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STAFF REPORT
COASTAL DEVELOPMENT PERMIT AMENDMENT AND
MODIFIED CONSISTENCY CERTIFICATION

CDP Amendment Application Nos.: E-98-029-A2 and E-00-004-A1

Consistency Certification Nos.: CC-059-00 and CC-078-00

Applicant: AT&T Corporation

Project Location: State and federal waters offshore of Manchester State Beach, Mendocino County; State and federal waters offshore of Montana de Oro State Park, west-southwest of the community of Los Osos, San Luis Obispo County

Project Description: Modify Special Condition 6 of the original permits (E-98-029 and E-00-004) and modify consistency certifications (CC-059-00 and CC-078-00) to require periodic surveys of the China-US and Japan-US undersea cables every five years, rather than every 18-24 months as originally approved.

Substantive File Documents: See Appendix A

SUMMARY

In 2000, the Coastal Commission approved Coastal Development Permits E-98-029 and E-00-004 and concurred with Consistency Certifications CC-059-00 and CC-078-00 submitted by AT&T to lay fiber optic cables from Manchester to Japan, Manchester to Morro Bay and Morro Bay to China. Key Coastal Act issues included potential effects on marine resources and commercial fishing. To prevent entanglement of marine mammals and fishing gear, the permits required AT&T to bury the cables to a depth of 1.0 meter except where precluded by seafloor substrates. The permits also required AT&T to survey the cable routes every 18 to 24 months for the life of project to verify that buried cable remains buried. If a cable survey indicates that previously buried cable has become unburied, AT&T must re-bury the cable segments. In its consistency certifications, AT&T also committed to survey its cables in federal waters and to re-bury any previously buried cable that has become unburied.

In the subject permit amendment applications and proposed modification to its consistency certifications, AT&T proposes to reduce the frequency of the periodic surveys for the cable segments in State and federal waters from once every 18 to 24 months to once every five years.

To date, AT&T has completed two periodic burial surveys, one in 2003 and the other in 2005. Comparing AT&T's 2001 as-built survey data with the 2003 and 2005 periodic survey results is difficult because of advances in cable detection technology since 2003. Some of the cable burial data reported by AT&T in the 2001 and 2003 surveys were inaccurate by comparison to the data reported in 2005 using the more advanced cable detection technology. For example, in some cases cable that is reported in 2003 as "buried" shows as "exposed" in 2005. This suggested that previously buried cable had become exposed and must be re-buried. However, side-by-side video comparisons show that the burial status of the cables has not appreciably changed between the two surveys. It appears that the 2003 survey results incorrectly reported that certain segments of cable were buried, but, in fact, these segments likely were not originally buried due to the presence of hard substrate.

Although staff was initially concerned that previously buried cable became unburied, it appears, based on video comparisons, that this was a reporting error and that the cables' burial status has remained relatively stable. In the six years since the cables have been laid, there have been no complaints by fishermen or reports of marine mammal entanglements. The Central California Joint Cable/Fisheries Liaison Committee supports the proposed five-year survey interval. For these reasons, staff believes changing the frequency of the burial surveys from every two years to every five years will not reduce protection of coastal resources. Furthermore, changing the frequency of the burial surveys will reduce the environmental effects associated with performing the surveys (e.g., air emissions and conflicts with commercial fishing along the cable survey routes).

Commission staff recommends the Commission **approve** the proposed permit amendments and **concur** with AT&T's modified consistency certifications.

1 STAFF RECOMMENDATION

1.1 Coastal Development Permit E-98-029 Amendment: Approval

Staff recommends approval of coastal development permit amendment application E-98-029-A2.

Motion

I move that the Commission approve the proposed amendment to coastal development permit E-98-029.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution

The Commission hereby approves coastal development permit amendment E-98-029-A2, and adopts the findings set forth below on grounds that the development, as amended, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the amended permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

1.2 Modified Federal Consistency Certification: Concurrence

Staff recommends concurrence with the modification to consistency certification number CC-059-00.

