ROBERT JYSTAD (Bar No. 187340)
JULIAN QUATTLEBAUM (Bar No. 214378)
JAMIE T. HALL (Bar No. 240183)
CHARLES J. McLURKIN (Bar No. 180522)
CHANNEL LAW GROUP, LLP
207 E. Broadway, Suite 201
Long Beach, CA 90802-8824
Telephone: (310) 982-7197
Facsimile: (562) 394-1940

Attorneys for Plaintiff
EXTENET SYSTEMS (CALIFORNIA) LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

ENDORSED FILED
SAN MATEO COUNTY

SEP 2 9 2011

Clerk of the Superior Court
By S. Peyrot
DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO -- SOUTHERN BRANCH

EXTENET SYSTEMS (CALIFORNIA) LLC, A CALIFORNIA LIMITED LIABILITY COMPANY Plaintiff vs. CITY OF BURLINGAME, CALIFORNIA, A CALIFORNIA MUNICIPAL CORPORATION Defendant.	Case No: CIV 508756 **DECLARATION OF PATRICIA RINGO IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION** Date: October 27, 2011 Time: 8:30 a.m. Dept: 3 Judge: Beth Labson Freeman BY FAX

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

DECLARATION OF PATRICIA RINGO

I, Patricia Ringo, hereby declare and attest as follows:

1. I am Director of Municipal Relations for the Western Region for ExteNet Systems, Inc., (ExteNet Systems") and its subsidiary ExteNet Systems (California) LLC ("ExteNet"). I make this Declaration in support of ExteNet's Motion for Preliminary Injunction in the above captioned action. Unless otherwise indicated, I know the following of my own personal knowledge, and if called as a witness in this action, I could and would testify competently to these facts under oath.

2. As Director of Municipal Relations for the Western Region, my primary function is to secure any necessary and appropriate permits from cities to enable ExteNet to install telecommunications facilities in the public rights-of-way and in connection with its business as a telecommunications company. Additionally, I am responsible for representing ExteNet Systems and ExteNet in its various dealings with public agencies and members of the public. I have over 18 years of telecommunications experience in network development and deployment across the United States. Prior to my position with ExteNet, I served multiple roles over 15 years with Contel Cellular and GTE MobileNet (currently known as Verizon Wireless). I have personally observed the facilities deployed by other companies that use the right-of-way and have observed numerous instances of utility equipment that has been installed above ground.

3. ExteNet Systems, then named Clearlinx Network Corporation, was issued a Certificate of Public Convenience and Necessity ("CPCN") by the California Public Utilities Commission ("CPUC") on May 6, 2005. ExteNet's CPCN authorizes ExteNet to provide limited facilities-based and resold local exchange access and interexchange telecommunications services in California as a telephone corporation. Attached hereto as **Exhibit 1** is a true and correct copy of ExteNet's CPCN.

4. On July 27, 2005, the CPUC granted the application of ExteNet's predecessor in interest, Clearlinx Network Corporation, for expanded full facilities-based authority and modified its CPCN to permit construction of facilities that are exempt from the California Environmental Quality Act (CEQA). This full facilities authority was granted to ExteNet under

the CPCN subject to the requirement that the CPUC's Energy Division staff confirm that the construction is exempt from CEQA and issue a "Notice to Proceed" before ExteNet may commence construction requiring full facilities-based authority. Attached hereto as **Exhibit 2** is a true and correct copy of this decision.

5. On August 3, 2011, the CPUC issued a project-specific authority to ExteNet to proceed with construction of the proposed Burlingame distributed antenna system ("DAS") network. Attached hereto as **Exhibit 3** is a true and correct copy of the CPUC's "Notice to Proceed."

6. ExteNet is a "carriers' carrier." ExteNet's telecommunications service consists of providing transport of ExteNet's wireless carrier customers' communications signals (both voice and data) between points designated by the customer without alteration of the communications. ExteNet directly owns, controls, operates, and manages its own instruments and appliances used to facilitate communications by telephone for compensation within California. ExteNet may also operate and manage instruments and appliances owned and controlled by its wireless carrier customers that are used to facilitate communications by telephone for compensation within California.

7. ExteNet's customers typically are providers of retail wireless telecommunications services (also known as Commercial Mobile Radio Services "CMRS" providers, cellular, or Personal Communications Services "PCS" providers); however, ExteNet's services are not limited to serving any specific type of wireless customer.

8. ExteNet's typical telecommunications service offering involves a communication signal handed off from ExteNet's customer to ExteNet that ExteNet then transports over its fiber optic facilities. This handoff and transport takes place at and through equipment configurations called "Nodes" that are located on utility or streetlight poles located in the public rights-of-way or in private utility easements.

9. The equipment comprising a typical Node in ExteNet's network includes a small, low-power antenna, equipment for the conversion of radio frequency signals to optical signals (or from optical to RF), fiber optic lines, remote radio units or radio amplifiers, and associated

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equipment such as power supplies, all of which are owned or controlled and operated, managed, and maintained by ExteNet.

10. Upon handoff from its customer, ExteNet transports communications signals through ExteNet's fiber optic network to a distant point that is typically, but not always, an aggregation point for signals from numerous nodes called a "Hub Site." The Hub Site is a central location that contains such wireless carrier equipment such as base transceiver stations or baseband equipment. The Hub Site is typically installed in a customer-designated location. ExteNet hands the communication signal back to its wireless carrier customer at the Hub Site, where the DAS network is interconnected with the customer's larger network.

11. All wireless signal transmissions are generated by ExteNet's customers, who control and are responsible for their licensed radio spectrum. Although ExteNet's service and network incorporates antennas and related wireless transmission and reception equipment, ExteNet is not a wireless or commercial mobile radio service ("CMRS") provider. ExteNet does not hold or control any radio spectrum licenses from the FCC.

12. ExteNet has proposed a 14 node Distributed Antenna System ("DAS") network utilizing existing above ground utility infrastructure, with 8 nodes located within the boundaries of the City of Burlingame ("City"). In order to construct, operate, and maintain its facilities, ExteNet requires access to utility poles located in the public rights-of-way for placement of the DAS nodes. Access to such poles and the public rights-of-way is essential to ExteNet's business and its provision of telecommunications services.

13. ExteNet's DAS network is proposed in an area of the City that is a completely "built out" residential neighborhood from a development standpoint. There are significant existing overhead utility lines and poles in proximity to the proposed DAS nodes. Specifically, primary and secondary power line, telephone wires, and cable wires are located in the impacted areas. There are also existing equipment cabinets and cable vaults in close proximity to a number of the nodes.

14. To perform its obligations under its customer contract, ExteNet needs to install its telecommunications facilities in the City's public rights-of-way. Specifically, ExteNet will need

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to install 8 nodes in the City. Each node will consist of an antenna attached to an existing above ground structure (such as an existing or replacement utility pole or streetlight). Accessory utility equipment will be either attached to the utility poles or installed in underground vaults. The antennas will be painted to match the color of the existing structure.

15. All of the Nodes will be installed in a manner that will not interfere with pedestrian or vehicular traffic in conformity with the safety standards set forth in G.O. 95 of the California Public Utilities Commission ("CPUC"). Indeed, the obstruction of the City's rights-of-way has not even been raised by the City during my discussions with City officials.

16. All of ExteNet's installations for the Burlingame DAS project are expected to be in the public rights-of-way or in public utility easements. Of the currently-anticipated 8 nodes, 7 will be located on existing or replacement electric utility poles that are located in the public right-of-way. It is a common procedure in telecommunications and utility network construction to replace existing poles with new poles for engineering and safety reasons. The remaining node will be attached to an existing streetlight pole in the City.

17. To the extent it is using existing electric utility poles, ExteNet has already arranged to place its facilities on the poles and other infrastructure located in the public rights-of-way. Indeed, ExteNet is a member of a regional collective of utilities and pole owners called the Northern California Joint Pole Association ("NCJPA"). NCJPA is a collective of municipalities and utilities, such as power and telephone companies, that jointly own, maintain, and occupy poles situated in public rights-of-way throughout Northern California, including the City of Burlingame. As a member of NCJPA, ExteNet jointly owns and has joint ownership rights in each of the poles to be used.

18. I contracted with a site acquisition firm, Permit Me, Inc., to coordinate with the City and process ExteNet’s permit applications. Permit Me, Inc. assigned Rick Hirsch to manage the project on their behalf. I work closely with Permit Me, Inc. and review all documents filed with the City.

19. On Wednesday, June 23, 2010, I attended a meeting with representatives from the City Department of Public Works (“DPW”) along with Rick Hirsch. The purpose of this meeting

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was to describe to the relevant City officials what ExteNet was planning to do in the City and familiarize the City with the fundamentals of Distributed Antenna Systems ("DAS"). The City informed us that they had an "encroachment permit process," but that they wanted to do some internal research to determine the appropriate entitlement process for ExteNet. The City told ExteNet at this meeting that no discretionary permits would be required and that the City's planning staff would not be reviewing the project. The City indicated that they would like ExteNet to submit drawings, photo-simulations of the proposed nodes, and a written description describing the scope of work. The City also indicated that they would like to see evidence of ExteNet's membership in the area Northern California Joint Pole Association. The City also indicated that they would like to see detailed drawings of the micro-trenching proposed by ExteNet. Finally, the City indicated that they were unsure of the appropriate fee structure.

20. ExteNet applied for encroachment permits from the City for the Burlingame DAS project on or about September 28, 2010. ExteNet complied with the existing City requirements for the submittal and processing of its encroachment permit applications. The City did not respond to ExteNet's encroachment permit applications within 30 days indicating that they were "incomplete." On the contrary, I tried to contact the City numerous times after the timing of ExteNet's application to no avail. From September 28, 2010 to November 17, 2010, I tried to contact Art Morimoto, Assistant Public Works Director, to determine the status of ExteNet's encroachment applications. I sought to reach Mr. Morimoto via both telephone and e-mail.

21. Finally, on November 18, 2010, I met with Mr. Morimoto, Robert Jystad (ExteNet's legal counsel), Rick Hirsch and the City Attorney Gus Guinan to discuss ExteNet's encroachment permit applications submitted on September 28, 2010. The City, instead of treating the applications like applications for the use of public rights-of-way filed by other state-certified telephone corporations, developed a new permitting process for wireless telecommunications facilities located in the public right-of-way ('ROW Regulations"), which were discussed with ExteNet at the November 18, 2010 meeting. The City and ExteNet discussed the ROW Regulations and after some modifications, ExteNet cooperated with the City in the application of the ROW Regulations to the Burlingame DAS on the assumption that the

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City would act in good faith. To my knowledge, the ROW Regulations have never been applied to any other certificated public utility other than ExteNet and appear to have been designed specifically for ExteNet's DAS Project. The City indicated at this meeting that ExteNet would not need to resubmit new permit applications to the City and that they would continue to process ExteNet's applications under the new review process they had created. As part of this process, the City required ExteNet to provide notice to residents located within approximately 300 feet of the nodes. The City later revised the notice requirement to require notices to residents located near selected guy-wire anchors. A true and correct copy of the ROW Regulations adopted by the City are attached as **Exhibit 4.**

22. Based on the interactions between ExteNet and the City in the modification of the ROW Regulations and the expectation that the City would be reasonable in the implementation of the ROW Regulations, ExteNet worked with the City through this process for nine months, agreeing to toll certain procedural deadlines imposed upon the City by federal law. Attached hereto as **Exhibit 5** is a true and correct copy of the last tolling agreement entered into by ExteNet and the City.

