

DUTY STATEMENT
TECH 052 (REV. 02/2018)

PROPOSED

24-084

ALERT: This form is mandatory for all Requests for Personnel Action (RPA).

INSTRUCTIONS: Before completing this form, read the instructions located on last page.

Section A: Position Profile

A. DATE 10/30/2024	B. APPOINTMENT EFFECTIVE DATE	C. INCUMBENT NAME Vacant
D. CIVIL SERVICE CLASSIFICATION Attorney V		E. POSITION WORKING TITLE MMBI Senior Counsel
F. CURRENT POSITION NUMBER		G. PROPOSED POSITION NUMBER (Last three (3) digits assigned by HR) 695-952-5781-XXX
H. OFFICE / SECTION / UNIT / PHYSICAL LOCATION OF POSITION Office of Legal Services/MMBI/West Sacramento		I. SUPERVISOR NAME AND CLASSIFICATION Sahana M. Ayer, Chief Counsel
J. WORK DAYS / WORK HOURS / WORK SHIFT (DAY, SWING, GRAVE) MONDAY - FRIDAY / 8:00AM TO 5:00PM (VARIABLE)		K. POSITION REQUIRES: FINGERPRINT BACKGROUND CHECK <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO DRIVING AN AUTOMOBILE <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO

Section B: Position Functions and Duties

Identify the major functions and associated duties, and the percentage of time spent annually on each (list higher percentages first).

	<p>Information Technology Domains (Select all domains applicable to the incumbent's duties/tasks.)</p> <p><input type="checkbox"/> Business Technology Management <input type="checkbox"/> IT Project Management <input type="checkbox"/> Client Services</p> <p><input type="checkbox"/> Information Security Engineering <input type="checkbox"/> Software Engineering <input type="checkbox"/> System Engineering</p>
	<p>Organizational Setting and Major Functions</p> <p>Under the general direction of the Chief Counsel, the Attorney V advises, supports, and represents the California Department of Technology (CDT) and the Office of Broadband and Digital Literacy (OBDL) serving as the exclusive expert in business establishment, network and asset acquisitions, commercialization, and initial market capitalization of the State's Middle Mile Broadband Initiative (MMBI) network. The Attorney V handles/litigates the most complex, sensitive, and difficult civil cases and/or corporate advice and/or transaction matters and assignments necessary to defend and reduce CDT and OBDL's legal exposure. The Attorney V shall be responsible for potential litigation from MMBI contractors, customers, and commercial competitors.</p> <p>The Attorney V will manage, negotiate, and lead contracting as CDT seeks to acquire assets, including existing networks, as well as to develop innovative and novel contractual joint-build arrangements with industry players. The Attorney V will provide unique legal expertise in initial capitalization to engage with the attorneys representing the private entity contracting as Third Party Administrator to operate and maintain the MMBI network, as well as the acquisition, development, construction, maintenance and operation of the federally funded-state mandated MMBI network, and implementation of the Governor's Broadband-for-All Action Plan.</p> <p>The Attorney V will be a subject matter expert in network acquisitions, broadband, state IT and non-IT procurements, telecommunications, construction contracts, complex litigation, contract negotiations, prevailing wage, statewide IT and telecom operations, services, systems, writs and protests, telecommunications and broadband regulation and compliance, legislation, policy, and, while not intended, possible condemnation and eminent domain actions. The Attorney V also mediates and assists in resolving disputes with contractors, and recommends action on State and Federal legislation, rules and regulations. The Attorney V will contact and maintain ongoing working relationships with other Executive Branch departments such as the Department of Finance, Department of Transportation (Caltrans), and the Department of General Services (DGS), constitutionally created entities such as the California Public Utilities Commission (CPUC), oversight agencies such as the Department of Justice (DOJ), Government Operations Agency (GovOps) and the California State Transportation Agency (CalSTA), as well as the Governor's Office, high-level gubernatorial appointees, the legislature, legislative staff, and the statutorily mandated third-party administrator of the Middle-Mile Broadband Initiative (MMBI).</p> <p>This position is designated under the Conflict-of-Interest Code. The position is responsible for making, or participating in the making, of governmental decisions that may potentially have a material effect on personal financial interests. The appointee is required to complete form 700 within 30 days of appointment. Failure to comply with the Conflict-of-Interest Code requirements may void the appointment.</p>