Motion

I move that the Commission concur with the applicant's modification to consistency certification CC-059-00 for the proposed change in survey intervals, finding that, 1) the coastal zone effects are not substantially different than originally described, and 2) the project, as modified, continues to be consistent with the enforceable policies of the California Coastal Management Program.

The staff recommends a **YES** vote. A majority vote in the affirmative will result in the adoption of the following resolution:

Resolution

The Commission hereby concurs with the modified consistency certification made by the applicant finding that the project, as modified, does not have coastal zone effects that are substantially different than the project as originally reviewed, and that the project continues to be consistent with the California Coastal Management Program.

1.3 Coastal Development Permit E-00-004 Amendment: Approval

Staff recommends approval of coastal development permit amendment application E-00-004-A1.

Motion

I move that the Commission approve the proposed amendment to coastal development permit E-00-004.

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution

The Commission hereby approves coastal development permit amendment E-00-004-A1, and adopts the findings set forth below on grounds that the development, as amended, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the amended permits complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

1.4 Modified Federal Consistency Certification: Concurrence

Staff recommends concurrence with the modification to consistency certification number CC-078-00.

Motion

I move that the Commission concur with the applicant's modification to consistency certification CC-078-00 for the proposed change in survey intervals, finding that, 1) the coastal zone effects are not substantially different than originally described, and 2) the project, as modified, continues to be consistent with the enforceable policies of the California Coastal Management Program.

The staff recommends a **YES** vote. A majority vote in the affirmative will result in the adoption of the following resolution:

Resolution

The Commission hereby concurs with the modified consistency certification made by the applicant finding that the project, as modified, does not have coastal zone effects that are substantially different than the project as originally reviewed, and that the project continues to be consistent with the California Coastal Management Program.

2 FINDINGS AND DECLARATIONS

The Commission finds and declares as follows:

2.1 Background

Between 2000 and 2002 the Commission approved the installation and operation of seven offshore fiber optic cable systems.¹ The Commission required each applicant to bury cable in soft sediment where feasible so as to avoid interference with commercial fishing gear and prevent marine mammal entanglements. Each permit also required periodic cable inspection surveys in State waters every 18 to 24 months. The purpose of the periodic surveys is to ensure that previously buried cable remains buried. The applicants also committed in their consistency certifications to perform this survey requirement in federal waters. If a cable survey indicates that previously buried cable has become unburied, the applicant is required to re-bury the cable segments. To date, most of the fiber optic cable companies have completed two cable burial surveys. Generally, the results of the surveys show that buried cable remains buried and stable. The Commission recently has approved changing the survey interval from every 18-24 months to every five years for the PC Landing Corporation, PAC Landing Corporation and MFS Globenet, Inc. (See E-98-027-A2/CC-041-00, E-98-027-A3/CC-041-00 and E-99-011-A2/CC-028-00).

2.2 Proposed Permit Amendments and Consistency Certification

AT&T proposes to amend Special Condition 6 of Coastal Development Permit (CDP) E-98-029 and E-00-004 and modify consistency certifications CC-059-00 and CC-078-00 to extend the burial survey interval from once every 18 to 24 months to once every five years. The various cables of the AT&T system were permitted in the following way: E-98-029/CC-059-00: S7 China-US Morro Bay, E1 China-US Morro Bay; and E-00-004/ CC-078-00: S9 Japan-US Morro Bay, S9 Japan-US Manchester and S8 Japan-US Manchester.

The proposed revised special condition set forth below would supersede and replace **Special Condition 6** approved by the Commission in CDPs E-98-029 and E-00-004. The revisions are illustrated by strikethroughs for deletions and underlining for additions. All other requirements of the Commission's approval of CDPs E-98-029 and E-00-004, including but not limited to the

¹ E-99-011/CC-028-00 – MFS Globenet, Inc.; E-98-029/CC-059-00 and E-00-004/CC-078-00 – AT&T Corporation; E-00-008/CC-110-00 – Global West Network, Inc.; E-05-007/CC-076-05 – Monterey Bay Research Institute; E-98-027/CC-041-00 and E-01-029/CC-111-01 – PC Landing Corporation and PAC Landing Corporation

Standard Conditions set forth in Section 2.0 of the Commission's findings, remain in full force and effect with respect to the amended projects.