23. The ROW Regulations projected an application review schedule of approximately three months, not including any appeal. After nine months of responding to the City's actions and requirements, ExteNet was less than halfway through the process. This delay was the result of the City's refusal to allow ExteNet to issue public notices until City officials were satisfied with the construction drawings and photographic simulations that accompanied the public notices complied with numerous changes request by the City. The City and ExteNet coordinated for months on a public notification process that required the City's preliminary approval of the Burlingame DAS. This process took almost eight months and, on or about July 12, 2011, the City authorized ExteNet to send out public notices of the Burlingame DAS. The notices informed the public that if no request for review was submitted by the public, the permits would be issued. Several notices were issued on July 12, 2011 with a response date of August 2, 2011. Attached hereto as **Exhibit 6** is a true and correct sampling of the Public Notices issued for ExteNet's DAS network.

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Long Beach, CA 90802

24. The Public Notice process has become extraordinarily burdensome and oppressive and a tool used by certain members of the public to prepare for litigation or to harass and discourage ExteNet. ExteNet has been asked to respond to dozens of multipart detailed questions, most of which concern matters outside the scope of the City's rightful authority. Many of the public inquiries demanded discovery-like responses and ExteNet's responses themselves prompted more inquiries. Responses demanded equipment specifications, proof that equipment meets safety standards, information regarding signal direction and the need for environmental impact reports, information regarding employee qualifications, information regarding lease payment terms, including payments to the City, lists of current DAS sites, attempts at getting admissions, and information regarding ExteNet's name change. Some responses were personal, *e.g.*, "would you want young children of your own…" In addition, the City has required ExteNet to send notices to all residents not only within approximately 300 feet of every node, but also to homes adjacent to several anchors supporting a new guy wire necessary to attach fiber to existing utility poles. This noticing was imposed even though the anchors and guy wires are state-level requirements. I was responsible for communicating with residents and addressing their concerns and demands. I received a broach range of comments from residents. For example, some residents wanted to know if the Burlingame DAS network would provide better wireless coverage, while others were concerned about the perceived health effects of radio frequency emissions. I received over 100 comments and responded to every single comment received regardless of whether the comment was received within the 21 day noticing timeframe or came from a person residing within the noticing radius required by the City of Burlingame Department of Public Works. As previously noted, the comment period expired on August 2, 2011. On August 10, 2011, the City responded via e-mail asserting that ExteNet had not adequately addressed the comments received from residents. That same day, on August 10, 2011, I responded and indicated that I felt that I had fully answered all resident comments and questions that were relevant to the time, place and manner of ExteNet's installation and that I felt that many residents were only interested in a complete withdrawal of ExteNet's applications. I further asked the City to identify which particular inquiries they thought were not given sufficient responses.

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Long Beach, CA 90802

25. On August 18, 2011, I met with Gus Guinan and Art Morimoto and Lisha Mai of the Department of Public Works and City Attorney's Office, to discuss the status of ExteNet's applications, the scope of ExteNet's obligation to respond to public comments and a proposed "moratorium." At that meeting, the City notified ExteNet that, on September 6, 2011, the City Council would consider and probably adopt a moratorium prior to formulating a new zoning ordinance application to wireless facilities. However, I was told that the City was planning to exclude pending applications by ExteNet and T-Mobile from the effect of the moratorium. I was told that the City had not reviewed ExteNet's responses to the resident comments and that they wanted to review those comments prior to ExteNet moving forward in the encroachment permit approval process. The City indicated that it would take "more than a week" to review those comments and that they would get back to us. We were also invited to attend a workshop on October 5, 2011 to discuss a proposed "Wireless Ordinance." ExteNet informed the City that, if the moratorium were applied to ExteNet's proposed DAS, ExteNet would not agree to extend the tolling agreement any further and would commence litigation.

26. ExteNet objected to the Moratorium and informed the City that ExteNet believed the Moratorium could not be applied to its special encroachment permit applications. Attached hereto as **Exhibit 7** is a true and correct copy of a letter to City Attorney Gus Guinan from ExteNet's legal counsel, Robert Jystad, dated August 17, 2011.

27. On or about September 6, 2011, the Burlingame City Council considered the proposed moratorium. A Staff Report dated September 6, 2011 was prepared by City Attorney Gus Guinan, which recommended that the moratorium exclude ExteNet pending applications. Attached hereto as **Exhibit 8** is a true and correct copy of the Staff Report dated September 6, 2011 entitled a "Temporary Wireless Communication Facilities Moratorium" ("Staff Report"). Notwithstanding staff's recommendation, the City Council removed the language that would have exempted ExteNet's permit applications from the moratorium.

28. On September 2, 2011, five weeks after the public comment period closed, the Department of Public Works sent ExteNet a letter (dated September 9, 2011) based on the residents' comments asking ExteNet to underground fiber and nodes (notwithstanding existing

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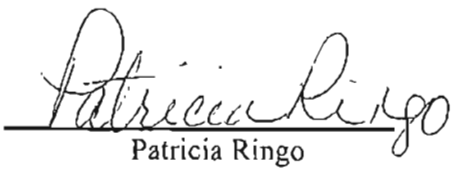
Long Beach, CA 90802

above ground facilities) in order to eliminate guy-wire anchors. Further, the City asked ExteNet to address residents health concerns, justify the need for the proposed nodes, conduct a property values study, and consider utilizing City property (which is only available by lease and subject to the discretion of the City Council to approve or deny) instead of public rights-of-way. Attached hereto as **Exhibit 9** is a true and correct copy of the letter I received from the City. The City never told me that a "Request for Department of Public Works Review" had been filed by any one of the residents whom notice was required to be given and I am not aware that any such Request has been filed.

29. On September 9, 2011, eleven months after the applications were filed and nine months after the ROW Regulations were implemented, ExteNet found itself less than halfway through the "three-month" process and still responding to the City as part of the initial three-week public outreach process. As previously noted, the majority of the delay was due to the City's refusal to permit ExteNet to proceed with the public notification process, allegedly due to dissatisfaction with the drawings and photographic simulations of the guy wire anchors. Now, in addition, ExteNet faced costs and lengthy delays related to a property values study, and the risk of denial if it did not assume the substantial costs of undergrounding where overhead facilities still existed simply to eliminate guy wire anchors.

30. On September 22, 2011, the City Attorney informed ExteNet that, although the moratorium was set to expire on October 21, 2011, he was "almost positive the moratorium will be extended to allow for completion of a draft, the public hearing before the planning Commission and the introduction and the adoption (public hearing) before the Council." Attached hereto as **Exhibit 10** is a true and correct copy of an e-mail from Gus Guinan to Robert Jystad *et al.* dated September 22, 2011.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this Declaration was executed by me on September 29, 2011 in Lisle, Illinois.



Patricia Ringo

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit List

Exhibit No.	Exhibit	Page
1	ExteNet's CPCN	10
2	CPUC Decision 06-04-063	22
3	Notice to Proceed	47
4	ROW Regulations	49
5	Tolling Agreement entered into by ExteNet and the City	58
6	Public Notices issued for ExteNet's DAS network	63
7	Letter to City Attorney Gus Guinan from Robert Jystad, dated August 17, 2011	75
8	Staff Report dated September 6, 2011	78
9	Letter from the Department of Public Works to ExteNet, dated September 9, 2011	85
10	E-mail from Gus Guinan to Robert Jystad *et al.*, dated September 22, 2011	88

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207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 1

Decision 05-07-004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Clearlinx Network Corporation, a Delaware Corporation, for a Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunications Service in California as a Facilities-based Carrier.	Application 05-05-007 (Filed May 6, 2005)

O P I N I O N

Clearlinx Network Corporation, a Delaware Corporation, filed an application on May 6, 2005, for a certificate of public convenience and necessity to provide inter - and intra- local access and transport area services in California as a non-dominant interexchange carrier. This application was filed pursuant to the registration process adopted in Decision (D.) 97-06-107 and related decisions.

The applicant was qualified to use the registration process, complied with the filing requirements for a registration application, and there were no protests to the application. The applicant was qualified to and requested an exemption from tariffing requirements. Applicant also agreed to abide by the consumer protection rules adopted in D. 98-08-031, as modified from time to time. Therefore, pursuant to the authority granted to the Executive Director by Decision 97-08-050, the applicant should be granted a certificate of public convenience and necessity to provide this service.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Findings of Fact

1. The application was filed on May 6, 2005, and appeared in the Commission's Daily Calendar on May 11, 2005.

2. There were no timely protests to the application.

3. The applicant was qualified to and requested an exemption from tariffing requirements. Applicant also agreed to abide by the consumer protection rules adopted in D. 98-08-031, as modified from time to time.

Conclusions of Law

1. Applicant should be granted the requested certificate of public convenience and necessity subject to the conditions in the attached appendices.
2. Applicant should be granted an exemption from the requirements to file tariffs.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Clearlinx Network Corporation to operate as a facilities-based carrier of inter-Local Access and Transport Area (LATA) and, to the extent authorized by Decision 94-09-065, intra-LATA telecommunications services offered by communication common carriers in California subject to the conditions set forth in the attached appendix. Applicant is assigned corporate identification number U-6959-C which shall be included in the caption of all filings made with this Commission.
2. Application No. 05-05-007 is closed.

This order is effective today.

Dated July 6, 2005, at San Francisco, California.

STEVE LARSON
Executive Director

Appendix A

NON-DOMINANT INTEREXCHANGE CARRIER REGISTRATION

1. If you requested confidential treatment of the financial portions of your application, it was granted and those materials will remain under seal for one year from the date of the decision. If you wish to continue the seal on those materials beyond the one-year period, you must make a formal request no later than thirty days prior to the expiration of the year explaining the reasons why you believe such extension is necessary.

2. You are subject to the following fees, and you must remit them regularly. Per the instructions in Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted, even if the amount due is $0.

   a. The current 1.550% surcharge applicable to all intrastate services except for those excluded by Decision (D.) 94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Public Utilities (PU) Code § 879; Resolution T-16917, effective April 1, 2005);

   b. The current 0.30% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-16816 effective February 1, 2004);

   c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 2004-2005 fiscal year (Resolution M-4813);

   d. The current 0.150% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16916, effective April 1, 2005);

   e. The current 2.430% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066,

Appendix A

p. 191, App. B, Rule 6.F.; Resolution T-16898 effective January 1, 2005); and

f. The current 0.16% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (set by Resolution T-16833, effective August 1, 2004).

