

**CALENDAR ITEM
C01**

A 33

03/02/09
PRC 8144.1
W 26237
S.Young
S. McFarlin

S 15

**CONSIDER THE TERMINATION OF AN EXISTING GENERAL LEASE - RIGHT OF
WAY USE, THE ADOPTION OF AN ENVIRONMENTAL IMPACT REPORT, AND THE
ISSUANCE OF A GENERAL LEASE - RIGHT OF WAY USE**

LESSEE/APPLICANT:

AT&T Corporation
3D151F, 1 AT&T Way
Bedminster, NJ 27921

AREA, LAND TYPE, AND LOCATION:

5.56 acres, more or less, of sovereign lands in the Pacific Ocean, near the city of
Los Osos, San Luis Obispo County.

AUTHORIZED USE:

Installation, use and maintenance of a portion of Segment 5 of the AT&T Asia
America Gateway (AAG) fiber optic cable that will be placed into an existing five-
inch diameter steel conduit.

LEASE TERM:

Ten years, beginning March 2, 2009, with the right to renew for one additional
period of 15 years, subject to such reasonable renewal terms and conditions as
the State may impose.

CONSIDERATION:

\$65,400 per year; with the State reserving the right to modify the method, amount
or rate of consideration effective on the second anniversary of the beginning date
of the lease. Irrespective of whether the State exercises the right to modify the
lease consideration on the second anniversary, it may do so on the fifth
anniversary, and subsequently thereafter, as provided in the Lease.

CALENDAR ITEM NO. **C01** (CONT'D)

SPECIFIC LEASE PROVISIONS:

Insurance:

Combined single limit coverage of no less than \$1,000,000.

Bond:

\$500,000.

Other Provisions:

1. AT&T shall provide to the Commission a copy of the Critical Operations and Curtailment Plan for the primary work vessel.
2. AT&T shall provide to the Commission a project specific hazardous spill contingency plan.
3. Within 90 days of the acceptance by AT&T of the work as complete from the contractor, AT&T will provide a copy of the cable post lay ROV (remotely operated vehicle) survey and report and a set of as built plans showing the final plan and profile of the conduit in the lease area.
4. The Mitigation Monitoring Program and Environmental Conditions adopted by the Commission at the time of approval of the Lease are incorporated in the Lease. AT&T will be bound by and perform all of the Terms and Conditions contained in the Mitigation Monitoring Program and Environmental Conditions adopted by the CSLC.
5. The cable will be buried to a target depth of one meter to avoid entanglement with gray whales during feeding and to avoid gear entanglement with bottom trawlers.
6. A plow will be used to bury the cable wherever feasible to a water depth of 1,000 fathoms as determined by Commission staff in consultation with the on-site monitor. Precise maps giving location and actual burial depth will be provided to the Commission upon completion of the cable installation.
7. NOAA Fisheries approved marine wildlife monitors will be on board the cable burial and transport vessels for complete daytime observations during marine construction activities within 50 miles of the shore.
8. AT&T will conduct a post-lay ROV survey and provide a report, prepared by a marine biologist, which includes information on the area and estimated number and species of organisms affected by the project in rocky habitats. Additionally, a post-lay cable burial

CALENDAR ITEM NO. **C01** (CONT'D)

verification survey and inspection will to be conducted at 12 to 24 month intervals, avoiding the winter season during the first four-year period and thereafter as approved by the Commission. A post-lay cable burial verification survey and inspection will be conducted following any event that may cause the cable to be exposed.

BACKGROUND INFORMATION:

On February 8, 2000, the Commission issued a Permit for a Telephone Line Right of Way and four General Leases - Non-Exclusive Right of Way Use to MFS Globenet, Inc. (MFS). The permit and leases were part of MFS's fiber optic cable system and involved the construction of five steel conduits and placement of two fiber optic cables within two of the newly constructed conduits offshore of Montaña de Oro State Park in San Luis Obispo County. At that time, MFS contemplated the future assignment of the three empty conduits to AT&T (Lease Nos. PRC 8142, PRC 8143 and PRC 8144). On April 3, 2000, MFS notified the Commission of its intent to assign lease PRC 8144 in the event the conduit authorized under the lease was available when AT&T was ready to pull a new cable identified as China-US E1. Subsequently, on April 20, 2000, Lease No. PRC 8144.1, for the empty steel conduit identified as "Bore #5", was amended to allow the installation of the E1 new fiber optic cable into the conduit. The lease was assigned to AT&T on that date. However, the conduit had not been constructed when the cable ship was ready to install the China-US E1 cable in 2001. AT&T submitted a new application to install the E1 cable in the conduit already under construction for Lease No. PRC 8143.1 and on April 21, 2001, the Commission approved and authorized the installation of the E1 cable in the conduit for PRC 8143.1. The conduit for PRC 8144.1 was completed and has remained empty and available for future cable installation.

