

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0185-20__

SPONSOR: Rickie Nez

TITLE: An Action Relating To Resources And Development; Rescinding Resolution No. RDCD-105-18; And Approving The Grant Of Right-Of-Way And Leases To Arcadian Infracom, Located On Navajo Nation Trust Lands On The Navajo Nation (Utah, Arizona, And New Mexico)

Date posted: August 18, 2020 at 1:13 PM

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0185-20

DATE: August 17, 2020

TITLE OF RESOLUTION: PROPOSED STANDING COMMITTEE RESOLUTION; AN ACTION RELATING TO RESOURCES AND DEVELOPMENT; RESCINDING RESOLUTION NO. RDCD-105-18; AND APPROVING THE GRANT OF RIGHT-OF-WAY AND LEASES TO ARCADIAN INFRACOM, LOCATED ON NAVAJO NATION TRUST LANDS ON THE NAVAJO NATION (UTAH, ARIZONA, AND NEW MEXICO)

PURPOSE: The purpose of this legislation is to approve:

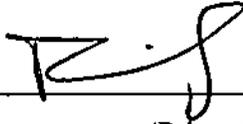
1. The grant of Development Rights to Arcadian Infracom Fiber Project;
2. The grant of Rights of Way and Hut location leases for all communications purposes, for an initial term of fifty (50) years with two (2) successive twenty (20) year renewal periods;
3. The combined cash and in-kind compensation mechanism as consideration paid to the Navajo Nation for use of the Rights-of-Way, Hut location leases and grant of the Development Rights;
4. Arcadian providing to third parties rights to use dark fiber and conduit related services including O&M and colocation as well as other communications services along the Routes installed on the Rights-of-Way.
5. The Resources and Development Committee would make such grant recognizing that permitting process approvals may be completed following commencement or following completion of construction of the Fiber Project.
6. The Resources and Development Committee would grant to Arcadian approval to assign, with the right to mortgage, all or any portion of the Rights-of-Way or Hut leases to the extent necessary for Arcadian to secure financing for the Fiber Project.
7. Arcadian would be required to commence, but not complete prior to either commencement or completion of construction, all required studies and requests for permissions.
8. The cash and in-kind compensation agreed in the form of free use of Arcadian dark fibers and wavelength services to be provided to the Navajo Nation in exchange for the grant of the Rights-of-Way as satisfactory to the Navajo Nation and is in the Navajo Nation's best interest.
9. The Waiver by the Navajo Nation of valuation by the Bureau of Indian Affairs pursuant to 25 C.F.R. § 169.110(b) is in the best interests of the Navajo Nation.
10. Acceptance of the agreed upon cash and in-kind compensation for the grant of the Rights-of-Way is in the Navajo Nation's best interest.

This written summary does not address recommended amendments as may be provided by the standing committees. The Office of Legislative Counsel requests each Council Delegate to review each proposed resolution in detail.

5-DAY BILL HOLD PERIOD: Johnson
Website Posting Time/Date: _____
Posting End Date: 08-23-20
Eligible for Action: 08-24-20

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 24th NAVAJO NATION COUNCIL -- Second Year, 2020

3 INTRODUCED BY

4 
5 _____
6 (Prime Sponsor)

7
8 TRACKING NO. 0185-20

9
10 AN ACTION

11 RELATING TO RESOURCES AND DEVELOPMENT; RESCINDING RESOLUTION
12 NO. RDCD-105-18; AND APPROVING THE GRANT OF RIGHT-OF-WAY AND
13 LEASES TO ARCADIAN INFRACOM, LOCATED ON NAVAJO NATION TRUST
14 LANDS ON THE NAVAJO NATION (UTAH, ARIZONA, AND NEW MEXICO)

15
16 BE IT ENACTED:

17
18 SECTION ONE. AUTHORITY

19 The Resources and Development Committee of the Navajo Nation Council has the
20 authority to grant final approval for all land withdrawals, non-mineral leases, permits,
21 licenses, rights-of-way, surface easements and bonding requirements on Navajo
22 Nation lands and unrestricted (fee) land. This authority shall include subleases,
23 modifications, assignments, leasehold encumbrances, transfers, renewals, and
24 terminations. 2 N.N.C. §501 (B) (2).

25
26 SECTION TWO. FINDINGS

27 A. Arcadian Infracom ("Arcadian") is a privately funded company developing a large
28 scale long-haul fiber optic communications route through the Navajo Nation
29 connecting Phoenix to Salt Lake City, Phoenix to Denver and Los Angeles to Dallas
30 ("Fiber Project").