These fees change periodically. You should access the Commission web site (WWW.CPUC.CA.GOV) at least semiannually for current values, use these as of the effective date in your customer bills, and update your tariff when you submit an advice letter for other changes.

3. You are exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure.

4. You are exempt from PU Code §§ 816-830.

5. You are exempt from PU Code § 851 when the transfer or encumbrance serves to secure debt.

6. You shall file a written acceptance of the certificate granted in this proceeding with the Director of the Telecommunications Division.

7. Prior to initiating service, you shall provide the Manager of the Commission's Consumer Affairs Branch with your designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number(s). This information shall be updated if the name or telephone number changes, or at least annually.

8. You shall notify the Director of the Telecommunications Division in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.

9. You shall keep your books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

10. In the event your books and records are required for inspection by the Commission or its staff, you shall either produce such records at the Commission's

Appendix A

offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to your office.

11. You shall file an annual report with the Director of the Telecommunications Division, in compliance with GO 104-A, on a calendar-year basis, using the information request form developed by Commission staff and contained in Appendix B. You shall file an annual affiliate transaction report with the Director of the Telecommunications division, in compliance with D.93-02-019, on a calendar year basis, using the form developed by the Commission staff and contained in Appendix C.

12. You shall ensure that your employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

13. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

14. PU Code 708 requires public utilities to provide ID badges to all employees with a format specified in that Section, and employees to present that badge when they request entry to customer or subscriber premises. You shall send a letter to the Director of the Telecommunications Division within 60 days of the effective date of this order declaring that you have issued the required badges.

15. If you are 90 days or more late in filing an annual report or in remitting the fees listed above, Telecommunications Division shall prepare for Commission consideration a resolution that revokes your CPCN, unless you have received the written permission of Telecommunications Division to file or remit late.

16. You have requested an exemption from the requirement to file tariffs and have represented to the Commission that you are qualified for such an exemption.

17. Beginning December 6, 2004, you must abide by the Consumer Protection Rules contained in General Order 168.

Appendix A

18. If your company is planning to discontinue service or to file for bankruptcy, you are required to contact the Bankruptcy Coordinator in the Telecommunications Division immediately. Please ask us for instructions in your particular circumstances; our rules are designed to ensure that your telecommunications customers receive adequate notice and are minimally inconvenienced. Your compliance is necessary so that you are not penalized for failure to follow Commission rules.

19. Your facilities-based authority is limited. It includes installing a switch in an existing building, the purchase or lease of existing facilities, and blowing fiber into existing conduit. Generally, if you construct any new facilities (e.g., lay fiber cable), you must file a formal application that includes a Proponent's Environment Assessment (PEA). Please contact the Energy Division's Environment Section with any questions about your particular plans.

(END OF APPENDIX A)

Appendix B

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original hardcopy and a machine readable electronic copy using Microsoft Word or compatible format of the information requested in Attachment B pages 2 and 3 no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

Director, Telecommunications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-2883.

Appendix B

Information Requested of California Interexchange Telephone Utilities.

To be filed with the Director, Telecommunications Division, California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.

2. Address.

3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.

4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.

5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

   If incorporated, specify:

   a. Date of filing articles of incorporation with the Secretary of State.

   b. State in which incorporated.

6. Commission decision number granting operating authority and the date of that decision.

7. Date operations were begun.

8. Description of other business activities in which the utility is engaged.

9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:

   a. Regulated public utility.

   b. Publicly held corporation.

Appendix B

10. Balance sheet as of December 31st of the year for which information is submitted.

    Income statement for California operations for the calendar year for which information is submitted.

(END OF APPENDIX B)

Appendix C

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

   - Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
   - Brief description of business activities engaged in;
   - Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
   - Ownership of the utility (including type and percent ownership);
   - Corporate officers.

2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries listed in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (e.g., a subsidiary that in turn is owned by another subsidiary or and/or affiliate in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as "controlling corporations" of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariffed services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual Affiliate

Appendix C

Transaction Report and verified in accordance with Section 1-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the Commission stating the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF APPENDIX C)

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 2

Decision 06-04-063 April 27, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of ClearLinx Network Corporation (U-6959-C) for a Modification to its Certificate of Public Convenience and Necessity in Order to Provide Competitive Local Exchange, Access and Non-Dominant Interexchange Services.	Application 05-07-025 (Filed July 27, 2005)

OPINION GRANTING MODIFICATION OF CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

I. Summary

ClearLinx Network Corporation (U-6959-C) (Applicant) seeks a modification of its existing certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 to obtain authority to provide full facilities-based local exchange and interexchange telecommunications services.[1] We grant the application, subject to the requirements and conditions stated below.

We also specify a procedure to be followed if Applicant wishes to pursue full facilities-based construction activities that involve potential exemptions from environmental review under the California Environmental Quality Act (CEQA).

[1] In Decision (D.) 05-07-004, the Commission previously granted Applicant a CPCN (U-6959-C) authorizing the provision of limited facilities-based interexchange services in California.

II. Background

Applicant, a Delaware corporation, seeks authority to provide full facilities-based local exchange and interexchange services. Applicant's principal place of business is located at 1901 S. Meyers Road, Suite 190, Oakbrook Terrace, IL 60181.

In this application, Applicant requests full facilities-based authority to provide local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone,[2] and Citizens Telephone Company and interexchange services statewide.

Applicant plans to initially offer point to point circuits carried on fiber optic facilities. These point to point circuits will carry the Radio Frequency traffic of wireless services providers (WSPs) between Applicant's newly-deployed share distributed antenna systems and the WSPs' existing facilities. Applicant states that these fiber-fed shared distributed antenna systems will extend wireless networks, will address the increasing demand from WSPs for a solution to long-standing service coverage problems, and will provide network enhancements that add capacity to accommodate high speed data applications.

Applicant proposes to provide these services through a combination of its own facilities and services leased from existing carriers and other suppliers. The fiber optic facilities will be deployed primarily in an aerial configuration, attached to utility poles and other aerial support structures. However, for some

[2] SureWest Telephone was formerly known as Roseville Telephone Company.

routes, Applicant may need to construct additional facilities in or near to rights-of-way.[3]

The requirements for the expanded CPCN authority requested by Applicant here are the same as those previously met by Applicant for its existing CPCN (U-6959-C), except for the requirements of the CEQA as applied to any proposed full facilities-based construction by Applicant.[4] Therefore, the only issue before us in this application is whether Applicant's proposed construction and process for requesting determinations of exemption from CEQA by Commission staff meets the requirements of CEQA and should be approved. Applicant remains subject to the requirements of D.05-07-004, which granted Applicant authority to provide limited facilities-based interexchange services.

III. Environmental (CEQA) Review

The CEQA (Public Resources Code Sections 21000 et seq.) applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public

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[3] ClearLinx states in its Supplement that its plant construction will differ from other, more traditional telecommunications providers because:

- Its projects consist largely of deploying aerial facilities (fiber optic cable and pole-mounted antenna node equipment);
- Its projects will cover short distances;
- Its projects are widely separated geographically, and are not interconnected in a traditional network; and
- Its projects are driven by customer needs, so that ClearLinx does not know very far in advance where its next project will be located.

[4] Applicant has also filed financial documentation, information regarding required deposits, and biographical information regarding the experience of its management, which demonstrates that Applicant otherwise meets the requirements for a full facilities-based CPCN.

about the potential significant environmental effects of the proposed activities." (Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.)

Since the Commission must issue a discretionary decision (i.e., grant Section 1001 certificate authority) without which the proposed activity will not proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA Guidelines, Section 15051(b)). The Commission is the Lead Agency for this project under CEQA. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval.

Applicant seeks authority in this application to modify its existing CPCN to include full facilities-based competitive local exchange, access and non-dominant interexchange service. Applicant initially filed this application on July 27, 2005, and filed a supplement to the application on November 2, 2005 (Supplement) and a second supplement on February 17, 2006. Although Applicant did not file a Preliminary Environmental Assessment with the application, Applicant provided additional information in the Supplement to address compliance with Rule 17.1 of the Commission Rules of Practice and Procedure and the degree to which its planned outside construction implicates CEQA. In its application and Supplement, Applicant outlined its projected business activities and described the types of facilities it may utilize and construct, including their geographical location and extent. The application and Supplement provide adequate information to determine the environmental impacts (if any) of such activities and the degree to which such activities and facilities may be exempt from further CEQA review.

In its application and Supplement, Applicant states that its business activities associated with the installation of its Distributed Antenna System (DAS) facilities are so limited that they should potentially qualify for a number of categorical exemptions available under CEQA. In its Supplement, Applicant provides two attachments to support its case. Attachment A provides a description of the types of facilities involved in a DAS network, and Attachment B provides both a proposed procedure by which Applicant would provide notice of the claimed exemption, and a detailed list of existing CEQA categorical exemptions that would apply to the installation of DAS facilities by Applicant.

Applicant has proposed the following procedure for obtaining Commission approval of its claimed CEQA exemptions for proposed construction projects:

- Applicant will provide the Commission Energy Division with:
  - A detailed description of the proposed project, including:
    - Customer(s) to be served;
    - The precise location of the proposed construction project; and
    - Regional and local site maps.
  - A description of the environmental setting, to include at a minimum:
    - Cultural, historical, and paleontologic resources;
    - Biological resources; and
    - Current land use and zoning.
  - A construction workplan, to include:
    - Commission Preconstruction Survey Checklist—Archaeological Resources;

    - Commission Preconstruction Survey Checklist—Biological Resources;
    - A detailed schedule of construction activities, including site restoration activities;
    - A description of construction/installation techniques;
    - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
    - A list of permits required for the proposed project.
  - A statement of the CEQA exemption(s) applicable to the proposed project; and
  - Documentation and factual evidence sufficient to support a finding that the claimed exemption(s) is (are) applicable.

- The Commission Energy Division will review the Applicant's submission for the proposed project to confirm that the claimed exemption(s) from CEQA are applicable.
- Within 21 days from the date of Applicant's submittal, the Commission Energy Division will issue either:
  - A Notice to Proceed (NTP) and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research, or
  - A letter of denial stating the specific reasons why the claimed exemption(s) are not applicable to the proposed project.

The application makes clear that Applicant's facilities-based DAS projects will consist of: predominantly aerial fiber optic facilities; the installation of compact "nodes" on existing utility poles; a minor amount of ground disturbance (100 – 200 feet) associated with connecting equipment enclosures on private property with the aerial right-of-way; and aerial fiber runs of short distances, rarely exceeding 1,000 feet in length. All facilities will be located

within public utility rights-of-way (with the exception of ingress and egress to and from the facilities). The projects and facilities will be widely separated geographically.

We have carefully reviewed the application and Supplement and find that:

- Applicant's proposed facilities-based project activities are very limited;
- These activities would in almost all circumstances be very likely to qualify for an exemption from CEQA; and
- The proposed process for reviewing the applicability of CEQA exemptions to Applicant's DAS facilities-based projects is not only adequate for the Commission's purposes as CEQA Lead Agency, but is also in the public interest because it enables Applicant to respond in a timely manner to WSPs' requests for service without the delay or burden of a full CEQA review when such review is unnecessary.

