

STATE OF CALIFORNIA

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

ARNOLD SCHWARZENEGGER, Governor



June 23, 2010

Advice Letter 3043-G/3520-E

Jane K. Yura
Vice President, Regulation and Rates
Pacific Gas and Electric Company
77 Beale Street, Mail Code B10B
P.O. Box 770000
San Francisco, CA 94177

**Subject: Grant of Easement to 360networks (USA), Inc., to Use and Maintain
an Easement Across PG&E Property in Shasta County – Request for
Approval Under Section 851**

Dear Ms. Yura:

Advice Letter 3043-G/3520-E is effective December 31, 2009.

Sincerely,

A handwritten signature in blue ink that reads "Julie A. Fitch".

Julie A. Fitch, Director
Energy Division

Brian K. Cherry
Vice President
Regulatory Relations

77 Beale Street, Room 1087
San Francisco, CA 94105

Mailing Address
Mail Code B10C
Pacific Gas and Electric Company
P.O. Box 770000
San Francisco, CA 94177

Fax: 415.973.7226

September 2, 2009

Advice 3043-G\3520-E
(Pacific Gas and Electric Company ID U 39 M)

Public Utilities Commission of the State of California

**Subject: Grant of Easement to 360networks (USA), Inc., to Use and Maintain an
Easement Across PG&E Property in Shasta County - Request for
Approval Under Section 851**

Purpose

Pacific Gas and Electric Company (“PG&E”) submits this Advice Letter to respectfully request an order from the California Public Utilities Commission (“Commission”) authorizing PG&E under Public Utilities Code Section 851¹ to grant a permanent, non-exclusive easement to 360networks (USA), Inc. (“360networks”), on PG&E-owned land located in Shasta County, California. This easement covers 360networks’ use and maintenance of optical fiber cable that it has already installed in an underground conduit in the proposed easement pursuant to a January 31, 2000, license entered under General Order (“G.O.”) 69-C. The grant of this easement is not adverse to the public interest and will not interfere in any way with PG&E’s provision of utility service.

PG&E also respectfully requests that the Commission find that this transfer of easement rights between PG&E and 360networks does not constitute a project under the California Environmental Quality Act (CEQA) because this request does not authorize and will not result in any construction activities; the previous conduit installation for an Oregon-to-California Project performed by 360networks’ predecessor was already reviewed by the CPUC as lead agency under CEQA, and approved under D.00-01-022.

¹ Unless otherwise noted, all statutory references are to the Public Utilities Code.

Background

PG&E requests authority to grant 360networks a permanent, non-exclusive easement, approximately 10 feet wide and 9,323² feet long, to use and maintain an existing underground conduit currently installed on land owned in fee by PG&E. 360networks will use the easement to inspect, replace, remove, maintain, and use a single bundle, seventeen-duct fiber optic conduit system. The land encompassing the proposed easement is part of PG&E's non-nuclear, hydroelectric watershed property and PG&E's gas transmission corridor, and consists largely of rural open space in Shasta County, California. A copy of the proposed easement agreement is attached hereto as Attachment 1.

360networks is the successor-in-interest of Worldwide Fiber Networks, Inc. ("WFN"), which was the successor-in-interest of Pacific Fiber Link, L.L.C. ("PFL"). As part of its early planning in the late 1990's project to install fiber optic cable from Oregon to California, PFL sought a communications easement adjacent to PG&E's natural gas transmission Line-400/401 and at Lake Britton, near the community of Fall River Mills, in eastern Shasta County. At the time, PG&E was preparing to divest its hydroelectric generation facilities and related properties in accordance with California Assembly Bill 1890, signed into law in 1996. At that time, PG&E responded to PFL indicating PG&E was unable to convey the communications easement due to PG&E's efforts to comply with the deregulation and restructuring of the California electric industry. However, in order to avoid the threat of eminent domain and the delay of the Oregon-to-California project once it was approved by the CPUC on January 6, 2000^{3/}, PG&E and WFN entered into a Right-of-Entry ("ROE") license agreement on January 31, 2000, including a provision allowing PG&E to terminate the ROE agreement pursuant to General Order ("G.O.") 69-C. (General Order 69-C, adopted by Res. No. L-230, July 10, 1985.)^{4/} A copy of the ROE agreement is attached hereto as Attachment 2.

² The original survey on which the Easement Agreement was based found the installation to be 9,374 feet long, but a more recent survey concluded it was 9,323 feet long. (See Section 9, *infra*.)

³ See CPUC D.00-01-022, issued on January 6, 2000, granting a modification of WFN's operating certificate in order to obtain environmental approval of this Oregon-to-California fiber optic conduit and cable project, as discussed further below in Section 13.

⁴ The CPUC has found such G.O. 69-C license agreements for conduit installation to be valid if entered before December 2000, as was the case here. (See D.05-09-030, 2005 Cal. CPUC LEXIS 431, involving 94 miles of fiber optic installation by Broadwing, performed without prior CEQA review. There, the CPUC granted Section 851 approval for the Broadwing fiber optic installation on a prospective basis, noting that its December 2000 decision in D.00-12-005 [disfavoring G.O. 69-C licenses for construction without benefit of prior CEQA review] had been adopted after Broadwing had commenced and almost completed construction in 2000.) Here, not only was the license with 360networks' predecessor entered in January 2000 but its work to install this less than a 2-mile segment of conduit had been fully performed many months *prior to the CPUC's issuance of D.00-12-006*, and such installation did not take place until *after* the CPUC had performed its own full CEQA review, finding that the Oregon-to-California project, as mitigated, "will not have significant effects on the environment," and ordered that mitigation monitoring be overseen by CPUC staff. (See D.00-01-022, *mimeo*, p. 8, as discussed in detail in Section 13 below.)

360networks' immediate predecessor, WFN, installed the underground conduit and optical fiber facilities pursuant the ROE license agreement and construction was completed by mid-2000. The ROE license agreement has since expired and the conduit and optical fiber facilities remain on PG&E's property under the ROE license agreement in a holdover status. 360networks now seeks to secure its rights by obtaining the proposed easement from PG&E. PG&E unavoidably experienced significant delays in receiving the necessary finalized transactional documents from 360networks due to its predecessor's bankruptcy and subsequent merger with other companies during its emergence from bankruptcy, which resulted in downsizing and numerous personnel changes due to reorganizations. As a result, PG&E did not receive approval for the easement agreement from 360networks until July 2009. In addition, for the same bankruptcy-related reasons, PG&E experienced difficulties in obtaining other original supporting documents related to this filing, including the original survey, resulting in PG&E having to re-survey the land to support the easement.

The proposed easement satisfies Section 851 as it is not "adverse to the public interest." (D.03-01-084, 2003 Cal. PUC LEXIS 73, *10.) Applying Section 851 to transactions similar to the proposed easement, the Commission has found that "[t]he public interest is served when utility property is used for other productive purposes without interfering with the utility's operation or affecting service to utility customers." (D.02-01-058, 2002 Cal. PUC LEXIS 11, *9-*10, citing D.00-07-010, 2000 Cal. PUC LEXIS 576.) "It is reasonable for California's energy utilities, with their extensive easements, rights of way, and cable facilities, to cooperate in this manner with telecommunications utilities that seek to build an updated [fiber optic] network." (D.02-12-023, 2002 Cal. PUC LEXIS 902, *11.) The Commission has also found that "[j]oint use of utility facilities has obvious economic and environmental benefits" (*Id.*) including to "facilitate...[telecommunications] service to its customers, while avoiding installation of duplicative infrastructure by making use of existing PG&E plant." (D.05-09-030, *mimeo*, p. 9, 2005 Cal. PUC LEXIS 431.) Furthermore, 360networks is a competitor in the telecommunications market and the fiber optic facilities to which this easement relates "contribute to the development of competition"-- a reason the CPUC has cited in approving similar arrangements. (*Id.*) Finally, the existing facilities have not interfered with, and the proposed easement will not interfere in any way with, PG&E's utility operations or with PG&E's provision of service to its customers. However, 360networks' provision of service to telecommunications customers *would* be impaired and the public interest would not be served if this Section 851 request for approval of this easement were not granted on a prospective basis. That would require 360networks to remove the existing conduit, which would deprive the public of needed facilities to provide telecommunications service in California.

The requested prospective transfer of easement rights between PG&E and 360networks under Section 851 does not constitute a "project" under CEQA as there is no foreseeable activity that may cause direct or indirect physical change to the environment. This approval does not authorize and will not result in any construction activities, only the transfer of an easement for *existing* underground conduit. (See Resolution E-4211, p.2 and Finding of Fact 5 issued December 4, 2008, approving easements for existing sidewalk-segments in the City of Fresno that had received

CEQA approval many years before. There, the CPUC also found the easement transaction not to be a project under CEQA as there was no foreseeable activity that may cause direct or indirect physical change to the environment.) In addition, the CPUC itself has already performed CEQA lead agency review of these facilities as a lead agency, and found that the entire Oregon-to-California project, as mitigated, would not have a significant effect on the environment. (See D.00-01-022, *mimeo*, p. 8.)

In accordance with the format of advice letter directed in Resolution ALJ-202 (Appendix A, Section IV.), PG&E provides the following information related to the proposed transaction:

(1) Identity and Addresses of All Parties to the Proposed Transaction:

Pacific Gas and Electric Company	360networks (USA) Inc.
Andrew L. Niven	Mitchell Merryman
Gail L. Slocum	867 Coal Creek Circle, Suite 160
Law Department	Louisville, CO 80027
P.O. Box 7442	Telephone: (303) 854-5271
San Francisco, CA 94120	Mitchell.Merryman@360.net
Telephone: (415) 973-6583	
Facsimile: (415) 973-0516	
Email: GLSG@pge.com	

(2) Complete Description of the Property Including Present Location, Condition and Use:

The requested easement consists of a ten-foot-wide and 9,323 foot-long-strip within an approximately 507 acre parcel of PG&E-owned real property within the County of Shasta, State of California, commonly known as the Lines 400 and 401 Corridor, (Assessor's Parcel Numbers 016-570-005 & 020, 023-250-008, 036 & 037, 023-080-007, 009, 012 & 013, State Board of Equalization Nos. 135-45-55F-1 through 4, 135-45-19-4, 135-45-12B-4 through 6, 135-45-56B-1, 3 & 4, 135-45-18E-6) and more particularly described in Exhibit A, Attachment 1, attached hereto and made a part hereof (hereinafter, the "Property").

(3) Intended Use of the Property:

As stated earlier, after receiving CPUC approval of its modified CPCN for the project in early 2000, 360networks' predecessor installed the small segment of its Oregon-to-California project's underground conduit and optical fiber facilities to which this easement relates pursuant its ROE agreement with PG&E dated January 31, 2000. All construction activities were complete by mid-2000. The ROE agreement has since expired and the conduit and optical fiber facilities remain on PG&E's property under the ROE Agreement in a holdover status. 360networks now seeks to secure its rights by obtaining the proposed easement from PG&E. 360networks will use the easement to inspect, replace, remove, maintain, and use a single bundle, seventeen-duct fiber optic conduit system.

This easement authorization request does not result in any construction or expand the CPCN authorization previously granted by the CPUC for 360networks' overall Oregon-to-California conduit project, and does not impair PG&E's ability to provide utility service to its customers and the public.

(4) Complete Description of Financial Terms of the Proposed Transaction:

In consideration for this grant of easement, 360networks will pay PG&E a one-time easement fee of \$9,323 as the fair market value for the proposed easement (see Section 9 *infra*).⁵

(5) Description of How Financial Proceeds of the Transaction Will Be Distributed:

The easement described in this advice letter is associated with PG&E's non-nuclear, hydroelectric watershed property and PG&E's gas transmission system.

PG&E proposes that the portion of the easement fee attributed to PG&E's hydroelectric generation facilities be credited to Other Operating Revenue to reduce the generation revenue requirement in future general rate cases, consistent with conventional cost-of service ratemaking.

Proceeds from the easement fees associated with PG&E's natural gas transmission and storage property are subject to the Gas Accord,⁶ and all costs associated with gas transmission property are subject to Gas Accord ratemaking for gas transmission service in PG&E's gas transmission and storage rate cases.⁷ PG&E will account for site license fees as Gas Other Operating Revenue and will be used to reduce PG&E's revenue requirement consistent with conventional cost-of-service ratemaking.

(6) Statement on the Impact of the Transaction on Ratebase and Any Effect on the Ability of the Utility to Serve Customers and the Public:

No PG&E property is being sold or disposed of in concerning the proposed easement. Therefore, there are no changes to PG&E's ratebase.

