

**CALENDAR ITEM  
C12**

A 34  
S 18

08/22/08  
WP 7264.2  
M. Clark

**CONSIDER CERTIFICATION OF A MITIGATED NEGATIVE DECLARATION  
AND AMENDMENT OF A GENERAL LEASE – RIGHT OF WAY USE**

**LESSEE:**

AT&T Corp., a wholly-owned subsidiary of SBC Communications, Inc.  
3001 Cobb Parkway, NW-Room 162  
Atlanta, GA 30339

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

Three parcels of school lands totaling 1.70 acres, more or less, located in portions of Section 16, T16N, R13E, SBM; Section 36, T16N, R11E, SBM; Section 36, T15N, R9E, SBM, between Barstow and Mountain Pass, San Bernardino County.

**EXISTING AUTHORIZED USE:**

Use and maintenance of an existing buried fiber optic communication cable and subsurface warning tape.

**EXISTING LEASE TERM:**

30 years, beginning November 30, 1988.

**EXISTING CONSIDERATION:**

\$500 per year; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

**PROPOSED AMENDMENT:**

1. Amend the Lease by replacing Section 1 (Basic Provisions) with the following terms:
  - a. **Authorized Use and Improvements:** Authorize the construction, operation, use, and maintenance of a 0.7-inch diameter fiber optic communications cable encased in one of three bundled one and one-half inch diameter high density polyethylene conduits and subsurface warning tape; the retention of existing warning marker posts; a 20-foot temporary construction work area; and the

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decommissioning and abandonment in place of an existing 0.5-inch diameter direct buried (not in conduit) fiber optic communication cable and subsurface warning tape.

- b. **Temporary Construction Term:** A two-year term beginning August 22, 2008, for the use of a temporary construction work area located on Parcel 2.
  - c. **Consideration:** \$684 annual rent effective November 30, 2008; with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.
  - d. **Construction Dates:** Construction may begin no sooner than August 22, 2008 and must be completed no later than August 31, 2010.
  - e. **Liability Insurance:** Liability insurance of no less than \$2,000,000.
  - f. **Surety:** Surety bond or other security in the amount of no less than \$5,000.
2. Amend the lease by replacing Section 2 (Special Provisions) with specific provisions for construction activities and the abandonment in place and eventual removal of the existing direct buried cable.
  3. Amend the lease by replacing Section 3 (Lease Description).
  4. All other terms and conditions of the lease shall remain in effect without amendment.

**OTHER PERTINENT INFORMATION:**

1. Lessee has the right to use the lands adjoining the lease premises.
2. On December 13, 1988, the Commission authorized a 30-year General Lease – Right of Way Use, to the American Telephone and Telegraph Company for the installation and maintenance of a direct buried fiber optic communications cable. On August 22, 1990, the Commission approved an amendment of the Lease to include a third parcel of State-owned school land crossed by the fiber optic communication cable. This Lease was subsequently assigned to AT&T Corp. (AT&T), a wholly-owned subsidiary of SBC Communications, effective November 18, 2005. The Lease will expire November 29, 2018. The Lessee has applied for an amendment to its existing Lease to install a new conduit encased fiber

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optic communication cable and subsurface warning tape, and to decommission and abandon in place the existing direct buried fiber optic communication cable and subsurface warning tape within Parcel 2 of the Lease Premises.

