

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0221-23_

SPONSOR: Carl R. Slater

TITLE: An Action Relating to the Resources and Development Committee; Amending Resolution RDCAU-32-20 “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)” to Rescind the Navajo Nation’s Consent to the “Development Rights” Provision

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0221-23

DATE: September 14, 2023

TITLE OF RESOLUTION: AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE; AMENDING RESOLUTION RDCAU-32-20 “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)” TO RESCIND THE NAVAJO NATION’S CONSENT TO THE “DEVELOPMENT RIGHTS” PROVISION

PURPOSE: The purpose of this proposed resolution is to amend RDCAU-32-20 to rescind the Navajo Nation’s consent for “Development Rights” granted to Arcadian Infracom.

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

5-DAY BILL HOLD PERIOD
Website Posting Time/Date _____
Posting End Date: 09-20-23
Eligible for Action: 09-21-23

1 PROPOSED STANDING COMMITTEE RESOLUTION
2 25th NAVAJO NATION COUNCIL—First Year, 2023

3 INTRODUCED BY

4
5 _____
6 Primary Sponsor



7
8 TRACKING NO. 0221-23

9
10 AN ACTION

11 RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE;
12 AMENDING RESOLUTION RDCAU-32-20 “RESCINDING RESOLUTION NO.
13 RDCD-105-18; AND APPROVING THE GRANT OF RIGHT-OF-WAY AND
14 LEASES TO ARCADIAN INFRACOM, LOCATED ON NAVAJO NATION
15 TRUST LANDS ON THE NAVAJO NATION (UTAH, ARIZONA AND NEW
16 MEXICO)” TO RESCIND THE NAVAJO NATION’S CONSENT TO THE
17 “DEVELOPMENT RIGHTS” PROVISION

18
19 **BE IT ENACTED:**

20 **SECTION ONE. AUTHORITY**

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

27
28 **SECTION TWO. FINDINGS**

29 A. The Resources and Development Committee of the Navajo Nation Council
30 approved Resolution RDCAU-32-20 on August 28, 2020. RDCAU-32-20 is

1 attached as **Exhibit 1** (exhibits omitted).

2 B. Pursuant to RDCAU-32-20, Arcadian Infracom (“Arcadian”) was given consent for
3 rights-of-way and associated leases to build a large-scale long-haul communications
4 route through the Navajo Nation, which would extend from Salt Lake City to
5 Phoenix, Denver to Phoenix, and Los Angeles to Dallas via an underground fiber
6 optic network. Of the project’s 2,800 miles of fiber optic communication lines,
7 approximately 343 miles cross Navajo Nation lands.

8 C. RDCAU-32-20 stated that Arcadian’s fiber project would provide bandwidth
9 sufficient to support data-intensive applications such as high-quality video
10 transmission access to benefit K-12 public education, higher education and life-long
11 learning opportunities, telemedicine and remote working arrangements, which could
12 help mitigate the health, safety and economic effects of the Covid-19 pandemic.
13 RDCAU-32-20, Section Two, Subsection C.

14 D. Arcadian was also granted certain exclusive rights to develop broadband on the
15 Navajo Nation. Specifically, “For a period of five (5) years from the effective dates
16 of this Resolution, Arcadian will have exclusive rights to develop Navajo Nation
17 lands to install new fiber optic cables from points within the Navajo Nation that are
18 connected to any facilities outside of the Navajo Nation (“Development Rights”).”
19 RDCAU-32-20, Section Two, Subsection I.

20 E. The effective date of RDCAU-32-20 is August 28, 2020, and the Development Rights
21 will therefore expire on August 28, 2025.

22 F. Numerous funding opportunities currently exist for the development of broadband
23 infrastructure, including federal funding like the E-rate program for schools and
24 libraries, the Broadband Equity, Access, and Development Program, and the Tribal
25 Broadband Connectivity Program, in addition to state and other funding sources.

26 G. The vague and broad language of the Development Rights has created confusion and
27 has created a chilling effect on the development of broadband projects on the Navajo
28 Nation. Given the language of the Development Rights, it is unclear what projects
29 proposed by third parties are free to move forward and which projects can only move
30 forward with the consent of Arcadian.

1 H. Because of the availability of numerous funding sources for broadband development
2 and the Navajo people's critical need for broadband connectivity, the Resources and
3 Development Committee of the Navajo Nation Council believes that rescinding the
4 consent for the Development Rights contained in RDCAU-32-20 is in the best interest
5 of the Navajo Nation.
6

7 **SECTION THREE. APPROVAL**

8 A. The Resources and Development Committee of the Navajo Nation hereby
9 amends RDCAU-32-20 as follows:
10

11 **SECTION TWO. FINDINGS**

12 ***

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

19 ***

20 **SECTION FOUR. APPROVALS**

21 A. The Resources and Development Committee of the Navajo
22 Nation Council hereby approves, as more specifically
23 described in the above findings:

24 1. ~~The grant of the Development Rights as described~~
25 ~~above;~~

26 ***

27 B. The Resources and Development Committee of the Navajo Nation Council hereby
28 authorizes the President of the Navajo Nation to execute any and all documents
29 necessary to affect the intent and purpose of this resolution.
30