

Meeting Date: 02/26/24  
Lease Number: 8142  
Staff: J. Toy

# Staff Report 74

**LESSEE:**

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MFS Globenet, Inc.

**APPLICANT/SUBLESSOR:**

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MCI International LLC

**SUBLESSEE:**

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AT&T Corp.

**PROPOSED ACTION:**

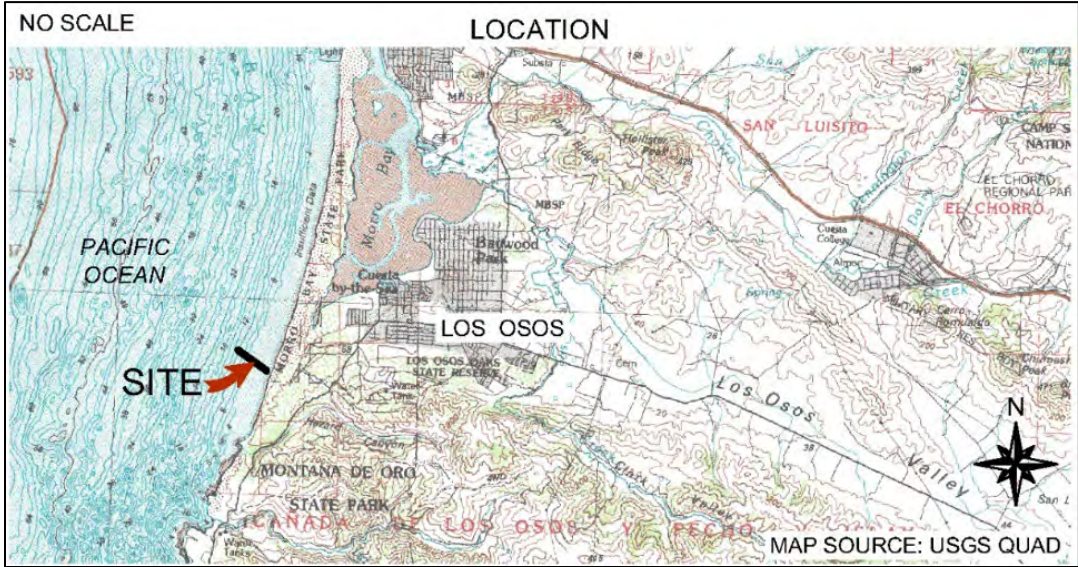
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Termination of a General Lease – Non-Exclusive Right-of-Way Lease; Consider Voiding Invoice 59898; Waive Penalty and Interest; Issuance of a General Lease – Right-of-Way Use; and Endorsement of a Sublease.

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

Sovereign tide and submerged land in the Pacific Ocean, offshore of Montaña de Oro State Park, San Luis Obispo County (as shown in Figure 1, below).