We therefore approve Applicant's proposed process for Commission review of claimed CEQA exemptions for construction projects undertaken pursuant to Applicant's full facilities-based authority, based on the specific facts of this case with the following modifications related to the Commission Energy Division's review and approval or disapproval of the proposed exemptions.

- If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), and issues a letter of denial to Applicant, Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any construction activities.

Applicant shall not perform any full facilities-based construction activities without first obtaining an NTP from the Commission Energy Division or authorization by the Commission after the requisite environmental review.

However, the Commission is reviewing CEQA issues affecting telecommunications providers on a broader, policy level in Rulemaking (R.) 00-02-003. Applicant may utilize the above process for obtaining Commission review, and approval or disapproval of, proposed CEQA exemptions unless or until the Commission adopts different requirements applicable to Applicant in R.00-02-003 or a subsequent proceeding.

IV. Conclusion

We conclude that the application conforms to our rules for authority to provide full facilities-based local exchange and interexchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

V. Request to File Under Seal

Applicant requests that the financial information filed as Exhibits 2, 3, and 4 to this application be filed under seal. The financial information consists of Applicant's financial statements and financial documentation. We have granted similar requests in the past, and we grant Applicant's request here.

VI. Categorization and Need for Hearings

In Resolution ALJ 176-3157 dated August 25, 2005, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

VII. Comments on the Draft Decision

No protests were filed in this proceeding. Therefore, this is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant

to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

VIII. Assignment of Proceeding

John A. Bohn is the Assigned Commissioner and Myra J. Prestidge is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of this application appeared in the Daily Calendar on August 26, 2005.
2. No protests were filed.
3. Hearings are not required.
4. Applicant seeks expansion of its existing CPCN to obtain authorization to provide full facilities-based local exchange and interexchange services by installing and operating DAS facilities.
5. The Commission is the Lead Agency for this project under CEQA.
6. Applicant filed a supplement to its application on November 2, 2005, which provided detailed information on the degree to which its planned outside construction implicates CEQA.
7. Applicant contends that its business activities associated with the installation of its DAS facilities are of such a limited nature that they should potentially qualify for a number of categorical exemptions available under CEQA.
8. Applicant has proposed a procedure, in which Applicant would notify Commission Energy Division staff of the claimed CEQA exemptions and Commission Energy Division staff would review and act upon Applicant's claimed CEQA exemptions.

9. Applicant has provided a detailed list of existing CEQA categorical exemptions that would potentially apply to the installation of DAS facilities.

10. Applicant's proposed facilities-based project activities are of a limited nature and would in almost all circumstances be highly likely to qualify for an exemption from CEQA.

11. Applicant's proposed process for reviewing the applicability of the CEQA exemptions for DAS facilities-based projects, as modified in this decision, is adequate for the Commission's purposes as the CEQA Lead Agency and is in the public interest.

12. The Commission is reviewing CEQA issues related to telecommunications providers on a broader, policy basis in R.00-02-003.

13. As part of its second supplement to the application, Applicant submitted a draft of its initial tariffs that contained the deficiencies identified in Attachment A to this decision. Except for these deficiencies, Applicant's draft tariffs complied with the Commission's requirements.

14. Applicant has met the requirements for issuance of a CPCN authorizing the provision of full facilities-based local exchange and interexchange services.

Conclusions of Law

1. Except for the requirement for additional environmental (CEQA) review, the requirements for a full facilities-based CPCN are generally the same as for a limited facilities-based CPCN.

2. Applicant's description of its future construction projects and proposed process for Commission review of claimed CEQA exemptions for these projects, as described above, meet the requirements of CEQA, based on the specific facts of this case.

3. If the Commission subsequently adopts different requirements for review of claimed CEQA exemptions for telecommunications carriers generally in R.00-02-003 or a subsequent proceeding, Applicant should be subject to those requirements, as applicable.

4. Public convenience and necessity require Applicant's full facilities-based local exchange and interexchange services to be offered to the public subject to the terms and conditions set forth herein.

5. The application should be approved.

6. Upon approval of the application, Applicant should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. Applicant should remain subject to the requirement of D.05-07-004, its licensing decision.

8. Applicant's request to file its financial information under seal should be granted, to the extent set forth below.

9. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to ClearLinx Network Corporation (Applicant) to operate as a full facilities-based provider of local exchange services in the service territories of Pacific Bell Telephone Company, Verizon California Inc., SureWest Telephone, and Citizens Telephone Company and interexchange services statewide, subject to the terms and conditions set forth below. This authorization expands

Applicant's existing authority to provide limited facilities-based interexchange services in this state.

2. Applicant is authorized to construct the facilities addressed in this decision only upon receiving prior Commission approval.

3. The staff of the Commission Energy Division is authorized to review, process, and act upon Applicant's requests for a determination that its full facilities-based construction activities are exempt from the requirements of the California Environmental Quality Act (CEQA).

4. If Applicant wishes to engage in full facilities-based construction activities and believes that these activities are exempt from CEQA, Applicant shall first apply to the Commission Energy Division staff for a determination of exemption from CEQA using the following procedure:

- Applicant will provide the Commission Energy Division with:
  - A detailed description of the proposed project, including:
    - Customer(s) to be served;
    - The precise location of the proposed construction project; and
    - Regional and local site maps.
  - A description of the environmental setting, including at a minimum:
    - Cultural, historical, and paleontologic resources;
    - Biological resources; and
    - Current land use and zoning.
  - A construction workplan, including:
    - Commission Preconstruction Survey Checklist—Archaeological Resources;

    - Commission Preconstruction Survey Checklist—Biological Resources;
    - A detailed schedule of construction activities, including site restoration activities;
    - A description of construction/installation techniques;
    - A list of other agencies contacted with respect to siting, land use planning, and environmental resource issues, including contact information; and
    - A list of permits required for the proposed project.
  - A statement of the CEQA exemption(s) claimed to apply to the proposed project; and
  - Documentation supporting the finding of exemption from CEQA.

- The Commission Energy Division will then review the submittal and notify Applicant of either its approval or its denial of Applicant's claim for exemption from CEQA review within 21 days from the time that Applicant's submittal is complete.
- If the Commission Energy Division approves Applicant's claimed CEQA exemption(s), the staff will prepare a Notice to Proceed and file a Notice of Exemption with the State Clearinghouse, Office of Planning and Research.
- If the Commission Energy Division disapproves Applicant's claimed CEQA exemptions, the staff will issue to Applicant a letter which states the specific reasons that the claimed CEQA exemptions do not apply to the proposed project.
- If the Commission Energy Division disapproves Applicant's claimed CEQA exemption(s), Applicant shall either re-design the specific project and facilities and then reapply for a finding of exemption from CEQA, or file a formal application with the Commission seeking the requisite approval and full CEQA review, before commencing any full facilities-based construction activities.

5. Applicant shall not engage in any construction activity relating to a pending CEQA exemption request before receiving an NTP from Commission Energy Division staff.

6. If the Commission adopts different requirements for obtaining Commission review of proposed CEQA exemptions applicable to Applicant in Rulemaking 00-02-003 or a subsequent proceeding, Applicant shall be subject to those requirements.

7. Applicant remains subject to the requirements of Decision 05-07-004, which granted Applicant a CPCN authorizing the provision of interexchange services.

8. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services. Applicant may not offer competitive local exchange services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall correct the deficiency noted in Attachment A. The tariffs shall be effective not less than one day after approval by the Commission's Telecommunications Division. Applicant shall comply with its tariffs.

9. The certificate granted and the authority to render service under the rates, charges, and rules authorized herein will expire if not exercised within 12 months after the effective date of this order.

10. The corporate identification number assigned to Applicant, U-6959-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

11. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/ Investigation 95-04-044), as well as all other applicable Commission rules,

decisions, GOs, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

12. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachments B, C, and D to this decision.

13. Applicant's financial statements and information filed as Exhibits 2, 3, and 4 to the application shall be filed under seal and shall remain under seal for a period of two years after the date of this order. During this two-year period, the information filed as Exhibits 2, 3, and 4 to the application shall remain under seal and shall not be viewed by any person other than the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), the Assistant Chief ALJ, or the Chief ALJ, except as agreed to in writing by Applicant or as ordered by a court of competent jurisdiction. If Applicant believes that it is necessary for this information to remain under seal for longer than two years, Applicant shall file a new motion at least 30 days before the expiration of this limited protective order.

14. Application 05-07-025 is closed.

This order is effective today.

Dated April 27, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

ATTACHMENT A

List of deficiencies filed by ClearLinx Network Corporation in A.05-07-025 and to be corrected in its Tariff Compliance filing:

1. Sheet 6: Include the actual service area map in the tariff.

2. Sheet 26: Include the following in the CLC tariff: "Pursuant to Resolution T-16901, all telecommunications carriers are required to apply CPUC mandated Public Program surcharge rates (excluding (a) Universal Lifeline Telephone Service (ULTS) billings; (b) charges to other certificated carriers for services that are to be resold; (c) coin sent paid telephone calls (coin in box) and debit card calls; (d) customer-specific contracts effective before 9/15/94; (e) usage charges for coin-operated pay telephones; (f) directory advertising; and (g) one-way radio paging) and the CPUC Reimbursement Fee rate (excluding (a) directory advertising and sales; (b) terminal equipment sales; (c) inter-utility sales) to intrastate services. For a list of the Public Program surcharges and Reimbursement Fee, and the amounts, please refer to the Pacific Bell (d.b.a. SBC California) tariffs."

(END OF ATTACHMENT A)

ATTACHMENT B

REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fee and surcharges that must be regularly remitted per the instructions in Appendix E to Decision (D.) 00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.

a. The current 1.29% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16966, dated December 1, 2005, effective January 1, 2006);

b. The current 0.27% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16965, dated December 1, 2005, effective January 1, 2006);

c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4816, dated March 15, 2006, effective April 1, 2006);

d. The current 0.21% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-16963, dated December 1, 2005, effective January 1, 2006);

e. The current 2.00% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.; Resolution T-16964, dated December 1, 2005, effective January 1, 2006); and

f. The current 0.13% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10--066, p. 88, App. B, Rule 8.G; Resolution T-16888, dated December 1, 2005, effective January 1, 2006).

Note: These fees change periodically. In compliance with Resolution T-16901, December 2, 2004, Applicant should check the joint tariff for surcharges and fees filed by Pacific Bell (dba SBC California) and apply the current surcharge and fee amounts in that joint tariff on end-user bills until further revised.

3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4.E of D.95-12-056:

"E. CLCs shall be subject to the following tariff and contract filing, revision and service pricing standards:

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.

"(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

"(3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than five (5) working

days' notice to the Commission. Customer notification is not required for such minor rate increases.

"(4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days' notice to the Commission.

"(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days' notice to the Commission.

"(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.

"(7) CLCs shall file tariffs in accordance with PU Code Section 876."