E-98-029

Cable Surveying. Every ~~18 to 24 months~~ five years for the life of project, the applicant shall survey those portions of the E1 and S7 cable route from the mean high tide line to the seaward limit of the territorial waters of the State of California to verify that the cables have remained buried consistent with the as-built cable burial plan required by Special Condition 5. The survey shall be conducted with a remotely-operated vehicle ("ROV") equipped with video and still cameras and by a third party approved by the Executive Director. Within 30 days of survey completion, the applicant shall submit to the Executive Director a report describing the results of the survey. If the survey shows that a segment(s) of a cable is no longer buried consistent with the as-built cable burial plan required by Special Condition 5, the applicant shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments.

E-00-004

Cable Surveying. Every ~~18 to 24 months~~ five years for the life of project, the applicant shall survey those portions of the S8 and S9 cable route from the mean high tide line to the seaward limit of the territorial waters of the State of California to verify that the cables have remained buried consistent with the as-built cable burial plan required by Special Condition 5. The survey shall be conducted with a remotely operated vehicle ("ROV") equipped with video and still cameras and by a third party approved by the Executive Director. Within 30 days of survey completion, the applicant shall submit to the Executive Director a report describing the results of the survey. If the survey shows that a segment(s) of a cable is no longer buried consistent with the as-built cable burial plan required by Special Condition 5, the applicant shall, within 30 days of survey completion, submit to the Executive Director for approval a plan to re-bury those cable segments.

AT&T also proposes to survey the cables located in federal waters every five years.

2.3 Permit and Federal Consistency Jurisdiction

This staff report is a combined analysis for permit amendments E-98-029-A2 and E-00-004-A1 and modified consistency certifications CC-059-00 and CC-078-00. The Coastal Commission has original coastal permit jurisdiction over project areas on public trust lands, tidelands, and submerged lands from the mean high tide line to three nautical miles offshore. The proposed change to Special Condition 6 of each permit requires a permit amendment. The project also required federal permits from the United States Army Corps of Engineers, and therefore required federal consistency certifications pursuant to Section 307(c)(3)(A) of the Coastal Zone Management Act. For the portions of the project that lie outside the coastal zone in federal

waters, the applicant submitted modified consistency certifications to the Coastal Commission on July 10, 2007. The applicant has certified that the proposed modification complies with California's approved coastal management program (CCMP) and will be conducted in a manner consistent with the CCMP.

2.4 Related Agency Approvals

State Lands Commission

AT&T has entered into multiple leases² with the State Lands Commission (SLC) that authorize the laying of the subject cable segments across State-owned submerged lands and tidelands. These leases also require periodic cable burial surveys once every 18 to 24 months. In June 2007, AT&T applied to SLC to extend the survey requirements of its leases to once every five years. That application is pending.

Each lease requires AT&T to perform additional surveys of the cable in the event of natural or human-caused events that may uncover and expose the cable. Examples of qualifying events that could trigger an additional survey include a major earthquake, or notification from a commercial fisherman that a trawl net has snagged a previously-buried cable segment.

2.5 Coastal Act Issues

Marine Resources and Commercial Fishing

Coastal Act § 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Coastal Act § 30234.5 states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

The findings in support of AT&T's original permits and consistency certifications addressed the potential for (a) whales to be entangled with cables; (b) commercial fishing gear to become entangled with cable; and (c) abandoned trawl nets to entangle with cable and drown marine mammals and other marine wildlife.

