



September 17, 2020

Via email

Robert Osborn  
Director, Communications Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

RE: Termination of Digital 299 Broadband Project, granted in Resolution T-17548  
and a Further Request for Additional Funds filed November 12, 2019

Dear Mr. Osborn:

On March 23, 2017, the California Public Utilities Commission (CPUC) awarded Inyo Networks, Inc. (Inyo) a grant for the Digital 299 Middle Mile and Last Mile Broadband Project (Digital 299) through Resolution No. T-17548. Inyo sought this grant at the request of the Redwood Coast Connect Broadband Consortium which had designated the route as their region's highest priority in an attempt to reach 98% of households in the consortium's region, a goal AB1665 gave to the CPUC to achieve. As set forth in great detail in our pending November 12, 2019 Request for Additional Funds filed with the Communications Division Director, due to unexpected circumstances beyond the grantee's control including route changes requested by a state agency and increases in costs and labor, Inyo notified the Commission that the Digital 299 project had increased substantially in cost. Inyo requested the "rightsizing" of the CASF funds for the project, citing past Commission precedent supporting funding of exogenous costs. In the Request for Additional Funds, Inyo requested an additional amount of \$40,343,067 (69.6%) from CASF and committed itself to provide a match of \$38,022,758, an increase of \$15,098,226 from the original budget.

Today with a heavy heart, Inyo is notifying the Commission of its immediate intent to terminate the Digital 299 project due to lack of funds for the project as described in Inyo's November 12, 2019 Request for Additional Funds. One factor is that the Commission has taken no action on the pending Request for Additional Funds and Inyo can no longer sustain the project without any CASF funds granted to date. Second, Inyo's new match of over \$38 million for the current project has proven to be too heavy of a lift.

Inyo applied for a USDA ReConnect grant/loan of \$38,022,758 but there has not been any feedback from USDA to date and, frankly, the USDA application had proposed service areas for

the project that were very chopped up due to USDA program rules that allow only unserved areas. Inyo does not feel confident that this USDA ReConnect loan will be granted.

Inyo had secured its match for the initial grant. However, given the additional request, Inyo had to search for significant new funding for its new higher match. Inyo initially had lined up a significant IRU lease for dark fiber to help fund this significant match but the firm deadline the project needed to meet has now passed. The lack of Commission approval on the Request Additional Fund by May 2020 has caused the company to decline to proceed further with the proposed IRU contract. Given Inyo has spent nearly \$3.4 million of its own funds to date, Inyo cannot afford to continue the project, with no certainty of funding for the additional amount or its own additional match requirement.

**No CASF funds have been withdrawn for the Digital 299 project to date.** Due to its good faith effort to bring this project to completion and due to circumstances beyond Inyo's control that resulted in exogenous costs as described in detail in its November 12, 2019 Request for Additional Funds and herein, Inyo respectfully requests \$2,357,196 in CASF funding which it has expended to date, representing 69.4% of the \$3,386,776 in costs to date. Inyo will absorb the other 30.4% (\$1,029,580) of the costs.<sup>1</sup> Inyo recognizes that the current CASF rules do not anticipate this situation<sup>2</sup> and does not provide a clear procedural path for recoupment of good faith expenditures on a CASF project. Inyo respectfully requests that the Commission to allow this one-time reimbursement under these very unique circumstances. This situation will bring substantial funds back into the CASF account, and this will allow other worthy CASF projects to go forward, including other projects that Inyo is pursuing.

### **CASF Approved Budget**

In the original pre-AB 1665 grant in T-17548, funding in the amount of \$46,709,036 from the California Advanced Services Fund (CASF) Infrastructure Fund was approved. The CASF grant constitutes 69.6 percent of the initial total project cost of \$69,633,568.<sup>3</sup> Applicant Inyo Networks was to provide 30.4 percent or \$22,924,532 of the total project cost. The middle-mile project portion (which constitutes the vast majority of the project) was funded at the 70% level, and the small Lewiston last mile portion of the project is funded at the 60% level. Funds for the project were to be made available upon the completion of CEQA, as typical for CASF-funded projects.

In detail in Inyo's November 12<sup>th</sup> request which we incorporate by reference, Inyo related a number of changed conditions which were outside its control, including a request by Caltrans to not place part of the D299 path on State Route 299 which caused an move of part of the

---

<sup>1</sup> The D299 grant had a match ration of 69.6% CASF grant – 30.4% Applicant; this maintains that match.

<sup>2</sup> Section 16 of the CASF rules do not have provisions for potential reimbursement where an applicant has expended its own funds in good faith but received no CASF funds and is terminating the project for circumstances beyond its control.

<sup>3</sup> Resolution T-17548, at p. 3. Portions of the project were disallowed in some areas of Cottonwood to Redding, and Weaverville, due to challenges, resulting in an eligible budget of \$67,073,674.

backbone onto unimproved USFS and logging roads through portions of the Shasta-Trinity and the Six Rivers National Forests. This new path added 14.2 additional miles of backbone on unimproved roads (as opposed to a highway). This change caused increases in materials, labor and construction costs. Inyo issued two sets of Solicitations (Request for Proposals) to obtain realistic and up-to-date bids.