AT&T is now proposing to lay one new fiber optic cable from Hawaii to California as part a larger cable system originating in Asia and identified as the Asia-America Gateway (AAG) Fiber Optic Cable System. The proposed fiber optic cable would land at AT&T's existing landing facility at Montaña de Oro State Park near Morro Bay. The cable would be connected to the AT&T cable station located near San Luis Obispo, via an existing terrestrial cable conduit system. The marine cable would be installed using a combination of plowing and direct bottom lay along a pre-determined course. The near-shore cable would be installed in the existing empty conduit, Bore #5, Lease No. PRC 8144.1.

ENVIRONMENTAL PROCESS:

The Notice of Preparation (NOP) for the Environmental Impact Report (EIR) was circulated on November 7, 2007. The NOP was sent to federal, state and local agencies, environmental and public interest groups; affected landowners; local

CALENDAR ITEM NO. **C01** (CONT'D)

libraries, newspapers; and other interested parties. Two public scoping meetings were held in the city of San Luis Obispo on November 27, 2007 to provide an opportunity for the general public to learn about the proposed project and to participate in the environmental analysis by providing oral or written comments on the proposed project to be included in the Draft EIR.

On December 3, 2008, the Commission issued a Notice of Availability of the Draft EIR and Notice of Public Hearings. The Draft EIR was circulated for a 45-day public review period that started on December 3, 2008 and ended January 16, 2009.

Commission staff conducted two public hearings on January 6, 2009, in the city of San Luis Obispo. At the hearings, the public was given the opportunity to ask questions about the draft EIR and its contents and to present oral and/or written testimony. The Commission's decision-making process was also explained. Issues raised during the scoping and public comment period on the Draft EIR were addressed in the Final EIR that was released on February 19, 2009. On February 19, 2009, the Commission issued a Notice of Intent to certify the EIR.

ENVIRONMENTAL ISSUES:

The Final Environmental Impact Report (FEIR) indicates that all identified significant impacts can be reduced to less than significant with the application of the mitigation measures required under the Mitigation Monitoring Program (MMP), Exhibit D, attached.

Issues addressed in the draft EIR included aesthetics/visual resources; air quality, biological resources, cultural resources, erosion, water quality, recreation, noise, and system safety/risk of upset. Of these issues, GHG emissions and potential impacts to sensitive species are highlighted below.

1. Air Quality

The EIR found that the construction of the Project would produce NO_x emissions greater than the current threshold. In addition, the project has the possibility of producing GHG emissions that might incrementally contribute to climate change. The following mitigation measures address these two issues.

- The Project NO_x emissions will exceed the six ton per quarter threshold established by the San Luis Obispo County Air Pollution Control District (APCD) by 3.8 tons. As determined by the APCD, AT&T shall financially contribute to the off-site emission reduction program within the APCD jurisdiction for emissions exceeding the six tons per quarter threshold.

CALENDAR ITEM NO. **C01** (CONT'D)

- In addition, prior to the start of construction, AT&T shall purchase carbon offset credits from the California Climate Action Registry (CCAR), the APCD, or any source that is approved by the Commission's Executive Officer and that is consistent with the policies and guidelines of the California Global Warming Solution Act of 2006 (AB 32) to mitigate the Greenhouse Gas Emissions associated with construction of the Project. Within 60 days of completion of the project, AT&T will submit a report for the Executive Officer's review and approval, which identifies all construction-related emissions and the offsets that were purchased from approved programs that resulted in a zero net increase in emissions from the Project construction.

2. Biology

The EIR found that the construction of the Project may have adverse impacts to marine animals. These impacts have been mitigated with the following measure:

- A Marine Wildlife Contingency Plan for the pre- and post-lay surveys and cable lay operations shall be prepared and will include measures to reduce the chance of a vessel/marine mammal interaction and underwater noise impacts within the area most likely to support the most common cetaceans. The plan will include provisions for the appropriate number of NOAA marine mammal monitors to be on board vessels that could cause an impact to marine mammals including cable lay, cable burial and transport vessels.

The EIR found the potential for impacts to the Morro shoulderband snail. This potential impact has been mitigated with the following measure:

- Prior to the disturbance of potentially suitable habitat areas, a USFWS-approved biologist shall survey for, collect, and relocate any Morro shoulderband snails found within the project area to suitable on-site or off-site habitat areas not planned for disturbance.

OTHER ISSUES:

At the January 6, 2009, public hearing for the Draft EIR, Commission staff received comments from the public and local officials, encouraging AT&T to provide funding to assure the public's continued free access to Montaña de Oro State Park (Park). Portions of AT&T's existing fiber optic cables, as well as the proposed AAG cable, cross into the Park at the cable landing site. Staff understands that AT&T is participating in discussions regarding the requested funding.