<p>% of time performing duties</p>	<p>Essential Functions (Percentages shall be in increments of 5, and should be no less than 5%)</p> <p>Represent, advise, and support the Office of Broadband in the implementation of the MMBI. Perform complex legal research to support the acquisition, construction, development, maintenance and operation of the Middle-Mile Broadband Network (Middle-Mile Network) to ensure compliance with the American Rescue Plan Act (ARPA), and other state and federal funding mandates. Prepare MMBI for federal and state audits, including audits by the Legislature, Department of Finance (DOF) and California State Auditor. Ensure compliance with funding and reimbursement requirements.</p>
<p>30%</p>	<p>Legal Defense in Lawsuits</p> <ul style="list-style-type: none"> • Represent CDT’s interests diligently and zealously within the bounds of the law. • Conduct thorough legal research to understand the applicable laws, regulations, and precedents relevant to the case. • Assess the strengths and weaknesses of the case, including evidence and potential legal arguments, to provide informed advice to CDT. • Formulate a defense strategy tailored to the specific circumstances of the case. This may involve identifying legal defenses, evidentiary issues, or procedural tactics. • Draft pleadings, motions, and other legal documents necessary for the defense, such as answers to complaints, motions to dismiss, or motions for summary judgment. • Engage in the discovery process, which involves gathering evidence through methods such as depositions, interrogatories, requests for documents, and expert witness testimony. • Engage in settlement negotiations with the opposing party or their legal representatives to resolve the case outside of court, if it's in the best interest of CDT. • Represent CDT in court proceedings, including pre-trial hearings, trial proceedings, and any appeals that may follow. • Prepare witnesses for testimony, ensuring they understand their role and are equipped to provide accurate and compelling testimony in support of the defense. • Keep CDT informed about the progress of the case, provide guidance on available options, and advise on the potential outcomes and risks associated with different courses of action. • Adhere to ethical standards of professional conduct, including maintaining client confidentiality, avoiding conflicts of interest, and upholding the duty of loyalty to CDT.
<p>30%</p>	<p>Commercialization & Capitalization</p> <ul style="list-style-type: none"> • Provide legal expertise in the process of bringing the new service to market and making monetary benefits from it sufficient to cover both state and TPA operating costs. • Provide legal expertise in initial capitalization, the initial investment or seed money for a start-up that allows the business to launch and stay operational. • Support CDT engagement with attorney(s) representing public private partnership concession contracting to provide service on behalf of the State for 30-40 years. • Advising on the acquisition, development, construction, maintenance and operation of the federally funded-state mandated Middle Mile Broadband network, and implementation of the Governor’s Broadband-for-All Action Plan.
<p>15%</p>	<p>Infrastructure and Network Acquisitions</p> <ul style="list-style-type: none"> • Similar to the acquisition of Digital 395, create and assess contracts related to network and asset acquisitions, ensuring they align with legal requirements. • Thoroughly investigate potential acquisitions, examining financials, legal documents, and other relevant information (i.e., the review of contracts, permits, organizational documents and other materials relating to the target assets, the subject assets or, occasionally, the buyer, to develop an understanding of the scope, value and risks of the transaction) and preparing a due diligence memorandum. • Engage in negotiations to finalize the terms of transactions, protecting CDT interests. • Create a comprehensive implementation checklist identifying all actions that must be taken and documents to be delivered in connection with the transaction. • Draft and negotiate the principal transaction agreement, including crafting appropriate representations, warranties, covenants and disclosure schedules in light of issues identified during due diligence and conditions of closing. • Provide tactical advice during negotiations.

% of time performing duties

- Integrate specialist attorney comments, as well as comments from CDT personnel, into transaction agreements.
- Draft and negotiate ancillary documents, including any exclusivity agreement, legal opinion, bill of sale, assignment and assumption agreements, escrow or transition services agreements.
- Develop corporate governance requirements for the Third Party Administrator to ensure corporate accountability over time and in the relationship with CDT.
- Identify requirements for third party consents and coordinate with personnel to obtain them.