### **Inyo's Request for Out-of-Pocket Expenses to Date**

As an indication of Inyo's commitment to date, Inyo invested \$3,386,776 in project development (pre-award and post-award). See Attachment A for the details as of August 21, 2020.<sup>4</sup> Consistent with CASF rules, Inyo has not received any CASF funds to date, and has funded every penny itself. The work on the project has been significant. Inyo accomplished these milestones to date.

Permits: Inyo substantially completed the environmental permitting process including project scoping, field surveys tribal consultation and agency consultation for CEQA and NEPA. Inyo had been preparing final reports, with targeted permit completion permits by close of January. To understand the complexity of this project, the environmental permitting process involved approximately 50 agencies.

Engineering: Inyo completed and mapped the end-to-end route design, including running line, anchor connections, and laterals. Land ownership and parcel information were inventoried. Inyo completed network design and pole line documentation of the Lewiston last mile network. Inyo completed working drawings with environmental mitigation measures incorporated.

Procurement: Inyo added a project procurement officer to our project management office for contract administration. Inyo issued Requests for Proposals for environmental consulting, electronics, nodes, cable, conduit, vaults, and underground construction (twice). These were used in budget validation.

Community Outreach: Inyo participated in various statewide broadband conferences to increase visibility of Digital 299, taking part in policy discussions and agency collaboration. Inyo also engaged in extensive local community outreach to schools, hospitals, tribal governments, and local agencies. Formal presentations at numerous conferences, economic development forums, and county/civic interest group events (California Broadband Council (CBC), California State Association of Counties (CSAC), Rural County Representatives of California (RCRC), etc. Digital 299 has a very high profile both statewide. At a federal level, Inyo met with senior staff in the US Department of Agriculture, Federal Communications Commission, and the Department of Commerce and various elected officials, thus establishing a high profile at the national level, as well.

---

<sup>4</sup> Attachment A is a Construction in Progress Account through July 22, 2020. Categories include Payroll Allocations, Subcontractors and Equipment, Permits and Applications, Legal Fees, Grant Development, Travel Costs, and Project Management/Market Analysis/Other.

Economic Development: Inyo worked with California Center for Rural Policy, RRDEC, Rural County Representatives of California (RCRC) and others. Inyo teamed up with the Humboldt Bay Harbor District (Harbor District) to transform legacy assets through broadband availability. In addition to raising broadband awareness in the area, these efforts will help the region, and the state, to remain competitive in the global information economy.

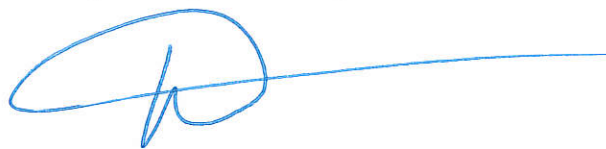
Pre-Sales and Matching Funds: Inyo reached out on a nationwide basis to a broad set of public and private sources to close funding gap. In addition to some level of success in capital markets, we have brought international players to the table to acquire dark fiber on the route. We continue meeting with state and federal agencies on relevant safety, economic development and disaster recovery programs. In April, encouraged to do so by a number of local, state and federal stakeholders, Inyo applied for federal funds under the USDA ReConnect Broadband Program, which included \$25,000,000 in grants funds and \$38,022,758 in loans. This application required the project to be sub-divided into over 39 discrete, discontinuous projects to meet the application structure of the USDA's program.

### **Timing Considerations**

In its November 12<sup>th</sup> request, Inyo stated that project construction will take thirty (30) months once shovels are in the ground, leading to several years before network completion. Inyo requested that the Commission decide on this request for additional CASF funds by May 2020. It is now August 2020, and there is no indication that an approval will be forthcoming for the full amount of the additional request. Given the delay, Inyo has lost a key contract for an IRU for dark fiber that would have helped fund its additional match. At this point, Inyo feels it has no choice but to withdraw from the project and seek out of pocket costs that it expended in good faith in reliance on the initial grant.

Inyo makes clear that it is disappointed, because it strongly believes in the many benefits the Digital 299 project will bring to the State's commitment to close the Digital Divide and ensure that a secure, reliable communications infrastructure is deployed to one the most vulnerable parts of the state. With the wildfire threat increasing, this project would also have played a key role in advanced communications to assist in prevention, communications during a disaster, and recovery scenarios. The benefits of a successful Digital 299 is not inconsequential. We look forward to discussing this request with Communications Division leaders.

Respectfully submitted,



Nicholas Keeler  
President, Inyo Networks, Inc.

cc: Michael Minkus  
Louise Fischer  
President Marybel Batjer  
Commissioner Martha Guzman Aceves  
Commissioner Clifford Rechtschaffen  
Commissioner Liane Randolph  
Commissioner Genevieve Shiroma

Attachment A