10		60270006002	\$31,150
11		60270006003	\$21,346
12		60290056001	\$41,250
13		60290056002	\$47,963
14		60290056003	\$21,136
15		60290055031	\$28,542
16		60710116001	\$28,821
17		60710116002	\$28,821
18		60710089012	\$36,602

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c)	ZIP Codes	96133	
		96107	
		93517	
		93541	
		93546	
		93512	
		93514	
		93513	
		93526	
		93545	
		93549	
		93505	
		93501	
		93596	
		93516	
8	Estimated Potential Subscriber Size		
a)	Households	6,202	
9	Deployment Schedule (from Commission approval)	Completion within 24 months of Resolution approval.	
10	Proposed Project Budget		\$22,473,077
b)	CASF (10%)		\$1,628,484
c)	CIAC		\$618,824
d)	Amount of CASF Funds Requested		\$2,247,308

APPENDIX A
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Inyo Networks, Inc. Last Mile Project Shapefiles



APPENDIX A
Resolution T- 17229
Inyo Networks, Inc. Last Mile Statewide Map



END OF APPENDIX A