

Zayo Group, LLC's Prineville to Reno Fiber Optic Line Project's Response to the CPUC's Data Request No. 3 Relating to Identification and Evaluation of Alternatives

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On June 16, 2021, the Zayo Group, LLC ("Zayo") received from the California Public Utilities Commission ("Commission" or "CPUC") a series of comments and questions, together with a data request in a document entitled *Zayo Group, LLC's Prineville to Reno Fiber Optic Line Project Analysis of and Potential Revisions to Zayo's Alternative Analysis in the PEA and the Data Request NO. 3* ("Data Request No. 3"). Following receipt of Data Request No. 3, the Zayo team, the CPUC and ECorp had a follow up call regarding the level of information required for the CPUC to evaluate alternatives in the Project's Environmental Impact Report ("EIR"). This document was prepared to provide this information and to specifically respond to Data Request No. 3. In particular, this document provides more detail regarding the goals and benefits of the proposed Project to facilitate the Commission's selection and analysis of alternatives.

CEQA requires an analysis of feasible alternatives. The term feasible is defined in Public Resources Code Section 21061.1 as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." The Guidelines add the term "legal" to the list of factors to take into account. 14 Cal. Code Regs Sec. 15364. "The issue of feasibility arises in two different junctures: (1) in the assessment of alternatives in the EIR and (2) during the agency's later consideration of whether to approve the project. But differing factors come into play at each stage. For the first phase -- inclusion in the EIR -- the standard is whether the alternative is *potentially* feasible. By contrast, at the second phase -- the final decision on project approval -- the decision-making body evaluates whether the alternatives are *actually* feasible. At that juncture the decision-makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible." *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 981 (internal citations omitted).

In the first stage, the identification of alternatives to evaluate in the EIR, an alternative can be eliminated if it:

- does not substantially reduce significant environmental impacts. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 C3d 553, 566 (alternatives studied in an EIR should be ones that substantially reduce environmental impacts as compared to the proposed project); *see also City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 CA4th 362, 419 (not necessary to study an alternative that did not reduce any identified significant impact) ;
- does not attain most of the basic project objectives. *See, e.g. In re Bay-Delta Programmatic Env't'l Impact Report Coordinated Proceedings* (2008) 43, C4th 143, 1165 (no need to study an alternative that "cannot achieve the project's underlying fundamental purpose"); *Saltonstall v. City of Sacramento* (2015) 234 CA4th 549, 573 (city not required to study alternative of remodeling an existing arena when one project objective was to create an attraction in a blighted area);
- is not potentially feasible considering factors like logistics, economics and technology. *See San Francisco Bay Ass'n v. San Francisco Bay Conserv. & Dev. Comm'n* (1992) 10 CA4th 908, 922

("CEQA does not require the examination of alternatives that are so speculative, contrary to law, or economically catastrophic as to exceed the realm of feasibility"); or

- is not reasonable or realistic. *In re Bay-Delta Programmatic Env't Impact Report Coordinated Proceedings* (2008) 43, C4th 143, 1163 ("An EIR does not have to consider alternatives 'whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.'")(citing Cal. Code Regs., Tit. 14 Sec. 15126.6(f)(3).

The key to selection of alternatives for study in an EIR is the identification of alternatives that meet most of the project objectives while reducing the level of environmental impacts. *Watsonville Pilots Ass'n v. Watsonville* (2010) 183 CA4th 1059, 1089. Accordingly, it is critical that the project objectives describe with adequate specificity the goals and drivers for a proposed project.

With these concepts in mind, Zayo recognizes that the project objectives included in the PEA could have better described the goals and benefits of the Prineville to Reno Fiber Optic Line. Following up on our discussion on June 24, 2021, we request the project objectives to be expanded and read as follows (together with support for each objective):

1. *Provide connectivity for major California businesses between regional hubs in Nevada and Oregon, for which connectivity is of major importance to a significant number of the largest employers in California.* In order to support California's economy, its major employers need to have access to increased reliable connected broadband service which is not currently available.
2. *Provide opportunities for improved quality of rural broadband in Nevada, California and Oregon.* Because of their low population densities and the high cost of building networks with lower economic values, rural communities often fail to attract investment by service providers. Construction of the middle mile infrastructure serves as the necessary foundation enabling local internet service providers to economically offer "last mile" services to customers in traditionally underserved communities. Rural communities also benefit from redundant bandwidth services to the extent internet service is already available by improving reliability. Thus, even in rural communities with established internet service, creating redundancy provides expanded and alternative bandwidth in case of an emergency or catastrophic event (e.g., storms, fires, etc.). The objective of the proposed Project is to enhance services in underserved communities for both reasons.
3. *Provide affordable broadband services to currently underserved communities.* Most rural communities have limited access to broadband services providers. The project objective is to provide a trunk line with substantial capacity and thereby afford additional last mile internet service providers access, increasing competition for services in the area and helping to reduce the cost to the end users.
4. *Remain within the existing road ROWs in order to reduce impacts to undisturbed areas and to limit the number of necessary contract parties to a feasible number.* Reliance on ROWs of existing major public roadways is premised on the fact that these areas have already been disturbed as a result of original road construction and subsequent on-going maintenance. In many of these same areas, the subsurface has also been disturbed as a result of buried infrastructure. Generally speaking, the same cannot be said for land adjacent to or in the