⁵ Due to 360network's inability to produce the original survey, PG&E caused a new survey to be conducted which found that the easement area is 9,323 long, rather than the 9,374 feet apparently represented in the original survey used in developing the Easement Agreement. The final agreed easement fee to be approved herein is based on \$1 per linear foot times the final surveyed easement length of 9,323.

⁶ The term "Gas Accord" generally refers to the original settlement of the issues pertaining to Pacific Gas and Electric gas transmission and storage (GT&S) system in the Gas Accord Settlement Agreement that was adopted in D.97-08-055 [73 CPUC2d 754]. The Commission has twice modified D.97-08-055 and has since also adopted D.03-12-061 (Gas Accord II Settlement Agreement), D.04-12-050, (Gas Accord III Settlement Agreement), and D.07-09-045 (Gas Accord IV Settlement Agreement).

⁷ *Id.*

The granting of this easement (and the continued existence of the already-installed underground conduit) will not interfere with or in any way impact the operations of the PG&E's facilities or PG&E's ability to provide utility service to its customers and the public.

This transaction does not involve the transfer or change of ownership of facilities currently used in utility operations. PG&E will retain full access rights and ownership of its facilities on the Property to support its utility operations. As discussed above, the proposed easement is not adverse to the public interest but rather serves 360networks' desire to secure its rights by obtaining the proposed easement from PG&E to support 360networks' provision of continued service to telecommunications customers using these existing underground conduit facilities.

(7) The Original Cost, Present Book Value, and Present Fair Market Value for Sales of Real Property and Depreciable Assets, and a Detailed Description of How the Fair Market Value Was Determined (e.g., Appraisal):

Not applicable.

(8) The Fair Market Rental Value for Leases of Real Property, and a Detailed Description of How the Fair Market Rental Value Was Determined:

Not applicable.

(9) For Fair Market Rental Value of the Easement or Right-of-Way and a Detailed Description of How the Fair Market Rental Value Was Determined:

The fair market value for the easement was initially determined on October 21, 1999, by a valid independent appraisal that was approved by 360networks and its predecessor, and found acceptable to PG&E.⁸ More recently PG&E conducted an internal appraisal of the easement area, based on research evaluating similar rural property in Shasta County, in an effort to determine whether there might need to be an update to the prior appraisal value for the easement area. Through this analysis, PG&E determined that the typical rural land value in Shasta County is estimated to be approximately \$4,500 per acre. The dimensions of the proposed easement area are 10 feet by 9,323 feet, or 2.14 acres. Multiplying the per/acre cost by the total acreage of 2.14 acres, PG&E arrived at an appraised value of approximately one dollar per linear foot which confirms the initial appraisal as falling within the acceptable market range, for an easement in rural Shasta County, and no change to the previously-agreed considerations was needed. PG&E has shared this internal analysis with 360Networks and both parties agree that appraisal and the previously-agreed \$1

⁸ Unfortunately, since the bankruptcy of 360networks' predecessors, the original October 21, 1999 appraisal can no longer be found.

per linear foot consideration reflects the fair market value for the easement. For all of these reasons, PG&E believes that the Commission should find the \$9,323 easement payment (at \$1 per linear foot times the newly surveyed easement length of 9,323 linear feet) to be reasonable.

(10) A Complete Description of any Recent Past (Within the Prior Two Years) or Anticipated Future Transactions that May Appear To Be Related to the Present Transaction⁹:

To PG&E's knowledge, there are no recent past or anticipated future transactions that appear to be related to the present transaction.

(11) Sufficient Information and Documentation (Including Environmental Review Information) to Indicate that All Criteria Set Forth in Section II(A) of Resolution ALJ-202 Are Satisfied:

Sufficient information and documentation has been included with this advice letter to show that all of the eligibility criteria stated in Section II of Resolution ALJ-202 have been met. The proposed transaction is "not a project" under the CEQA requirements provided in ALJ-202, and will not require additional CEQA review by the Commission (See Section 13 below). Approval of the proposed easement does not authorize and will not result in any construction activities, only the transfer of an easement for existing underground conduit. The proposed transaction will not have an adverse impact on the public interest or on the ability of the utility to provide safe and reliable service to customers at reasonable rates. The compensation for the proposed easement is well below the \$5 million threshold set forth for fee property and lease equivalents. Finally, the transaction does not involve the transfer or change in ownership of facilities currently used in utility operations.

(12) Additional Information to Assist in the Review of the Advice Letter:

PG&E is not aware of any additional relevant information other than what is included with this advice letter.

(13) Environmental Information

a. Exemption

- i. Has the proposed transaction been found exempt from CEQA by a government agency?

⁹ During adoption of the Advice Letter pilot program in ALJ-186 (later followed by ALJ-202), this category of information was included to enable the CPUC to ensure that utilities were not seeking to circumvent the \$5 million Advice Letter threshold by dividing what is a single asset with a value of more than \$5 million into component parts each valued at less than \$5 million, which is clearly not the case here. (See CPUC Resolution ALJ-186, issued August 25, 2005, mimeo, p.5.)

1. If yes, please attach notice of exemption. Please provide name of agency, date of Notice of Exemption, and State Clearinghouse number.

Not applicable.

2. If no, does the applicant contend that the project is exempt from CEQA? If yes, please identity the specific CEQA exemption or exemptions that apply to the transaction, citing to the applicable State CEQA Guideline(s) and/or Statute(s).

Not applicable.

b. Not a "Project" Under CEQA

- i. If the transaction is not a "project" under CEQA, please explain why.

The proposed transfer of easement rights between PG&E and 360networks does not constitute a project under CEQA. The approval of this easement does not authorize and will not result in any construction activities, only the transfer of an easement for *existing* underground conduit. This conduit was installed as part of an overall project which was already approved by the CPUC. Specifically, this small underground installation within the easement was approved by the CPUC as part of 360networks' predecessor's California-to-Oregon Project. In that proceeding, the CPUC made CEQA lead agency findings that the prior project, as mitigated, would not have a significant effect on the environment.¹⁰ There is

¹⁰ The objective of the Oregon-to-California project was to build a fiber optic cable and conduit system. In Northern California, the system consists of the underground installation of approximately 15 plastic conduits of 1½- and 2-inch diameter, and access hatches or hand holes approximately every 3,600 feet. On January 6, 2000, the Commission granted 360networks' predecessor's request to modify its Certificate of Public Convenience and Necessity ("CPCN") to include the Commission's Final Mitigated Negative Declaration and Initial Study ("Final Mitigated Negative Declaration") and authorized the construction of the Project as set forth in A.99-08-021. (D.00-01-022, *mimeo*, p.8, 2000 Cal. PUC LEXIS 24 ("360networks' CEQA Decision") A copy of the Final Mitigated Negative Declaration and the Commission's Notice of Determination related to the Project are attached hereto as Exhibit C.

In addition, construction of this project was supervised and overseen by the Environmental Projects Unit of the CPUC's Energy Division, for purposes of monitoring and enforcement of mitigation measures. (*Id.*, *mimeo*, p. 15.) Accordingly, on January 19, 2000, the CPUC's Environmental Projects Unit issued a Notice to Proceed with the Oregon-to-California fiber optic conduit project. The work on the small portion of PG&E's lands began in February 2000, *after* all of these CPUC approvals. Included within the scope of the Oregon-to-California project was the underground installation on PG&E property related to the proposed easement here. 360networks' existing underground conduit and optical fiber within the proposed easement has already been built pursuant to the CPUC's January 6, 2000 CEQA approval. Specifically, the Commission concluded in D.00-01-022 that, subject to 360networks' predecessor's compliance with the mitigation measures set forth in

no foreseeable activity as a result of this easement transaction that may cause a direct or indirect physical change to the environment. (See Resolution E-4211, p. 2 and Finding of Fact 5.)

CEQA requires any California governmental agency approving a discretionary project to consider the environmental impacts of its decisions. (Cal. Pub. Res. Code, § 21080.) A project is an activity that "may cause either a direct physical change in the environment, or a reasonable foreseeable indirect physical change in the environment" and either (a) is directly undertaken by any public agency, (b) is supported by contracts, grants, subsidies, loans, or other forms of assistance from a public agency, or (c) involves the issuance of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies. (Cal. Pub. Res. Code, § 21065.) Here, the discretionary Section 851 decision is whether or not to authorize the requested easement relating to underground conduit which has already been built.

In conclusion, because granting the easement will cause no physical change to the environment, this request for 851 authorization is not a "project" under CEQA. Furthermore, the easement relates to an existing conduit constructed pursuant to CPUC Decision D.00-01-022, in which the CPUC found that Oregon-to-California fiber optic project, as mitigated, would not have significant effects on the environment.

Protests

Anyone wishing to protest this filing may do so by letter sent via U.S. mail by facsimile or electronically, any of which must be received no later than **September 22, 2009**, which is 20 days after the date of this filing. Protests should be mailed to:

CPUC Energy Division
Attention: Tariff Unit, 4th Floor
505 Van Ness Avenue
San Francisco, CA 94102

Facsimile: (415) 703-2200
E-mail: mas@cpuc.ca.gov and jnj@cpuc.ca.gov

Copies of protests also should be mailed to the attention of the Director, Energy Division, Room 4004, at the address shown above.

the Final Mitigated Negative Declaration, the Project – including the existing underground installation of conduit and optical fiber on PG&E land – would not have a significant impact on the environment. The CPUC staff oversaw the necessary mitigation monitoring. (*Id.*, mimeo, pp. 8, 15.)

The protest also should be sent via U.S. mail (and by facsimile and electronically, if possible) to PG&E at the address shown below on the same date it is mailed or delivered to the Commission.

Pacific Gas and Electric Company
Attention: Brian Cherry
Vice President, Regulatory Relations
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

Facsimile: (415) 973-7226
E-mail: PGETariffs@pge.com

Effective Date

Pursuant to the review process outlined in Resolution ALJ-202, PG&E requests that this advice filing become effective by Commission resolution as soon as possible. **PG&E submits this filing as a Tier 3.**

Notice

In accordance with General Order 96-B, Section IV, a copy of this advice letter is being served on the Energy Division and the Division of Ratepayer Advocates. In addition, in accordance with General Order 96-B, Section IV, a copy of this advice letter is being sent electronically and via U.S. mail to parties shown on the attached list. Address change requests should be directed to San Heng at (415) 973-2640. Advice letter filings can also be accessed electronically at <http://www.pge.com/tariffs>.



Vice President, Regulatory Relations

Attachments

cc: Service List - Advice Letter 3043-G\3520-E

***** **SERVICE LIST Advice 3043-G/3520-E *******
APPENDIX A

Karen Clopton
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505 Van Ness Avenue
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kvc@cpuc.ca.gov

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Brewster Fong
Division of Ratepayer Advocates
505 Van Ness Avenue
San Francisco, CA 94102
(415) 703- 2187
bfs@cpuc.ca.gov

***** **AGENCIES *******

Patrick J. Minturn, Director
Shasta County Department of Public Works
1855 Placer St.
Redding, CA 96001-1759
Phone: (530) 225-5661
Fax: (530) 225-5667

***** **3rd Party *******

360networks (USA) Inc.
Mitchell Merryman
867 Coal Creek Circle, Suite 160
Louisville, CO 80027
Telephone: (303) 854-5271
Mitchell.Merryman@360.net

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY UTILITY (Attach additional pages as needed)

Company name/CPUC Utility No. **Pacific Gas and Electric Company (ID U39 M)**

Utility type:	Contact Person: <u>Linda Tom-Martinez</u>
<input checked="" type="checkbox"/> ELC <input checked="" type="checkbox"/> GAS	Phone #: <u>(415) 973-4612</u>
<input type="checkbox"/> PLC <input type="checkbox"/> HEAT <input type="checkbox"/> WATER	E-mail: <u>lmt1@pge.com</u>

EXPLANATION OF UTILITY TYPE

ELC = Electric GAS = Gas
PLC = Pipeline HEAT = Heat WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **3043-G/3520-E**

Tier: 3

Subject of AL: **Grant of Easement to 360networks (USA) Inc. to Use and Maintain an Easement Across PG&E Property in Shasta County - Request for Approval Under Section 851**

Keywords (choose from CPUC listing): Section 851

AL filing type: Monthly Quarterly Annual One-Time Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution #:

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL: No

Summarize differences between the AL and the prior withdrawn or rejected AL¹: _____

Is AL requesting confidential treatment? If so, what information is the utility seeking confidential treatment for:

Confidential information will be made available to those who have executed a nondisclosure agreement: Yes No

Name(s) and contact information of the person(s) who will provide the nondisclosure agreement and access to the confidential information: _____

Resolution Required? Yes No

Requested effective date: **Upon Commission Approval**

No. of tariff sheets: N/A

Estimated system annual revenue effect (%): N/A

Estimated system average rate effect (%): N/A

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected: N/A

Service affected and changes proposed¹: N/A

Pending advice letters that revise the same tariff sheets: N/A

Protests, dispositions, and all other correspondence regarding this AL are due no later than 20 days after the date of this filing, unless otherwise authorized by the Commission, and shall be sent to:

CPUC, Energy Division
Tariff Files, Room 4005
DMS Branch
505 Van Ness Ave.,
San Francisco, CA 94102
jnj@cpuc.ca.gov and mas@cpuc.ca.gov

Pacific Gas and Electric Company
Attn: Brian K. Cherry
Vice President, Regulatory Relations
77 Beale Street, Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177
E-mail: PGETariffs@pge.com

Advice 3043-G/3520-E

Attachment 1
Easement Agreement

LD# 2138-04-0216

Communications Easement (360networks (USA) inc.)

