

**CALENDAR ITEM
C39**

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08/11/09
WP 8152.1
S.Young

ASSIGNMENT OF LEASE

LESSEE/ASSIGNOR:

PC Landing Corp.
5956 Sherry Lane, #1000
Dallas, TX 75225

ASSIGNEE:

PC Landing Corp., a wholly owned indirect subsidiary of NTT Communications Corporation
50 California Street, Suite 1500
San Francisco, CA 94111

AREA, LAND TYPE, AND LOCATION:

11 acres, more or less, of sovereign lands in the Pacific Ocean, offshore of the city of Grover Beach, San Luis Obispo County.

AUTHORIZED USE:

The construction, installation, operation, maintenance, and use of two 5.25-inch diameter steel conduits and two fiber optic cables.

LEASE TERM:

Ten years, beginning April 20, 2000, 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:

\$242,075 per annum, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the Lease.

OTHER PERTINENT INFORMATION:

1. Assignee has the right to use the uplands adjoining the lease premises.

CALENDAR ITEM NO. **C39** (CONT'D)

2. On April 20, 2000, the Commission approved the issuance of a ten-year General Lease – Right of Way Use to PC Landing Corp. for the construction, installation, operation, maintenance, and use of two 5.25-inch diameter steel conduits and two fiber optic cables, referred to as the PC-1 cable system, offshore of the city of Grover Beach in San Luis Obispo County. The cables provide infrastructure for global access to an existing land line communication network. The PC-1 system is designed as a ring configuration consisting of two cable landings in the United States and two landing in Japan. This configuration enables transmission to continue uninterrupted if there is a cable failure by routing transmission through the unaffected parts of the ring.

Subsequently, on July 19, 2002, PC Landing Corp. filed a voluntary petition in the United States Bankruptcy Court seeking relief under Chapter 11 of the Bankruptcy Code. As a result, PC Landing defaulted on its rental obligations under the Lease. A reorganized parent company, Pacific Crossing Limited, including reorganized PC Landing Corp., emerged from Chapter 11 bankruptcy as a stand-alone entity continuing the operation of the PC-1 system, in accordance with the reorganization plan approved by the U.S. Bankruptcy Court on November 10, 2005, Case No. 02-12086. Accordingly, this change in controlling interest within the meaning of the lease required the Commission's approval of an assignment of the lease from PC Landing Corp. to the reorganized PC Landing Corp. On December 8, 2005, the Commission approved the assignment of the lease, a Settlement Agreement and various lease amendments that provided that the reorganized PC Landing Corp. make payments for back rental with interest, modification of cable post-burial survey intervals and increases to the surety bond amount on an incremental basis to an aggregate total of \$1,000,000.

Commission staffs have now been advised that pursuant to a Stock Purchase Agreement dated May 22, 2009, NTT Communications Corporation (NTT Com) will acquire all of the issued and outstanding shares of PC Landing Corp.'s parent company, Pacific Crossing Limited. NTT Com is an international provider of telecommunications services, and its parent company is Nippon Telegraph and Telephone Corporation.

Under the provisions of the lease, if a Lessee is a corporation, any dissolution, merger, consolidation, or other reorganization of Lessee, or sale or other transfer of a percentage of capital stock of Lessee which results in a change of controlling persons, is deemed to be an assignment within the meaning of the Lease. Accordingly, Pacific Crossing Limited, on behalf of PC Landing Corp., has applied to the Commission for an

CALENDAR ITEM NO. **C39** (CONT'D)

assignment of the Lease. Based on staff review of the application materials submitted including financial information, staff is recommending that the Commission approve the assignment of Lease No. PRC 8152.1. All other terms and conditions of the Lease remain valid and in full force.

3. 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.

EXHIBIT:

- A. Site and Location Map

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

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.

AUTHORIZATION:

AUTHORIZE THE ASSIGNMENT OF LEASE NO. PRC 8152.1, A GENERAL LEASE – RIGHT OF WAY USE, OF SOVEREIGN LANDS SHOWN ON EXHIBIT A (FOR REFERENCE PURPOSES ONLY) ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, FROM PC LANDING CORP. A SUBSIDIARY OF PACIFIC CROSSING LIMITED, TO PC LANDING CORP., AN INDIRECT SUBSIDIARY OF NTT COMMUNICATIONS CORPORATION; EFFECTIVE AUGUST 11, 2009.