MINUTE ITEM
This Calendar Item No. C54 was approved as Minute Item No. 54 by the California State Lands Commission by a vote of 3 to 0 at its 9/19/00 meeting.

CALENDAR ITEM
C54

A 10, 17, 25, 26, 30

S 5, 6, 12

09/19/00
PRC 8014.1
PRC 8044.1
N. Smith

AMENDMENT OF AND CONSENT TO CO-LOCATION UNDER LEASES PRC 8014 & 8044

LESSEE:

GST Telecom California, Inc.
4001 Main Street
Vancouver, Washington 98663

CO-LOCATOR:

Williams Communications, Inc.
110 West 7th Street, Suite 500
Tulsa, Oklahoma 74121-2064

AREA, LAND TYPE, AND LOCATION:

0.69 acres, more or less, of sovereign lands between Sacramento and Los Angeles through the San Joaquin Valley, crossing nine waterways, eight by directional boring and one attached to an existing bridge, various counties.

AUTHORIZED USE:

The Commission has previously authorized the installation, operation and maintainance of six 8-inch and three 10-inch steel conduits. Each conduit contains six innerducts, one of which will be used for a fiber optic cable.

LEASE TERM:

PRC 8014.1
Twenty-five years, beginning February 1, 1998

PRC 8044.1
Twenty-five years, beginning November 11, 1998.

CONSIDERATION:

$767 per year (PRC 8014.1) and $336 per year (PRC 8044.1); with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

PROPOSED AMENDMENT:

The proposed amendment (the "Amendment and Consent to Co-location") will authorize Williams Communication Inc. ("Williams") to utilize fiber optic cable within the rights of way created under PRC Nos. 8014.1 & 8044.1 (collectively referred to as the "Leases"); provide for the installation of two additional fiber optic cables into the existing conduit, for a total of three fiber optic cables; provide that GST Telecom California, Inc. and Williams are jointly and severally liable for the performance of all covenants and obligations arising under the Leases; and provide that Williams shall abide by all of the terms, conditions and limitations of the Leases.

OTHER PERTINENT INFORMATION:

1. Lessee has a right to use the uplands adjoining the lease premises.

2. At its February 27 and December 16, 1998, meetings the Commission authorized GST Telecom California, Inc. (GST) to construct a fiber optic network between Sacramento and Los Angeles through the San Joaquin Valley. Authorization was for the installation, operation and maintenance of conduit containing six innerducts, one which houses one fiber optic cable.

3. Williams is constructing a portion of its nationwide fiber optic network in California. This network includes numerous routes within the State. Williams' route from Sacramento to Los Angeles would reduce environmental impacts through co-location of fiber optic cable within existing rights of way. The shared use of rights of way and/or facilities by telecommunications providers has been referred to in the industry as "co-location."

4. GST and Williams entered into an Indefeasable Right of Use Agreement ("IRU"), dated June 9, 1999. Under the terms of the IRU Agreement, GST has granted to Williams the exclusive right to use two innerducts each containing one fiber optic cable in GST's existing conduit system. In order to implement the IRU with Williams, GST now seeks Commission approval to amend the Leases to authorize the placement of two additional fiber

optic cables within the existing conduit and to secure the consent of the Commission to the co-location of Williams in the rights of way created under the Leases.

5. On May 17, 2000, GST Telecom Inc., and affiliated debtors, including GST Telecom California, Inc, (collectively referred to as "Debtors") filed a petition in the U.S. Bankruptcy Court for the District of Delaware seeking reorganization under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1330. Section 356 of the Bankruptcy Code accords the Debtor the right to assume or reject executory contracts and unexpired leases. To date, the Debtor has not exercised this right with respect to the Leases. Upon the motion of Debtors and with the approval of the Bankruptcy Court, the Debtors have assumed the IRU Agreement with Williams which provides for the location of Williams' facilities within the conduit system partially located within the Leases.

