

# Staff Report 25

## **APPLICANT:**

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Frontier California, Inc.

## **PROPOSED ACTION:**

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Rescission of previous authorization and issuance of a General Lease – Right-of-Way Use

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

0.05 acres, more or less, of State indemnity school land in a portion of Section 26, Township 9 North, Range 2 East, SBM, near the unincorporated community of Newberry Springs, San Bernardino County.

## **AUTHORIZED USE:**

Use and maintenance of an existing underground fiber optic communication cable and a copper communication cable.

## **TERM:**

10 years, beginning October 21, 2021.

## **CONSIDERATION:**

\$503 per year, with an annual Consumer Price Index adjustment.

## **SPECIFIC LEASE PROVISIONS:**

Liability insurance in an amount no less than \$1,000,000 per occurrence; Lessee may satisfy all or part of the insurance requirement through maintenance of a staff-approved self-insurance program as specified in the lease.

## BACKGROUND:

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School lands were granted to the State of California by the federal government under the Act of March 3, 1853 (10 Stat. 244) and consisted of the 16th and 36th sections of land in each township (with the exceptions of lands reserved for public use, lands taken by private land claims, and lands known to be mineral in character). In cases of preemption due to the exceptions described above, the State was given the opportunity to select replacement lands from the United States in lieu of Sections 16 or 36. These replacement lands are now known as State indemnity school lands or lieu lands.

On February 6, 1989, the Commission authorized the exchange of State school lands under the jurisdiction of the Commission for public lands under the jurisdiction of the United States Department of the Interior, Bureau of Land Management (BLM) ([Item 43, February 6, 1989](#)). The Commission accepted the patent subject to a right-of-way easement to Contel of California (Contel) for a 10-foot-wide right-of-way for an underground fiber optic communication cable and a copper communication cable.

In 1993, Contel was part of an operating company merger and was placed under GTE Corporation (GTTC). On June 30, 2000, Bell Atlantic and GTTC merged into one company as Verizon Communications, which was subsequently renamed Verizon California, Inc. On April 1, 2016, Frontier Communications purchased Verizon California. Frontier California, Inc. is a Frontier Communications-owned operating company.

## STAFF ANALYSIS AND RECOMMENDATION:

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### AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

### STATE'S BEST INTERESTS:

The Contel right-of-way easement expired on March 24, 2010, and on August 19, 2015, the Commission authorized a Lease No. PRC 7522 to Verizon California, Inc. ([Item 67, August 19, 2015](#)). After the Commission authorized the lease, Frontier Communications purchased Verizon, but that lease was never executed. For these reasons, staff is recommending the rescission of the Commission's August 19, 2015 authorization. Frontier California, Inc. has applied for a new lease and rent is current.

Established in 1935, Frontier Communications has grown to provide service in 25 states. The Applicant offers Internet, phone, television services, and a broad range of complex communications services to all types of residential and business customers throughout California.

The proposed lease is limited to a 10-year term, does not alienate the State's fee simple interest, and does not grant the lessee exclusive rights to the lease premises. The lease requires the Applicant to insure and indemnify the State for any liability incurred as a result of the lessee's activities on the lease premises and to maintain the underground fiber optic communication cable and a copper communication cable at its sole expense. The lease also requires the payment of annual rent, which generates revenue for the California State Teachers' Retirement System, consistent with Public Resources Code section 6217.5.

### **CLIMATE CHANGE:**

As stated in *Safeguarding California Plan: 2018 Update* (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. The lease area is open lands with moderate to low vegetation fuels, and are vulnerable to the above events, including dust storms and flash flooding from thunderstorms, and to a lesser extent, wildland fires. The leased lands and surrounding land may be vulnerable to these weather events; however, these projected climate change effects are not expected to affect the uses of the leased lands for the underground fiber optic line and copper communication cable.

