

RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
of the 25th NAVAJO NATION COUNCIL—Second Year, 2024

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

BE IT ENACTED:

SECTION ONE. AUTHORITY

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

SECTION TWO. FINDINGS

- A. The Resources and Development Committee of the Navajo Nation Council approved Resolution RDCAU-32-20 on August 28, 2020. RDCAU-32-20 is attached as **Exhibit 1** (exhibits omitted).
- B. Pursuant to RDCAU-32-20, Arcadian Infracom ("Arcadian") was given consent for rights-of-way and associated leases to build a large-scale long-haul communications route through the Navajo Nation, which would extend from Salt Lake City to Phoenix, Denver to Phoenix, and Los Angeles to Dallas via an underground fiber optic network. Of the project's 2,800 miles of fiber optic communication lines, approximately 343 miles cross Navajo Nation lands.
- C. RDCAU-32-20 stated that Arcadian's fiber project would provide bandwidth sufficient to support data-intensive applications such as high-quality video transmission access to benefit K-12 public education, higher education and life-long learning opportunities, telemedicine and remote working arrangements, which could help mitigate the health, safety

and economic effects of the Covid-19 pandemic. RDCAU-32-20, Section Two, Subsection C.

- D. Arcadian was also granted certain exclusive rights to develop broadband on the Navajo Nation. Specifically, "For a period of five (5) years from the effective dates of this Resolution, Arcadian will have exclusive rights to develop Navajo Nation lands to install new fiber optic cables from points within the Navajo Nation that are connected to any facilities outside of the Navajo Nation ("Development Rights")." RDCAU-32-20, Section Two, Subsection I.
- E. The effective date of RDCAU-32-20 is August 28, 2020, and the Development Rights will therefore expire on August 28, 2025.
- F. Numerous funding opportunities currently exist for the development of broadband infrastructure, including federal funding like the E-rate program for schools and libraries, the Broadband Equity, Access, and Development Program, and the Tribal Broadband Connectivity Program, in addition to state and other funding sources.
- G. The vague and broad language of the Development Rights has created confusion and has created a chilling effect on the development of broadband projects on the Navajo Nation. Given the language of the Development Rights, it is unclear what projects proposed by third parties are free to move forward and which projects can only move forward with the consent of Arcadian.
- H. Because of the availability of numerous funding sources for broadband development and the Navajo people's critical need for broadband connectivity, the Resources and Development Committee of the Navajo Nation Council believes that rescinding the consent for the Development Rights contained in RDCAU-32-20 is in the best interest of the Navajo Nation.

SECTION THREE. APPROVAL

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

SECTION TWO. FINDINGS

- I. ~~For a period of five (5) years from the effective dates of this Resolution, Arcadian will have exclusive rights to develop Navajo Nation lands to install new fiber optic cables from points within the Navajo Nation that are~~

~~connected to any facilities outside of the Navajo Nation ("Development Rights").~~

SECTION FOUR. APPROVALS

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

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

B. 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.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 25th Navajo Nation Council at a duly called meeting at Mentmore, (Navajo Nation) New Mexico, at which quorum was present and that same was passed by a vote of 3 in favor, 2 opposed, on this 31st day of January 2024.



Brenda Jesus, Chairperson
Resources and Development Committee
Of the 25th Navajo Nation Council

Motion: Honorable Shawna Ann Claw

Second: Honorable Danny Simpson



RESOLUTION OF THE
RESOURCES AND DEVELOPMENT COMMITTEE
24th Navajo Nation Council --- Second Year, 2020

AN ACTION

RELATING TO RESOURCES AND DEVELOPMENT COMMITTEE; 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)

BE IT ENACTED:

SECTION ONE. AUTHORITY

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

SECTION TWO. FINDINGS

- A. Arcadian Infracom ("Arcadian") is a privately funded company developing a large scale long-haul fiber optic communications route through the Navajo Nation connecting Phoenix to Salt Lake City, Phoenix to Denver and Los Angeles to Dallas ("Fiber Project").
- B. The Navajo Nation is in the midst of an unprecedented health, safety and economic emergency due to the COVID-19 pandemic.
- C. The Fiber Project will provide bandwidth sufficient to support data-intensive applications such as high-quality video transmission access to benefit K-12 public education, higher education and life-long learning opportunities, telemedicine and remote working arrangements, which can help mitigate the health, safety and economic effects of the COVID-19 pandemic.
- D. This Fiber Project will stretch the global internet backbone through the Navajo Nation to 1) create new jobs and job skills for Navajo members, 2) provide cash and services to the Navajo Nation by sharing Fiber Project revenues and services as compensation for use of Navajo Rights-of-Way, 3) generate new

tax revenues through the construction and operation of infrastructure built on the Navajo Nation, and 4) assist Navajo Nation in providing high speed internet to remote Navajo and surrounding communities.