RECORDING REQUESTED BY AND RETURN TO:

PACIFIC GAS AND ELECTRIC COMPANY

3600 Meadowview Drive

Redding, CA 96002

Attention: Land Agent

Location: City/Uninc _____

Recording Fee \$ _____

Document Transfer Tax \$ _____

- Computed on Full Value of Property Conveyed, or
- Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale

Signature of declarant or agent determining tax

(A portion of APN 016-570-005 & 020, 023-250-008, 036, & 037, 023-080-007, 009, 012 & 013)

EASEMENT AGREEMENT

(Telecommunications)

This Easement Agreement ("Agreement") is made and entered into this _____ day of _____, 200____ (the "Effective Date") by PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called "PG&E", and 360NETWORKS (USA) INC., a Nevada corporation, hereinafter called "Grantee."

RECITALS

A. PG&E owns approximately 507 acres of real property within the County of Shasta, State of California, commonly known as the Lines 400 and 401 corridor, (Assessor's Parcel Numbers 016-570-005 & 020, 023-250-008, 036, & 037, 023-080-007, 009, 012 & 013, State Board of Equalization Nos. 135-45-55F-1 through 4, 135-45-19-4, 135-45-12B-4 & 6, 135-45-56B-1, 3 & 4, 135-45-18E-6) and more particularly described in Exhibit A, attached hereto and made a part hereof (hereinafter, the "Property").

B. PG&E and Grantee's predecessor, Worldwide Fiber Networks, Inc., entered into an agreement dated January 31, 2000 (the "Permission") whereby Grantee was granted permission to enter the Property and install a single bundle, seventeen (17) duct, buried fiber optic conduit system and associated appurtenant facilities as more specifically set forth in the Permission (the "Conduit System"). The Permission contemplated that PG&E would convey a ten (10) foot wide communications easement at such time as the Grantee could prepare a legal description of the Conduit System as built. Pursuant to the Permission, Grantee installed the Conduit System. The Permission expired September 30, 2000.

C. Grantee has requested that PG&E grant the ten (10) foot wide telecommunications easement for the maintenance and use of the Conduit System as originally contemplated by the parties as set forth in the Permission.

D. PG&E is willing to grant such easement(s) on the terms and subject to the conditions set forth herein.

Now, therefore, in consideration of Grantee's agreement to pay the sum of Nine Thousand Three Hundred Twenty Three Dollars (\$9,323.00), based on one-dollar per linear foot for nine thousand three hundred twenty-three (9,323) linear feet of easement and for other good and valuable consideration, PG&E and Grantee agree as follows:

1. Grant of Easements: PG&E hereby grants to Grantee, upon the terms and conditions set forth in this Agreement, the following easements:

(a) Telecommunications Easement. A non-exclusive easement to inspect, replace, remove, maintain and use the Conduit System, within a ten (10) foot wide strip constituting a portion of the Property (the "Telecommunications Easement Area") as legally described on **Exhibit "A-1" and Exhibit "A-2", and shown upon Exhibit "B-1" and Exhibit "B-2"**, attached hereto and made a part hereof.

(b) Right of Entry; Ingress and Egress. A non-exclusive right of surface access, ingress and egress to and from the Telecommunications Easement Area, over and across the portion of the Property on which PG&E has constructed private roads and lanes thereon, by such routes as PG&E determines, in its reasonable discretion, will occasion the least practicable damage and inconvenience to PG&E and its facilities as may be designated by PG&E from time to time (the "Access Area"). The Telecommunications Easement Area and the Access Area are collectively referred to herein as the "Easement Area."

2. Limitations on Use.

(a) The Easement Area and the Conduit System are to be used by Grantee only for those uses permitted in Section 1 above, and for no other purpose. This Agreement does not authorize the interconnection of the Conduit System with PG&E's facilities.

(b) PG&E reserves the right to restrict access to the Easement Area or any portion or portions thereof in the event of fire, earthquake, storm, riot, civil disturbance, or other casualty or emergency, or in connection with PG&E's response thereto, or if emergency repairs or maintenance are required to PG&E facilities within or in the vicinity of the Easement Area, or otherwise when PG&E deems it advisable to do so, including in connection with events and emergencies occurring or affecting PG&E's business operations located elsewhere than in the immediate vicinity of the Property.

(c) Grantee shall not erect or construct any buildings or any other structures within the Easement Area, and shall not drill, bore or excavate except as specifically authorized by this Agreement.

3. Condition of Easement Area. Under the Permission, Grantee has been in occupancy of the Easement Area since approximately the year 2000 and is thoroughly familiar with the condition of the Easement Area and the Property. Grantee accepts the Easement Area in its existing physical condition, without warranty by PG&E or any duty or obligation on the part of PG&E to maintain the Easement Area. Grantee acknowledges that one or more of the following

(collectively, "Potential Environmental Hazards") may be located in, on or underlying the Property and/or the Easement Area:

(a) electric fields, magnetic fields, electromagnetic fields, electromagnetic radiation, power frequency fields, and extremely low frequency fields, however designated, and whether emitted by electric transmission lines, other distribution equipment or otherwise ("EMFs");

(b) Hazardous Substances (as hereinafter defined). For purposes hereof, the term "Hazardous Substances" means any hazardous or toxic material or waste which is or becomes regulated by Legal Requirements (as hereinafter defined) relating to the protection of human health or safety, or regulating or relating to industrial hygiene or environmental conditions, or the protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, including, but not limited to, laws, requirements and regulations pertaining to reporting, licensing, permitting, investigating and remediating emissions, discharges, releases or threatened releases of such substances into the air, surface water, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of such substances. Without limiting the generality of the foregoing, the term Hazardous Substances includes any material or substance:

(1) now or hereafter defined as a "hazardous substance," "hazardous waste," "hazardous material," "extremely hazardous waste," "restricted hazardous waste" or "toxic substance" or words of similar import under any applicable local, state or federal law or under the regulations adopted or promulgated pursuant thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601 *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§6901 *et seq.*; the Clean Air Act, 42 U.S.C. §§7401 *et seq.*; the Clean Water Act, 33 U.S.C. §§1251 *et seq.*; the Toxic Substance Control Act, 15 U.S.C. §§2601 *et seq.*; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§136 *et seq.*; the Atomic Energy Act of 1954, 42 U.S.C. §§2014 *et seq.*; the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§10101 *et seq.*; the California Hazardous Waste Control Law, Cal. Health and Safety Code §§25100 *et seq.*; the Porter-Cologne Water Quality Control Act, Cal. Water Code §§13000 *et seq.*; the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health and Safety Code §§25300 *et seq.*); and the Medical Waste Management Act (Health and Safety Code §§25015 *et seq.*); or

(2) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous, and is now or hereafter regulated as a Hazardous Substance by the United States, the State of California, any local governmental authority or any political subdivision thereof, or which cause, or are listed by the State of California as being known to the State of California to cause, cancer or reproductive toxicity; or

(3) the presence of which on the Property poses or threatens to pose a hazard to the health or safety of persons on or about the Property or to the environment; or

(4) which contains gasoline, diesel fuel or other petroleum hydrocarbons; or

(5) which contains lead-based paint or other lead contamination, polychlorinated biphenyls ("PCBs") or asbestos or asbestos-containing materials or urea formaldehyde foam insulation; or

(6) which contains radon gas;

(c) fuel or chemical storage tanks, energized electrical conductors or equipment, or natural gas transmission or distribution pipelines; and

(d) other potentially hazardous substances, materials, products or conditions.

Grantee shall be solely responsible for the health and safety of, and shall take all necessary precautions to protect its employees, contractors, consultants, agents and invitees ("Grantee's Representatives") from risks of harm from Potential Environmental Hazards. Grantee acknowledges that it has previously evaluated the condition of the Easement Area and all matters affecting the suitability of the Easement Area for the uses permitted by this Agreement, including, but not limited to, the Potential Environmental Hazards listed herein.

4. Construction and Maintenance. Grantee hereby covenants and agrees:

(a) that the construction of the Conduit System has been performed in accordance with detailed plans and specifications ("Plans") previously approved by PG&E, and complies with all Legal Requirements, as defined below in Section 7. Grantee further represents and covenants that all permits, authorizations or other approvals have been obtained, at Grantee's sole cost and expense as may be necessary for the construction and operation of the Conduit System. Grantee acknowledges and agrees that PG&E's review of Grantee's Plans for the Conduit System is solely for the purpose of protecting PG&E's interests, and shall not be deemed to create any liability of any kind on the part of PG&E, or to constitute a representation on the part of PG&E or any person consulted by PG&E in connection with such review that the Plans or the Conduit System are adequate or appropriate for any purpose, or comply with applicable Legal Requirements;

(b) to comply with all Legal Requirements which relate to the generation, use, storage, handling, treatment, transportation or disposal of Hazardous Substances, as defined herein, or to health, safety, noise, environmental protection, air quality or water quality. Grantee shall furnish satisfactory evidence of such compliance upon request by PG&E. Grantee shall not cause or permit any Hazardous Substances to be brought upon, produced, stored, used, discharged or disposed of on, or in the vicinity of the Property. Grantee shall be responsible for the cost of remediating any discharge or release of Hazardous Substances resulting from or arising in connection with Grantee's use of the Property, and shall immediately notify and the appropriate regulatory authorities where required by law, of such discharge or release;

(c) to notify PG&E in writing within three (3) business days of any investigation, order or enforcement proceeding which in any way relates to the Property, or to any contamination or suspected contamination on, within or underlying the Property. Such notice shall include a complete copy of any order, complaint, agreement, or other document which may have been issued, executed or proposed, whether draft or final;

(d) not to interfere in any way or permit any interference with the use by PG&E of the Property. Interference shall include, but not be limited to, any activity by Grantee that places any of PG&E's gas or electric facilities in violation of any of the provisions of General Order Nos. 95 (Overhead Electric), 112 (Gas), and 128 (Underground Electric) of the California Public Utilities Commission ("CPUC") or to any other Legal Requirements under which the operations of utility facilities are controlled or regulated. Grantee shall not erect, handle, or operate any tools, machinery, apparatus, equipment, or materials closer to any of PG&E's high-voltage electric conductors than the minimum clearances set forth in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety; which minimum clearances are incorporated herein by reference; but in no event closer than ten (10) feet to any energized electric conductors or appliances. Grantee shall not drill, bore, or excavate within thirty (30) feet of any of PG&E's underground facilities, including, but not limited to, gas pipelines, valves, regulators or electric conduits. Grantee shall provide notice to Underground Service Alert at 1-800-227-2600 at least two (2) business days prior to commencing any drilling, boring or excavating permitted hereunder to assist Grantee with locating any and all underground facilities, including, but not limited to, gas pipelines, valves, regulators or electric conduits;

(e) to conduct its activities and operations within and on the Easement Area in such a manner so as not to endanger the Property, PG&E's utility facilities, the environment and human health and safety. In the event PG&E determines that Grantee's activities in any way endanger the Property, PG&E's utility facilities, the environment, or human health and safety, PG&E may, in PG&E's sole discretion, require that Grantee halt such activities until appropriate protective measures are taken to PG&E's satisfaction. Grantee shall hold PG&E harmless from any claims resulting from any delay under this paragraph. PG&E's right to halt activities under this paragraph shall not in any way affect or alter Grantee's insurance or indemnity obligations under this Agreement, nor shall it relieve Grantee from any of its obligations hereunder that pertain to health, safety, or the protection of the environment;

(f) to maintain the Conduit System in good condition and repair, and be responsible for the security of, the Conduit System;

(g) to repair any damage it may cause to PG&E's facilities and improvements in or around said Easement Area;

(h) to coordinate all activities regarding the easements granted herein to reasonably minimize any interference with the use by PG&E of the Easement Area and PG&E's adjoining lands, and to at all times place and maintain markers on the ground, sufficient to identify the location of the Conduit System, such markers to be reasonably spaced at intervals of not less than five hundred feet (500'), and placed at all entrances and exits where roads intersect the Conduit System;

(i) not to fence or enclose the Easement Area (except that Grantee may, with PG&E's permission, and Grantee will, upon PG&E's request, whenever construction work is being performed on, over or about the Easement Area, erect and maintain a temporary fence to surround and secure the area in which such work is being performed); and,

(j) that if Grantee fails to perform any act or other obligation on its part to be performed hereunder, and such failure is not remedied within fifteen (15) days following notice from PG&E (or in the case of an emergency, following such notice, if any, as may be reasonably practicable under the existing circumstances), PG&E may (but without obligation to do so, and without waiving or releasing Grantee from any of its obligations) perform any such act or satisfy such obligation, or otherwise remedy such emergency or such failure on the part of Grantee. All costs incurred by PG&E in responding to or remedying such failure by Grantee shall be payable by Grantee to PG&E on demand.

