

# Staff Report 51

**APPLICANT:**

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Broadwing Communications, LLC, a Delaware limited liability company

**PROPOSED ACTION:**

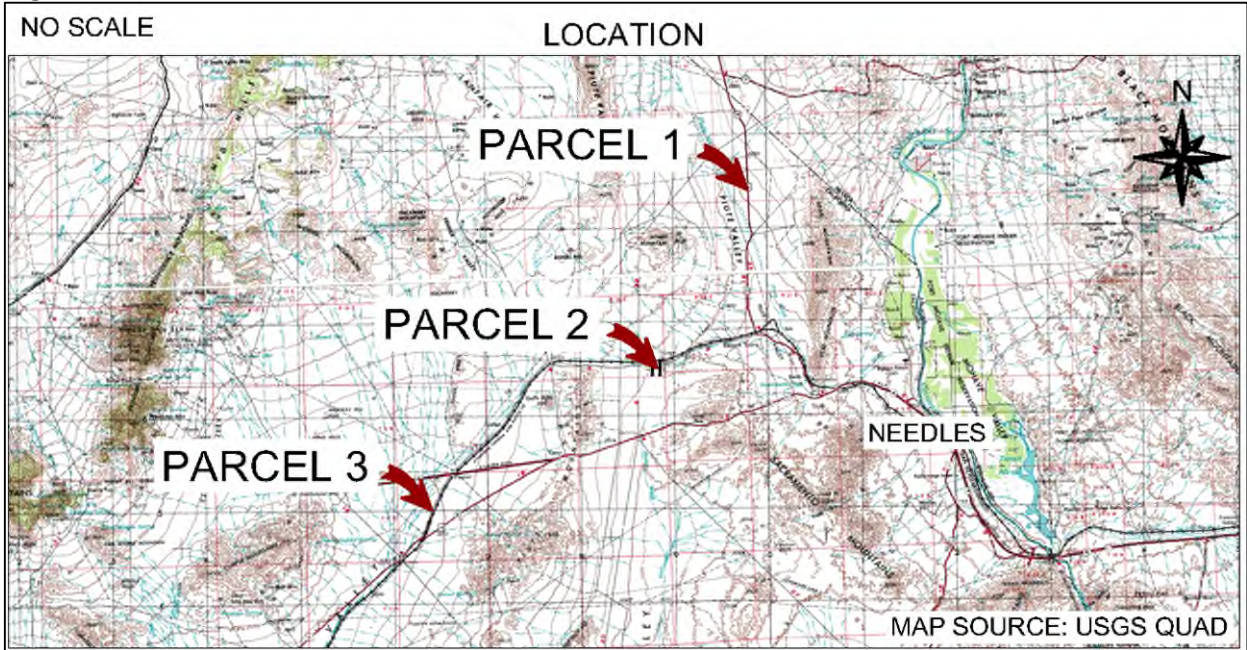
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Issuance of a General Lease – Right-of-Way Use.

**AREA, LAND TYPE, AND LOCATION:**

3.15 acres, more or less, of State-owned school land and indemnity school land in portions of Section 16, Township 8 North, Range 17 East; Tract 39 of Sections 29 and 32, Township 12 North, Range 20 East; and Section 36, Township 10 North, Range 19 East, SBM, near Homer, Goffs, and Essex, San Bernardino County (as shown in Figure 1).