3. The Lessee is proposing to perform new construction and maintenance activities on a 190-mile fiber optic communication cable (cable) route running from Las Vegas, Nevada, to Victorville, California, to replace cable that is nearing the end of its useful life. The proposed project will rehabilitate the existing facilities and provide for future expansion. The new construction portion of the project will involve approximately 32.56 miles in California. It will also consist of decommissioning and abandoning the existing direct buried cable and subsurface warning tape in place and installing new conduit encased cable and subsurface warning tape. In addition, the Lessee is proposing to place 77 new access vaults and 77 new marker posts along the California side of the route, none of which will be located on the Lease Premises.
4. The proposed new construction and decommissioning/abandonment in place of the existing cable will occur within only one of three parcels of State school land under lease (Parcel 2 as described in the revised Section 3 of the Lease) covering approximately 1,863 linear feet, between Halloran Summit and Cima Road in San Bernardino County. All construction on State lands will take place within Parcel 2 of the Lease Premises which consists of an existing ten-foot-wide right-of-way located within an existing 24-foot wide dirt access road. The proposed Amendment will authorize the use of a 20-foot temporary construction work area which will parallel the Lease Premises. The term of the use of the temporary construction work area will be from August 22, 2008, to no later than August 21, 2010. Temporary improvements are not anticipated to be installed during the construction process.
5. The California portion of the project includes installation of new conduit by plowing and trenching; however, horizontal directional drilling (HDD) may be required to install conduit under road crossings, utilities, dry washes, or extremely rocky terrain. The construction of the cable on the Lease Premises does not anticipate any HDD activities. On the Lease Premises, the conduit will be buried at a depth of approximately four feet and will be buried within two to six feet of the existing cable. After the conduit is installed, cable will be pulled or blown through one of the three empty conduits. The Lessee currently has no plans to use the two additional conduits, but is proposing to install the conduits so that the Lease Premises will not have to be disturbed if a need for additional cable arises

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in the future. The proposed Amendment requires the Lessee to obtain approval from the Commission prior to installing additional cables within the two additional conduits. The existing warning marker posts, located throughout the Lease Premises and proposed and existing subsurface warning tape that parallel the cable provide a warning to the public that fiber optic cable is buried below. The marker posts also allow engineers to scan the road for the cable location without having to resort to ground-disturbing activities.

6. Construction is scheduled to begin in fall of 2008 and may take up to six months to complete. After construction is complete, construction debris will be removed and the Lease Premises will be restored to pre-existing conditions, including vegetation restoration.
7. The Lease will also be amended to 1) revise the annual rent from \$500 to \$684; 2) provide for construction limiting dates; 3) an increase the liability insurance requirement from \$1,000,000 to \$2,000,000; 4) require a Surety Bond or other security in the amount of \$5,000; 5) and replace section 3 (Land Description).

**ENVIRONMENTAL INFORMATION:**

1. The staffs of the Bureau of Land Management and the CSLC, joint federal and state lead agencies, have completed work on a joint Final Environmental Assessment/ Mitigated Negative Declaration (Final EA /MND). The Final EA /MND was prepared pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), and a 20-day public review period was provided from July 15, 2008 to August 4, 2008. Seven comments were received from the following: the Applicant's consultant (Chambers Group, Inc.), the Applicant's attorney (Allen Matkins Leck Gamble Mallory & Natsis LLP), the Colorado River Board of California, the Mojave Desert Air Quality Management District, the Native American Heritage Commission, the Department of Toxic Substances Control and the State Clearinghouse and Planning Unit.
2. The Final EA /MND has identified potential impacts to the Desert Tortoise (listed as threatened under both the federal endangered species act (FESA) and the California endangered species act (CESA)) , Mojave Ground Squirrel (listed as threatened under CESA) and their habitats, recreation, traffic and vegetation and provides the mitigation measures necessary to reduce all the potential impacts to a less than significant level.

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3. On May 20, 2008, the United States Fish and Wildlife Services (Service) issued a Biological Opinion (BO) for the project concluding that, "After reviewing its current status, the environmental baseline for the action area, the effects of the proposed action, and the cumulative effects, it is the Service's biological opinion that the Bureau's proposed issuance of a right-of-way grant to AT&T to replace fiber optic cables is not likely to jeopardize the continued existence of the desert tortoise. We reached this conclusion because the proposed action will affect a very small amount of suitable habitat and very few desert tortoises. In addition, AT&T will implement numerous measures to avoid, minimize and reduce the potential adverse effects of the action on the desert tortoise."

Staff of the CSLC and the California Department of Fish and Game (CDFG) have reviewed the BO. The CDFG will rely on the Final EA /MND, in combination with the BO to issue a 2081 "incidental take" permit to AT&T for the project. CDFG will monitor future cable maintenance activity. The mitigation measures contained in the Final EA/MND and the BO are contained in the Mitigation Monitoring Program for the proposed replacement project.

4. 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 a Proposed Mitigated Negative Declaration identified as CSLC ND 746, State Clearinghouse No. 2008071076. Such proposed Mitigated Negative Declaration was prepared and circulated for public review pursuant to the provisions of the CEQA.