vicinity of roadway ROWs, particularly in rural areas. Accordingly, a route located within existing ROWs is likely to impact fewer previously undisturbed areas. Moreover, developing outside of public ROWs presents significant logistical challenges. If an existing public ROW is not used, a route would require negotiations of hundreds of easements and related transactions. Decades of experience has taught that as the numbers of required negotiations increase, the transactional cost and the time to complete increase by an order of magnitude, rendering such transactions practically infeasible.

5. *In order to provide a secure and protected route, install a fiber optic trunk line cable buried underground.* Fiber optic routes, particularly long haul routes such as the proposed Project, are designed to provide the highest level of security and durability available. Because of the susceptibility to damage aerial fiber optic cable has compared to underground,¹ many national wireless providers, multisystem cable operators, and other customers will not purchase service on aerial routes, rendering such routes infeasible. Placing fiber optic cables underground is preferred to aerial for many reasons including:
 - Protection from environmental hazards, such as lightning, wind, wildfires, and damage caused by animals;
 - Protection from human interference such as damage caused by gunplay, accidents while working on electrical wires and vandalism;
 - Providing sufficient security and resiliency. The entities that are financing development of trunk lines such as the proposed Project will use the line to carry sensitive traffic between data centers, banks, government institutions, and security companies. The resiliency and security offered by underground cabling cannot be duplicated by aerial and the entities financing and the customers who will be serviced by this type of project insist on underground placement of cable for these reasons; and
 - Consistent temperature of the underground, resulting in no fluctuations or losses of signal that can be caused by exposure to the elements.

6. *Reduce or eliminate impacts to environmental resources.* The Project should be designed to avoid impacts wherever feasible and to minimize impacts when full avoidance is not feasible.

As described in the PEA, Zayo designed the proposed route incorporating mitigation measures and design features intended to achieve an optimal balance between project objectives and environmental protection. Such an approach implements the policy encouraging incorporation of “environmental considerations into project conceptualization, design and protection.” 14 Cal. Code Regs. 15004(b)(1). This approach narrows the range of available alternatives offering environmental advantages as compared to the proposed project. *See Mira Mar Mobile Community v. City of Oceanside* (2004) 119 CA4th 477.

¹ In the past twelve months in the west region (Arizona, California, Idaho, Oregon, Nevada, Utah and Washington), Zayo had the following outages related to aerial cables: 5-weather related; 5-vandalism; 14-fire related; 14-auto accident related; and 5-aerial cable damaged by other working on a pole line. The frequency of wildfire, including along the route of the proposed Project, make development of an aerial line infeasible.

Request for Additional Information on Proposed Project

In Data Request 3, the CPUC asked for further information demonstrating how the proposed Project met the identified project objectives. Following please find a response for each:

1. *Provide prime connection to regional hubs and prime connectivity for a significant number of the largest employers in California:* Prineville and Reno are both network hubs and the proposed Project will serve as a backbone for huge amounts of data transfer between critical data centers between and at these hubs, providing a necessary diverse broadband route. Currently, major employers in California have an unmet need for bandwidth and the proposed Project will provide this prime connectivity. There is limited options for diversity for broadband and backhaul services through the eastern geographic areas of Oregon, California and Nevada, with saturation of aerial and underground routes on the West Coast in area prone to fire and earthquake damage. The proposed Project will offer a unique, diverse, and highly protected route through Oregon, Eastern California, and Nevada to both wireline and wireless providers. Additionally, the proposed Project will offer the world's largest wireless carrier an opportunity to expand its footprint via fiber to the tower, small cell growth and backhaul of tower to traffic to hub and data centers.
2. *Provide service to underserved rural areas in California.* The proposed Project will traverse portions of Modoc, Lassen and Sierra Counties, including many rural areas that currently have limited access to broadband services. For example, according to one source, "broadband availability and competition in Alturas is below average" and over 99% of addresses in this area have one or fewer options for broadband services. It is reported that Alturas' connectivity is 1060th in 1,152 communities in the State. See <https://broadbandnow.com/California/Alturas>. The proposed project will provide the middle mile for services to these rural areas, enabling last mile providers to offer high capacity bandwidth services to residents and business along the route. As discussed above, given the cost associated with constructing the middle mile, this is often a large barrier to providing services in these areas. As an example of the additional service that will likely be provided, Zayo currently has a cable multi service operator ("MSO") under contract for bulk fiber capacity between Alturas, California and the California/Oregon border. Access points to the fiber will be installed along the route providing the ability for the cable MSO to service the surrounding communities. Zayo is also in advance conversation with a regional carrier for bulk fiber capacity between Davis Creek, California and Standish, California. Access points will also be installed along this route providing the ability for the regional carrier to service additional communities along the route as well.
3. *Provide affordable services to rural areas.* As previously discussed, the rural areas along the route in Modoc, Lassen and Sierra Counties have limited competition among cable and internet providers. By providing the middle mile, it is anticipated that there will be competition which will help bring down the cost to rural users. Zayo is in discussion with multiple providers interested in taking bulk capacity, which should directly increase competition and benefit local users. Zayo is also targeting rural wireless internet service providers and national wireless providers to take capacity on the route to potentially create even more options for consumers in the surrounding areas.

