

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Communications Division  
Carrier Oversight and Programs Branch**

**RESOLUTION T-17635**  
January 31, 2019

**R E S O L U T I O N**

**RESOLUTION T-17635.** This Resolution approves AT&T California's request for a second deviation from Public Utilities Code § 320 to construct an additional 280 feet of overhead (aerial) fiber facilities along State Scenic Highway 1 in San Luis Obispo County.

By Advice Letter 47340 filed on May 2, 2018.

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**SUMM**

**ARY**

This Resolution grants AT&T California's (AT&T; U-1001-C) request for a second deviation from Public Utilities (P.U.) Code Section 320 and California Public Utilities Commission (Commission) Decision (D.) 80864, to construct an additional 280 feet in new aerial fiber facilities on existing utility poles along State Scenic Highway 1 in San Luis Obispo County.<sup>1</sup> Resolution T-17552 approved a previous first deviation request.

**BACKGROUND**

**P.U. Code Section 320**

P.U. Code Section 320 states that:

The legislature hereby declares that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to

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<sup>1</sup> In Resolution T-17552, the Commission approved AT&T's request to place approximately 1,235 in aerial fiber facilities along a span of five utility poles on State Scenic Highway 1 in San Luis Obispo County adjacent to the aerial construction requested in this Resolution. The total length of the aerial placement for both constructions will be approximately 1,515 feet along six continuous spans.

any highway designated a state scenic highway pursuant to Article 2.5 (commencing with § 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which would be visible from such scenic highways if erected above ground.

The Commission is responsible for the administration of Section 320. After hearings conducted in Case 9364, the Commission implemented Section 320 in D.80864 on December 19, 1972, which states:

In order to facilitate administration, letter requests for deviations will be accepted, reviewed by the Commission staff and, where appropriate, approved by Commission resolution.

D.80864 states that no communications or electric utility shall install aerial distribution facilities “in proximity to” and “visible from” any prescribed corridor on a designated scenic highway in California unless a showing is made before the Commission and the Commission finds that undergrounding would be infeasible or inconsistent with sound environmental planning. The Decision defines “in proximity to” as being within 1,000 feet from each edge of the right-of-way (ROW) of designated state scenic highways. D.80864 requires that all communications or electric utilities facilities within 1,000 feet of a scenic highway be undergrounded.

D.80864 further states that when repairs or replacement of existing aerial facilities in the same location do not significantly alter the visual impact of the scenic highway, they should not be considered as new construction and need not be converted to underground. Therefore, based on D.80864, deviations from Section 320 may be permitted when undergrounding would not be economically feasible and would not significantly alter the visual impact of the scenic highway.

Accordingly, the Commission requires that any exemption or deviation from P.U. Code Section 320 requirements be requested through a Tier 3 advice letter (AL) to the Communications Division (CD).

**AT&T's First Section 320 Deviation Request Approved by Resolution T-17552**

Resolution T-17552 addressed AL 45915, in which AT&T stated that fiber placement along State Scenic Highway 1 in San Luis Obispo county will provide service to existing and future cell sites to provide increased capacity, coverage, and access to 9-1-1

emergency services to this remote coastal area. AT&T planned to construct new aerial fiber construction along a span of five existing PG&E electric utility poles measuring a length of 1,235 feet.

AT&T stated that at both ends of the construction of 1,235 feet of aerial fiber cables, the fiber will be placed underground using the same path as the existing underground facilities. The proposed aerial construction was limited to poles that are above a sensitive archeological area. Staff asked whether AT&T could place its new fiber facilities underground by going around the archeological site or trenching under Scenic Highway 1 to the other side of the highway to avoid aerial construction. AT&T responded that “the majority of this project will be placed underground along the east side of Highway 1.” AT&T stated the project would cross Highway 1 underground to the west side to avoid wetlands, and then cross back to the east side of Highway 1 underground to avoid a bridge and proceed to go aerial on existing PG&E utility poles over a creek and across the archeological sensitive sites. Once the archeological sites are cleared, the project continues underground. The construction of additional fiber cables on existing utility poles would only minimally affect the view because there are existing power lines on the upper part of the utility poles.