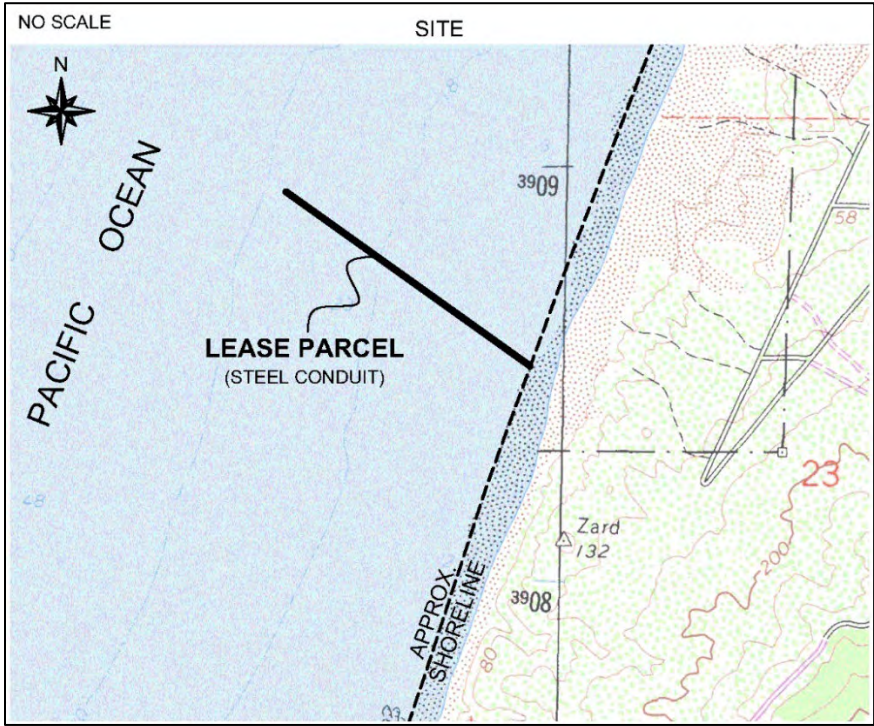
Figure 1. Location



**AUTHORIZED USE:**

Use of an existing 6-inch-diameter steel conduit (as shown in Figure 2).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

**TERM:**

25 years; beginning February 8, 2024.

**CONSIDERATION:**

\$11,880 per year, with an annual Consumer Price Index adjustment and the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease.

**SPECIFIC LEASE PROVISIONS:**

- Any future use or modification to the improvements will require prior Commission review and approval.
- Liability insurance in an amount no less than \$1,000,000 per occurrence, or equivalent staff-approved self-insurance program.
- Bond or other surety in the amount of \$75,000.

**STAFF ANALYSIS AND RECOMMENDATION:**

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**AUTHORITY:**

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

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

On October 29, 2010, the Commission authorized a General Lease – Non-Exclusive Right-of-Way Use to MFS Globenet, Inc. for use of one 6-inch-diameter steel conduit offshore of Montaña de Oro State Park, San Luis Obispo County ([Item 46, October 29, 2010](#)). On February 9, 2016, the Commission authorized a revision of rent to revise the annual rent from \$15,093 per year to \$16,652 per year ([Item 64, February 9, 2016](#)). On December 6, 2016, the Executive Officer authorized the continuation of rent at \$16,652 per year ([Executive Officer's Report, December 6, 2016](#)). On December 31, 2020, MFS Globenet, Inc. merged into MCI International LLC. The lease will expire on February 7, 2025.

The conduit contains Segment 9 of the Japan-U.S. Fiber Optic Cable Network, a 2-inch-diameter subsea fiber optic cable. The conduit is owned by the Applicant. The cable is owned by a consortium comprised of AT&T and others; however, the seaward segment of the cable, which lies outside of the conduit, is authorized to

AT&T Corp. under Lease Number PRC 8204.1, a General Lease – Right-of-Way Use. The cable is retired, and AT&T Corp. plans to submit an application and removal plan for the Commission’s review and approval in 2025. The Applicant is in the process of planning a new transpacific communication system to replace the capacity lost by the retired system. The current lease with MFS Globenet, Inc. will expire in less than a year and authorization of a new lease for the conduit will aid the Applicant’s planning efforts.

MCI International LLC, a subsidiary of Verizon Business Global LLC, is now applying for termination of the General Lease – Non-Exclusive Right-of-Way Use, issuance of a General Lease – Right-of-Way Use, and an endorsement of sublease regarding occupation of the conduit by the retired cable and MCI’s authority to remove said cable. Staff recommends termination of the current lease, effective February 7, 2024, and issuance of the proposed lease, effective February 8, 2024, to align with the current lease anniversary date. Rent owed for the 2024-25 lease year under the existing lease to MFS Globenet, Inc. has not been paid, pending Commission action on the current application. However, staff billed the lessee for that rent. Since the amount has not been paid, staff also applied penalty and interest charges to the amount owed, as provided in the lease. Since revised rent under the proposed new lease will be paid for the 2024-25 lease year starting on February 8, 2024, and both the lessee and rent are changing, staff recommends the rental invoice previously issued to the Lessee for rent owed under the existing lease be voided and any penalty and interest associated with that billing be waived. The Applicant has the right to use the upland adjacent to the lease premises.

The conduit is buried below the ocean floor within State waters and does not impede surface use or interfere with Public Trust needs and values at this location, at this time, and for the term of the proposed lease. The proposed facilities do not significantly alter the land, and the lease does not alienate the State’s sovereign interest, or permanently impact public rights.