4. Applicant may deviate from the following provisions of GO 96-A: (a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

5. Applicant shall file a service area map as part of its initial tariff.

6. Prior to initiating service, Applicant shall provide the Commission's Consumer Affairs Branch with the name and address of its designated contact person(s) for purposes of resolving consumer complaints. This information shall be updated if the name or telephone number changes, or at least annually.

7. Applicant shall notify the Director of the Telecommunications Division in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

8. Applicant shall notify the Director of the Telecommunications Division in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.[1]

9. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

10. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

11. Applicant shall file an annual report with the Director of the Telecommunications Division, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

12. Applicant shall file an affiliate transaction report with the Director of the Telecommunications Division, in compliance with D.93-02-019, on a calendar-year basis using the form contained in Attachment D.

13. Applicant shall ensure that its employees comply with the provisions of Pub. Util. Code § 2889.5 regarding solicitation of customers.

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[1] California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

14. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

15. If Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.

16. Applicant is exempt from General Order 96-A, subsections III.G (1) and (2), and Rule 18(b) of the Commission's Rules of Practice and Procedure.

17. Applicant is exempt from Pub. Util. Code §§ 816-830.

18. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

19. If Applicant decides to discontinue service or file for bankruptcy, it shall immediately notify the Telecommunications Division's Bankruptcy Coordinator.

20. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C

ANNUAL REPORT

An original and a machine readable, copy using Microsoft Word or compatible format shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

Failure to file this information on time may result in a penalty as provided for in Sections 2107 and 2108 of the Public Utilities Code.

Required information:

1. Exact legal name and U # of the reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

   If incorporated, specify:

   a. Date of filing articles of incorporation with the Secretary of State.
   b. State in which incorporated.
6. Number and date of the Commission decision granting the Certificate of Public Convenience and Necessity.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. List of all affiliated companies and their relationship to the utility. State if affiliate is a:

   a. Regulated public utility.
   b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

ATTACHMENT D

CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

- Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
- Brief description of business activities engaged in;
- Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
- Ownership of the utility (including type and percent ownership);
- Voting rights held by the utility and percent; and
- Corporate officers.

2. The utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (e.g., a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as "controlling corporations" of the competitive utility, the utility must only report under the requirements of #1 and #2 above any affiliated entity that either (a) is a public utility or (b) transacts any business with the utility filing the annual report excluding the provision of tariff services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual Affiliate Transaction Report and verified in accordance with Sections I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 3

STATE OF CALIFORNIA

Arnold Schwarzenegger, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

August 3, 2011

Anita Taff-Rice
1547 Palos Verdes, #298
Walnut Creek, CA 94597

Dear Ms. Taff-Rice:

ExteNet Systems (California) LLC submitted a Notice of Proposed Construction (NPC) for the construction of a Distribute Antenna System network in Burlingame, California. The NPC requests the Energy Division to act upon ExteNet's request for a determination that the proposed construction qualifies as a categorically-exempt project under the California Environmental Quality Act (CEQA).

On April 27, 2006, the California Public Utilities Commission (Commission) issued a Full Facilities-Based Certificate of Public Convenience and Necessity to ExteNet Systems for the construction of fiber fed DAS networks in California to rectify the service coverage problems of existing wireless service providers. According to ExteNet, a typical DAS project would consist of the installation of one or more compact nodes on existing poles connected by short strands of aerial and/or underground fiber optic conduit. In D. 06-04-063, the CPUC determined that these projects, as described by ExteNet, would more than likely fall within one of several categorical exemptions identified under CEQA, and that further environmental review would not be required.

The Energy Division has reviewed ExteNet Systems' NPC to construct a DAS network in Burlingame, California and has determined that the proposed project is consistent with the type of project identified by the Commission as categorically exempt under CEQA. The Energy Division hereby grants ExteNet with the authorization to proceed with the construction of the project as described in the NPC.

Sincerely,

Jensen Uchida

Jensen Uchida
California Public Utilities Commission
Regulatory Analyst

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 4

CITY OF BURLINGAME
PUBLIC WORKS DEPARTMENT

Permit, Location, Design and Public Notification Requirements Associated with Telecommunications Provider's Placement of Facilities On Utility Poles Located Within City Right-of-Way

A. Telecommunications Facility Requirements

General Requirements

1. The following general requirements apply at all times to all wireless telecommunications facilities located in the City' right of way:

(a) Each facility must comply with any and all applicable provisions of the Burlingame Municipal Code, including but not limited to provisions concerning streets and sidewalks and provisions of the Uniform Building Code, National Electrical Code, Uniform Plumbing Code, Uniform Mechanical Code, and Uniform Fire Code, and any conditions of approval imposed as part of the approval process.

(b) Each facility must comply with any and all applicable regulations and standards promulgated or imposed by any state or federal agency, including, but not limited to, the Federal Communications Commission.

(c) Certification must be provided that the proposed facility will at all times comply with all applicable health requirements and standards pertaining to RF emissions.

(d) That amount of horizontal clearance required by and consistent with CPUC regulations must be maintained between any part of the antenna and any power lines, unless the antenna is installed to be an integral part of a utility tower, pole or facility;

(e) Interference with city communication systems is prohibited. The applicant shall be responsible for any costs incurred by the city, including the costs of retaining consultants, to review and analyze the reports.

(f) The owner or operator of any facility shall obtain and maintain current at all times a business license issued by the city.

Design Requirements

2. All wireless telecommunication facilities in the City's right of way, shall comply with the following design requirements:

(a) Based on potential aesthetic impact, the order of preference for facility type is: facade mounted, roof mounted, utility pole mounted, ground mounted, and

freestanding tower. If a ground mounted or freestanding tower is proposed, the application must include an explanation as to why other facility types are not being considered.

(b) All facilities shall be designed to minimize any noise and visual impacts to the greatest extent feasible, considering technological requirements, by means of placement, screening, and camouflage, to be compatible with existing architectural elements and building materials, and other site characteristics. The applicant shall use the smallest and least visible antennas possible to accomplish the owner/operator's coverage objectives.

(c) Colors and materials for facilities shall be chosen to minimize visibility. Facilities shall be painted or textured using colors to match or blend with the primary background.

(d) Facility lighting shall be designed so as to meet but not exceed minimum requirements for security, safety and all other applicable regulations, and in all instances shall be designed so as to avoid glare and minimize illumination on adjacent properties.

(e) Facade mounted equipment shall be camouflaged by incorporating the antenna into the dominant design elements of the building; they shall be painted and textured to match the existing structure, and shall not project beyond a maximum of eighteen inches from the face of the building or other support structure.

(f) All facilities shall be designed so as to be resistant to and minimize opportunities for unauthorized access, climbing, vandalism, graffiti, and other conditions which would result in hazardous conditions, visual blight, or attractive nuisances.

(g) Where appropriate, facilities shall be installed so as to maintain and enhance existing landscaping on the site, including trees, foliage and shrubs, whether or not utilized for screening. In appropriate circumstances, additional landscaping shall be planted where such vegetation is deemed necessary to provide screening or to minimize the visual impact of the facility.

(h) All monopoles, lattice towers and antennae mounted on utility poles shall be designed to be the minimum functional height and width and to cause the minimum visibility.

(i) Roof mounted antennas shall be constructed at the minimum height possible to serve the operator's service area and shall be designed to minimize their visibility.

(j) In general, no freestanding facility or ancillary support equipment may be located between the face of a building and a public street, bikeway or park, except for approved facade-mounted equipment or facilities located on existing or new permitted structures. Exception may be made in order to reduce visual,

aesthetic or other impacts of facilities and antennae.

(k) The city shall retain the authority to limit the number of antennas and/ or related equipment to be located at any site and adjacent sites in order to prevent negative visual impact associated with multiple facilities. Architectural and other camouflaging treatment shall be coordinated between all users on each site.

(l) Landscaping, including shrubs and trees shall be used, when possible, to block the line of sight between facilities and adjacent residential uses and residentially zoned properties.

(m) Freestanding facilities, including towers, lattice towers, and monopoles, shall be restricted to a maximum height of twenty-five feet when located adjacent to residentially zoned properties. Facilities shall be setback at a ratio of two horizontal feet for every one foot in height. The facility shall not be readily visible to the nearest residentially zoned property.

B. Application Procedures

Application

1. Wireless Telecommunications Provider (WTP) shall submit an application for a special encroachment permit for the placement of any telecommunications facilities, including cell antennae, in, on, above, or on any pole or other structure or fixture in the City's right-of-way.

2. The application shall include the following information:

a. Name, address, telephone number, email address of applicant (including a contact person)
b. Name, address, telephone number, email address of owner of facility if different than applicant (including a contact person)
c. Site plans and project descriptions, including but not limited to:
    1) A map of ALL facility locations and a narrative description of each;
    2) Site plan/map showing all properties within 300 feet of all proposed facility locations;
    3) Height of the facilities and all associated equipment;
    4) Antenna details (dimensions, shape, color, material, etc.);
    5) Photo-simulations of each proposed facility and all associated equipment.
d. A description of the services that the applicant proposes to offer or provide in conjunction with the proposed sites and a technical analysis of the need for the proposed facilities for the purpose of delivering the services, including gap in service;

e. Documentation certifying the applicant has obtained all applicable licenses or other approvals required by the Federal Communications Commission to provide the services proposed in connection with the application, including certification that the facilities will comply with FCC RF emissions standards;
f. Where applicable, a plan depicting existing surrounding landscaping, proposed landscaping, a landscape protection plan for construction and a maintenance plan (including an irrigation plan, if applicable);
g. Copy of WTP's CPUC certification.
h. Any other relevant information required by DPW Director.

Initial Review

3. Upon receipt of the application, DPW and Department of Community Development/ (CDD) shall review the submitted application and supporting materials. Within twenty one (21) calendar days of receipt of the application, DPW shall provide the City's consolidated comments to WTD. DPW may schedule a site visit to take place within those twenty one (21) days with CDD and WTP, to review and discuss the location, possible alternatives and any other issues involved with the application.

Public Notification Process

4. If the DPW approves the preliminary location and design (including equipment appearance and size, height and compatibility) of facilities, WTP shall commence and complete a public outreach process:

a. WTP shall mail out letters to the residents and property owners within 300 feet of each facility location
b. The notification letter shall include the following:
    i. Description of scope of work
    ii. Plan sheet showing the location of the pole and related equipment to an engineering scale.
    iii. A photo simulation of the proposed pole extension.
c. Property owners shall have twenty one (21) calendar days from the date of notification to provide comments, questions and concerns directly to a WTP contact phone number, email address and mail address. The notification letter shall provide this time limit and the WTP's contact information.
d. WTP shall maintain copies of the notification letters and proof of mailing in WTP file for each proposed facility and/or cell antenna location and shall provide said copies to City upon request.
e. If comments are received from any of the residents or property owners, WTP shall work directly with the resident and/or property owner to address their concerns and notify DPW in writing of the resolution. If WTP is unable to resolve any concern, WTP shall notify City and DPW shall:
(1) Contact the resident or property owner to clarify the issues and concerns.