The archeologically-sensitive site in question, CA-SLO-175, is a large prehistoric habitation site with ancestral human burials. It was previously evaluated and determined to be eligible for listing in the California Register of Historical Places and should receive all due consideration under the California Environmental Quality Act (CEQA) and the National Historic Preservation Act (NHPA). AT&T included in its advice letter filing a letter from the Native American Heritage Commission (a California State Agency), which states that the site that AT&T would have to underground its fiber facilities contains, “the potential for Native American cultural resources”, and that the absence of any specific site information in the Sacred Lands File is not an indication of the absence of Native American cultural resources in the area of the proposed project.

**AT&T’s Second Proposed Section 320 Deviation in AL 47340**

The proposed additional span is approximately 280 feet in length. AT&T states that such placement would have minimal visual impact as there are already existing power lines on the PG&E utility poles. AT&T consulted with Staff about the need to extend the length of the Section 320 deviation approved by Resolution T-17552 by one additional span, and Staff advised that a subsequent AL requesting deviation was necessary. Accordingly, AT&T filed Tier 3 AL 47340 on May 2, 2018 requesting approval.

## **NOTICE/PROTEST**

Notice of AL 47340 was published in the Commission's public calendar on May 7, 2018. The Commission did not receive any protests to AL 47340.

## **DISCUSSION**

### **Overview**

Consulting firm Montgomery & Associates, Inc., is assisting AT&T with environmental concerns in this area. After the Commission approved Resolution T-17552, Montgomery & Associates recommended to AT&T that it extend the aerial fiber optic placement project by one additional pole span, adjacent to the south end of the already approved five-pole span, to further avoid disturbing any archeologically-sensitive sites. Staff reviewed AT&T's filings and supporting documents for both Section 320 deviation requests. In view of Resolution T-17552 and supporting documentation provided in AL 47340, Staff's analysis considered the following:

### **Analysis of California Environmental Quality Act (CEQA) Exemption Request**

AT&T asserts that the project is exempt under the Categorical Exemption codified at CEQA Guidelines Section 15301 (Class 1). This exemption covers minor alterations of existing public and private structures or facilities involving negligible expansion of use.

The project meets the criteria of this CEQA exemption but cannot be relied upon along a Scenic Highway if the project damages scenic resources. See CEQA Guidelines Section 15300.2(d), which states, "Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway..." As explained below, Staff has confirmed that this project would not result in damage to scenic resources along a Scenic Highway corridor.

Staff advised AT&T to obtain updated opinions from the County of San Luis Obispo and the Native American Heritage Commission.<sup>2</sup> Staff also advised AT&T to contact the Department of Transportation (Caltrans) District 5 Landscape Architecture Division regarding an opinion on CEQA exemption.

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<sup>2</sup> Represented by the R3X Group, which provides engineering design, environmental planning, and project management services on behalf of the Native American Heritage Commission.

On August 29, 2018, AT&T submitted to Staff a letter from the County of San Luis Obispo (*See Attachment A*), informing AT&T that the proposed additional span of fiber facilities “would have minimal visual impacts while avoiding sensitive archaeological resources” and “appears to be exempt from County permit requirements pursuant to Coastal Zone Land Use Ordinance Section 23.03.040(d)(6), which applies to installation, testing, placement in service, or the replacement of any necessary utility connection between an existing service facility and any development that has previously been granted a permit.”

On September 12, 2018, the consulting firm R3X Group, Inc., representing the Native American Heritage Commission, recommended that AT&T avoid environmental impact to the CA-SLO-175/173 sites by continuing aerial placement to an existing utility pole before transitioning underground (*See Attachment B*).

Finally, on November 6, 2018, Caltrans informed AT&T that the proposed additional 280 feet of aerial fiber facilities would have minimal effect on the site and its surroundings and would not degrade the visual value of the State Scenic Highway Corridor.<sup>3</sup>

Based upon the above factors, Staff finds that the information provided by the County of San Luis Obispo, Native American Heritage Commission, and Caltrans, eliminates the exceptional circumstance presented by the Scenic Highway because there will be no damage to scenic resources as a result of the project. Thus, Staff recommends that the project may be constructed relying on CEQA Guidelines Section 15301 - Existing Facilities: “Class 1 consists of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination...[Including,] (b) Existing facilities of both investor and publicly-owned utilities used to provide electric power, natural gas, sewerage, or other public utility services...”