The lease is limited to a 25-year term and does not grant the lessee exclusive rights to the lease premises. Upon termination of the lease, the lessee may be required to remove any improvements and restore the lease premises to their original condition. Additionally, the proposed lease requires the lessee to maintain a performance bond in the amount of \$75,000 and to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee’s activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

**CLIMATE CHANGE:**

Climate change impacts, including sea level rise, more frequent and intense storm events, increased flooding and erosion, and changes in sediment deposition affect open coastal areas in California. The facilities are located in the Pacific Ocean and the Santa Barbara Channel in tidally influenced sites offshore of Montaña de Oro State Park in San Luis Obispo County.

The California Ocean Protection Council updated the *State of California Sea-Level Rise Guidance* in 2018 to provide a synthesis of the best available science on sea level rise projections and rates. Commission staff evaluated the “high emissions,” “medium-high risk aversion” scenario to apply a conservative approach based on both current emission trajectories and the lease location and structures. The Port San Luis tide gauge was used for the projected sea level rise scenario for the region as listed in Table 1.

**Table 1. Projected Sea Level Rise for Port San Luis**

Year	Projection (feet)
2030	0.7
2040	1.2
2050	1.8
2100	6.7

Source: Table 19, [State of California Sea-Level Rise Guidance: 2018 Update](#)

Note: Projections are with respect to a 1991 to 2009 baseline.

As stated in the [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, fire, drought, extreme heat, and storms (especially when coupled with sea level rise). The combination of these conditions will likely result in increased wave run up, storm surge, and flooding in coastal areas. Climate change and sea level rise will further influence coastal areas by changing erosion and sedimentation rates as beaches and coastal landscapes are exposed to increased wave force.

The conduit is buried under the ocean bed. Therefore, it is not likely to be affected by flooding or storm conditions that may occur within the lease area given future projected scenarios of climate change. The subject lease will require monitoring of the conduit for potential exposure and vulnerabilities to hazards (among other required inspections).

Pursuant to the proposed lease, the Applicant acknowledges that the lease premises are located in an area that may be subject to the effects of climate change, including sea level rise.

**CONCLUSION:**

For all the reasons above, staff believes the termination and issuance of the lease will not substantially impair the public rights to navigation, fishing, and commerce, or substantially interfere with the Public Trust needs and values at this location, at this time, and for the term of the lease; and is in the best interests of the State.

**OTHER PERTINENT INFORMATION:**

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1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. The lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leveraging Technology" and "Meeting Evolving Public Trust Needs" Strategic Focus Areas of the Commission's 2021-2025 Strategic Plan.
3. The Applicant has another application under consideration on the February 26, 2024 Commission meeting agenda pertaining to Lease Number PRC 8142.1, a General Lease – Non-Exclusive Right-of-Way Use.
4. Termination of the lease and endorsement of a sublease are not projects as defined by the California Environmental Quality Act (CEQA) because they are administrative actions 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).

5. 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.

## **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).

### **PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that the proposed lease will not substantially impair the public rights to navigation, fishing, and commerce or substantially interfere with Public Trust needs and values at this location, at this time and for the term of the lease; and is in the best interests of the State.

### **AUTHORIZATION:**

1. Void invoice #59898 issued by Commission staff on December 18, 2023 to MFS Globenet, Inc. for the February 8, 2024 through February 7, 2025 lease year under Lease Number PRC 8142.1, and waive any penalty and interest associated with that invoice and rental amount.
2. Authorize termination of Lease Number PRC 8142.1, a General Lease – Non-Exclusive Right-of-Way Use issued to MFS Globenet, Inc., effective February 7, 2024.
3. Authorize issuance of a General Lease – Right-of-Way Use to the Applicant beginning February 8, 2024, for a term of 25 years, for an existing 6-inch-diameter steel conduit; annual rent in the amount of \$11,880 with an annual Consumer Price Index adjustment, and with the State reserving the right to fix a different rent periodically during the lease term, as provided for in the lease; liability insurance in an amount no less than \$1,000,000 per occurrence; and a surety bond in the amount of \$75,000.



4. Authorize the endorsement of a sublease between the Applicant and AT&T Corp., effective February 8, 2024, for a portion of said lease, for an existing fiber optic cable authorized under Lease Number PRC 8204.1 to occupy the Applicant's conduit.
5. Authorize the Executive Officer or designee to replace exhibits in the lease upon submission, review, and approval of satisfactory documents demonstrating removal of the fiber optic cable, and to terminate the endorsement of sublease attached to the lease as Exhibit C.