To prevent entanglement, Special Condition 4 of the original permits required AT&T to bury the cables to a depth of 1.0 meter except where precluded by seafloor substrates. Where a 1.0 meter

² PRC 8203.1, PRC 8204.1, PRC 8154.1, PRC 8278.1

burial depth could not be achieved, the permits required AT&T to bury the cables to the maximum depth feasible. AT&T agreed to these same burial requirements in federal waters out to the 1,000-fathom water depth. AT&T was able to bury 68-87% of each cable (to a target depth of 0.6 to 1 meter below the seafloor). Due the presence of hard substrate, the remaining cable was laid on the surface of the seafloor.

To help ensure buried cable remains buried, the Commission required in Special Condition 6 that AT&T survey every 18 to 24 months for the life of project the cable routes to verify that the cables remain buried. If the survey indicates that a segment of the cable is no longer buried consistent with the as-built cable burial plan, AT&T must re-bury the cable.

To date, AT&T has completed two periodic burial surveys, one in 2003 and the other in 2005. Comparing AT&T's 2001 as-built survey data with the 2003 and 2005 periodic survey results is difficult because of advances in cable detection technology since 2003. Some of the cable burial data reported by AT&T in the 2001 and 2003 surveys were inaccurate by comparison to the data reported in 2005 using the more advanced cable detection technology. For example, in some cases cable that is reported in 2003 as "buried" shows as "exposed" in 2005. This suggested that previously buried cable had become exposed and must be re-buried. However, side-by-side video comparisons show that the burial status of the cables has not appreciably changed between the two surveys. It appears that the 2003 survey results incorrectly reported that certain segments of cable were buried, but, in fact, these segments likely were not originally buried due to the presence of hard substrate.

Although the Commission was initially concerned that previously buried cable became unburied, it appears, based on video comparisons, that this was a reporting error and that the cables' burial status has remained relatively stable. In the six years since the cables have been laid, there have been no complaints by fishermen or reports of marine mammal entanglements. The Central California Joint Cable/Fisheries Liaison Committee supports the proposed five-year survey interval. For these reasons, the Commission believes changing the frequency of the burial surveys from every two years to every five years will not reduce protection of coastal resources. Furthermore, changing the frequency of the burial surveys will reduce the environmental effects associated with performing the surveys (e.g., air emissions and conflicts with commercial fishing along the cable survey routes).

The Commission therefore finds that reducing the survey interval from once every 18 to 24 months to once every five years is consistent with the marine resources and commercial fishing policies (Sections 30230 and 30234.5) of the Coastal Act.

3 CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's administrative regulations requires Commission approval of coastal development permit applications and amendments to permits to be supported by a finding showing the application, as modified by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits approval of a proposed development if there are feasible

alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. Based on information derived from surveys that have been performed thus far, a reduction in the frequency of the burial surveys will not materially increase the likelihood of the environmental effect that the surveys are intended to avoid, namely, interference with commercial fishing and entanglement of marine mammals. Furthermore, such a reduction will reduce the environmental effects associated with performing the surveys (e.g., air emissions from survey vessels and potential conflicts with commercial fishing along the cable survey routes). The project as amended by the conditions of approval described herein incorporates mitigation measures to avoid any significant environmental effects under the Coastal Act and the CEQA. There are no less environmentally damaging feasible alternatives or mitigation measures.

APPENDIX A

Substantive File Documents

California Coastal Commission. "Final Adopted Findings for CDP Application Number E-98-029 and Consistency Certification CC-059-00." July 11, 2000.

----- "Final Adopted Findings for CDP Application Number E-00-004 and Consistency Certification CC-078-00." September 12, 2000.

AT&T. "Japan-US Submarine Cable Network Cable Burial Report." January 15, 2002.

----- "China-US Submarine Cable Network Cable Burial Report." January 15, 2002.

----- "2005 AT&T 24-Month California Survey." November 2, 2005.

January 31, 2006. Letter from Christopher Kubiak, Central California Joint Cable/Fisheries Liaison Committee to Barbara Dugal, California State Lands Commission.

September 6, 2007. Letter from James T. Burroughs, Allen Matkins Leck Gamble Mallory & Natsis LLP to Susan M Young, California State Lands Commission.

EXHIBIT 1 Regional Map of PAC Cable