(2) Address concerns (other than health concerns) by requesting WTP to evaluate possible modification or relocation of the facility(ies).

i. If WTP can modify the site design and/or locate a replacement site, it shall submit new drawings showing the modification or proposed new location. If a new location, then the public notification process for the new site must be initiated and completed.

ii. If WTP can not modify the cell antenna or locate a suitable replacement site, it shall provide the DPW a detailed, written evaluation describing the reasons that the possible modifications to the facility or the possible replacement site are not feasible.

iii. In consultation with City Attorney, DPW shall determine if applicable state or federal law requires approval of the Special Encroachment Permit, or if permit shall be denied.

iv. WTP shall send a letter to the resident or property owner objecting to the cell antenna demonstrating the effort made in trying to modify the cell antenna or identify replacement sites and the reasons why such modifications or replacement sites were determined by WTP to not be feasible.

C. Permit Issuance

1. Within thirty (30) days of completion of the public notification and response process, WTP shall submit two (2) sets of final, complete construction drawings to scale on 11” by 17” size plans.

a. WTP shall include PG&E proposed service point based on field verification by PG&E and WTP personnel.

b. Research shall be performed by WTP to include the following information:

i. Existing PG&E service and other existing utility facilities.

ii. Conduit routing/pull box location.

c. The plans submitted shall be certified by professional engineers, both civil and electrical.

d. The plans shall contain structural calculations for each facility location.

2. Within fifteen (15) days of submission (or re-submission), DPW shall review the Special Encroachment Permit application and accompanying materials. If the application, the materials or accompanying plans are deficient, DPW shall so indicate with appropriate comments and return the application to WTP for re-working and re-submission. If the application, materials and accompanying plans satisfy all requirements, DPW shall issue the Special Encroachment Permit with appropriate conditions.

3. Any changes, repairs, replacements or revisions to the equipment or any other aspect of the facilities designated in the plans submitted for approval shall require an amended Special Encroachment Permit, issued pursuant to the same process as the original permit. If the change, repair, replacement or revision is

limited to a change, repair, replacement or revision that does not increase the size, shape, color, location or other physical appearance of the facilities, WTP shall notify DPW of the work and need not apply for or obtain a new or amended Special Encroachment Permit.

4. The Special Encroachment Permit shall be issued with appropriate conditions, including but not limited to:

a. WTP shall hold harmless, release, indemnify and defend (with counsel reasonably satisfactory to City) the City, its officers, agents, employees and volunteers, their successors and assigns (the "Indemnities"), from and against all liability, cost and expense for loss of or damage to property, both real and personal, and for injuries to or death of any person (including, but not limited to, the property and employees of each party) when arising or resulting from the placement of any wireless telecommunications facility in the City's right-of-way by WTP, its agents, employees, contractors, subcontractors or invitees, including but not limited to, all liability, cost and expense for loss of or damage to property, both real and personal, and for injuries to or death of any person (including, but not limited to, the property and employees of each party) when arising or resulting from any cause.

The duty of WTP to indemnify and save harmless the Indemnities herein, includes the duties to defend as set forth in §2778 of the Civil Code. It is the express intent under this section, that WTP will defend, indemnify and hold harmless the Indemnities from any and all claims, suits or actions arising from any cause whatsoever as set forth above, other than the sole willful misconduct or criminal acts of the Indemnities. This indemnity shall survive termination of this Special Encroachment Permit. It is the intention of the parties that should any term of this indemnity provision be found to be void or unenforceable, the remainder of the provision shall remain in full force and effect.

Any person, firm, corporation or other entity which WTP authorizes, directly or indirectly, to access or use the wireless telecommunications facility in the City's right-of-way for any purpose, including any subcontractor, shall be deemed to be WTP's agent and shall be subject to all the applicable terms of this Agreement. WTP understands, acknowledges and specifically agrees to the obligations expressed in this indemnity provision.

b. WTP shall obtain and maintain General Liability insurance policies in an amount of not less than one million dollars ($1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage in a form at least as broad as ISO "Occurrence" Form CG 0001. The City, its officers, officials, employees and volunteers shall be named as insured as respects liability arising out of activities performed by or on behalf of the WTP and premises owned, occupied or used by the WTP. The endorsement providing this additional insured coverage

shall be equal to or broader than ISO Form CG 20 10 11 85 and must cover joint negligence, completed operations, and the acts of subcontractors. WTP's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the City, its officers, officials, employees or volunteers shall be excess of the WTP's insurance and shall not contribute with it. Insurers shall have a Best's rating of no less than A-VII and authorized to do business in the State of California.

Upon execution of the Special Encroachment Permit, WTP shall furnish the City with certificates of insurance and with original endorsements effecting coverage required. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

c. WTP shall maintain all facilities approved in the Special Encroachment Permit; WTP shall ensure that said facilities are reasonably free of dirt, grease, deteriorating paint, broken equipment, rust, corrosion, discoloration, graffiti or similar conditions.

d. If WTP abandons or discontinues use of facilities, WTP shall notify City within five (5) days and shall remove all facilities and restore area to its previous condition within a reasonable time not to exceed ninety (90) days.

D. Permit Fees

Wireless Telecommunications Provider shall pay City a fee for the complete cost of processing the application and issuing the permit.

E. Appeal Process

Within ten (10) days of DPW's approval of the Special Encroachment Permit, any person may appeal the approval or denial of the permit to the Planning Commission. In order to be effective, the appeal must be in writing, state the reasons or grounds for the appeal and be filed with the City Clerk together with the required appeal fee. The appeal shall be heard by the Planning Commission and, after such hearing, the Commission shall determine the matter and may approve, disapprove or modify the determination of the DPW.

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 5

SHOT CLOCK TOLLING AGREEMENT

This Shot Clock Tolling Agreement ("Agreement") is made by and among ExteNet Systems (California), LLC, a Delaware limited liability company (hereinafter, “ExteNet”) and the City of Burlingame, California (hereinafter, “the City”). ExteNet and the City may each be referred to as a “Party” or collectively as “the Parties" to this Agreement.

RECITALS

WHEREAS, on or about September 28, 2010, ExteNet filed applications for Special Encroachment Permits (“Applications”) to place eight (8) distributed antenna system (“DAS”) nodes and related equipment in City’s public rights-of-way (attached as Exhibit 1); and

WHEREAS, on or about November 18, 2009, the Federal Communications Commission issued the declaratory ruling *In the Matter of Petition for Declaratory Ruling to Clarify Provisions of Section 332(c)(7)(B) to Ensure Timely Siting Review and to Preempt Under Section 253 State and Local Ordinances that Classify All Wireless Siting Proposals as Requiring a Variance*, 24 FCC Rcd. 13994 (Nov. 18, 2009) (“FCC Shot Clock”); and

WHEREAS, the FCC Shot Clock, *id.* at par. 45*ff*., interpreted Section 332 of the Telecommunications Act of 1996 (47 U.S.C. § 332(c)(7)(B)(ii)), which required state and local agencies to act on completed applications to place, construct or modify personal wireless services facilities “within a reasonable period of time,” and thereby established limited time frames in which a state or local agency may consider completed applications to place wireless communications facilities (“WTFs”), and specifically set a 90-day limit on completed applications to collocate WTFs on existing structures and a 150-day limit on all other WTF completed applications; and

WHEREAS, the FCC Shot Clock clarified that "a reasonable period of time may be extended beyond 90 or 150 days by mutual consent of the personal wireless service provider and the State or local government, and that in such instances, the commencement of the 30-day period for filing suit will be tolled," *id.* at par. 49; and

NOW THEREFORE, the Parties mutually agree and consent to the following terms and conditions of this Agreement.

TERMS AND CONDITIONS

1. All claims, causes of action and defenses that might be asserted by one or more Parties that may arise from the City's actions or failure to act on the Applications are tolled according to the terms of this Agreement and specifically until the Expiration Date in order to allow the City sufficient time to review and process the Applications under the ROW Requirements.

2. No Party to this Agreement admits or concedes by entering into this Agreement (1) that such claims exist in whole or part, or (2) that the existence of such claims or an admission to them in whole or in part is a prerequisite to making this Agreement. This Agreement shall not be construed as an admission of liability on the part of any Party to the Agreement. This Agreement is an expression only of the desire and willingness of the Parties to complete the application review process outlined in the ROW Requirements.

3. The Parties will forebear commencing legal or equitable proceedings with respect to any claim arising out of the facts set forth above until after this Agreement expires.

4. This Agreement shall expire on August 30, 2011 ("Expiration Date").

5. This Agreement is not evidence of an admission or liability by any party of any claim, cause of action, or defense. This Agreement is privileged from disclosure or use as evidence on

any claim or cause of action except to demonstrate the tolling that the Agreement effects. If, for any reason, any of the provisions of this Agreement is invalid, inoperative, void or ineffective, the remaining provisions herein shall not be affected thereby.

6. This Agreement is drafted by a common contribution and editing among all the Parties to it; no inference shall arise or be applied against any Party on the theory that fewer than all the Parties drafted this Agreement.

7. This Agreement may be extended only by a writing signed by the Parties to this Agreement, which establishes a date certain to which the Agreement has been extended.

8. Each person who executes this Agreement is duly authorized to act on behalf of the Party obligated by the terms of this Agreement; and the execution of this Agreement binds the Parties on whose behalf this Agreement is executed.

9. This Agreement may be signed in counterparts; an integration of counterparts that contains the signatures of all parties shall suffice for execution of this Agreement; and photocopies or facsimiles of this Agreement shall suffice as originals.

10. Either Party may terminate this Agreement, effective 30-days after the date of serving a written notice of termination, by serving notice of termination by letter to the other Party. Such notice letter shall be served by facsimile transmission, followed by the delivery of an original of the notice letter by United States certified mail, return receipt requested, to the following persons at the following addresses and facsimile numbers:

As to ExteNet:
George Vinyard
ExteNet Systems
3030 Warrenville Rd.
Suite 340
Lisle, IL 60532
Fax: 630-577-1332

As to the City:
Gus Guinan
Office of the City Attorney
City of Burlingame
501 Primrose Road
Burlingame, CA 94010
Fax: 650-342-8386

With Copies To:
Robert Jystad
Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802
Fax no.: 562-394-1940

11. This Agreement shall be governed by the laws of the State of California.

12. "Effective Date" means and refers to the date on which this Agreement is signed by the Parties.

Date: 6/30/2011

CITY OF BURLINGAME, CA

By: _____

Gus Guinan
Name

City Attorney
Title

Date: 6/29/11

EXTENET SYSTEMS (CALIFORNIA), LLC

By: _____

Robert Jystad
Name

Outside Counsel OBO Extenet Systems (California), LLC
Title

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 6

CITY OF BURLINGAME
NOTICE
APPLICATION FOR SPECIAL ENCROACHMENT PERMIT

On September 27, 2010, the applicant named below filed Special Encroachment Permit Application No. 82790-#13 with the City of Burlingame, to place telecommunications safety facilities in the public right-of-way.