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<sup>3</sup> Caltrans' District 5 Landscape Architecture Division wrote, in part: “The current Advice Letter Dated May 8, 2018 requests that the aerial cable be added to one more power pole and extended 280 additional feet, resulting in a total length of new overhead cable of new overhead cable of 1,515 linear feet. Based on review of the site and the revised proposal, it has been determined that the additional 280 feet of aerial cable would have minimal effect on the visual quality and character of the site and its surroundings. In addition, the aerial cable would not adversely affect scenic vistas, views of coastal scenic resources, or result in a new source of light or glare. As a result, the extended aerial cable would not degrade the visual value of the State Scenic Highway Corridor.”

### **Safety Considerations**

AT&T holds that once the new aerial fiber facilities are in place, faster broadband services will be available to current and future residents, businesses, and public entities in the area. Also, fiber placement in the area will provide service to existing and future cell sites to provide increased capacity, coverage and access to 9-1-1 emergency services in this remote coastal area.<sup>4</sup>

### **Comments**

In compliance with P.U. Code Section 311(g), a notice letter was e-mailed on December 28, 2018, informing all parties on the service list for Resolution T-17635 of the availability of the draft of this Resolution for public comments at the Commission's website <http://www.cpuc.ca.gov>. This letter also informed parties that the final Resolution adopted by the Commission will be posted and will be available at the same website. The Commission received no comments.

### **Conclusion**

Staff has reviewed the documents submitted in AL 47340, and previous related AL 45915 and Resolution T-17552, including letters supporting the project and the applicability of CEQA exemption including the visual and environmental impact of aerial placement, and agrees with these findings. Therefore, Staff recommends that the Commission approve AT&T's request for a second deviation from the requirements of P.U. Code Section 320 to construct an additional 280-foot span of aerial fiber facilities along State Scenic Highway 1 in San Luis Obispo County.

### **Findings and Conclusions**

1. The Commission implemented Public Utilities Code (P.U. Code) Section 320 in Decision (D.)80864 on December 19, 1972.
2. Decision (D.) 80864 authorizes the Commission to accept, review and approve Section 320 deviation requests.
3. On August 31, 2016, AT&T filed Tier 3 Advice Letter (AL) 45915 requesting a deviation from Section 320 to allow construction of aerial fiber facilities along a

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<sup>4</sup> Resolution T-17552, February 9, 2017

span of five existing PG&E utility poles totaling 1,235 feet, along designated Scenic State Highway 1 in San Luis Obispo County.

4. The project alignment fell within the recorded boundary of an important archaeological site (CA-SLO-175), which produced a field survey that confirmed the presence of surface artifacts (shell, ground stone and debitage), and 40 excavated human burials.
5. The site should receive all due consideration under the California Environmental Quality Act and the National Historic Preservation Act.
6. Resolution T-17552 approved AT&T's first deviation request filed in AL 45915.
7. AT&T filed AL 47340 on May 2, 2018, requesting an additional 280-foot, one span deviation directly adjacent to and continuous with the south end of the project approved by Resolution T-172552, to further avoid disturbing any archaeologically-sensitive sites.
8. Every development project which requires discretionary governmental approval will require at least some environmental review pursuant to the California Environmental Quality Act (CEQA), unless an exemption applies.
9. AT&T asserted that the project is exempt under the Categorical Exemption codified at CEQA Guidelines Section 15301 (Class 1), which covers minor alterations of existing public and private structures or facilities involving negligible expansion of use.
10. CD Staff advised AT&T to obtain updated opinions from the County of San Luis Obispo, Native American Heritage Commission, and to contact the Department of Transportation (Caltrans) District 5 Landscape Architecture Division regarding an opinion on CEQA exemption.
11. The County of San Luis Obispo informed AT&T that the proposed additional span of fiber facilities "would have minimal visual impacts while avoiding sensitive archaeological resources"
12. The consulting firm R3X Group, Inc. representing the Native American Heritage Commission recommended that AT&T avoid environmental impact to

the CA-SLO-175/173 sites by continuing aerial placement to an existing utility pole before transitioning underground.

13. Caltrans informed AT&T that the proposed additional 280 feet of overhead fiber facilities would have minimal visual effect on the visual quality of the site and its surroundings and would not degrade the visual value of the State Scenic Highway Corridor.
14. The project is exempt from California Environmental Quality Act review pursuant to Guidelines Section 15301- Existing Facilities.
15. Staff recommends that the Commission approve AT&T's request for a second deviation from the requirements of P.U. Code Section 320 to construct an additional 280 feet of aerial fiber facilities along State Scenic Highway 1 in San Luis Obispo County.