- E. The original Arcadian network design in 2018 was based on the use of NTUA poles for the aerial installation of the Arcadian fiber network. Based on Arcadian customer requirements for an underground fiber optic network to ensure the security and resiliency of their fiber network, the Arcadian network design has changed to an underground installation method which will no longer require the utilization of NTUA poles. As a result, RDCD-105-18 will be rescinded and this new legislation will be enacted to reflect the revised partnership structure between the Navajo Nation and Arcadian. RDCD-105-18 is attached as **Exhibit C**.
- F. Arcadian will install its fiber optic cable along the routes of the Fiber Project ("Routes") underground for approximately 343 miles within the Navajo Nation largely along public roadways within the Navajo Nation as described on **Exhibit A** ("Rights-of-Ways"). Arcadian will also install its electronic equipment buildings ("Huts") along the Route, placing the buildings approximately 50 miles apart on the Navajo Nation lands.
- G. Arcadian may grant long term rights to use dark fiber, conduits and sell other communications services on the Routes to its customers.
- H. As consideration for the grant of the Rights-of-way for this Fiber Project:
 - (1) Arcadian will pay to the Navajo Nation an amount equal to a 3% share of all collected gross fiber IRU, fiber lease, operations and maintenance ("O&M"), colocation and wavelength service revenue generated from the portions of the Fiber Project installed on the Navajo Nation on a pro-rata basis based on the miles of the Fiber Project located on Navajo Nation that are used to provide those services.
 - (2) Arcadian will provide to the Navajo Nation use of twelve (12) dark fiber strands and associated O&M and colocation services on the portion of the Routes located on Navajo Nation lands.

- (3) Arcadian will provide to the Navajo Nation 400 gigabits of separate lit capacity on the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and Denver when those Routes are complete.
- (4) Arcadian will provide to NTUA 400 gigabits of separate lit capacity on the Routes from one point within Navajo Nation to Salt Lake City, Phoenix and Denver when those Routes are complete.
- I. For a period of five (5) years from the effective dates of this Resolution, Arcadian will have exclusive rights to develop Navajo Nation lands to install new fiber optic cables from points within the Navajo Nation that are connected to any facilities outside of the Navajo Nation ("Development Rights").
- J. The Rights-of-Way will be granted for an initial term of fifty (50) years with two (2) successive twenty (20) year renewal periods, in Arcadian's name, with the right to assign, pledge or mortgage, all or any portion of the right of way or hut leases to the extent necessary for Arcadian to secure financing for the Fiber Project, without any further approval by the Resources and Development Committee.
- K. The proposed Rights-of-Way (including Arcadian Hut locations) are set forth in **Exhibit A**.
- L. In light of the immediate and emergency need for completion of the Fiber Project to mitigate the health, safety and economic effects of the COVID-19 pandemic, Arcadian may immediately commence construction of the Fiber Project and during such construction Arcadian will commence all required environmental studies and archaeological clearances, including the Environmental Assessment Report, Finding of No Significant Impact, Biological Resources Compliance, Cultural Resources Compliance Letter, Cultural Resources Compliance Form and Cultural Resources Inventory Report. During construction of the Fiber Project, Arcadian will also commence the required processes for surface disturbing activities, including but not limited to the Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment. Arcadian may commence construction prior to the completion of such approvals and prior to delivery of the consent application for the Rights-of-Way to the Bureau of Indian Affairs ("BIA") for the grant thereof. Due to the unprecedented emergency facing the Navajo people due to the COVID-19 pandemic, any such approvals may occur

after the completion of the Fiber Project. In the event of a discovery ("discovery" means any previously unidentified or incorrectly identified cultural resources including but not limited to archaeological deposits, human remains, or locations reportedly associated with Native American religious/traditional beliefs or practices) all operations in the immediate vicinity of the discovery must cease and the Navajo Nation Heritage and Historic Preservation must be notified at (928)871-7148.

