

**COMMENTS**  
**CALIFORNIA BROADBAND COOPERATIVE TO RESOLUTION T-17408**

**DELIVERED VIA EMAIL**

Mr. Ryan Dulin  
Director, Communications Division  
California Public Communications Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Dear Mr. Dulin,

California Broadband Cooperative, Inc. (CBC) respectfully submits the following comments in regard to Resolution T-17408.

First, CBC wishes to complement the CD Staff on an excellent investigation and unraveling of a number of complex circumstances that have impacted the execution of the Digital 395 project from its inception. The purpose of these comments is to elaborate on several items in the Staff's analysis for further clarification.

Budget Comparison Categories

During the initial submission of the CASF and NTIA budget, there were no "line item" categories defined for financial analysis. So no budgetary line item standard was set for all of the BTOP and CASF projects. As a consequence, the initial budget that was submitted and approved used categories that at times were detailed (such as our enumeration of splice cases, unit costs, etc.) while others were more global. As in most projects, the more detailed elements were used when factors were known or could be modeled. In other instances, such as in Table 5 ("Permitting Costs"), we were unclear as to the specific breakdown of costs by agency. Here, we used one or two lines, such as "Other" to incorporate our costs estimates.

Subsequently, when submitting the details of project costs three years later, we used more detailed categories to show where those expenses were incurred. To the casual reader, it appears, in the Tables, that we knew of the relevant categories in advance, but assigned no monies. Rather, our intent was to compare the original budget with more details for analysis.

This was also the case with Table 5: based on Firm-Fixed-Price bid solicitations, we received three bids from reputable California environmental consulting firms. Using these bids and further queries about monitoring cost estimates, we arrived at a \$2.3MM estimate of environmentally related costs which we put into one line item. The table breaks costs down into further details in our latest budget projection.

## Programmatic Agreement and Environmental Costs

The Programmatic Agreement (PA) was a solution proposed by the NTIA as a means to initiate an early construction start whereby work could proceed incrementally under the review of 21 land management and environmental agencies, including seven tribal entities. For smaller projects, Section 106 under the National Historic Preservation Act of 1966 (NHPA), is incorporated into the Environmental Impact Study or Environmental Assessment. In our case, the scope of the project would have caused the environmental timeframes to extend well beyond the time for construction, and caused the project to exceed the timeframes allowed by the American Recovery and Reinvestment Act of 2009 ("Recovery Act"). Once the FONSI and MND were issued, the PA essentially governed many aspects of the project's timing and our planning.

Anticipating the impact of the PA was entirely unpredictable. From the outset, few of the agencies in the area had experience with this instrument. Moreover, while we eventually identified, analyzed and established avoidance measures for 465 sites, none known in advance by the project proponents. In an effort to protect cultural sites, their locations are not by law, disclosed to the general public. They are not observable until detailed studies are conducted "on the ground" (i.e., pedestrian surveys by qualified archeologists). Only at that time, and after review by the relevant agencies, is it possible to assess the methods of construction. Thus, prediction is extremely difficult.

Because of timeframes, the PA declared all sites to be "eligible" which meant they had to be avoided. The predominate method defined – boring. Although we accounted for a 15% contingency in construction costs to accommodate contract modifications, the eventual number (ultimately determined in February, 2013) far exceeded this amount.

## Poor Planning

The CD Staff indicated that the overage was the result of "Poor Planning" on the part of CBC and Praxis Associates. We believe this statement is inaccurate, as the project required continuous planning to adjust to the ever-changing requirements of the PA, the timeframes for construction, severe weather, materials and equipment, logistics, staffing, rights of way, permits, and so forth. In fact, project planning enabled for a nearly 450-mile underground fiber system to be constructed in about 15 months through incredibly harsh terrain. This included connecting nearly 300 service locations and installing over fifteen distribution facilities.

While we concede that our predictions of the cultural and other environmental challenges of the area were significantly underestimated (largely due to the uncertainties outlined above), it was because of our planning skills that we were able to adapt and contribute \$14MM in under-runs to off-set the spiraling costs

relating to the PA. Budgetary assessment of the PA and related factors, however, were substantially unanticipated, and in retrospect, quite incorrect.

At the time that the Commission staff wrote that the funding for the 2081 permit was permissible, none of the PA fieldwork had completed nor had construction been started. It is therefore correct that we believed we were on track with budget projections. In fact, in the absence of PA related avoidance costs and related studies, we would have come in under budget.

#### Timing of Request

We apologize to the Commission and staff for the timing of this request and its need for expeditious handling. Because of the permit and environmental delays, we were only authorized to begin construction in August 2012. With the on-set of winter in Mono County, construction slowed and it was not until April that the full-extent of the PA-driven costs were becoming clear. This is when most of the boring work was being done in Mono County, where most of the ESAs were resident. Projections and actual bids enabled CBC to arrive at a well-defined financial assessment as the underground construction proceeded.

As we write these comments, all conduit on the backbone, except 10 miles in Mono County have been completed. All the major communities have services installed and all nodes are in place and operational. So this request is in the wake of a proven construction capability and with the budget pressures of the CDFW before us. The CD staff accurately portrayed the areas still in need of construction, many related to the Commission's changes in pole loading calculations. In short, the project is close to completion and its continued funding would serve the Eastern Sierra immensely in delivering Next Generation Broadband for the next 100 years. We believe that while the infrastructure supporting the project is still in place, equipment deployed, material in stock, and with the benefits of tight project controls by the federal government, the goals of the California Advanced Services Fund would be well achieved.

#### CEQA Limitations of the Commission in Project Funding

We recognize that the Commission cannot fund projects that are not reviewed under CEQA. This impacts three areas of our project, which are route changes required by last mile service providers, tribal groups, or local government officials. In consideration of the timeframes, and if CBC is successful in reducing the Permit fee from the CDFW, we would ask the Commission to grant to the CD staff the authority to repurpose these "saved" funds to the areas in question, once satisfied by CEQA. We believe this would save the Commission and staff valuable time in preparing an additional Resolution for these three areas.

### Minor Factual Items and Errata

There are several minor, and perhaps inconsequential facts included in the Resolution that we believe should be noted for the record:

Page 2, Paragraph 3: The network is currently capable of delivering 150 Gbps not 10 Gbps due to the evolution of fiber electronics since the application was filed in 2009.

Page 7, Paragraph 3: The network was broken into 79 "Segments" for project administration. This is only the backbone segments and does not include adjunct laterals and distribution areas which many had.

Page 16, Paragraph 3: The CDFW imposed a 3:1 mitigation ratio. The Resolution states 4:1 acres to be acquired for every acre "impacted."

Page 21, Paragraph 3: Resolution states that "construction crews working in a different segment in the Inyo National Forest accidentally trenched instead of bored through three cultural sites and did not have a monitor." CBC contractors only trenched through one site, not three.

Page 25, Paragraph 1: "After the ARRA award, Praxis learned its status had changed from vendor to Sub-Recipient. . . ." After significant amount of discussion, the NTIA ruled that Praxis could not be a Contractor on the project due to its involvement in the development of the application, design work, and participation in CBC governance. Praxis faced the option to assume the role of Sub-Recipient, with attending federal oversight, or forced to withdraw the project from execution. Due to expectations in the Eastern Sierra, we chose to proceed as sub-recipient and manage the project.

Please contact me if you have any questions on 510-599-4062.

Sincerely,



Michael T. Ort, Ph.D.  
Chief Operating Officer  
California Broadband Cooperative, Inc.