5. Indemnification; Release.

(a) Grantee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless PG&E, its parent corporation, subsidiaries and affiliates, and their respective officers, managers, directors, representatives, agents, employees, transferees, successors and assigns (each, an "**Indemnitee**" and collectively, "**Indemnitees**") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "**Claims**"), including Claims arising from the active or passive negligence of the Indemnitees, which arise from or are in any way connected with the occupancy or use of the Easement Area by Grantee, Grantee's Representatives or any third party user of the Conduit System, or the exercise by Grantee of its rights hereunder, or the performance of, or failure to perform, Grantee's duties under this Agreement, including, but not limited to, Claims arising out of: (1) injury to or death of persons, including but not limited to employees of PG&E or Grantee (and including, but not limited to, injury due to exposure to EMFs and other Potential Environmental Hazards in, on or about the Property); (2) injury to property or other interest of PG&E, Grantee or any third party; (3) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to human health or the environment, and including any liability which may be imposed by law or regulation without regard to fault; excepting only with respect to any Indemnitee, to the extent of any Claim arising from the sole gross negligence or willful misconduct of such Indemnitee. Without limiting the generality of the foregoing, Grantee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless from and against Claims arising out of or in connection with any work of improvement constructed or installed at or on, labor performed on, or materials delivered to, or incorporated in any improvements constructed on, the Easement Area by, or at the request or for the benefit of, Grantee. In the event any action or proceeding is brought against any Indemnitee for any Claim against which Grantee is obligated to indemnify or provide a defense hereunder, Grantee upon written notice from PG&E shall defend such action or proceeding at Grantee's sole expense by counsel approved by PG&E, which approval shall not be unreasonably withheld, conditioned or delayed.

(b) Grantee acknowledges that all Claims arising out of or in any way connected with releases or discharges of any Hazardous Substance by Grantee or Grantee's Representatives, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with Grantee's use or occupancy of the Easement Area or the surrounding Property, or any of the activities of Grantee or Grantee's Representatives, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys'

fees and disbursements and any fines and penalties imposed for the violation of Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

(c) Grantee's use of the Property shall be at its sole risk and expense. Grantee accepts all risk relating to its occupancy and use of the Easement Area. PG&E shall not be liable to Grantee for, and Grantee hereby waives and releases PG&E and the other Indemnitees from, any and all liability, whether in contract, tort or on any other basis, for any injury, damage, or loss resulting from or attributable to any occurrence on or about the Easement Area, the condition of Easement Area, or the use or occupancy of the Easement Area.

(d) Grantee shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including, but not limited to, attorneys' fees and costs), liabilities and damages resulting from the failure of Grantee, or any of its contractors or subcontractors, to comply with the insurance requirements set forth in **Exhibit C**, attached hereto and made a part hereof. If Grantee fails to so indemnify, protect, defend or hold harmless any Indemnitee, then at PG&E's option, this Agreement shall terminate, and the estate and interest herein granted to Grantee shall revert to and revest in PG&E, if such failure continues for five (5) days following the giving of written notice of termination to Grantee, unless within such time such failure is cured to the reasonable satisfaction of PG&E.

(e) The provisions of this Section 5 shall survive the termination of this Agreement.

6. Additional Facilities. Grantee shall not install any additional facilities or improvements in, on, under or over the Easement Area without the prior written consent of PG&E, which consent may be granted or withheld in PG&E's sole and absolute discretion, and the prior consent, to the extent required by applicable law or regulation, of the CPUC. Grantee shall submit detailed plans and specifications for installation of any proposed additional facilities within the Easement Area to PG&E for its written approval at the address specified in Section 14. Any additional approved facilities or improvements must comply with all Legal Requirements, as defined below in Section 7. Grantee acknowledges and agrees that PG&E's review of Grantee's plans and specifications for any additional facilities or improvements is solely for the purpose of protecting PG&E's interests, and shall not be deemed to create any liability of any kind on the part of PG&E, or to constitute a representation on the part of PG&E or any person consulted by PG&E in connection with such review that such plans and specifications, or the additional facilities or improvements, are adequate or appropriate for any purpose, or comply with applicable Legal Requirements. Any such approved additional facilities or improvements will be included in the definition of the Conduit System for purposes of this Agreement upon the date of approval by PG&E.

7. Compliance with Laws. Grantee shall, at its sole cost and expense, promptly comply with all laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, with the conditions of any permit, occupancy certificate, license or other approval issued by public officers relating to Grantee's use or occupancy of the Easement Area; and with any liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record, or of which Grantee has notice,

which may be applicable to the Easement Area (collectively, "Legal Requirements"), regardless of when they become effective, insofar as they relate to the use or occupancy of the Easement Area by Grantee. The judgment of any court of competent jurisdiction, or the admission of Grantee in any action or proceeding against Grantee, whether or not PG&E is a party in such action or proceeding, that Grantee has violated any Legal Requirement relating to the use or occupancy of the Easement Area, shall be conclusive of that fact as between PG&E and Grantee.

8. Abandonment, Termination. In the event Grantee abandons the Conduit System, this Agreement shall terminate and all of the easements and other rights of Grantee hereunder shall revert to PG&E. The non-use of the Conduit System for a continuous period of two (2) years, unless such nonuse is due to factors outside Grantee's reasonable control, in which case such period is extended to four (4) years, shall be conclusive evidence of such abandonment. Upon any termination of this Easement, Grantee shall remove within six (6) months of such termination, at no cost to PG&E, such facilities and equipment installed pursuant to this Agreement as PG&E may specify. Upon any termination of this Easement, Grantee shall execute, acknowledge and deliver to PG&E a quitclaim deed or such other documents or instruments, in a form reasonably acceptable to PG&E, as may be reasonably necessary to eliminate this Agreement as an encumbrance on the title to the Easement Area or any larger parcel of property containing the Easement Area.

9. Reserved Rights. Subject to the provisions of Section 11 below, PG&E reserves the right to use the Easement Area for any and all purposes which will not unreasonably interfere with the Conduit System. Without limiting the generality of the foregoing:

(a) PG&E reserves the right to make use of the Easement Area for such purposes as it may deem necessary or appropriate if, and whenever, in the interest of its service to its patrons or consumers or the public, it shall appear necessary or desirable to do so. Grantee acknowledges that the Property is a part of the Federal Energy Regulatory Commission ("FERC") Project Nos. 233 and 2687. PG&E reserves the right to use the Property, including the Easement Area, in all ways and for all purposes necessary or appropriate to its obligations as licensee under FERC Project Nos. 233 and 2687. Grantee shall not make use of the Easement Area in any way which would endanger health, create a nuisance, or otherwise be incompatible with overall project recreational uses.

(b) Grantee acknowledges that PG&E may have previously granted, and may in the future grant, certain rights in and across the Easement Area to others, and the use of the word "grant" in this Agreement shall not be construed as a warranty or covenant by PG&E that there are no such other rights.

(c) Grantee shall not make use of the Easement Area in any way which will endanger human health or the environment, create a nuisance or otherwise be incompatible with the use of the Easement Area, the Property, or PG&E's adjacent property, by PG&E or others entitled to use such property.

(d) This grant is made subject to all applicable provisions of General Order No. 95 (Overhead Electric), General Order 112 (Gas) and General Order No. 128 (Underground Electric) of the CPUC, in like manner as though said provisions were set forth herein.

10. Governmental Approvals. This Agreement shall not become effective, notwithstanding that it may have been executed and delivered by the parties, and Grantee shall not commence any activities hereunder, unless and until the CPUC approves this Agreement and the easements granted and other transactions contemplated hereby (including the adequacy of the compensation to be paid by Grantee), by an order which is final, unconditional and unappealable (including exhaustion of all administrative appeals or remedies before the CPUC). Grantee further acknowledges and agrees that PG&E makes no representation or warranty regarding the prospects for CPUC approval, and Grantee hereby waives all Claims against PG&E which may arise out of the need for such CPUC approval or the failure of the CPUC to grant such approval. This Agreement is made subject to all the provisions of such approval, as more particularly set forth in CPUC Resolution [insert Resolution number] (Advice Letter No. [Insert Advice Letter number]), in like manner as though said provisions were set forth in full herein.

11. Relocation. Subject to the provisions of this Section 11, the rights granted to Grantee herein shall forever be subordinate to PG&E's right to replace, reconstruct, relocate, operate and maintain its existing gas transmission lines which traverse the Easement Area and PG&E's adjacent lands. If PG&E's use of its reserved rights described above, or PG&E's use as licensee under the FERC license, necessitates the relocation of the Conduit System, Grantee shall, at its own cost and expense, relocate the Conduit System to an alternate location mutually agreed upon between PG&E and Grantee, provided Grantee is given at least six (6) months prior written notice of such required relocation. Any such relocation of the Conduit System shall be coordinated and scheduled between PG&E and Grantee so as to minimize, to the extent practicable, any interference with the use and operation of the Conduit System by Grantee resulting from such relocation.

12. Compliance; Insurance. PG&E shall have a right to access and inspect the Easement Area at any time to confirm Grantee's compliance with Legal Requirements and the provisions of this Agreement. Prior to the Effective Date of this Agreement, Grantee shall procure, and thereafter Grantee shall carry and maintain in effect at all times during the term of the Agreement, the insurance specified in **Exhibit C**, attached hereto and made a part hereof by this reference, provided that PG&E reserves the right to review and modify from time to time the coverages and limits of coverage required hereunder, as well as the deductibles and/or self-insurance retentions in effect from time to time (but PG&E agrees that it will not increase required coverage limits more often than once in any five-year period). All insurance shall be written on forms and with insurance carriers acceptable to PG&E. Grantee is also responsible for causing its agents, contractors and subcontractors to comply with the insurance requirements of this Agreement at all relevant times.

13. Mechanics' Liens. Grantee shall keep the Property free and clear of all mechanics', material suppliers' or similar liens, or claims thereof, arising or alleged to arise in connection with any work performed, labor or materials supplied or delivered, or similar activities performed by Grantee or at its request or for its benefit. If any mechanics' liens are placed on the Property in connection with the activities or the Conduit System set forth in this Agreement, Grantee shall promptly cause such liens to be released and removed from title, either by payment or by recording a lien release bond in the manner specified in California Civil Code Section 3143 or any successor statute.

14. Notice. Any notices or communications hereunder shall be in writing and shall be personally delivered or sent by first class mail, certified or registered, postage prepaid, or sent by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee party at its address or addresses listed below, or to such other address or addresses for a party as such party may from time to time designate by notice given to the other party. Notices shall be deemed received upon actual receipt by the party being sent the notice, or on the following business day if sent by overnight courier, or on the expiration of three (3) business days after the date of mailing.

If to PG&E:

Pacific Gas and Electric Company
Attention: Land Agent
3600 Meadowview Drive
Redding, CA 96002
(530) 246-6548

With a copy to:

(If by certified mail)

Wendy T. Coleman, Esq.
Pacific Gas and Electric Company
P.O. Box 7442
San Francisco, CA 94120
(415) 973-6067

(If by personal delivery or overnight courier)

Wendy T. Coleman, Esq.
Pacific Gas and Electric Company
77 Beale Street, Mail Code B30A
San Francisco, CA 94105

If to Grantee:

360networks (USA) inc.
Legal Department
867 Coal Creek Circle, Suite 160
Louisville, CO 80027

15. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of California.

16. Entire Agreement. This Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the parties and constitutes the entire

agreement of the parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by both parties.

17. Binding Effect. This Agreement and the covenants and agreements contained herein shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns (subject to the provisions of Section 18). No assignment or delegation by Grantee, whether by operation of law or otherwise, shall relieve Grantee of any of its duties, obligations or liabilities hereunder, in whole or in part. The covenants of PG&E and Grantee hereunder shall run with the land.