PROJECT LOCATION: 1477 Bernal Ave., Burlingame, California

Submit any comments to:

Applicant: ExteNet Systems, Inc.
Representative: Patti Ringo
Telephone: 805-404-4202
Email: paringo@extenetsystems.com

With a copy to:

City of Burlingame
Department of Public Works
501 Primrose Road
Burlingame, CA 94010
650-558-7230
Attn: Bill Lowrie

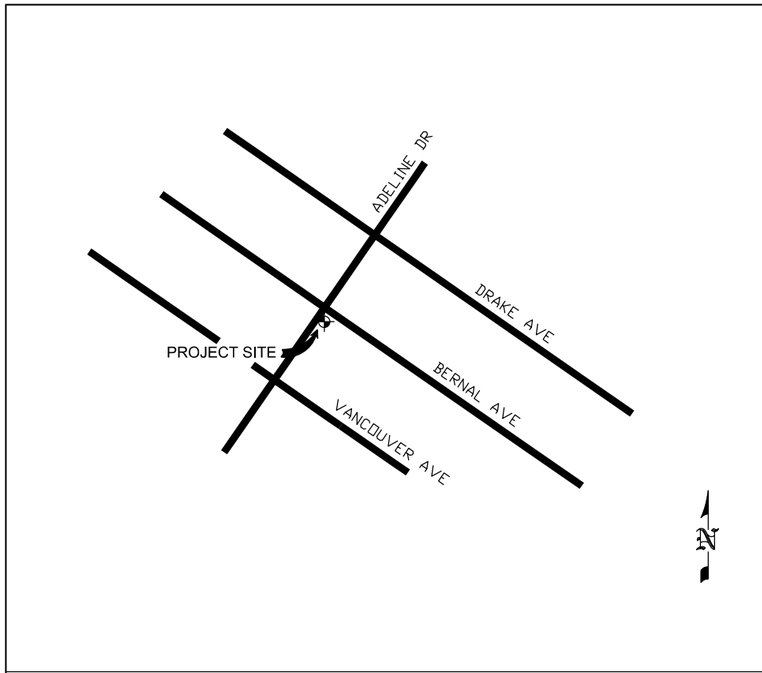
Project Description: Installation of safety anchor guy wire and bolt in the public right-of-way located in front of 1477 Bernal Ave., Burlingame, CA. Additional information regarding the proposed installation is enclosed.

Pursuant to City of Burlingame Guidelines for the grant of encroachment permits for placement of Telecommunications Safety facilities in the public right-of-way, all property owners within 30 feet of the proposed project are being notified of this Special Encroachment Permit Application. You are not obligated to take any action. If you have any comments regarding this proposed installation, please provide them directly to the applicant with a copy of your comments to the Department of Public Works.

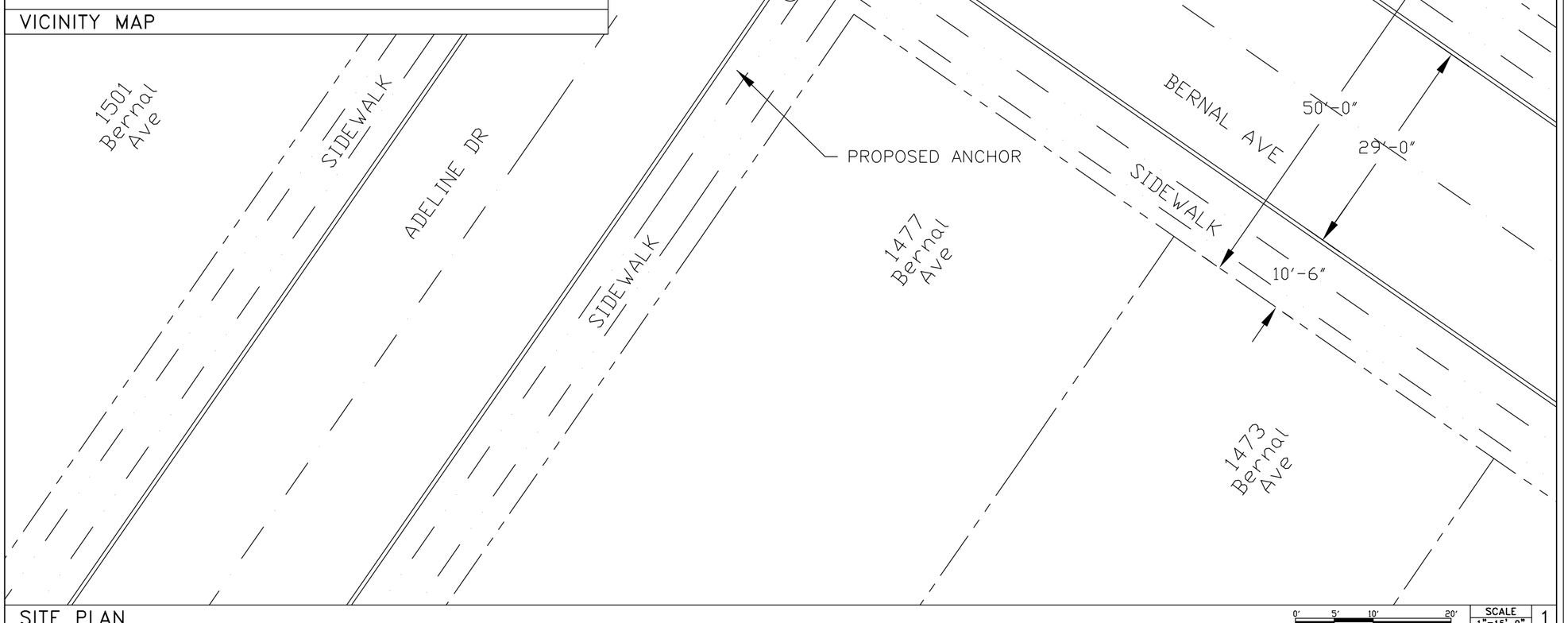
To submit your comments and concerns or to inquire about the project, you must contact the Applicant within 21 days of the date of this Notice as indicated below. If your concerns are unresolved, you can request the Department of Public Works to further review this application before a final determination is made on the issuance of the permit. If no Request for Department of Public Works Review is filed, this project will be approved by the Department of Public Works following the Expiration Date indicated below.

Date of this Notice: 7-12-11

Comment Period Expiration Date: 8-2-11



VICINITY MAP



SITE PLAN 1

extenet SYSTEMS YOUR NETWORK. EVERYWHERE.

3030 Warrenville Rd, Suite 340
Lisle, IL 60532
www.extenet.com

PROJECT INFORMATION:

BURLINGAME
BURL#2
POLE#56
1477 BERNAL AVE
BURLINGAME, CA 94010

CURRENT ISSUE DATE:

05/16/11

ISSUED FOR:

ENCROACHMENT

BY:	DATE:	DESCRIPTION:	REV:
	05/16/11	ENCROACHMENT	0
BY	DATE	DESCRIPTION	REV

PLANS PREPARED BY:

ACI
Advanced Communications Inc.
1-800-825-4ACI
5711 Research Drive
Canton, MI 48188

ACI NUMBER: A1-1477A

CONSULTANT:

SEAL OF APPROVAL:

SHEET TITLE:

SITE PLAN

SHEET NUMBER: A3

REVISION: 0

05/16/11

Burl#2
Pole #56

In Front of:
1477 Bernal Ave
Burlingame, CA 94010

Date: 04/19/2011

Site Map

Existing

Proposing

extenet SYSTEMS YOUR NETWORK. EVERYWHERE.

ACI Advanced Communications Incorporated

CITY OF BURLINGAME
NOTICE
APPLICATION FOR SPECIAL ENCROACHMENT PERMIT

On September 27, 2010, the applicant named below filed Special Encroachment Permit Application No. 82790-#2 with the City of Burlingame, to place telecommunications antennae in the public right-of-way.

PROJECT LOCATION: 2536 Valdivia Way, Burlingame, California

Submit any comments to:

Applicant: ExteNet Systems, Inc.
Representative: Patti Ringo
Telephone: 805-404-4202
Email: paringo@extenetsystems.com

With a copy to:

City of Burlingame
Department of Public Works
501 Primrose Road
Burlingame, CA 94010
650-558-7230
Attn: Bill Lowrie

Project Description: Installation of telecommunications antennae on a utility pole in the public right-of-way located in front of 2536 Valdivia Way, Burlingame, CA. Additional information regarding the proposed installation is enclosed.

Pursuant to City of Burlingame Guidelines for the grant of encroachment permits for placement of Telecommunications Facilities in the public right-of-way, all property owners within 300 feet of the proposed project are being notified of this Special Encroachment Permit Application. You are not obligated to take any action. If you have any comments regarding this proposed installation, please provide them directly to the applicant with a copy of your comments to the Department of Public Works.

To submit your comments and concerns or to inquire about the project, you must contact the Applicant within 21 days of the date of this Notice as indicated below. If your concerns are unresolved, you can request the Department of Public Works to further review this application before a final determination is made on the issuance of the permit. If no Request for Department of Public Works Review is filed, this project will be approved by the Department of Public Works following the Expiration Date indicated below.