- 1 B. The Navajo Nation is in the midst of an unprecedented health, safety and economic
2 emergency due to the COVID-19 pandemic.
- 3 C. The Fiber Project will provide bandwidth sufficient to support data-intensive
4 applications such as high-quality video transmission access to benefit K-12 public
5 education, higher education and life-long learning opportunities, telemedicine and
6 remote working arrangements, which can help mitigate the health, safety and
7 economic effects of the COVID-19 pandemic.
- 8 D. This Fiber Project will stretch the global internet backbone through the Navajo Nation
9 to 1) create new jobs and job skills for Navajo members, 2) provide cash and services
10 to the Navajo Nation by sharing Fiber Project revenues and services as compensation
11 for use of Navajo Rights-of-Way, 3) generate new tax revenues through the
12 construction and operation of infrastructure built on the Navajo Nation, and 4) assist
13 Navajo Nation in providing high speed internet to remote Navajo and surrounding
14 communities.
- 15 E. The original Arcadian network design in 2018 was based on the use of NTUA poles
16 for the aerial installation of the Arcadian fiber network. Based on Arcadian customer
17 requirements for an underground fiber optic network to ensure the security and
18 resiliency of their fiber network, the Arcadian network design has changed to an
19 underground installation method which will no longer require the utilization of
20 NTUA poles. As a result, RDCD-105-18 will be rescinded and this new legislation
21 will be enacted to reflect the revised partnership structure between the Navajo nation
22 and Arcadian. RDCD-105-18 is attached as **Exhibit C**.
- 23 F. Arcadian will install its fiber optic cable along the routes of the Fiber Project
24 ("Routes") underground for approximately 343 miles within the Navajo Nation
25 largely along public roadways within the Navajo Nation as described on **Exhibit A**
26 ("Rights-of-Way"). Arcadian will also install its electronic equipment buildings
27 ("Huts") along the Route, placing the buildings approximately 50 miles apart on
28 Navajo Nation lands.
- 29 G. Arcadian may grant long term rights to use dark fiber, conduits and sell other
30 communications services on the Routes to its customers.

1 H. As consideration for the grant of the Rights-of-Way for this Fiber Project:

2 (1) Arcadian will pay to the Navajo Nation an amount equal to a 3% share of
3 all collected gross fiber IRU, fiber lease, operations and maintenance ("O&M"),
4 colocation and wavelength service revenue generated from the portions of the Fiber
5 Project installed on the Navajo Nation on a pro-rata basis based on the miles of the
6 Fiber Project located on Navajo Nation that are used to provide those services.

7 (2) Arcadian will provide to the Navajo Nation use of twelve (12) dark fiber
8 strands and associated O&M and colocation services on the portion of the Routes
9 located on Navajo Nation lands.

10 (3) Arcadian will provide to the Navajo Nation 400 gigabits of separate lit
11 capacity on the Routes from one point within Navajo Nation to Salt Lake City,
12 Phoenix and Denver when those Routes are complete.

13 (4) Arcadian will provide to NTUA 400 gigabits of separate lit capacity on
14 the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and
15 Denver when those Routes are complete.

16 I. For a period of five (5) years from the effective dates of this Resolution, Arcadian
17 will have exclusive rights to develop Navajo Nation lands to install new fiber optic
18 cables from points within the Navajo Nation that are connected to any facilities
19 outside of the Navajo Nation ("Development Rights").

20 J. The Rights-of-Way will be granted for an initial term of fifty (50) years with two (2)
21 successive twenty (20) year renewal periods, in Arcadian's name, with the right to
22 assign, pledge or mortgage, all or any portion of the right of way or hut leases to the
23 extent necessary for Arcadian to secure financing for the Fiber Project, without any
24 further approval by the Resources and Development Committee.

25 K. The proposed Rights-of-Way (including Arcadian Hut locations) are set forth in
26 **Exhibit A.**

27 L. In light of the immediate and emergency need for completion of the Fiber Project to
28 mitigate the health, safety and economic effects of the COVID-19 pandemic,
29 Arcadian may immediately commence construction of the Fiber Project and during
30 such construction Arcadian will commence all required environmental studies and

1 archaeological clearances, including the Environmental Assessment Report, Finding
2 of No Significant Impact, Biological Resources Compliance, Cultural Resources
3 Compliance Letter, Cultural Resources Compliance Form and Cultural Resources
4 Inventory Report. During construction of the Fiber Project, Arcadian will also
5 commence the required processes for surface disturbing activities, including but not
6 limited to the Navajo Nation Historic Preservation Department Cultural Resources
7 Forms, Navajo Nation Fish and Wildlife Department Biological Compliance Forms
8 and Environmental Assessment. Arcadian may commence construction prior to the
9 completion of such approvals and prior to delivery of the consent application for the
10 Rights-of-Way to the Bureau of Indian Affairs ("BIA") for the grant thereof. Due to
11 the unprecedented emergency facing the Navajo people due to the COVID-19
12 pandemic, any such approvals may occur after the completion of the Fiber Project. In
13 the event of a discovery ("discovery" means any previously unidentified or
14 incorrectly identified cultural resources including but not limited to archaeological
15 deposits, human remains, or locations reportedly associated with Native American
16 religious/traditional beliefs or practices) all operations in the immediate vicinity of
17 the discovery must cease and the Navajo Nation Heritage and Historic Preservation
18 must be notified at (928) 871-7148.