### **CONCLUSION:**

For the reasons stated above, staff believes the rescission of authorization for a lease and issuance of the proposed lease is in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application to rescind authorization and issuance of a new lease is a discretionary action by the Commission. Each time the Commission approves or rejects a use of school land, it exercises legislatively delegated authority and responsibility as trustee of the State's school lands as authorized by law. If the Commission denies the application, the Applicant has no right to a lease. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.

2. This action is consistent with the “Leading Climate Activism” Strategic Focus Area of the Commission’s 2021-2025 Strategic Plan.
3. Rescission of approval is not a project as defined by the California Environmental Quality Act (CEQA) because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

4. Staff recommends that the Commission find that issuance of the lease is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

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

## **EXHIBITS:**

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- A. Land Description
- B. Site and Location Map

## **RECOMMENDED ACTION:**

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It is recommended that the Commission:

### **CEQA FINDING:**

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

### **STATE’S BEST INTERESTS:**

Find that the rescission and authorization of the proposed lease is in the best interests of the State.

### **AUTHORIZATION:**

1. Authorize the rescission of the Commission’s August 19, 2015, authorization of a General Lease – Right-of-Way Use to Verizon California, Inc.; and

2. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning October 21, 2021, for a term of 10 years, for the continued use and maintenance of an existing underground fiber optic communication cable and a copper communication cable, for the land as described on Exhibit A and as shown on Exhibit B (for reference purposes only), attached and by this reference made a part hereof; rent in the amount of \$503 per year, with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence; Applicant may satisfy all or part of the insurance requirement through maintenance of a staff-approved self-insurance program as specified in the lease.

## EXHIBIT A

A 2137

### LAND DESCRIPTION

A 10-foot wide strip of State School Land situate in Sections 26, Township 9 North, Range 2 East, San Bernardino Meridian, as shown on the Official U. S. Government Township Plat approved June 4, 1856, San Bernardino County, State of California, lying 5 feet on each side of the following described centerline:

BEGINNING at a point on the east line of said Section 26, which bears N 0° 14' 30" E 1028.94 feet from the Southeast corner of said section; thence along said centerline N 79° 17' 30" W 1578.00 feet more or less to the north line of SW ¼ of SE ¼ of Section 26 and TERMINUS of said centerline.

EXCEPTING THEREFROM any portion lying north of the north line and east of the east line of SW ¼ of SE ¼ of Section 26.

The sidelines of said strip to be lengthened or shortened as to begin and terminate at the east and north lines of SW ¼ of SE ¼ of Section 26.