- M. The Resources and Development Committee finds that given the public health challenge resulting from COVID-19, and because the Rights-of-Way to be granted are limited to previously developed corridors, it is in the best interests of the Navajo Nation to expedite the project review process pursuant to the Navajo Nation Environmental Policy Act and the Navajo Nation Cultural Resources Protection Act. The Resources and Development Committee hereby directs the Navajo Nation Division of Natural Resources, the Navajo Land Department, the Navajo Nation Environmental Protection Administration, Navajo Nation Heritage and Historic Preservation Department, Navajo Fish and Wildlife Department, and any other agency or department of Navajo Nation government, as well as NTUA as a Navajo Nation owned and operated enterprise, to prioritize the Fiber Project and cooperate with the Navajo Nation Department of Justice and the Office of the President and Vice-President to accelerate its immediate construction. Chapters along the Rights-of-Way shall be immediately notified by the Navajo Land Department of the Fiber Project and, should any additional land need to be leased by Arcadian outside of the developed corridors in order to facilitate construction of facilities related to the Fiber Project, the review and approval of such leases shall likewise be expedited.
- N. The Rights-of-Way to be granted, and any leases appurtenant to those Rights-of-Way, are subject to the Nation's standard terms and conditions for Rights-of-Way attached and incorporated herein as **Exhibit B**.

SECTION THREE. RESCINDING RDCE-105-18

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

SECTION FOUR. APPROVAL

- A. The Resources and Development Committee of the Navajo Nation Council hereby approves, as more specifically described in the above findings:
1. The grant of the Development Rights as described above;
 2. And grant of the 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 described in Section 2.G above as consideration paid to the Navajo Nation for use of the Rights-of-Way, Hut location leases and grant of the Development Rights; and
 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.
- B. The Resources and Development Committee of the Navajo Nation Council recognizes the unprecedented health, safety and economic emergency facing the Navajo people due to the COVID-19 pandemic and makes such grant recognizing that permitting process approvals described above may be completed following commencement or following completion of construction of the Fiber Project.
- C. The Resources and Development Committee of the Navajo Nation Council further grants 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.
- D. The Resources and Development Committee of the Navajo Nation Council finds that pursuant to 25 C.F.R. Section 169.110(a) and 169.118(b):
1. The cash and in-kind compensation agreed in the form of free use of Arcadian dark fibers and wavelength services described in Section 2(H) above that will be provided to the Navajo Nation in exchange for the grant of the

Rights-of-Way is satisfactory to the Navajo Nation and is in the Navajo Nation's best interest.

2. 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.
 3. Accepting the agreed upon cash and in-kind compensation described in Section 2(H) above for the grant of the Rights-of-Way is in the Navajo Nation's best interest.
- E. Arcadian is required to commence, but not complete prior to either commencement or completion of construction, all required studies and requests for permissions, including but not limited to the Navajo Nation Historic Preservation Department Cultural Resources Forms, Navajo Nation Fish and Wildlife Department Biological Compliance Forms and Environmental Assessment prior to the delivery of the consent application for the Rights-of-Way to BIA.
- 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 effect the intent and purpose of this resolution.

CERTIFICATION

I, hereby, certify that the following resolution was duly considered by the Resources and Development Committee of the 24th Navajo Nation Council at a duly called meeting held by a teleconference for which a quorum was present and that same was passed by a vote of 5 in favor, and 0 opposed, on this 28th day of August 2020.



Thomas Walker, Jr., Vice Chairperson
Resources and Development Committee
of the 24th Navajo Nation Council

Motion: Honorable Kee Allen Begay, Jr.
Second: Honorable Mark A. Freeland

Vice Chairperson Thomas Walker, Jr. not voting.

**RESOURCES AND DEVELOPMENT COMMITTEE
25th NAVAJO NATION COUNCIL**

SECOND YEAR 2024


**ROLL CALL
VOTE TALLY SHEET**

LEGISLATION #0221-23: 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. *Sponsor: Honorable Carl R. Slater Co-Sponsors: Honorable Crystalyne Curley, Shaandiin Parrish, and Brenda Jesus*

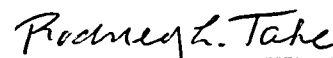
Date: January 31, 2024 – Regular Meeting (Mentmore, New Mexico)
Location: Navajo Division of Transportation – #16 Old Coalmine Road – Mentmore, New Mexico 87319

Main Motion:

M: Shawna Ann Claw **S:** Danny Simpson **V:** 3-2-1 (CNV)
In Favor: Shawna Ann Claw; Casey Allen Johnson; Danny Simpson
Opposition: Rickie Nez; Otto Tso
Not Voting: Brenda Jesus, *Chairperson*



Honorable Brenda Jesus, *Chairperson*
Resources and Development Committee



Rodney L. Tahe, *Legislative Advisor*
Office of Legislative Services