19 M. The Resources and Development Committee finds that given the public health
20 challenge resulting from COVID-19, and because the Rights-of-Way to be granted
21 are limited to previously developed corridors, it is in the best interests of the Navajo
22 Nation to expedite the project review process pursuant to the Navajo Nation
23 Environmental Policy Act and the Navajo Nation Cultural Resources Protection Act.
24 The Resources and Development Committee hereby directs the Navajo Nation
25 Division of Natural Resources, the Navajo Land Department, the Navajo Nation
26 Environmental Protection Administration, Navajo Nation Heritage and Historic
27 Preservation Department, Navajo Fish and Wildlife Department, and any other
28 agency or department of Navajo Nation government, as well as NTUA as a Navajo
29 Nation owned and operated enterprise, to prioritize the Fiber Project and cooperate
30 with the Navajo Nation Department of Justice and the Office of the President and

1 Vice-President to accelerate its immediate construction. Chapters along the Rights-
2 of-Way shall be immediately notified by the Navajo Land Department of the Fiber
3 Project and, should any additional land need to be leased by Arcadian outside of the
4 developed corridors in order to facilitate construction of facilities related to the Fiber
5 Project, the review and approval of such leases shall likewise be expedited.

- 6 N. The Rights-of-Way to be granted, and any leases appurtenant to those Rights-of-Way,
7 are subject to the Nation's standard terms and conditions for Rights-of-Way attached
8 and incorporated herein as **Exhibit B**.

9
10 **SECTION THREE. RESCINDING RDCD-105-18**

- 11 A. The Resources and Development Committee hereby rescinds RDCD-105-18 AN
12 ACTION RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE;
13 APPROVING THE GRANT OF RIGHT-OF-WAY TO NAVAJO TRIBAL
14 UTILITY AUTHORITY, LOCATED ON NAVAJO NATION TRUST LANDS ON
15 THE NAVAJO NATION (UTAH, ARIZONA AND NEW MEXICO) attached as
16 **Exhibit C**.

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18 **SECTION FOUR. APPROVAL**

- 19 A. The Resources and Development Committee of the Navajo Nation Council hereby
20 approves, as more specifically described in the above findings:
- 21 1. The grant of the Development Rights as described above;
 - 22 2. And grant of the Rights of Way and Hut location leases for all
23 communications purposes, for an initial term of fifty (50) years with two (2)
24 successive twenty (20) year renewal periods;
 - 25 3. The combined cash and in-kind compensation mechanism described in
26 Section 2.G above as consideration paid to the Navajo Nation for use of the
27 Rights-of-Way, Hut location leases and grant of the Development Rights;
28 and
 - 29 4. Arcadian providing to third parties rights to use dark fiber and conduit
30 related services including O&M and colocation as well as other

1 communications services along the Routes installed on the Rights-of-Way.

2 B. The Resources and Development Committee of the Navajo Nation Council
3 recognizes the unprecedented health, safety and economic emergency facing the
4 Navajo people due to the COVID-19 pandemic and makes such grant recognizing that
5 permitting process approvals described above may be completed following
6 commencement or following completion of construction of the Fiber Project.

7 C. The Resources and Development Committee of the Navajo Nation Council further
8 grants to Arcadian approval to assign, with the right to mortgage, all or any portion of
9 the Rights-of-Way or Hut leases to the extent necessary for Arcadian to secure
10 financing for the Fiber Project.

11 D. The Resources and Development Committee of the Navajo Nation Council finds that
12 pursuant to 25 C.F.R. Section 169.110(a) and 169.118(b):

13 1. The cash and in-kind compensation agreed in the form of free use of Arcadian
14 dark fibers and wavelength services described in Section 2(H) above that will
15 be provided to the Navajo Nation in exchange for the grant of the Rights-of-
16 Way is satisfactory to the Navajo Nation and is in the Navajo Nation's best
17 interest,

18 2. Waiver by the Navajo Nation of valuation by the Bureau of Indian Affairs
19 pursuant to 25 C.F.R. § 169.110(b) is in the best interests of the Navajo
20 Nation,

21 3. Accepting the agreed upon cash and in-kind compensation described in
22 Section 2(H) above for the grant of the Rights-of-Way is in the Navajo
23 Nation's best interest.

24 E. Arcadian is required to commence, but not complete prior to either commencement or
25 completion of construction, all required studies and requests for permissions,
26 including but not limited to the Navajo Nation Historic Preservation Department
27 Cultural Resources Forms, Navajo Nation Fish and Wildlife Department Biological
28 Compliance Forms and Environmental Assessment prior to the delivery of the
29 consent application for the Rights-of-Way to BIA.
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F. The Resources and Development Committee of the Navajo Nation Council hereby authorizes the President of the Navajo Nation to execute any and all documents necessary to affect the intent and purpose of this resolution.