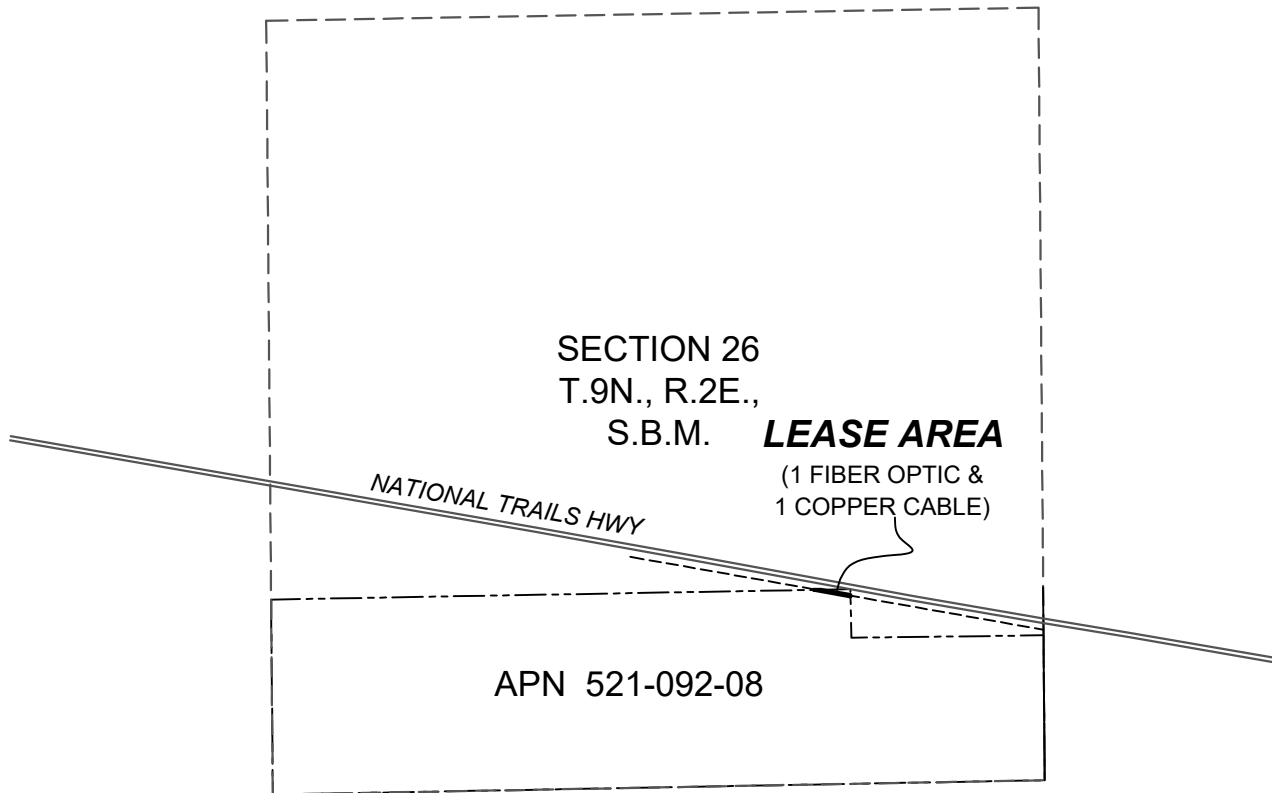
### END OF DESCRIPTION

Prepared 05/03/2021 by the California State Lands Commission Boundary Unit.



NO SCALE

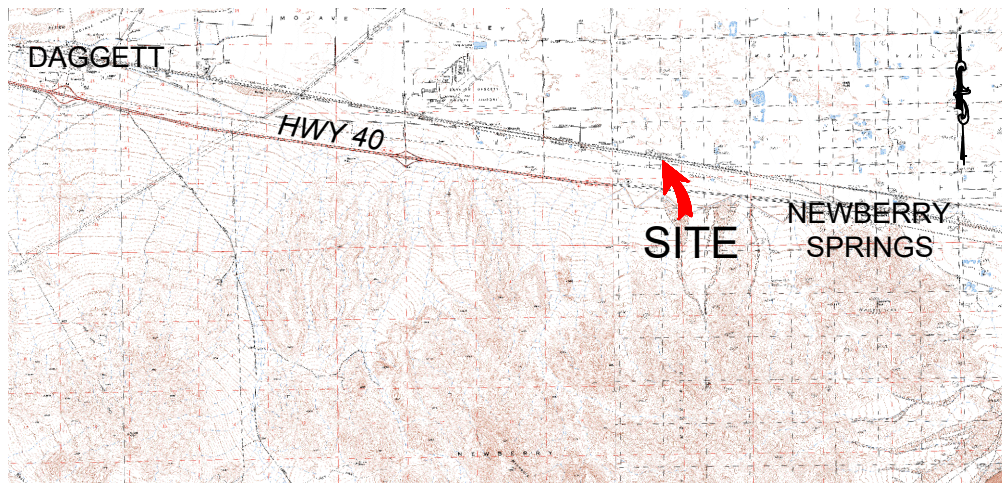
## SITE



SW  $\frac{1}{4}$  OF SE  $\frac{1}{4}$  OF SECTION 26, T9N, R2E, SBM  
NEAR TOWN OF NEWBERRY SPRINGS, SAN BERNARDINO COUNTY

NO SCALE

## LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

## **Exhibit B**

A 2137

FRONTIER CALIFORNIA, INC.

APN 521-092-08

GENERAL LEASE -  
RIGHT-OF-WAY USE

SAN BERNARDINO COUNTY



TS 05/03/2021