**THEREFORE, IT IS ORDERED that:**

1. AT&T California's (U-1002-C) request for a deviation from Public Utilities Code Section 320 to construct an additional 280 feet of aerial fiber facilities along State Scenic highway 1 in San Luis Obispo County, is approved.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on \_\_\_\_\_. The following Commissioners adopted it:

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ALICE STEBBINS  
Executive Director

# **Attachment A**



COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING & BUILDING  
TREVOR KEITH, *DIRECTOR*

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August 29, 2018

Ross Johnson, Director

AT&T Regulatory

Sent via email ([rj2397@att.com](mailto:rj2397@att.com))

Dear Mr. Johnson,

Thank you for contacting the County Department of Planning and Building for an expression of opinion regarding AT&T's proposed scenic highway deviation for overhead power lines along Highway 1 to avoid sensitive archaeological sites.

The County of San Luis Obispo has a certified Local Coastal Plan, which gives the County jurisdiction over development in the Coastal Zone. While the County's Local Coastal Plan encourages development to be sited in areas not visible from Highway 1, it also includes policies to protect archaeological resources. Based on our understanding of the project, it would have minimal visual impacts while avoiding sensitive archaeological resources and is therefore generally consistent with the relevant provisions of the County's Local Coastal Plan.

Additionally, the proposed project appears to be exempt from County permit requirements pursuant to Coastal Zone Land Use Ordinance Section 23.03.040(d)(6), which applies to "Installation, testing, placement in service, or the replacement of any necessary utility connection between an existing service facility and any development that has previously been granted a permit."

If you have any questions about this determination, please contact me at (805) 781-5198 or [asingewald@co.slo.ca.us](mailto:asingewald@co.slo.ca.us).

Sincerely,

A handwritten signature in black ink that reads "Airlin M. Singewald".

Airlin M. Singewald  
Supervising Planner

976 Osos Street, Room 300 | San Luis Obispo, CA 93408 | (P) 805-781-5600 | 7-1-1 TTY/TRRelay  
[planning@co.slo.ca.us](mailto:planning@co.slo.ca.us) | [www.sloplanning.org](http://www.sloplanning.org)

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End of Attachment A

# **Attachment B**



September 12, 2018

Mr. Neil Zakaria  
AT&T California  
196 Suburban Rd  
San Luis Obispo, CA 93401  
(805) 546-7012

**Re: Native American Consultation  
AT&T Project No. 9006823  
Hwy 1, San Luis Obispo County, CA**

Mr. Zakaria,

Sammy Rodríguez and Sarah Nicchitta with Albion Environmental conducted listening meetings with Native American tribes that expressed interest in the AT&T Hwy 1 project in San Luis Obispo County on July 13-14, 2015. The tribes requested that AT&T consider avoidance measures to avoid impacts to cultural resources. During the meeting, tribes expressed concern for potential impacts to Native American cultural and historical sites; specifically stating that unlike other environmental impacts, restoration of artifacts is near impossible once impacted by excavation with modern machinery.

Albion Environmental conducted an Extended Phase 1 (XP1) archaeological investigation between August 19 and August 26, 2017. The investigation indicates that potentially significant cultural materials are located at archaeological site CA-SLO-175/73. The boundaries of the archaeological site encompass the location of Existing Pole 11. AT&T initially purchased an easement to transition the proposed cable underground at this location (**see maps in Appendix A**). Based on this information, it is recommended that AT&T avoid environmental impacts to CA-SLO-175/73 by continuing aerial placement to Existing Pole 12 before transitioning underground.

The following information is provided as supporting documentation for this request:

- Site Maps in **Appendix A**. The Site Maps depict the known cultural resources within the project alignment.
- Archaeological Extended Phase 1 Report in **Appendix B**.
- A record of Native American comments beginning on page 2 of the Archaeological Extended Phase 1 Report.
- In depth discussion of archaeological site CA-SLO-175/73 beginning on page 14 of the XP1 report.

Should you have any questions or comments please reach me at (254) 723-0013 or sammy@r3xgroup.com.

Sincerely,

**R3X Group, Inc.**

A handwritten signature in black ink that reads "Sammy Rodriguez". The signature is written in a cursive, flowing style.

Sammy Rodriguez

End of Attachment B