6. On July 14, 2000, the Debtors filed a motion in the proceeding for an order authorizing the proposed sale under a competitive bid procedure of substantially all of the Debtors' assets and for assumption and assignment of all or substantially all of the Debtors' executory contracts and unexpired leases. Pursuant to the motion, a competitive bid sale was held on or about August 22, 2000. The successful bidder at the sale, and likely successor in interest to the assets of Debtors, was *Time Warner Inc. ("TWI")*. Staff has been advised by Debtors' bankruptcy counsel that the Bankruptcy Court has conditionally confirmed the sale to TWI and that Leases PRC 8014.1 & 8044.1 have been assumed, subject to the contingency that the sale is consummated. Provided remaining objections to the sale can be resolved to the satisfaction of the Bankruptcy Court, the closing and assumption of the Leases is projected to occur within the next 60 days.

7. Staff proposes that Commission authorize amendment of the Leases and consent to co-location of Williams pursuant to the IRU Agreement, provided however that the terms and conditions of the IRU shall be subordinate to the terms and conditions of the Leases, and provided further, GST and Williams shall be jointly and severally liable for the performance of all leasehold obligations, including the abandonment of facilities and site restoration. Further, Staff proposes that Commission authorization of the proposed amendment of the Leases, including consent to co-location, be approved subject to the condition precedent

that each of the following conditions occur within 120 days following Commission approval: 1) GST or its successor in interest exercise right to assume the Leases in accordance with Bankruptcy Code Section 365; 2) Execution of the Amendment of Leases by GST or its successor in interest with the approval of the Bankruptcy Court as may be required by law.

8. As to the consent to co-location, pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA because the activity 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, section 15378.

9. As to the amendment, pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), the staff has determined that this activity is exempt from the requirements of the CEQA under the general rule that the CEQA applies only to projects which have the potential for causing a significant effect on the environment. The staff believes, based on the information available to it, that there is no possibility that this project may have a significant effect on the environment.

   Authority: Title 14, California Code of Regulations, section 15061 (b) (3).

10. 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.

EXHIBITS:

A. PRC 8014.1 - Site Plat
B. PRC 8044.1 - Site Plat

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:
IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

AS TO THE CO-LOCATION, FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCES CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15378.

AS TO THE AMENDMENT OF LEASES PRC 8014.1 AND 8044.1, FIND THAT THE ACTIVITY IS EXEMPT FROM THE REQUIREMENTS OF THE CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 BECAUSE THERE IS NO POSSIBILITY THAT THE ACTIVITY MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT; TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15061 (b) (3).

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.

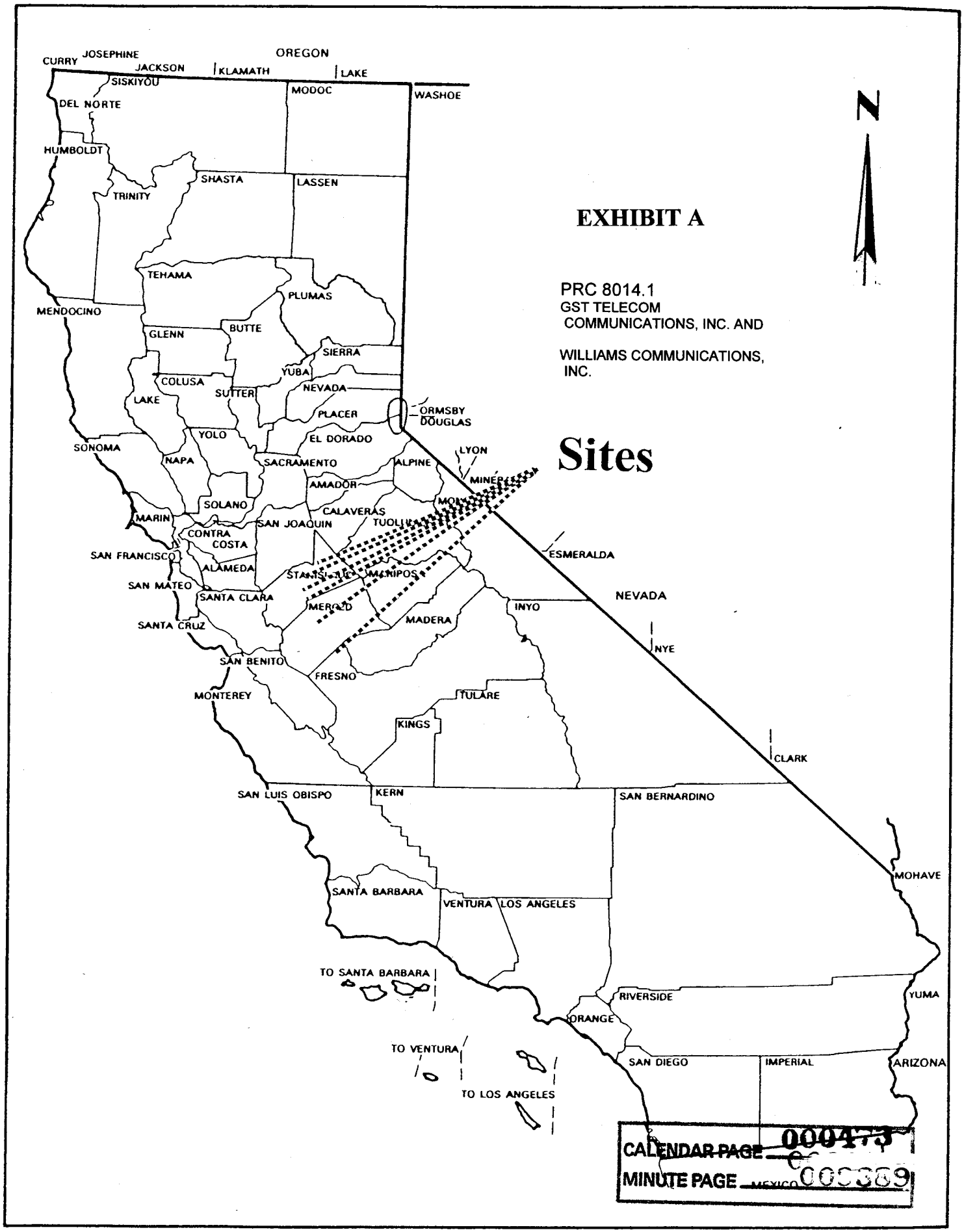
AUTHORIZATION:

1) AUTHORIZE THE AMENDMENT OF LEASES PRC 8014.1 & 8044.1, BOTH GENERAL LEASE - RIGHT OF WAY USE, OF SOVEREIGN LANDS SHOWN ON EXHIBIT A AND B ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, AND CONSENT TO THE CO-LOCATION OF WILLIAMS COMMUNICATIONS, INC. WITHIN THE RIGHTS OF WAY CREATED THEREIN FROM GST TELECOM CALIFORNIA, INC. TO WILLIAMS COMMUNICATIONS, INC., SUBJECT TO ALL OF THE TERMS, CONDITIONS AND LIMITATIONS OF THE LEASES, EFFECTIVE SEPTEMBER 19, 2000; AS TO THE AMENDMENT, AUTHORIZE WILLIAMS COMMUNICATIONS, INC. TO INSTALL, OPERATE AND USE TWO FIBER OPTIC CABLES LOCATED IN GST TELECOM CALIFORNIA, INC. CONDUIT; ALL OTHER TERMS AND

CONDITIONS OF THE LEASES WILL REMAIN IN EFFECT WITHOUT AMENDMENT.

2) AUTHORIZE THE EXECUTIVE OFFICER TO EXECUTE ALL DOCUMENTS AND TAKE SUCH MEASURES AS MAY BE NECESSARY OR CONVENIENT TO IMPLEMENT THE COMMISSION'S ACTION.

3) PROVIDE THAT THE AUTHORIZATION CONTAINED IN PARAGRAPHS 1 AND 2 ABOVE SHALL BE CONTINGENT UPON AND SUBJECT TO THE CONDITION PRECEDENT THAT EACH OF THE FOLLOWING EVENTS OCCUR WITHIN 120 DAYS FOLLOWING COMMISSION APPROVAL: 1) GST OR ITS SUCCESSOR IN INTEREST UNCONDITIONALLY ASSUMES LEASES PRC 8014.1 & 8044.1 IN ACCORDANCE WITH BANKRUPTCY CODE SECTION 365, AND; 2) COMMISSION STAFF IS FURNISHED WITH A DULY EXECUTED ORIGINAL OF THE AMENDMENT AND CONSENT TO CO-LOCATION UNDER LEASES PRC 8014.1 & 8044.1 BY GST TELECOM CALIFORNIA, INC. OR ITS LAWFUL SUCCESSOR-IN-INTEREST, UPON SUCH APPROVAL OF THE BANKRUPTCY COURT AS MAY BE REQUIRED BY LAW.