4. *Remain within the existing ROWs.* As described within the PEA, the Project has been designed to stay mainly within the Highway 395 corridor and thereby limiting impacts to undisturbed areas and managing the transactional costs of the Project to keep it financially feasible.
5. *Install a fiber optic cable buried underground.* The route will be buried and therefore meet the objective of providing a secure route.
6. *Design the Project to avoid impacts where possible.* During the siting of the project, the route has been modified to avoid sensitive resources such as wetlands, rare plants, and likely cultural resources. To date, the Project has been modified to bore under 25 wetlands and 9 other and waterbodies and been rerouted or included boring to avoid 37 identified cultural resources. Some specific examples regarding changes made to avoid cultural resources include:

- Site P-18-001951/ CA-LAS-1951 – Boring under the site
- Site P-18-001973/ CA-LAS-1973 (Dead Doe Site) – Reroute to other side of road and bore under site
- Site P-18-002235 (Red Rock Road) – Boring under site
- P-25-05877 – Rerouting to the east to avoid the site
- P-18-00155 – Rerouting to the east to avoid the site and boring to avoid sensitive plants
- P-18-00156 – Boring under site
- P-18-004116 – Extending driveway bore to extend bore under site
- P-18-001966 – Boring under site

Request for Additional Information on Alternatives

Oregon/Nevada Only Alternative

As noted in Data Request No. 3, the Oregon/Nevada only alternative would bypass California entirely. Zayo considered a route starting in Prineville, traversing along HWY 34 and 445 (Surprise Valley Road) and terminating in Reno. Most importantly, this alternative would not meet one of the primary objectives of the Project as it would not provide any benefits to the underserved communities in eastern California. Such a route would also require construction through a considerable distance of the Pyramid Lake Paiute Reservation, which would not be technically feasible given that there would not be the necessary electric services available along the route. Each ILA requires single phase, 400 amp electric service. Such service is not readily available and the route would require additional ILAs and a significantly increased costs, rendering it infeasible. Given that this route would transverse significant tribal land, it is also assumed that it would have similar or higher impacts to cultural resources as the proposed Project and therefore, would not result in a reduction of impacts. Finally, this route would not provide any access to California businesses located within California. This is not a feasible alternative.

Alternative Route Along 299 and 139/36

Zayo explored a route that would traverse along HWY 97 and 139. This alternative would not meet the Project objectives of providing access to significantly underserved rural communities as it would not allow access to the cities of Alturas and Standish, California. It was also found not to be feasible given that there is no access to the required electrical power. On the existing route, we will install an ILA

approximately every 80 km. This Alternative traverses long areas where there is no population and no electric power available and therefore we could not have an ILA every 80 km. With this Alternative, the only option would be to install ILAs at Susanville and Adin, which does not meet the distance specifications for the architecture for the route. The entire project is designed from end to end so when the ILA locations are moved in portion of the Project, it will impact the engineering for the entire route. Having longer cable distances and additional ILA, also increases the potential points of failure to the Project, thereby making it less secure. This would also increase the cost of the Project. This alternative is not feasible.

Private Land Alternative

Zayo considered an alternative that would be located entirely on private land. While we have not done a determination as to the number of private landowners from which we would need to obtain easements for this alternative, we conservatively estimate that this would require easement from in excess of 100 landowners along this approximately 200 mile route. Zayo has constructed hundreds of thousands of miles of fiber optic cable, and in the process, has dealt with both public and private concerns. Based on this experience, we know that the negotiations with private landowners along this alternative route would require untold hours of negotiations, millions of dollars in compensation, and potential litigation (arising from condemnation actions that would likely be necessary in some cases). Further, such an alternative would result in greater disturbance of previously undisturbed areas. The potential routes would all traverse largely rural areas which include expansive areas of undisturbed land and would not minimize impacts to environmental resources. Accordingly, the additional costs and time, together with the likely increase impacts, render this alternative infeasible.

Co-Location and Above Ground Installation Alternative

Co-location with existing utilities would require that substantial portions of the line would need to be above ground. As is described under Project Objective 5, in order to be feasible, the line needs to be located underground to provide a secure line which is adequately protected against natural disasters, accidents and human interference. An Alternative that does not meet this requirement is not feasible.