18. Assignment.

(a) Grantee shall not assign, convey, encumber, or otherwise transfer the easements and other rights herein conveyed, or any portion thereof or interest herein, without the prior written consent of PG&E, which consent will not be unreasonably withheld, delayed or conditioned; provided that Grantee may assign this Easement in whole or in part to a Permitted Assignee upon prior written notice to PG&E, subject to any required regulatory approval, if any. A “**Permitted Assignee**” shall mean (a) an Affiliate (as hereinafter defined) of Grantee, or (b) an entity that purchases all or substantially all of the assets of Grantee, or (c) an entity formed by or surviving a merger or consolidation of Grantee with another entity. For purposes of the foregoing, an “**Affiliate**” of Grantee means an entity that controls, is controlled by, or is under common control with Grantee; the term “**control**” means the possession, directly or indirectly, of the power, whether or not exercised, to direct or cause the direction of the management or policies of an entity, whether through the ownership of voting securities, by contract or otherwise; and the term “**controlled**” and “**common control**” have correlative meanings. Grantee acknowledges and agrees that in any instance where PG&E is required not to unreasonably withhold its consent, it shall be reasonable for PG&E to withhold its consent if any regulatory agency having or asserting jurisdiction over PG&E or the Easement Area, or having or claiming a right to review and/or approve the proposed transfer, fails to grant approval thereof (or imposes conditions on such approval which are not acceptable to PG&E, in its reasonable discretion). Grantee further acknowledges and agrees that in any instance where PG&E is required not to unreasonably delay giving or withholding its consent, it shall be reasonable for PG&E to make application for approval to any regulatory agency having or asserting jurisdiction, and to defer the giving or withholding of consent, without liability hereunder for delay, during the pendency and for a reasonable time following the conclusion of any such regulatory proceedings.

(b) Notwithstanding the restrictions set forth above in Section 18(a), Grantee shall have a limited right to enter into Indefeasible Right to Use Agreements or other comparable licensing agreements with third party users (but not leases, subleases, easements or other agreements transferring a possessory interest), without PG&E's consent, provided that the third party users (1) have a right to transmit data only through the existing Conduit System, (2) do not have a right of access onto the Property under any circumstances whatsoever, and (3) do not own any conduit, fibers or have any other personal property, equipment or facilities on the Property. Grantee shall be responsible for all communications with the third party users, and PG&E shall not be required to have any contact with such third party users. Grantee will be responsible for relocation and removal of the Conduit System as required by this Agreement, despite any claim by any third party user. Grantee hereby indemnifies PG&E from any and all Claims made by the third

party users, or Claims related to third party use of the Conduit System, as more fully set forth in Section 5 above.

19. Attorneys' Fees. Should either party bring an action against the other party, by reason of or alleging the failure of the other party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, then the party which prevails in such action shall be entitled to its reasonable attorneys' fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings and bankruptcy litigation, and in any appellate proceeding. The non-prevailing party shall also pay the attorney's fees and costs incurred by the prevailing party in any post-judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement. For purposes hereof, the reasonable fees of PG&E's in-house attorneys who perform services in connection with any such action shall be recoverable, and shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the relevant subject matter area of the law, in law firms in the City of San Francisco with approximately the same number of attorneys as are employed by PG&E's Law Department.

20. No Waiver. No waiver with respect to any provision of this Agreement shall be effective unless in writing and signed by the party against whom it is asserted. No waiver of any provision of this Agreement by a party shall be construed as a waiver of any subsequent breach or failure of the same term or condition, or as a waiver of any other provision of this Agreement.

21. No Offsets. Grantee acknowledges that PG&E is executing this Agreement in its capacity as the owner of the Easement Area, and not in its capacity as a public utility company or provider of electricity and natural gas. Notwithstanding anything to the contrary contained herein, no act or omission of Pacific Gas and Electric Company or its employees, agents or contractors as a provider of electricity and natural gas shall abrogate, diminish, or otherwise affect the respective rights, obligations and liabilities of PG&E and Grantee under this Agreement. Further, Grantee covenants not to raise as a defense to its obligations under this Agreement, or assert as a counterclaim or cross-claim in any litigation or arbitration between PG&E and Grantee relating to this Agreement, any claim, loss, damage, cause of action, liability, cost or expense (including, but not limited to, attorneys' fees) arising from or in connection with Pacific Gas and Electric Company's provision of (or failure to provide) electricity and natural gas.

22. No Third Party Beneficiary; No Dedication. This Agreement is solely for the benefit of the parties hereto and their respective successors and permitted assigns, and, except as expressly provided herein, does not confer any rights or remedies on any other person or entity. Nothing contained in this Agreement shall be deemed to be a gift or dedication of land or rights to the general public.

23. Due Authority. Grantee represents that (i) this Agreement is duly authorized, executed and delivered by and is binding upon Grantee, (ii) Grantee is a corporation, duly organized and validly existing and in good standing under the laws of the State of Nevada, (iii) Grantee is duly authorized and qualified to do business in California, and (iv) Grantee has the capacity and authority to enter into this Agreement and to fulfill all the obligations herein provided.

24. Captions. The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

25. Time. Except as otherwise expressly provided herein, the parties agree that as to any obligation or action to be performed hereunder, time is of the essence.

26. Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

27. Counterparts. This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

28. Other Documents. Each party agrees to sign any additional documents or permit applications which may be reasonably required to effectuate the purpose of this Agreement. Provided, however, that PG&E will not be required to take any action or execute any document that would result in any cost, expense or liability to PG&E.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

PACIFIC GAS AND ELECTRIC COMPANY,
a California corporation

360NETWORKS (USA) INC.,
a Nevada corporation

By: _____
Its: _____

By: _____
Its: _____

Exhibits A, A-1, A-2, B-1, B-2 and C attached

EXHIBIT A

PG&E PROPERTY

Lots 4, 6 and 7 of Section 29; excepting therefrom that portion of Lot 6 which lies north of Fall River and which was conveyed by Monar D. Nicholson and wife to Frederick G. Whipple by deed dated October 13, 1913 and recorded in Book 120 of Deeds at page 466, Shasta County Records; and Lots 1, 2, 5, and 6 of Section 32, both of Township 38 North, Range 4 East, Mount Diablo Base and Meridian.

Lot 4 and the northeast quarter of the northeast quarter of Section 28, both of Township 37 North, Range 3 East, Mount Diablo Base and Meridian.

Lot 1 and the southeast quarter of the northeast quarter of Section 3 and Lots 3, 4, 5, 6, and 7 of Section 2, all in Township 36 North, Range 3 East, Mount Diablo Base and Meridian.

EXHIBIT "A-1"

Strip 1

An easement being 10 feet wide and lying 5 feet on each side of the following alignment, and lying within Section 28, Township 37 North, Range 3 East, M.D.M., Shasta County, California, more particularly described as follows:

Commence at the Northeast corner of Section 3, Township 36 North, Range 3 East M.D.M.; thence North 58°53'50" West a distance of 3333.01 feet to the point of beginning of this description; thence along existing fiber optic conduits;

thence S.25°11'09"E., a distance of 39.86 feet;
thence S.06°49'38"E., a distance of 34.75 feet;
thence S.03°56'50"W., a distance of 27.07 feet;
thence S.05°36'57"W., a distance of 15.88 feet;
thence S.07°08'58"W., a distance of 12.75 feet;
thence S.02°49'48"W., a distance of 28.72 feet;
thence S.08°22'19"E., a distance of 36.68 feet;
thence S.11°46'07"E., a distance of 62.83 feet;
thence S.06°30'32"E., a distance of 125.40 feet;
thence S.00°55'51"E., a distance of 31.78 feet;
thence S.04°55'02"E., a distance of 45.37 feet;
thence S.13°51'19"E., a distance of 35.37 feet;
thence S.21°46'06"E., a distance of 83.33 feet;
thence S.16°12'28"E., a distance of 111.13 feet;
thence S.21°02'34"W., a distance of 30.67 feet;
thence S.02°39'21"E., a distance of 14.80 feet;
thence S.63°19'43"E., a distance of 21.05 feet;
thence S.54°03'50"E., a distance of 30.92 feet;
thence S.24°07'07"E., a distance of 94.28 feet;
thence S.20°58'59"E., a distance of 83.73 feet;
thence S.37°01'54"E., a distance of 54.23 feet;
thence S.37°48'17"E., a distance of 46.92 feet;
thence S.26°23'05"E., a distance of 102.64 feet;
thence S.35°10'24"E., a distance of 84.43 feet;
thence S.40°15'18"E., a distance of 18.77 feet;
thence S.39°36'00"E., a distance of 88.80 feet;
thence S.47°14'46"E., a distance of 112.22 feet;
thence S.40°28'13"E., a distance of 61.69 feet;
thence S.38°15'34"E., a distance of 150.43 feet +/- to the East line of said section 28 being the terminus of this description.

Strip 2

An easement being 10 feet wide and lying 5 feet on each side of the following alignment, and lying within Section 2 and 3, Township 36 North, Range 3 East, M.D.M., Shasta County, California, more particularly described as follows:

Commence at the Northeast corner of Section 3, Township 36 North, Range 3 East M.D.M.; thence South 50°36'16" West a distance of 1575.22 feet to the point of beginning of this description called point "A";

thence along existing fiber optic conduits N 62°26'21" W, a distance of 140 feet +/- to the West line of Government Lot 1 of said section 3 being the terminus of this description.
and also from said point "A" along existing fiber optic conduits S 62°19'46" E, a distance of 248.36 feet; thence S.63°21'05"E., a distance of 122.91 feet; thence S.62°27'33"E., a distance of 137.00 feet; thence S.60°56'12"E., a distance of 133.76 feet; thence S.59°08'55"E., a distance of 123.51 feet; thence S.55°04'10"E., a distance of 98.51 feet; thence S.51°35'48"E., a distance of 130.61 feet; thence S.52°11'25"E., a distance of 164.73 feet; thence S.50°31'46"E., a distance of 137.54 feet; thence S.41°22'57"E., a distance of 21.90 feet; thence S.58°07'35"E., a distance of 54.21 feet; thence S.50°52'51"E., a distance of 104.84 feet; thence S.49°07'50"E., a distance of 108.26 feet; thence S.41°53'37"E., a distance of 49.30 feet; thence S.39°27'13"E., a distance of 42.12 feet; thence S.35°55'28"E., a distance of 33.04 feet; thence S.32°32'06"E., a distance of 35.90 feet; thence S.25°26'31"E., a distance of 41.60 feet; thence S.19°48'09"E., a distance of 105.97 feet; thence S.11°17'09"E., a distance of 67.92 feet; thence S.06°49'02"E., a distance of 70.20 feet; thence S.00°29'26"W., a distance of 76.07 feet; thence S.05°09'03"W., a distance of 102.60 feet; thence S.03°44'21"W., a distance of 74.41 feet; thence S.03°40'03"W., a distance of 113.38 feet, to the South line of Government Lot 5 of said Section 2, and being the terminus of this description.

Basis of bearings for this description is Caltrans Monuments on Hwy #89
NAD83 91.35 between CM 29.39 and CM 29.48



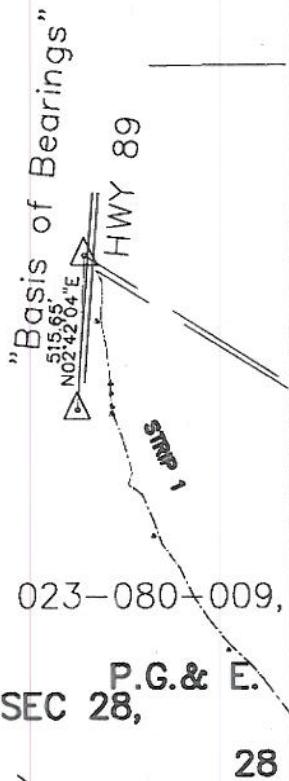
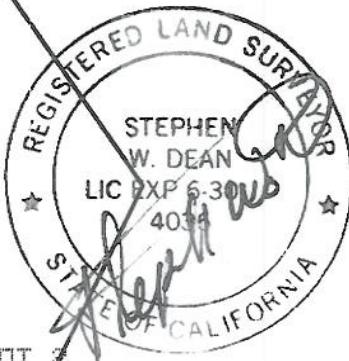


EXHIBIT "B-1"

Found a "T-Bar" in mos no record
 Found a 18" Pine N 82°30'W, 61.4', blazed & tagged
 Found a 24" Oak N20°30'E, 50.1', blazed & tagged
 Found a 36" Pine N6°W, 46.4', blazed & tagged
 Found a 27" Pine N 59°W 63.5', blazed & tagged

- △ FOUND A 1" ALM CAP MARKED CAL TRANS CM 29.39
- △ FOUND A 1" ALM CAP MARKED CAL TRANS CM 29.48



023-080-009, 012

P.G. & E.
SEC 28,

28 27

SEC 27, T. 37 N., R. 3 E.

