

**CALENDAR ITEM
C46**

A 33
S 15

10/29/10
WP 8142.1
S.Young

GENERAL LEASE – NON EXCLUSIVE RIGHT OF WAY USE

APPLICANT:

MFS Globenet, Inc.
2400 North Glenville Drive
Richardson, TX 75082

AREA, LAND TYPE, AND LOCATION:

Sovereign lands located in the Pacific Ocean, offshore of Montaña de Oro State Park, San Luis Obispo County.

AUTHORIZED USE:

Continued use and maintenance of one six-inch diameter steel conduit.

LEASE TERM:

15 years, beginning February 8, 2010.

CONSIDERATION:

\$15,093 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

SPECIFIC LEASE PROVISIONS:

Insurance:

No less than \$1,000,000 combined single limit coverage.

Bond:

\$75,000

OTHER PERTINENT INFORMATION:

1. Applicant owns and has the right to use the uplands adjoining the lease premises.

2. On February 8, 2000, the Commission approved the issuance of General Lease – Non Exclusive Right of Way Use, Lease No. PRC 8142.1, to MFS Globenet, Inc. (MFS) for the installation, use and maintenance of a six-inch diameter steel conduit as part of the Japan-U.S.

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Cable Network System in the Pacific Ocean, offshore of Montaña de Oro State Park, San Luis Obispo County. At that time, MFS indicated that the new conduit, at some point in the future, would house a fiber optic cable. Pursuant to the terms of Lease No. PRC 8142.1, the future installation of any cable in the empty conduit remained under the discretion of the Commission and subject to compliance with the California Environmental Quality Act (CEQA) and other applicable law.

Subsequently, on June 27, 2000, the Commission approved an amendment of Lease PRC 8142.1 to allow for the installation of a fiber optic cable, identified as Segment 9, within the conduit previously authorized under this Lease. The Amendment became effective on July 1, 2000.

In conjunction with the installation of Segment 9 of the fiber optic cable in the empty conduit, the Commission also authorized the issuance of a new General Lease-Right of Way Use, No. PRC 8204.1, to AT&T Corp. (AT&T), for the installation, use and maintenance of the fiber optic cable installed in the MFS empty conduit, effective July 1, 2000.

Both MFS and AT&T are members of a multi-member consortium (the Consortium) that owns the Japan-U.S. Cable Network. The members of the Consortium have entered into a private contractual agreement for the construction and maintenance of the Japan-U.S. Cable Network. Under the agreement, MFS retains ownership of the conduit authorized by Lease No. PRC 8142.1 and AT&T is responsible for the lease (Lease No. PRC 8204.1) for the fiber optic cable seaward of the conduit.

3. Lease No. PRC 8142.1 expired on February 7, 2010. The original lease contained a provision for a right to renew the lease for one additional period of 15 years, subject to such reasonable terms and conditions as the State may impose. MFS is now applying for a new lease for the additional 15-year term.
4. On October 30, 2007, the Commission approved a lease amendment to (Lease No. PRC 8142.1) to delete the cable burial inspection survey provision from this lease as the cable inspection is the responsibility of AT&T under provisions of Lease No. PRC 8204.1.
5. Pursuant to the Commission's delegation of authority and the State CEQA Guidelines (Title 14, California Code of Regulations, section 15061), staff has determined this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1,

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Existing Facilities; Title 2, California Code of Regulations, section 2905(a)(2). Similar permit conditions exist with the CCCs Coastal Development Permits (CDPs), for which both MFS & AT&T sought similar extensions.

Authority: Public Resources Code section 21084 and Title 14, California Code of Regulations, section 15300 and Title 2, California Code of Regulations, section 2905.

6. 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 staff's opinion that the project, as proposed, is consistent with its use classification.

EXHIBITS:

- A. Location and Site Map

PERMIT STREAMLINING ACT DEADLINE:

N/A

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

Find that the activity is exempt from the requirements of CEQA pursuant to Title 14, California Code of Regulations, section 15061 as a categorically exempt project. Class 1, Existing Facilities; Title 2, California Code of Regulations, section 2905(a)(2).

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:

Authorize issuance of a General Lease – Non Exclusive Right of Way Use to MFS Globenet, Inc. beginning February 8, 2010, for a term of 15 years, for the continued use and maintenance of one six-inch steel conduit as shown on Exhibit A attached (for reference purposes only) and by this

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reference made a part hereof; Consideration in the amount of \$15,093 per year, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease; Liability insurance for combined single limit coverage of not less than \$1,000,000; Surety bond in the amount of \$75,000.