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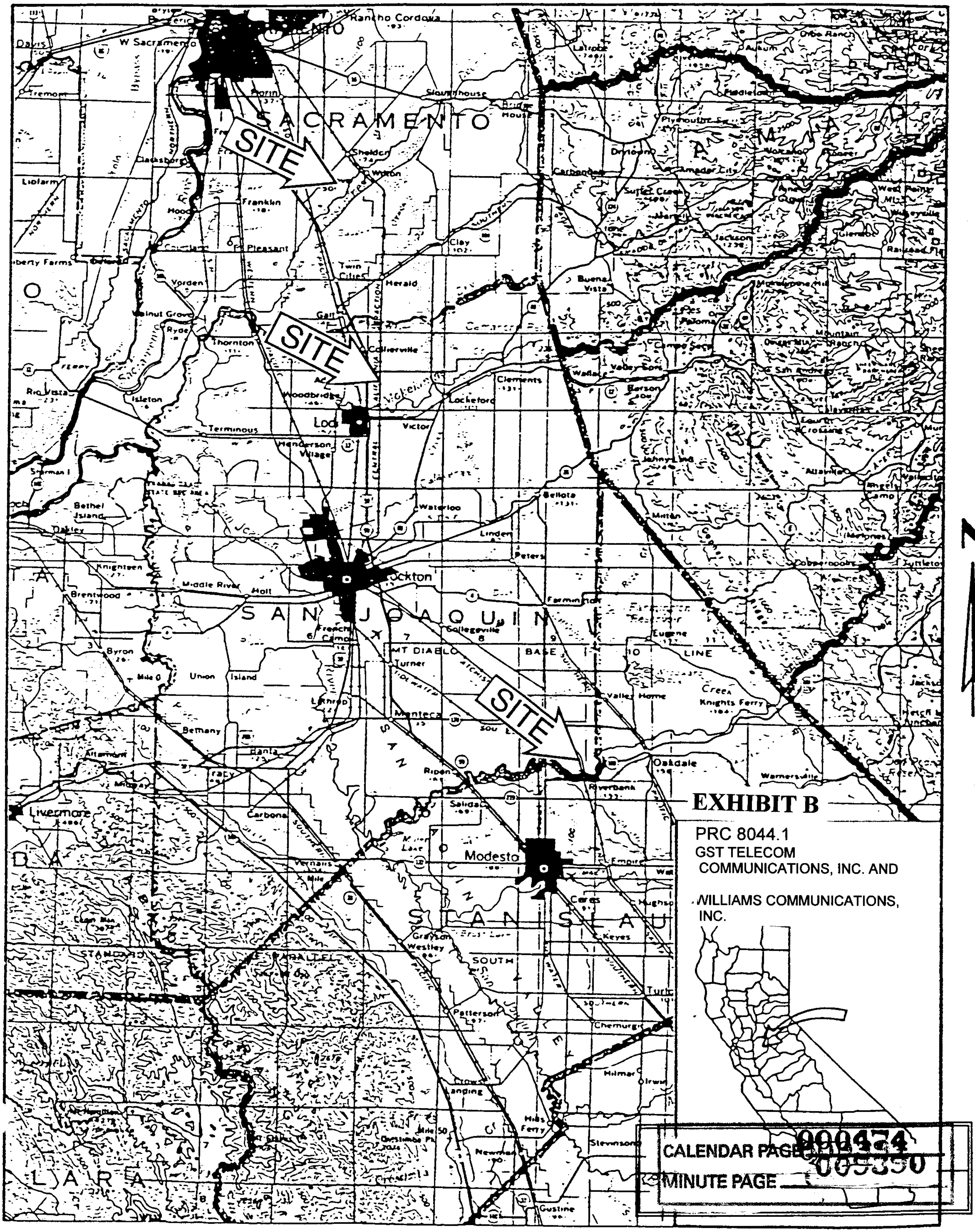

EXHIBIT B

PRC 8044.1
GST TELECOM COMMUNICATIONS, INC. AND
WILLIAMS COMMUNICATIONS, INC.

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