CALENDAR ITEM NO. **C01** (CONT'D)

OTHER PERTINENT INFORMATION:

1. AT&T has the right to use the uplands adjoining the lease premises.
2. **Termination of Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060(c)(3)], the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code section 21065 and Title 14, California Code of Regulations, sections 15060 (c)(3) and 15378.

3. **Issuance of New Lease:** Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15025), the staff has prepared an EIR identified as CSLC EIR No. 745, State Clearinghouse No. 2007111029. Such EIR was prepared and circulated for public review pursuant to the provisions of the CEQA. A Mitigation Monitoring Program has been prepared in conformance with the provisions of the CEQA (Public Resources Code section 21081.6) and is contained in Exhibit D attached hereto.
4. CEQA Findings, made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15091) are contained in Exhibit C, attached hereto.
5. This activity involves lands identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. Based upon the staff's consultation with the persons nominating such lands and through the CEQA review process, it is the staff's opinion that the project, as proposed, is consistent with its use classification.

FURTHER APPROVALS REQUIRED:

California Coastal Commission
Regional Water Quality Control Board
California Department of Fish and Game
U.S. Army Corps of Engineers

EXHIBITS:

- A. Location and Site Map
- B. Land Description
- C. CEQA Findings
- D. Mitigation Monitoring Program

CALENDAR ITEM NO. **C01** (CONT'D)

PERMIT STEAMLINING ACT DEADLINE:

September 1, 2009

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

TERMINATION OF LEASE – FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15060(c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

ISSUANCE OF NEW LEASE: CERTIFY THAT AN EIR NO. 745, STATE CLEARINGHOUSE NO. 2007111029, WAS PREPARED FOR THIS PROJECT PURSUANT TO THE PROVISIONS OF THE CEQA, THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN AND THAT THE EIR REFLECTS THE COMMISSION'S INDEPENDENT JUDGMENT AND ANALYSIS.

ADOPT THE FINDINGS, MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15091, AS CONTAINED IN EXHIBIT C, ATTACHED HERETO.

ADOPT THE MITIGATION MONITORING PROGRAM, AS CONTAINED IN EXHIBIT D, ATTACHED HERETO.

SIGNIFICANT LANDS INVENTORY FINDING:

FIND THAT THIS ACTIVITY IS CONSISTENT WITH THE USE CLASSIFICATION DESIGNATED BY THE COMMISSION FOR THE LAND PURSUANT TO PUBLIC RESOURCES CODE SECTIONS 6370, ET SEQ.

AUTHORIZATION:

1. AUTHORIZE THE TERMINATION OF GENERAL LEASE – RIGHT OF WAY USE NO. PRC 8144.1 ISSUED TO AT&T CORPORATION, EFFECTIVE MARCH 1, 2009.
2. AUTHORIZE ISSUANCE OF A GENERAL LEASE – RIGHT OF WAY USE TO AT&T CORPORATION BEGINNING MARCH 2, 2009, FOR A TERM OF

CALENDAR ITEM NO. **C01** (CONT'D)

TEN YEARS, WITH THE RIGHT TO RENEW FOR ONE ADDITIONAL PERIOD OF 15 YEARS, SUBJECT TO SUCH REASONABLE RENEWAL TERMS AND CONDITIONS AS THE STATE MAY IMPOSE FOR THE INSTALLATION, USE AND MAINTENANCE OF ONE FIBER OPTIC CABLE (PORTION OF SEGMENT 5 OF AT&T ASIA AMERICA GATEWAY FIBER OPTIC CABLE SYSTEM) WITHIN AN EXISTING CONDUIT ON THE LAND DESCRIBED ON EXHIBIT B AND AS SHOWN ON EXHIBIT A, FOR REFERENCE PURPOSES ONLY, ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF; ANNUAL RENT IN THE AMOUNT OF \$65,400; WITH THE STATE RESERVING THE RIGHT TO MODIFY THE METHOD, AMOUNT OR RATE OF CONSIDERATION EFFECTIVE ON THE SECOND ANNIVERSARY OF THE BEGINNING DATE OF THE LEASE, IRRESPECTIVE OF WHETHER THE STATE EXERCISES THE RIGHT TO MODIFY LEASE CONSIDERATION ON THE SECOND ANNIVERSARY, IT MAY DO SO ON THE FIFTH ANNIVERSARY, AND SUBSEQUENTLY THEREAFTER, AS PROVIDED IN THE LEASE; LIABILITY INSURANCE FOR COMBINED SINGLE LIMIT COVERAGE OF NO LESS THAN \$1,000,000; AND A SURETY BOND IN THE AMOUNT OF \$500,000.