GOV LOT 1

GOV LOT 2

3 2

GOV LOT 1

SEC 2, T. 36 N.

R. 3 E.

GOV LOT 4

SEC 3, T. 36 N., R. 3 E.

LAKE BRITTON

550°36'6"E

7575.22'

GOV LOT 5

P.G. & E.

023-250-008

023-250-037

SURVEY OF A FIBER OPTIC LINE	
360M NETWORKS	
IN A PORTION OF SEC 28, T. 37 N., R. 3 E., AND SECTIONS 2 AND 3, T. 36 N., R. 3 E., HSR SHASTA COUNTY, CA	
AS PER SURVEY OF SHASTA RIVER BY S.V. DEAN	
04-01-03 FEB 16, 2008	SHEET 1 OF 1 SCALE 1" = 600' BY S.V. DEAN

Basis of bearings for this map is between
 Caltrans monuments CM 29.39 and CM
 29.48, being N 2°42'04" E

EXHIBIT "A-2"

A easement being 10 feet wide and lying 5 on feet each side of the following alignment, and lying within IN A PORTION OF LOTS 4, 6 AND 7 OF SECTION 29, AND LOTS 1, 2, 5 AND 6 OF SECTION 32, TOWNSHIP 38 NORTH, RANGE 4 EAST, M.D.M., AS SHOWN ON THE OFFICIAL GOVERNMENT PLAT LYING IN SHASTA COUNTY, CALIFORNIA. DESCRIBED AS FOLLOWS;

STRIP 1

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 29; THENCE NORTH 62°33'33" EAST A DISTANCE OF 3584.47 FEET TO THE POINT OF BEGINNING, CALLED POINT "A"; THENCE NORTH 9° 18' 00" EAST ALONG EXISTING UNDERGROUND CONDUITS 950 FEET +/- TO THE NORTH PROPERTY LINE OF THE LANDS OWNED BY PACIFIC GAS AND ELECTRIC COMPANY AS RECORDED IN BOOK 02 OF OFFICIAL RECORDS AT PAGE 110, SHASTA COUNTY RECORDS AND ALSO FROM SAID POINT "A", SOUTH 9° 13' 29" WEST ALONG EXISTING UNDERGROUND CONDUITS 78.47 FEET THENCE;
SOUTH 1° 17'00" EAST 108.99 FEET THENCE;
SOUTH 6° 24'44" WEST 182.89 FEET THENCE;
SOUTH 8° 00'17" WEST 497.45 FEET THENCE;
SOUTH 2° 53'26" WEST 59.75 FEET THENCE;
SOUTH 10° 03'14" WEST 272.59 FEET THENCE;
SOUTH 1° 36'10" WEST 74.94 FEET THENCE;
SOUTH 2° 10'56" WEST 74.02 FEET THENCE;
SOUTH 3° 53'45" WEST 106.47 FEET THENCE;
SOUTH 7° 19'17" WEST 29.10 FEET THENCE;
SOUTH 2° 23'17" WEST 124.95 FEET THENCE;
SOUTH 10° 38'12" WEST 32.35 FEET TO THE NORTHERLY RIGHT-OF WAY OF McARTHUR ROAD, COUNTY ROAD # 9RO1B.

STRIP 2

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 29; THENCE SOUTH 87°40'30" EAST A DISTANCE OF 2979.25 FEET TO THE POINT OF BEGINNING, CALLED POINT "B"; THENCE NORTH 10° 38'12" EAST ALONG EXISTING UNDERGROUND CONDUITS 78.63 FEET +/- TO THE SOUTHERLY RIGHT-OF WAY OF McARTHUR ROAD, COUNTY ROAD # 9RO1B.
ALSO FROM SAID POINT "B" SOUTH 9° 30'28" WEST ALONG EXISTING UNDERGROUND CONDUITS 113.42 FEET THENCE;
SOUTH 5° 56'22" WEST 286.17 FEET THENCE;
SOUTH 14° 54'31" WEST 106.52 FEET THENCE;
SOUTH 7° 25'32" WEST 516.01 FEET THENCE;
SOUTH 6° 46'15" WEST 533.89 FEET THENCE;
SOUTH 7° 07'39" WEST 521.35 FEET THENCE;
SOUTH 8° 19'25" WEST 350 FEET +/- TO THE WESTERLY PROPERTY LINE OF THE LANDS OWNED BY PACIFIC GAS AND ELECTRIC COMPANY AS RECORDED IN BOOK 02 OF OFFICIAL RECORDS AT PAGE 110 SHASTA COUNTY RECORDS.

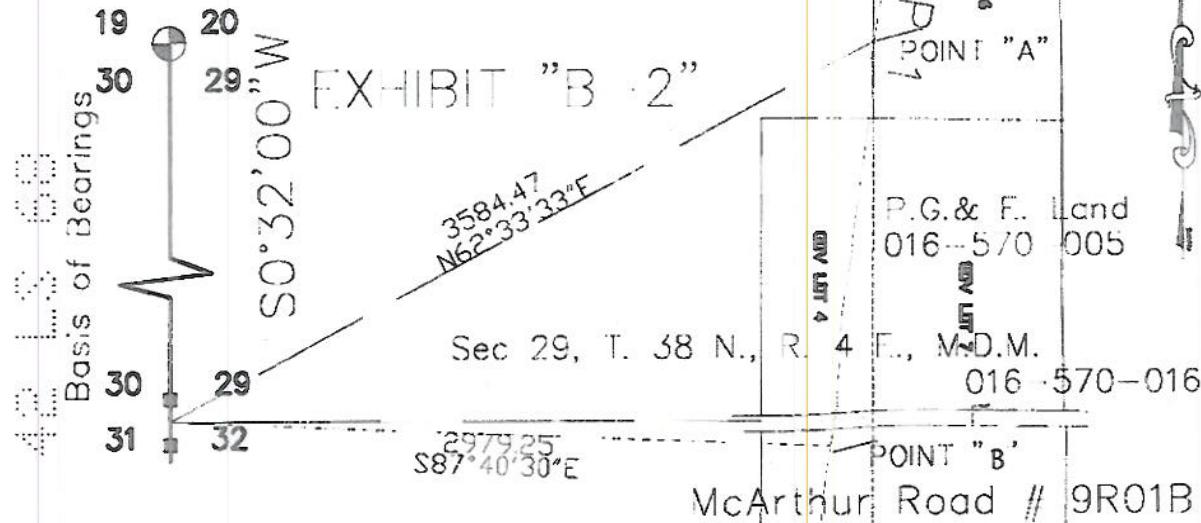
BASIS OF BEARINGS FOR THIS DESCRIPTION IS TAKEN FROM A RECORD OF SURVEY
FOR DALE BOSE AND RECORDED IN BOOK 42 OF LAND SURVEYS AT PAGE 68, SHASTA
COUNTY RECORDS.



360 Networks Fiber Optic Line

IN A PORTION OF SECTIONS 29 AND 32, T. 38 N., R. 4 E., M.D.M.
SHASTA COUNTY CA.

ASTRO SURVEY CO. 16335 NORTH ST REDDING 96001
04-01-01A SHEET 1 OF 1
02-18-2008 SCALE 1" = 800' BY S.W. DEAN



Sec 32, T. 38 N., R. 4 E., M.D.M.

- Fd a 6"x6" conc witness monument per 42 LS 68
- Fd a BLM brass cap per 42 LOS 68

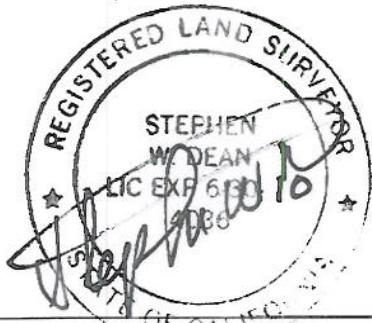


EXHIBIT C
INSURANCE REQUIREMENTS

Grantee shall procure, carry and maintain in effect throughout the term of this Agreement, in a form and with deductibles acceptable to PG&E and with such insurance companies as are acceptable to PG&E, the following insurance coverages (subject to periodic revision of the required coverage and limits of coverage as provided in Section 12 of this Agreement). Grantee is also responsible for the compliance of its contractors and subcontractors with the insurance requirements set forth below, as appropriate, provided that Grantee may, in the exercise of its reasonable judgment, permit its contractors and subcontractors to maintain coverages and limits lower than those specified below so long as the coverages and limits required by Grantee are commercially reasonable in light of applicable circumstances.

A. Workers' Compensation and Employers' Liability

1. Workers' Compensation insurance indicating compliance with any and all applicable labor codes, acts, laws or statutes, state or federal.
2. Employer's Liability insurance shall not be less than One Million Dollars (\$1,000,000.00) for injury or death, each accident.

B. Commercial General Liability

1. Commercial General Liability coverage with respect to the Easement Area and the use, occupancy and activities by and on behalf of Grantee, its employees and agents on or about the Easement Area, including construction and other related activities on the Easement Area, against claims for bodily injury (including death) and property damage (including loss of use), and at least as broad as the Commercial General Liability insurance occurrence policy form CG 00 01, or a substitute form providing equivalent coverage, covering liability imposed by applicable laws upon Grantee and such other insured parties ("Commercial General Liability Insurance"), having limits of not less than Three Million Dollars (\$3,000,000.00) per occurrence, Three Million Dollars (\$3,000,000.00) aggregate, for bodily injury and property damage, personal injury liability, and products and completed operations. Defense costs are to be provided as an additional benefit and not included within the limits of liability of the Commercial General Liability Insurance. Products and completed operations coverage shall remain in effect until two (2) years following completion of construction.
2. Coverage shall include: a) an "Additional Insured" endorsement (ISO Additional Insured form CG 2026, or a policy provision or substitute endorsement providing equivalent coverage, as reasonably approved by PG&E) adding as additional insureds PG&E, its directors, officers, agents and employees with respect to liability arising out of work performed by or for Grantee and to the extent of the indemnity obligations assumed hereunder; and b) an endorsement or policy

provision specifying that the Grantee's insurance is primary and that any insurance or self-insurance maintained by PG&E shall be excess and non-contributing.

C. Business Auto

1. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code I "any auto."
2. The limit shall not be less than One Million Dollars (\$1,000,000.00) each accident for bodily injury and property damage.

D. Additional Insurance Provisions

1. Upon the Effective Date of the Easement Agreement, and before commencing any work, Grantee shall furnish PG&E with two (2) sets of certificates of insurance evidencing all required insurance for Grantee, including copies of required endorsements.
2. All policies shall provide (or be endorsed to provide), and all certificates of insurance shall expressly specify, that the insurer will provide PG&E thirty (30) days advance written notice of policy cancellation, failure to renew, or reduction of coverage.
3. Certificates of insurance must be signed by a person authorized by that insurer to bind coverage on its behalf. Certificates and endorsements shall be submitted to:

Pacific Gas and Electric Company
Insurance Department
One Market, Spear Tower, Suite 2400
San Francisco, CA 94105

Pacific Gas and Electric Company
Attention: Land Agent
3600 Meadowview Drive
Redding, CA 96002

4. Upon request, Grantee shall furnish PG&E evidence of insurance for its agents or contractors.
5. All insurance required under this Agreement shall be effected under valid enforceable policies issued by insurers of recognized responsibility, as reasonably determined by PG&E.
6. If Grantee is permitted to self-insure hereunder for any required insurance, and elects to do so, Grantee shall be liable to PG&E for the full equivalent of insurance coverage which would have been available to PG&E if the applicable insurance policies had been obtained by Grantee from a third party insurer, in full compliance with the provisions of this Exhibit C, and shall pay on behalf of or indemnify PG&E for all amounts which would have been payable by the third party insurer. In addition, Grantee shall act with the same promptness and subject to the same standards of good faith as would apply to a third party insurance company.

7. Any policy of liability insurance required to be maintained hereunder by Grantee may be maintained under a so-called "blanket policy" insuring other locations and/or other persons, so long as PG&E is specifically named as an additional insured under such policy and the coverages and amounts of insurance required to be provided hereunder are not thereby impaired or diminished. In addition, liability insurance coverages may be provided under single policies for the full limits, or by a combination of underlying policies with the balance provided by excess or umbrella liability insurance policies.
8. Grantee agrees, at PG&E's request, to deliver complete certified copies of all policies, and/or to permit PG&E to inspect the original policies at any time and from time to time.