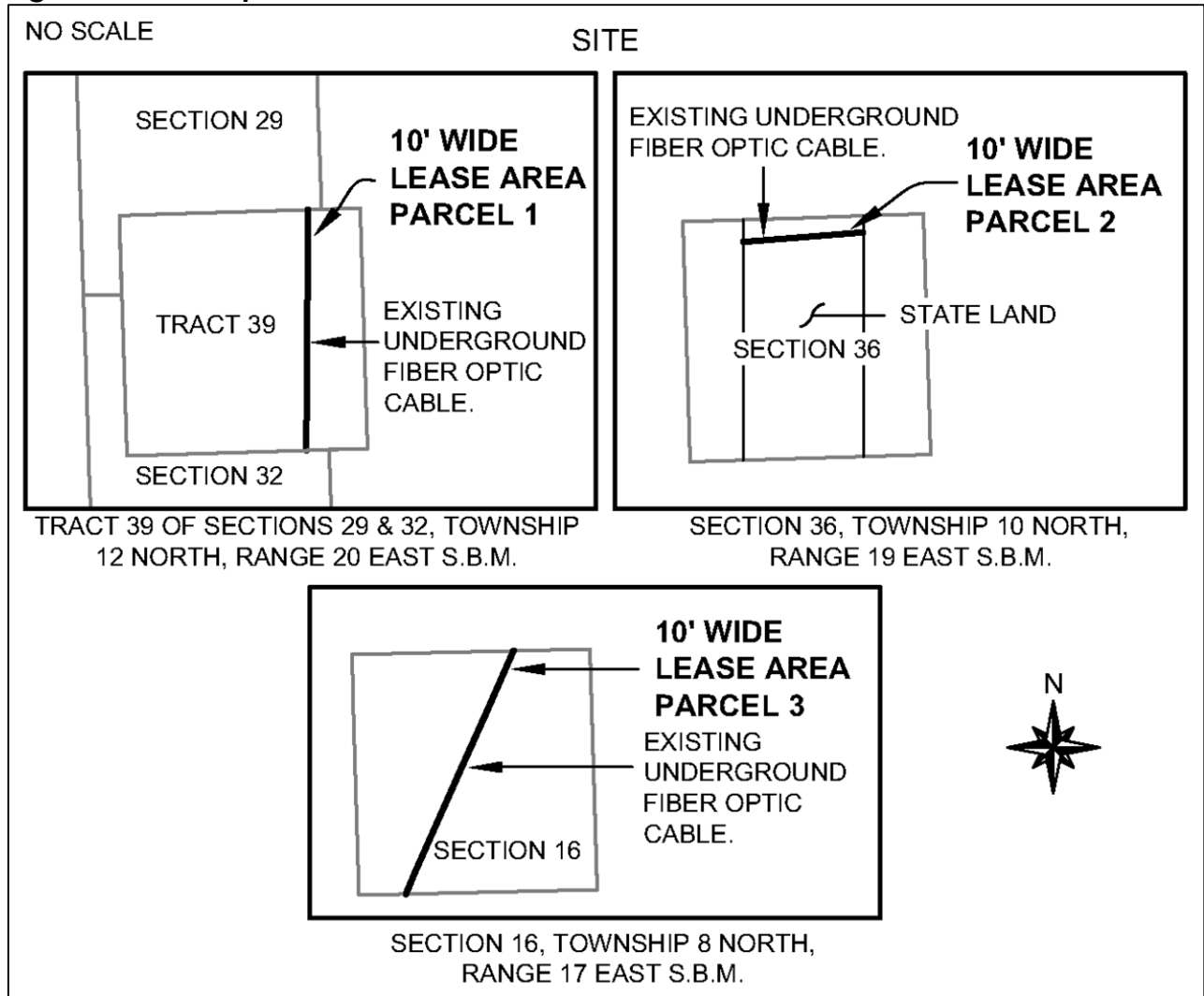
**Figure 1. Location**



**AUTHORIZED USE:**

Use and maintenance of an underground one-inch-diameter fiber optic communications cable encased in a two-inch-diameter high density polyethylene (HDPE) conduit (as shown in Figure 2).

**Figure 2. Site Map**



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

25 years, beginning December 17, 2024.

**CONSIDERATION:**

\$1,370 per year, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; and \$518 to compensate for the unauthorized occupation of sovereign land prior to December 17, 2024.

**SPECIFIC LEASE PROVISIONS:**

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee agrees the provisions of Section 3, Paragraph 11 shall also extend to the period of Lessee's unauthorized occupation of state-owned lands prior to December 17, 2024.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

Public Resources Code sections 6005, 6216, 6501.1, 6503, and 8701; California Code of Regulations, title 2, sections 2000 and 2003.

