

Digital 395 Middle Mile Right-of-Way Project

Decision Record

DOI-BLM-NV-C020-2011-0509-EA

May 2012



Background

The California Broadband Cooperative Inc. has proposed the Digital 395 Middle Mile Project (Project). The network would be located between Barstow, California and Reno, Nevada providing broadband services to the Eastern Sierra. The route primarily follows U.S. Highway 395. The service area includes 36 communities, seven Indian Reservations and two military installations. The new infrastructure would provide broadband access to: unserved and underserved communities; schools, libraries, community colleges; public safety agencies and healthcare providers. The Project is a part of the American Recovery and Reinvestment Act and would create jobs and stimulate the economy.

The Project would include the following features:

- construct a new approximately 479 mile backbone fiber route;
- construct approximately 62 miles of new distribution lines;
- place approximately 52 miles of fiber in existing utility conduits; and
- construct 16 nodes or prefabricated buildings to support wireless systems.

California Broadband Cooperative Inc. has applied to the Sierra Front Field Office (SFFO) for a right-of-way (ROW) under Title V, Section 501(a)(5) of the Federal Land Policy and Management Act of 1976 (BLM ROW application NVN089392). The ROW application is for installation, operation, maintenance and termination of buried fiber-optic broadband line on public lands for a length of 2.36 miles (12,457.18 feet) within Douglas County, Nevada. A 20 foot wide ROW has been requested during construction with a long term 10 foot wide ROW. California Broadband Cooperative Inc. also proposes to install fiber-optic broadband line within existing conduit across approximately 3.4 miles of public land in Carson City and Washoe County, Nevada. Use of existing conduit is proposed under existing BLM ROWs NVN066394 and NVN076169. No BLM approval is required for use of existing conduit which can be allowed by the ROW holders through subleasing provisions of the existing ROWs.

Land Use Plan Conformance

This project is in conformance with the Carson City Field Office Consolidated Resource Management Plan (2001). Sections that specifically apply to the Proposed Action include:

- LND-7, Administrative Actions #6: “Exchanges and minor non-Bureau initiated realty proposals considered where the analysis indicates they are beneficial to the public.”
- ROW-4, Administrative Actions #3: “...applicants for right-of-way grants...are subject to standard approval procedures outlined in the right-of-way regulations (43 CFR 2800)...”

Public Involvement

To meet the BLM’s obligation under NEPA for public involvement, on August 28, 2011 the BLM released the draft EA and FONSI for 30-days public review and comment. The draft EA and supporting documents were made available through ePlanning, a searchable database of NEPA documents for the BLM. A statewide news release was published and notification was provided to the Nevada State Clearinghouse to State and local agencies. The public comment

period ended on September 27, 2011. The SFFO received no comments from the public or other agencies.

Authority

The authority for the BLM to grant the ROW for SFFO-managed lands involved in this project is found within the Section 501 of the Federal Land Management Policy Act of 1976 and BLM ROW regulations at 43 CFR 2800. Authorization for BLM-managed lands within California will occur separately by a Decision issued by the BLM - California State Office.

Rationale

The Proposed Action addresses the BLM's purpose and need, which is to respond to an application for ROW (SF-299). Granting use of BLM-managed lands would facilitate NTIA's purpose and need which is to grant funding to the California Broadband Cooperative for the purposes of constructing a fiber optic cable network between Reno, Nevada and Barstow, California.

DECISION

Based on the analysis in the *Digital 395 Middle Mile Right-of-Way Project Environmental Assessment*, DOI-BLM-NV-C020-2011-0509-EA, it is my Decision to implement the Proposed Action on SFFO-managed lands and to issue a 30-year FLPMA ROW to California Broadband Cooperative Inc. for installation, operation, maintenance and termination of buried fiber-optic broadband line on the following public lands in Douglas County, Nevada:

Mount Diablo Meridian

T. 11 N., R 21 E.,

sec. 4, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 12 N., R 20 E.,

sec. 25, SW $\frac{1}{4}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;

sec. 36, NE $\frac{1}{4}$ NE $\frac{1}{4}$.

T. 12 N., R 21 E.,

sec. 31, lots 1 and 2, SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The ROW dimensions would be 12,457.18 feet by 10 feet. An additional 10 feet in width would be authorized for use during construction activities. Applicant Proposed Measures and Mitigation Measures from DOI-BLM-NV-C020-2011-0509-EA, a requirement to adhere to the approved Plan of Development for the project and a requirement for issuance of a Notice to Proceed prior to surface disturbing activities on public land, will be incorporated in the ROW as stipulations along with standard ROW terms and conditions.



Leon Thomas
Field Manager
Sierra Front Field Office

5-23-12

Date

APPEAL PROCEDURES

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with 43 CFR Part 4. If you appeal, your appeal must also be filed with the Bureau of Land Management at the following address:

Leon Thomas, Field Manager
BLM, Sierra Front Field Office
5665 Morgan Mill Road
Carson City, NV 89701

Your appeal must be filed within thirty (30) days from receipt or issuance of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4942, January 19, 1993) for a stay (suspension) of the decision during the time that your appeal is being reviewed by the Board, the petition for stay must accompany your notice of appeal. Copies of the notice of appeal and petition for a stay must also be submitted to:

Board of Land Appeals
Dockets Attorney
801 N. Quincy Street, Suite 300
Arlington, VA 22203

A copy must also be sent to the appropriate Office of the Solicitor at the same time the original documents are filed with the above office.

U.S. Department of the Interior
Office of the Regional Solicitor
Pacific Southwest Region
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

If you request a stay, you have the burden of proof to demonstrate that a stay should be granted. A petition for a stay is required to show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellants success on the merits.
3. The likelihood of immediate and irreparable harm if the stay is not granted.
4. Whether the public interest favors granting the stay.

The Office of Hearings and Appeals regulations do not provide for electronic filing of appeals. Electronically filed appeals will therefore not be accepted.