Advice 3043-G/3520-E

Attachment 2
Right-of-Entry License Agreement

CD # 2138-04-0193



**Pacific Gas and
Electric Company**

January 31, 2000

245 Market Street
San Francisco, CA 94105

Mailing Address
Mail Code N10A
P.O. Box 770090
San Francisco, CA 94177

415.973.7000

Mr. Bob Boyeson
Worldwide Fiber Networks, Inc.
P.O. Box 757
Anderson, California 96007

Dear Mr. Boyeson:

Pacific Gas and Electric Company (PG&E) hereby gives permission to Worldwide Fiber Networks, Inc. (WFN), its agents and/or contractors, to enter upon that portion of PG&E's real property, the approximate locations which are shown upon the maps attached hereto and designated Exhibit "A". The parameters regarding the actual location are described herein.

This permission is given to allow installation of a one bundle, seventeen (17) duct, buried fiber optic conduit system as part of the construction of a fiber optic communications system and accomplishing all incidents thereto.

The permission hereby given is in advance of the conveyance of a 10 foot wide communications easement from PG&E to WFN for said communications system and to allow WFN the ability to have a legal description prepared to describe the actual location of said communications system as constructed. Said easement shall be prepared by PG&E on its standard easement form attached hereto and designated Exhibit B.

This permission is given subject to the following terms and conditions:

1. WFN shall construct said communication system so as not to interfere with any of PG&E's facilities or its use of said property for public utility purposes.
2. On or before September 30, 2000, WFN shall provide to PG&E a centerline legal description and map of the final route and location of said communication system located on PG&E's property. The description and map shall be prepared by, or under the direction of a land surveyor, licensed in the state of California and shall include a wet stamp or seal with signature and expiration of the licensee. The description and map shall be incorporated into said easement from PG&E.

Mr. Bob Boyeson
January 31, 2000
Page Two

3. WFN shall construct said communication system so that:
 - A) that portion of said communication system to be installed near PG&E's gas transmission facilities shall be a minimum of 35 feet westerly and a maximum of 45 feet westerly of said gas transmission facilities, it being understood that said communication system will be within 30 feet of said gas transmission facilities as it sweeps into and out of private easements;
 - B) that portion of said communication system to be installed at or near Lake Britton shall be installed completely within the McCloud River Railroad Company's easement on PG&E's property;
 - C) PG&E's access to its gas transmission facilities is maintained at all times and any damage to said access shall promptly be repaired;
 - D) WFN shall promptly backfill any trench made by it on PG&E's property;
 - E) no grading or deposit of fill or spoil material of any kind shall occur over or near said gas transmission facilities;
 - F) said communication system shall be buried so that the top of the conduits shall be at least 30 inches below the present ground surface regardless of soil type;
 - G) WFN shall place above ground markers, in sufficient adequacy, as determined by PG&E, to provide positive locations of said communication system on PG&E's property.
4. WFN acknowledges that this permission is not a waiver of PG&E's right to compensation for any taking or of any remedy authorized by law to secure payment therefor.
5. WFN will pay PG&E an amount based on One Dollar (\$1.00) per linear foot for a ten foot (10') wide communications easement prepared by PG&E in the form attached hereto and designated Exhibit "B". WFN has estimated their system will cross PG&E's lands for approximately eight thousand one hundred fifty feet (8,150'). Based upon \$1.00 per linear foot, this would be a total estimated payment to PG&E of \$8,150.00. The actual payment to PG&E shall reflect the total linear feet across PG&E property as evidenced by WFN's legal description provided in condition #2 above.
6. This permission shall terminate on September 30, 2000, or until a reasonable time after WFN has been requested by PG&E to commence eminent domain proceedings, whichever occurs first.

Mr. Bob Boyeson
January 31, 2000
Page Three

7. PG&E shall not be liable to WFN for any loss, damage, or liability for damages, whether for loss of or damage to property, or injury to or death of persons, which shall arise out of or in any way be connected with WFN's operations hereunder unless such loss, damage, injury, or death shall be caused by the sole negligence or willful misconduct of PG&E.
8. WFN shall indemnify PG&E, its officers, agents, and employees, against all loss, damage, expense and liability resulting from injury to or death of persons, including, but not limited to, employees of WFN or PG&E, or injury to property, including, but not limited to, property of WFN or PG&E arising out of or in any way connected with WFN's operation hereunder including the exposure to electric and magnetic fields, excepting only such injury or death as may be caused by the sole negligence or willful misconduct of PG&E.
9. WFN acknowledges the right of PG&E, its successors, and assigns to use said property for Federal Energy Regulatory Commission Project No. 233 and Project No. 2687 purposes; and to use the same whenever in the interest of its service to the public it shall be deemed necessary so to do.
10. WFN's use of said property shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use, in accordance with paragraph (C) of the Commission's Order No. 313, issued December 27, 1965 (34 FPC 1546, 1549-50).
11. WFN shall comply with any laws, regulations or ordinances established by any federal, state, or local governmental agency or agencies having jurisdiction over WFN's use of PG&E's property, including, but not limited to, the applicable provisions of the Environmental Quality Act of 1970 (California Public Resources Code, Sections 21000 et seq.) and WFN shall secure any permits required thereby.
12. This right of entry is given subject to all of the provisions of General Order No. 69C of the Public Utilities Commission of the State of California and to all other applicable provisions of the laws and regulations of the State of California and all other governmental agencies.
13. WFN shall maintain in effect during the term of this permission insurance as required within attached "Exhibit C".
14. WFN shall contact Mr. David Wiens of PG&E's Redding Land Rights Office at (530) 246-6443, at least 48 hours prior to the start of construction of said system at each location for an evaluation of site conditions.

Mr. Bob Boyeson
January 31, 2000
Page Four

If the provisions contained herein are satisfactory, please so indicate by signing in the space provided on the duplicate copy hereof and returning it to this office. This permission is not in full force and effect until PG&E's copy is signed and returned to PG&E.

Sincerely,

Lu de Silva
Lu de Silva
Director, Land Rights and Resource Management

ACCEPTED

WORLDWIDE FIBER NETWORKS, INC., a Nevada corporation

By J. Hellman
Date April 6, 2000

Area 6

North Valley Div. (Shasta)

SBE# 135-45-55F pcl. 1-4

W 1/2 of the SE 1/4 Section 29 and

W 1/2 of the NE 1/4 Section 32

T. 38 N., R. 4 E. MDB&M

SBE# 135-45-18C pcl. 1 & 2

S 1/2 of SW 1/4 Section 27, T. 37 N., R. 3 E., MDB&M

NW 1/4 of NE 1/4 of Section 3, T. 36 N. R. 3 E., MDB&M

SBE# 135-45-19 pcl. 4

Por. Section 28, T. 37 N., R. 3 E., MDB&M

SBE# 135-45-12B pcl. 4,5 & 6

E 1/2 of E 1/2 , Section 28, T. 37 N., R. 3 E. MDB&M

SBE# 135-45-56B pcl. 1 & 3

E 1/2 of NE 1/4, Section 3 and

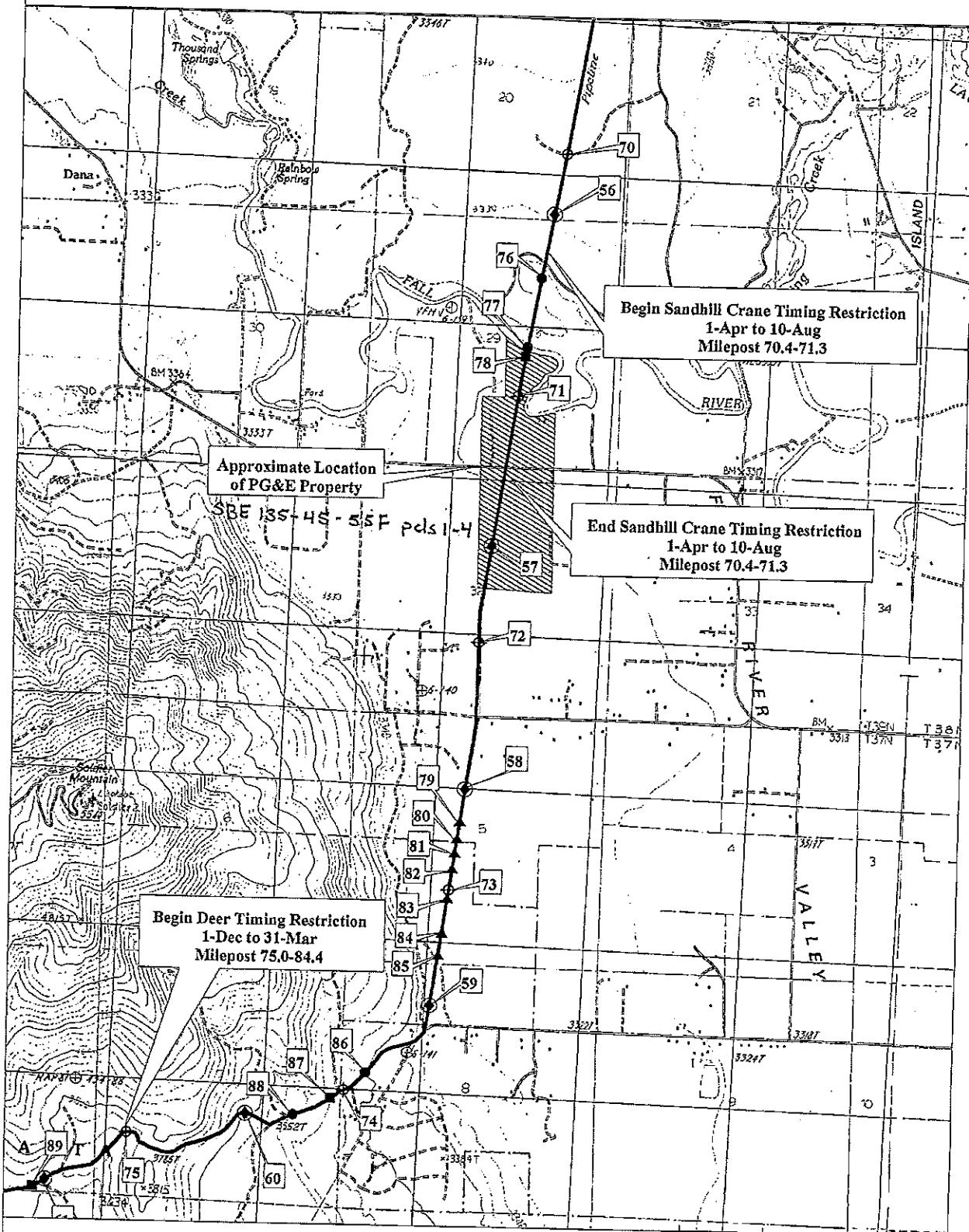
NE 1/4 Section 2, T.36 N., R. 3 E., MDB&M

SBE# 135-45-18E pcl. 6

SW 1/4 of the NW 1/4 of Section 2

T. 36 N., R. 3 E., MDB&M

PACIFIC FIBER LINK CALIFORNIA MITIGATION MAPS



LEGEND

0 500 1000 1500 2000 2500 3000 3500 4000 4500 5000 Feet

N

Mile Markers	Wetlands	Date: 12/24/99 Version Number: 4	Map 17 of 69
Mile Marker Labels	Wetland Labels		
Water Crossings	Com Plus Stations		
Water Crossing Labels	Not Constructed as of 1/1/2000		
Sensitive Resources	Constructed as of 1/1/2000		
Sensitive Resource Labels			
		Index sheets for Northern California section of the proposed Pacific Fiber Link Conduit. There are 69 maps covering the area from the southern Oregon border to Sacramento.	
		Quad Map References:	
		DANA FALL RIVER MILLS	