Collaboration

15%

- Contact and maintain ongoing working relationships with other Executive Branch departments such as the DOF, Caltrans, and the DGS, constitutionally created entities such as the CPUC, oversight agencies such as the GovOps and the CalSTA, as well as the Governor's Office, high-level gubernatorial appointees, the legislature, legislative staff, and the statutorily mandated third-party administrator of the MMBI.
- The Attorney V will work as the department's top Broadband legal expert, using innovative legal theories to work with a third-party administrator (TPA) hired under contract upon passage of the legislation, using traditional and alternative procurement strategies to obtain additional goods and services contractors that meet program needs and Federal competitive procurement guidelines. The Attorney V will continue working with the TPA to update its deliverables-based contract, as well as prepare Work Authorizations for specified deliverables.
- Concurrently, the Attorney V will work with counsel from DOF, the CPUC, DGS, Caltrans, GovOps, and the TPA to ensure coordination of the development of initial projects for the MMBI, as well as determining legal strategies for procuring vital broadband goods, leases, and consultant services to assist in the planning, development, construction, operation, and maintenance of the entire broadband middle-mile network. Conduct the most complex legal research to provide advice on highly visible and cutting-edge telecom and broadband policy and legislative initiatives in the areas of net neutrality, artificial intelligence, privacy and data protection, cybersecurity assessments and audits, open data and open-source public entity data sharing, enhanced commercial cloud offerings for public entities, blockchain technology, and broadband, VOIP (Voice Over Internet Protocol), and telecommunications.

Construction Disputes

5%

- Represent, advise and conduct complex litigation and administrative actions at the state and federal level related to right-of-way disputes, and while not intended, eminent domain/condemnation actions in collaboration with the Public Works Board, Caltrans and the DOF. Litigate construction disputes, legislative issues, network operations and maintenance policy, warranty, performance, contracting, IRUs, leases, licenses, easements, land use, CEQA, NEPA and other complex issues related to the acquisition, development, construction, operation and maintenance of the Broadband Middle-Mile network.

Marginal Functions (Percentages shall be in increments of 5, and should be no more than 5%.)

5%

- Act as the CDT's Statement of Economic Interests advisor.
- Advise on potential conflicts of interest under the Political Reform Act.

Work Environment Requirements

- Travel between the California Department of Technology and other department campuses, and other offices may be required.
- Required to carry a smart phone or other communication device.

Allocation Factors (Complete each of the following factors.)

Supervision Received:

The Attorney V is under the general direction of the Chief Counsel.

Actions and Consequences:

Decisions and recommendations made by the Attorney V can have a serious and high economic impact on programs and mandates, including loss of billions of dollars in federal and state funds. Poor judgment on the part of the Attorney V can result in organizational deficiencies and significant adverse legal actions, civil and criminal penalties, fines, damages and attorney’s fees. Because of the California Department of Technology’s public visibility, failure to comply with the applicable regulations, statutes, and policies could produce significant negative impacts to the Governor’s Office and Administration and could result in loss of public confidence and adverse press.

Personal Contacts:

The Attorney V works closely with CDT executives and managers, control agencies, and all levels of government, and constituents in the customer, stakeholder, and vendor communities.

Administrative and Supervisory Responsibilities Indicate “None” if this is a non-supervisory position.)

The Attorney V is involved in the analysis and investigation of legal issues, and administrative processes. The Attorney V may act on behalf of the Chief Counsel as necessary.

Supervision Exercised:

None, however, the Attorney V may act in a lead capacity over the work of other attorneys and staff.

Other Information

Desirable Qualifications: (List in order of importance.)

- Current member in good standing of the California State Bar.
- Excellent writing, verbal, analytical and organizational skills.
- Ability to present statements of fact, law, and arguments clearly and logically in written and verbal form.
- Experience working on high-visibility, complex, politically sensitive matters.
- Broad knowledge and experience: with asset commercialization, acquisitions, broadband and telecommunications projects and procurements, legal principles and their application, broadband and telecommunications regulatory compliance, legal procedures and terminology, fiscal practices, contracts, tort liability, public contract law, constitutional and administrative law, court procedures and rules of evidence, procedures involved in the purchase and transfer of real property, financial and accounting laws of the State of California.

INCUMBENT STATEMENT: I have discussed the duties of this position with my supervisor and have received a copy of the duty statement.

INCUMBENT NAME (PRINT)	INCUMBENT SIGNATURE	DATE
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SUPERVISOR STATEMENT: I have discussed the duties of this position with the incumbent.

SUPERVISOR NAME (PRINT) Sahana Ayer	SUPERVISOR SIGNATURE	DATE
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