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On December 16, 1998, the Commission authorized a General Lease – Right-of-Way Use to IXC Carrier, Inc. for the installation, operation, and maintenance of a one-inch-diameter fiber optic cable encased in a HDPE conduit ([Item 21, December 16, 1998](#)). On August 19, 2003, the Commission authorized the continuation of rent and the Lessee name was changed to IXC Communications Services, Inc. ([Item 28, August 19, 2003](#)). On December 9, 2004, following another name change, the Commission authorized an assignment of lease from BCSI, Inc., formerly known as Broadwing Communications Services, Inc. to Broadwing Communications, LLC, a wholly-owned subsidiary of CIII Communications, LLC ([Item 12, December 9, 2004](#)). On September 1, 2011, the Commission authorized the continuation of rent ([Item 63, September 1, 2011](#)). On August 23, 2018, the Commission authorized the revision of rent from \$651 per year to \$1,370 per year ([Item 94, August 23, 2018](#)). This lease expired on July 31, 2023.

The Applicant is now applying for a General Lease – Right-of-Way Use for the use and maintenance of an existing underground one-inch-diameter fiber optic communications cable encased in a two-inch-diameter HDPE conduit. The

Applicant, Broadwing Communications, LLC, a Delaware limited liability company is a wholly owned subsidiary of CII Communications, LLC.

Since rent has been paid through July 31, 2024, staff recommends that the Commission accept compensation from the Applicant for the unauthorized occupation of State land in the amount of \$518, to compensate for the period of unauthorized occupancy prior to December 17, 2024. The lease provisions regarding indemnity will apply for the entire period of August 1, 2023, the day after the lease expiration, through December 16, 2024, the day before the beginning of the proposed lease.

The proposed lease does not alienate the State's fee simple interest and does not permanently impair public rights. The lease is limited to a 25-year term and does not grant the lessee exclusive rights to the lease premises. The lease requires the Applicant to indemnify the State for any liability incurred as a result of the lessee's activities on the lease premises. The lease also requires the payment of annual rent, generating revenue for the California State Teachers' Retirement System, consistent with Public Resources Code section 6217.5.

#### **CLIMATE CHANGE:**

The combination of more frequent and longer duration weather patterns contributing to high winds, low humidity, extreme heat, and thunderstorm and lightning events for California's desert regions has contributed to an increasingly aggressive wildland fire season as a related product of climate change. In addition, as stated in the [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, fire, drought, extreme heat, and storms. The lease area is open lands with moderate to low vegetation fuels, and are vulnerable to the above events, including dust storms and flash flooding from thunderstorms, and to a lesser extent, wildland fires. The leased lands and surrounding land may be vulnerable to these weather events; however, these projected climate change effects are not expected to affect the uses of the leased lands because the fiber optic cable conduit is buried.

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are in an area that may be subject to effects of climate change.

**CONCLUSION:**

For the reasons stated above, staff believes issuance of this lease is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of State-owned school land, it exercises legislatively delegated authority and responsibility as trustee of the State's school lands as authorized by law. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with addressing the challenges and opportunities described in the Commission's [2021-25 Strategic Plan](#) to “Embrace and safeguard multi-benefit School Lands and resource management stewardship that equitably balances responsible local and regional economic development, supports living wages, environmental protection, and revenue generation.”
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15061.

**RECOMMENDED ACTION:**

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It is recommended that the Commission:

**CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

**STATE'S BEST INTERESTS:**

Find that the proposed lease is in the best interests of the State.

**AUTHORIZATION:**

1. Accept compensation from the Applicant in the amount of \$518, for the unauthorized occupation of State land for the period prior to December 17, 2024.
2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant, beginning December 17, 2024, for a term of 25 years, for the use and maintenance of an underground one-inch-diameter fiber optic communications cable encased in a two-inch-diameter HDPE conduit; annual rent in the amount of \$1,370 with an annual Consumer Price Index adjustment.