PACIFIC FIBER LINK CALIFORNIA MITIGATION MAPS

EXHIBIT "A" 2 of 2

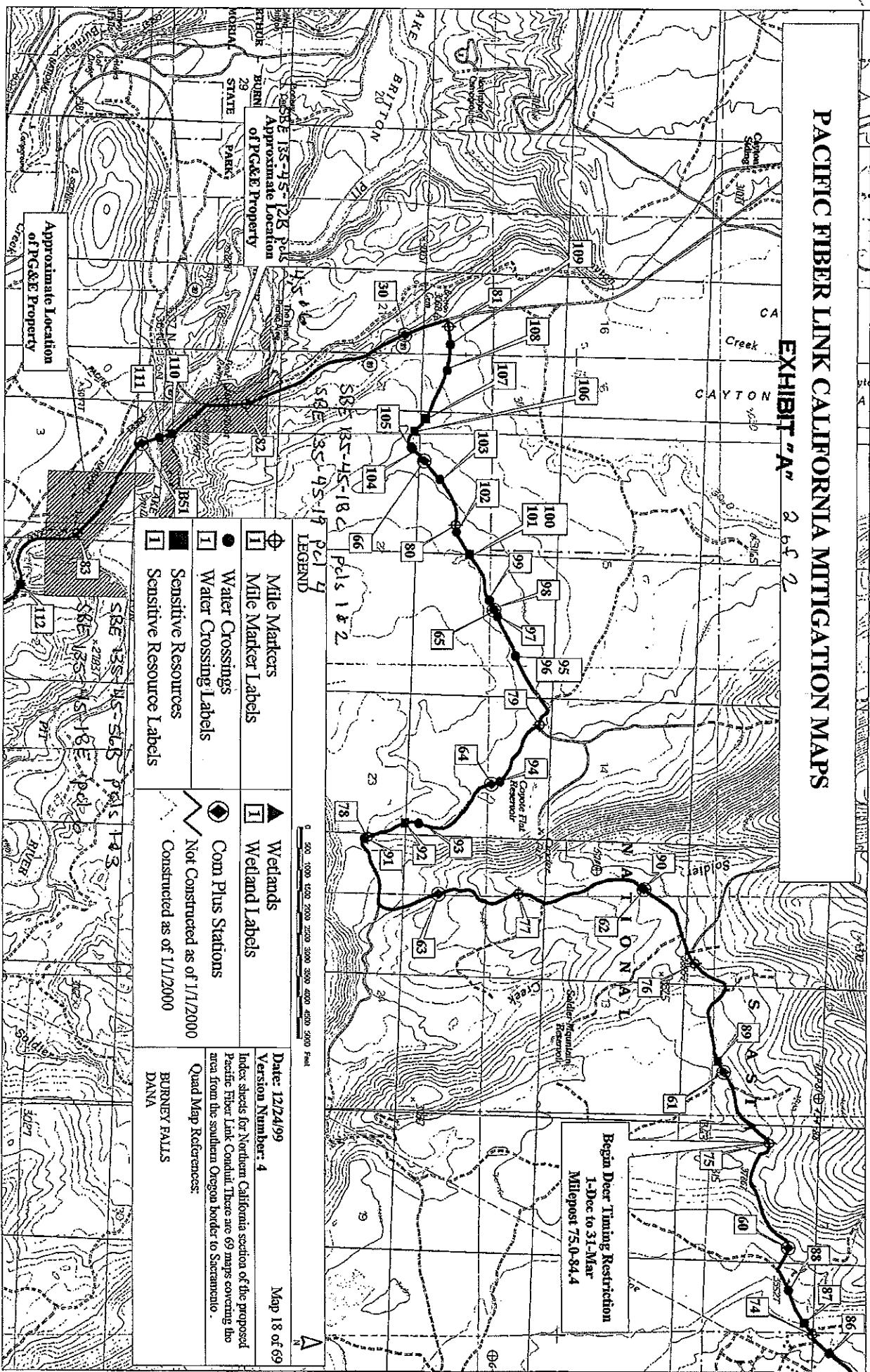


EXHIBIT "B"

AFTER RECORDING, RETURN TO: **EXAMPLE ONLY**

Location: City/Uninc _____

Recording Fee \$ _____

Document Transfer Tax \$ _____

- Computed on Full Value of Property Conveyed, or
- Computed on Full Value Less Liens & Encumbrances Remaining at Time of Sale

Signature of declarant or agent determining tax

EASEMENT

PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter called PG&E, hereby grants to Worldwide Fiber Networks, Inc., a Nevada corporation, hereinafter called WFN, the right, subject to termination as hereinafter set forth, to construct, install, maintain, inspect, test, repair, alter, replace or remove a multiple duct conduit communication system, together with the appurtenances necessary for the operation of said communication system within the hereinafter described strips of land within those certain lands, situate in the County of Shasta, State of California, described as follows:

(APN Assessor's parcel number)

(Insert description of lands)

The aforesaid strips of land are described as follows:

The strips of land of the uniform width of 10 feet lying 5 feet on each side of the line described in Exhibit "A" and shown upon Exhibit "B" attached hereto and made a part hereof.

PG&E also grants to WFN:

- (a) the right of ingress to and egress from said easement area over and across said lands by means of roads and lanes thereon, if such there be, otherwise by such route or routes as shall occasion the least practicable damage and inconvenience to PG&E, provided, that such right of ingress and egress shall not extend to any portion of said lands which is isolated from said easement area by any public road or highway, now crossing or hereafter crossing said lands; and

- (a) to promptly backfill any excavations made by it on said easement area and repair any damage it shall do to PG&E's private roads on said lanes;
- (b) WFN shall indemnify PG&E, its officers, agents and employees against all loss, damage, expense and liability resulting from injury to or death of persons, including, but not limited to, employees of PG&E or WFN, or injury to property, including, but not limited to, property of PG&E or WFN arising out of or in any way connected with the exercise of the rights herein granted including any loss, damage, expense, or liability proximately caused or contributed to by the negligence, whether active or passive, of first party, excepting only such loss, damage, expense, or liability as may be caused by the sole negligence or willful misconduct of first party;
- (c) that said communication facilities installed hereunder shall be constructed and maintained at WFN's sole expense and at no expense to PG&E;
- (d) WFN shall not fence said easement areas;
- (e) WFN shall place above ground markers, in sufficient adequacy, as determined by PG&E, to provide positive locations of the communication facilities installed on said lands; and
- (f) WFN shall not grade or deposit any fill or spoil material of any kind over or near PG&E's gas transmission facilities.

WFN shall not perform any work hereunder without giving PG&E at least one week's notice of WFN desire so to do in order that a representative of PG&E party may be present for the inspection and approval of WFN operations hereunder, said notice shall be given to Pacific Gas and Electric Company, (Address, Person's Title, and Telephone Number).

PG&E reserves the right to use said easement area for any purpose or purposes which will not interfere with WFN's full enjoyment of the rights hereby granted; provided, however, that PG&E shall not erect or construct any building or other structure or drill or operate any well within said strips of land.

No tools, machinery, equipment, apparatus, materials or supplies, or any part thereof shall be erected, handled or operated within 10 feet of any high voltage line energized at 50,000 volts or less. With respect to conductors energized at more than 50,000 volts, no tools, machinery, equipment, apparatus, materials, or supplies, or any part thereof shall be erected, handled or operated closer than the minimum clearances set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety, which said minimum clearances are incorporated herein by reference.

The easement granted herein may be considered by others to be an implied endorsement of WFN's plans. As a consequence, PG&E asks that WFN assure, by acceptance of this easement, that WFN has given due consideration to the ecological and environmental impact of its development and has complied with, or will comply with, the applicable provisions of the Environmental Quality Act of 1970 (California Public Resources Code, Sections 21000 et seq.).

WFN acknowledges PG&E's title in and to said strips of land and priority of PG&E's title therein and agree never to assail or resist said title.

The rights hereby granted shall terminate in the event that WFN shall fail for a continuous period of two years to maintain and use said strips of land for communication purposes. Furthermore, in accordance with General Order No. 69-C of the Public Utilities Commission of the State of California, PG&E reserves the right to terminate the easement herein granted whenever PG&E, in the interest of its service to the public, finds it necessary or desirable so to do.

Upon any termination of the rights hereby granted, WFN shall execute and deliver to PG&E a good and sufficient quitclaim of said rights. Should WFN fail or refuse to deliver such quitclaim to PG&E within ninety (90) days after written demand therefor, PG&E may execute and record a written notice reciting such termination and WFN's failure or refusal and, after ten (10) days from the date of recordation of such notice, it shall be conclusive evidence of the termination of said rights against WFN and all persons claiming under WFN.

The foregoing grant is made subject to all liens and encumbrances which may affect said lands and the word "grant" as used herein shall not be deemed to be a covenant against the existence of any thereof.

WFN acknowledges the right of PG&E, its successors and assigns, to use that portion of said easement area within Federal Energy Regulatory Commission Project Numbers 233 and 2637 for project purposes; and to use said easement areas within said projects whenever in the interest of its service to the public it shall be deemed necessary so to do.

WFN use of PG&E's said lands shall not endanger health, create a nuisance or otherwise be incompatible with overall project use, in accordance with Paragraph (C) of the Commission's Order No. 313 issued December 27, 1965 (34 FPC 1546, 1549-50).

Time is of the essence of the provisions hereof.

The provisions hereof shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have executed these presents this _____ day of
_____, 2000.

PACIFIC GAS AND ELECTRIC COMPANY

WORLDWIDE FIBER NETWORKS, INC.

**FOR EXAMPLE PURPOSES ONLY
DO NOT SIGN**

By _____

Lu de Silva, Director
Land Rights and Resource Management

By _____

EXHIBIT "C"

WFN shall maintain the following insurance coverage:

L. Workers' Compensation and Employers' Liability

- A. Workers' Compensation insurance or self-insurance indicating compliance with all applicable labor codes of the State of California.
- B. Employers' Liability insurance shall not be less than \$1,000,000 each accident for injury or death.

II. Commercial General Liability

- A. Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.
- B. The limit shall not be less than \$1,000,000 each occurrence for bodily injury, property damage and personal injury. If coverage is subject to a general aggregate limit, this aggregate limit shall be twice the occurrence limit.
- C. Coverage shall: a) By "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to any liability arising out of the use of the premises by Licensee hereunder; b) Be endorsed to specify that the Licensee's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

III. Business Auto

- A. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto."
- B. The limit shall not be less than \$1,000,000 each accident for bodily injury and property damage.

IV. Additional Insurance Provisions

- A. Before commencing performance hereof, WFN shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Licensee.
- B. The documentation shall state that coverage shall not be canceled except after thirty (30) days prior written notice has been given to PG&E.
- C. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to:

Pacific Gas and Electric Company
Insurance Department - B24H
Post Office Box 770000
San Francisco, CA 94177

A copy of all such insurance documents shall be sent to PG&E, Attn. Land Agent, 3600 Meadowview Drive, Redding, CA 96002.

- D. PG&E may inspect the original policies or require complete certified copies, at any time.

**PG&E Gas and Electric
Advice Filing List
General Order 96-B, Section IV**

Aglet	Day Carter Murphy	North Coast SolarResources
Alcantar & Kahl	Defense Energy Support Center	Occidental Energy Marketing, Inc.
Ameresco	Department of Water Resources	OnGrid Solar
Anderson & Poole	Department of the Army	Praxair
Arizona Public Service Company	Dept of General Services	R. W. Beck & Associates
BART	Division of Business Advisory Services	RCS, Inc.
BP Energy Company	Douglas & Liddell	Recon Research
Barkovich & Yap, Inc.	Douglass & Liddell	SCD Energy Solutions
Bartle Wells Associates	Downey & Brand	SCE
C & H Sugar Co.	Duke Energy	SMUD
CA Bldg Industry Association	Dutcher, John	SPURR
CAISO	Ellison Schneider & Harris LLP	Santa Fe Jets
CLECA Law Office	FPL Energy Project Management, Inc.	Seattle City Light
CSC Energy Services	Foster Farms	Sempra Utilities
California Cotton Ginners & Growers Assn	G. A. Krause & Assoc.	Sierra Pacific Power Company
California Energy Commission	GLJ Publications	Silicon Valley Power
California League of Food Processors	Goodin, MacBride, Squeri, Schlotz & Ritchie	Southern California Edison Company
California Public Utilities Commission	Green Power Institute	Sunshine Design
Calpine	Hanna & Morton	Sutherland, Asbill & Brennan
Cameron McKenna	International Power Technology	Tabors Caramanis & Associates
Casner, Steve	Intestate Gas Services, Inc.	Tecogen, Inc.
Chamberlain, Eric	Los Angeles Dept of Water & Power	Tiger Natural Gas, Inc.
Chevron Company	Luce, Forward, Hamilton & Scripps LLP	Tioga Energy
Chris, King	MBMC, Inc.	TransCanada
City of Glendale	MRW & Associates	Turlock Irrigation District
City of Palo Alto	Manatt Phelps Phillips	U S Borax, Inc.
City of San Jose	Matthew V. Brady & Associates	United Cogen
Clean Energy Fuels	McKenzie & Associates	Utility Cost Management
Coast Economic Consulting	Merced Irrigation District	Utility Specialists
Commerce Energy	Mirant	Verizon
Commercial Energy	Modesto Irrigation District	Wellhead Electric Company
Consumer Federation of California	Morgan Stanley	Western Manufactured Housing
Crossborder Energy	Morrison & Foerster	Communities Association (WMA)
Davis Wright Tremaine LLP	New United Motor Mfg., Inc.	eMeter Corporation
	Norris & Wong Associates	