Based upon the Initial Study, the Proposed Mitigated Negative Declaration, and the comments received in response thereto, there is no substantial evidence that the project will have a significant effect on the environment; Title 14, California Code of Regulations, section 15074 (b). A Mitigation Monitoring Program has been prepared in conformance with the provisions of the CEQA (Public Resources Code section 21081.6).

5. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. However, the Commission has declared that all state school lands and submerged lands are "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code sections 6370, et seq., use classifications for such lands have not been designated. Therefore, the

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finding of the project's consistency with the use classification as required by Title 2, California Code of Regulations, section 2954 is not applicable.

**APPROVALS OBTAINED:**

U.S. Fish and Wildlife Service

**FURTHER APPROVALS REQUIRED:**

U. S. Army Corps of Engineers, Bureau of Land Management, California Department of Fish and Game, California Regional Water Quality Control Board, State Historic Preservation Office, and the County of San Bernardino

**EXHIBITS:**

- A. Site and Location Map
- B. Land Description
- C. Mitigation Monitoring Plan
- D. Public Comments

**PERMIT STREAMLINING ACT DEADLINE:**

October 20, 2008

**RECOMMENDED ACTION:**

IT IS RECOMMENDED THAT THE COMMISSION:

**CEQA FINDING:**

CERTIFY THAT A PROPOSED MITIGATED NEGATIVE DECLARATION, CSLC ND NO. 746, STATE CLEARINGHOUSE NO. 2008071076 WAS PREPARED FOR THIS PROJECT PURSUANT TO THE PROVISIONS OF THE CEQA, THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN AND IN THE COMMENTS RECEIVED IN RESPONSE THERETO AND THAT THE MITIGATED NEGATIVE DECLARATION REFLECTS THE COMMISSION'S INDEPENDENT JUDGMENT AND ANALYSIS.

ADOPT THE PROPOSED MITIGATED NEGATIVE DECLARATION AND DETERMINE THAT THE PROJECT, AS APPROVED, WILL NOT HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT.

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

**AUTHORIZATION:**

AUTHORIZE THE AMENDMENT OF LEASE NO. PRC 7264.2, A GENERAL LEASE – RIGHT OF WAY USE, OF SCHOOL LANDS, FOR

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THE CONSTRUCTION, OPERATION, USE, AND MAINTENANCE OF A 0.7-INCH DIAMETER FIBER OPTIC COMMUNICATION CABLE ENCASED IN ONE OF THREE BUNDLED ONE AND ONE-HALF INCH DIAMETER HIGH DENSITY POLYETHYLENE CONDUITS AND SUBSURFACE WARNING TAPES; FOR THE RETENTION OF EXISTING WARNING MARKER POSTS; FOR THE DECOMMISSIONING AND ABANDONMENT IN PLACE OF AN EXISTING DIRECT BURIED FIBER OPTIC COMMUNICATION CABLE AND SUBSURFACE WARNING TAPE AS SHOWN ON EXHIBIT A (FOR REFERENCE PURPOSES ONLY) AND DESCRIBED ON EXHIBIT B ATTACHED AND BY REFERENCE MADE A PART HEREOF; FOR THE USE OF A 20-FOOT TEMPORARY CONSTRUCTION WORK AREA FOR A TERM OF TWO YEARS BEGINNING AUGUST 22, 2008 AS SHOWN ON EXHIBIT A AND AS DESCRIBED ON EXHIBIT C ATTACHED AND BY REFERENCE MADE A PART HEREOF; A REVISION IN THE RENT FROM \$500 PER YEAR TO \$684, EFFECTIVE NOVEMBER 30, 2008; FOR CONSTRUCTION LIMITING DATES; FOR AN INCREASE IN THE LIABILITY INSURANCE COVERAGE TO \$2,000,000; FOR THE ADDITION OF A SURETY BOND OR OTHER SECURITY IN THE AMOUNT OF \$5,000; FOR ADDITIONAL SPECIAL PROVISIONS FOR CONSTRUCTION ACTIVITIES, ABANDONMENT IN PLACE AND EVENTUAL REMOVAL OF THE AUTHORIZED IMPROVEMENTS; AND FOR THE REPLACEMENT OF SECTION 3 (LAND DESCRIPTION); ALL OTHER TERMS AND CONDITIONS OF THE LEASE WILL REMAIN IN EFFECT WITHOUT AMENDMENT.