Date of this Notice: 7/12/2011

Comment Period Expiration Date: 8/2/2011

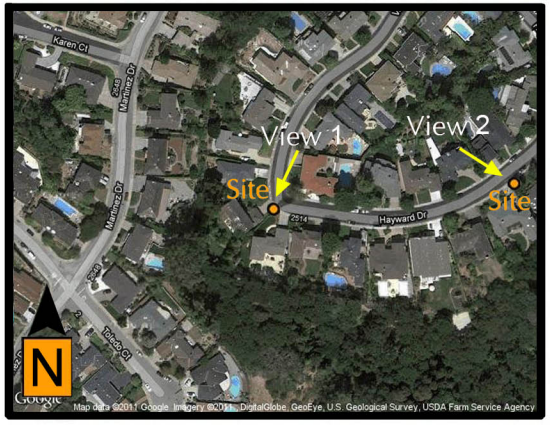
BGM-134A

Views One & Two

2536 Valdivia way, Burlingame, Ca 94010

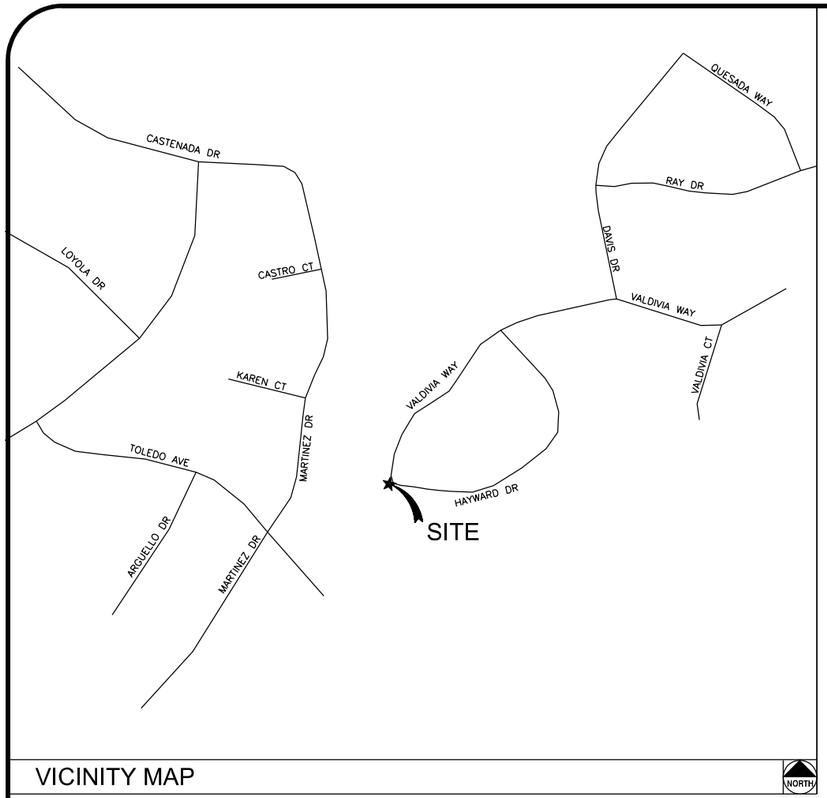
Date of Final : 5/27/2011

Site Map

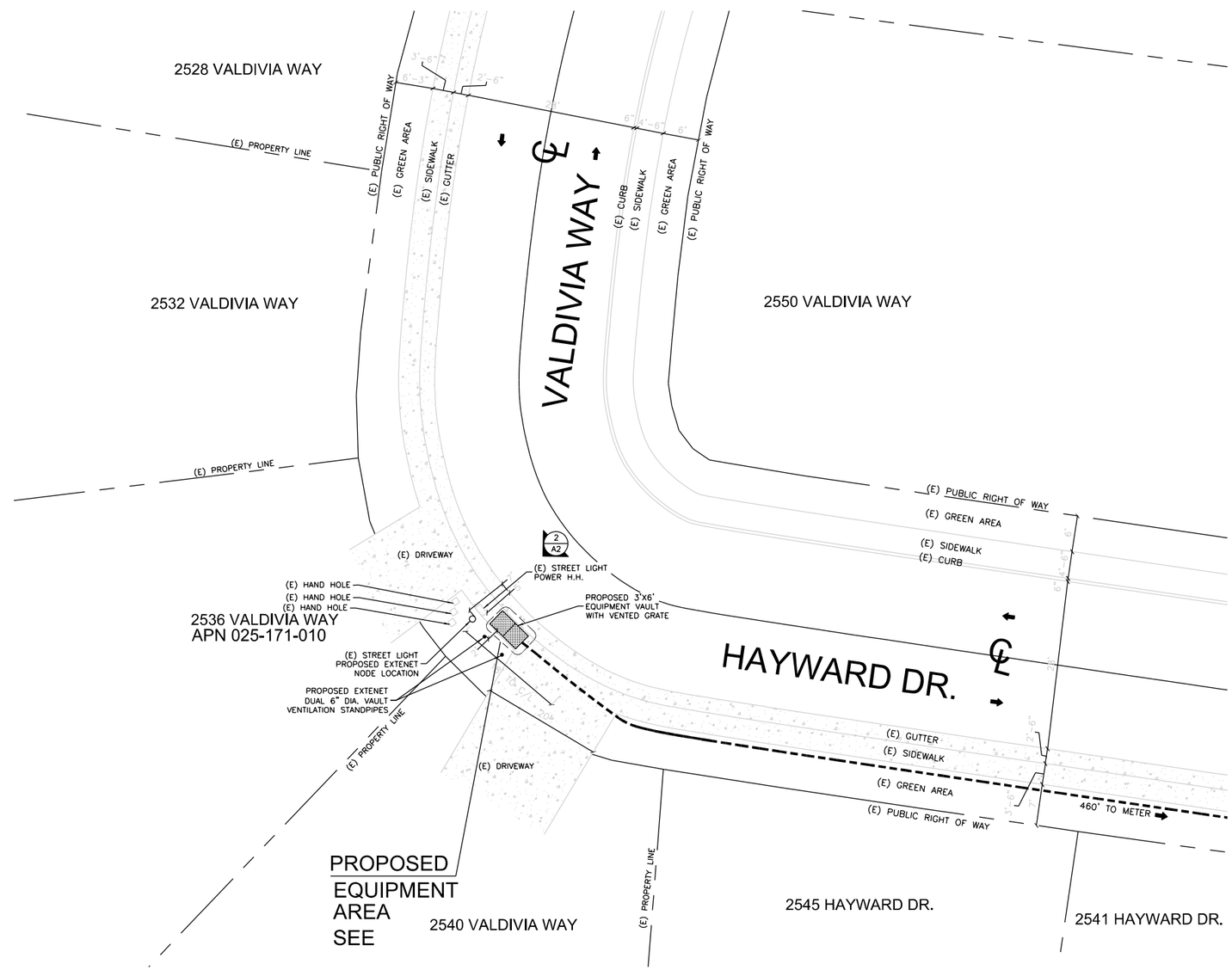


Existing

Proposing



VICINITY MAP



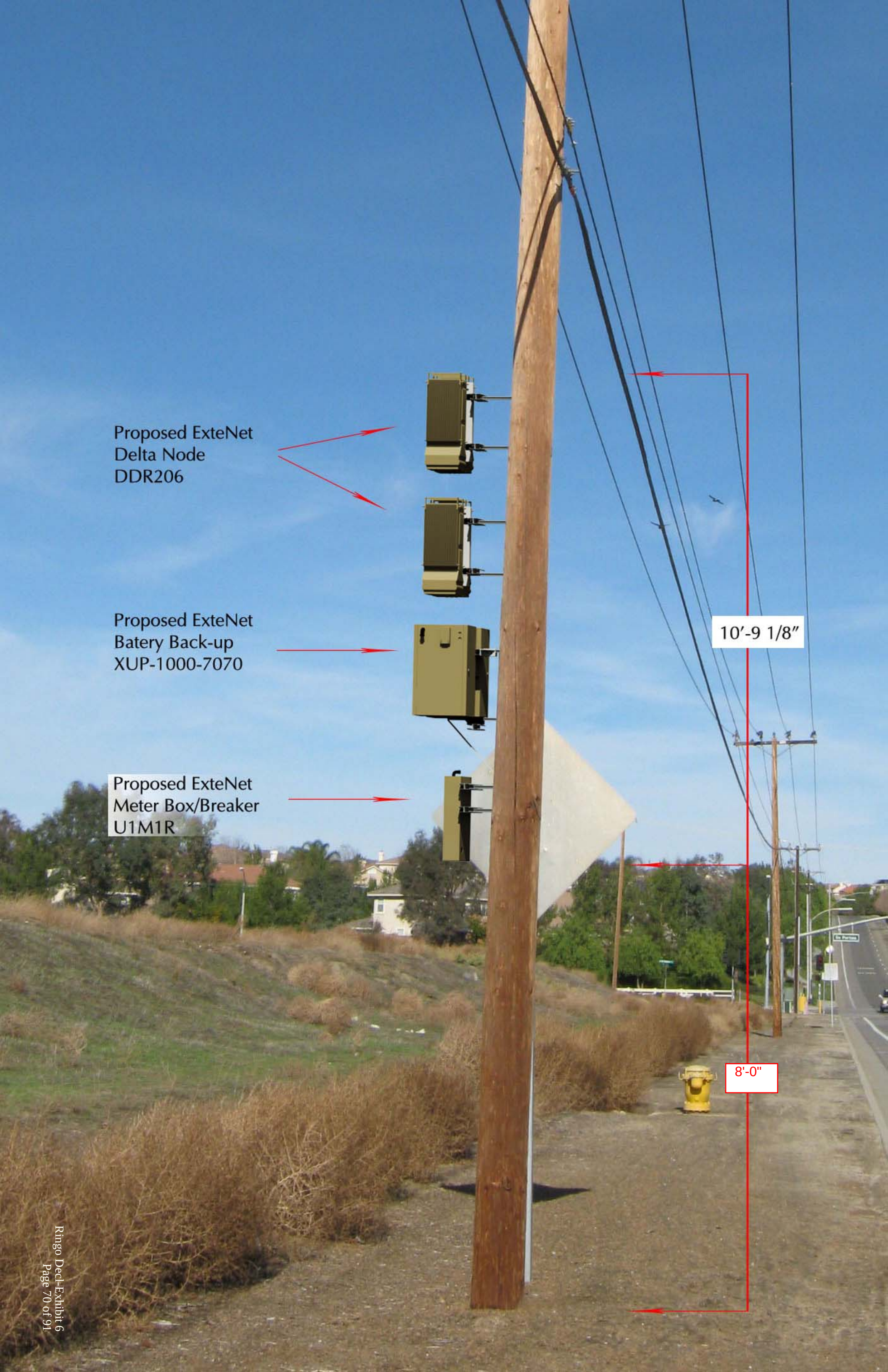
Call Before you Dig! 1-800-227-2600

SITE PLAN - NODE 134A (2536 VALDIVIA WAY)

0 5' 10'

SCALE: 1"=10'-0"

1


Proposed ExteNet
Delta Node
DDR206
Proposed ExteNet
Batery Back-up
XUP-1000-7070
Proposed ExteNet
Meter Box/Breaker
U1M1R
10'-9 1/8"
8'-0"

CITY OF BURLINGAME
NOTICE
APPLICATION FOR SPECIAL ENCROACHMENT PERMIT

On September 27, 2010, the applicant named below filed Special Encroachment Permit Application No. 82790-#3 with the City of Burlingame, to place telecommunications antennae in the public right-of-way.

PROJECT LOCATION: 1457 Drake Avenue, Burlingame, California

Submit any comments to:

Applicant: ExteNet Systems, Inc.
Representative: Patti Ringo
Telephone: 805-404-4202
Email: paringo@extenetsystems.com

With a copy to:

City of Burlingame
Department of Public Works
501 Primrose Road
Burlingame, CA 94010
650-558-7230
Attn: Bill Lowrie

Project Description: Installation of telecommunications antennae on a utility pole in the public right-of-way located in front of 1457 Drake Avenue, Burlingame, CA. Additional information regarding the proposed installation is enclosed.

Pursuant to City of Burlingame Guidelines for the grant of encroachment permits for placement of Telecommunications Facilities in the public right-of-way, all property owners within 300 feet of the proposed project are being notified of this Special Encroachment Permit Application. You are not obligated to take any action. If you have any comments regarding this proposed installation, please provide them directly to the applicant with a copy of your comments to the Department of Public Works.

To submit your comments and concerns or to inquire about the project, you must contact the Applicant within 21 days of the date of this Notice as indicated below. If your concerns are unresolved, you can request the Department of Public Works to further review this application before a final determination is made on the issuance of the permit. If no Request for Department of Public Works Review is filed, this project will be approved by the Department of Public Works following the Expiration Date indicated below.

Date of this Notice: 7/12/2011

Comment Period Expiration Date: 8/2/2011

BGM-139A

View One

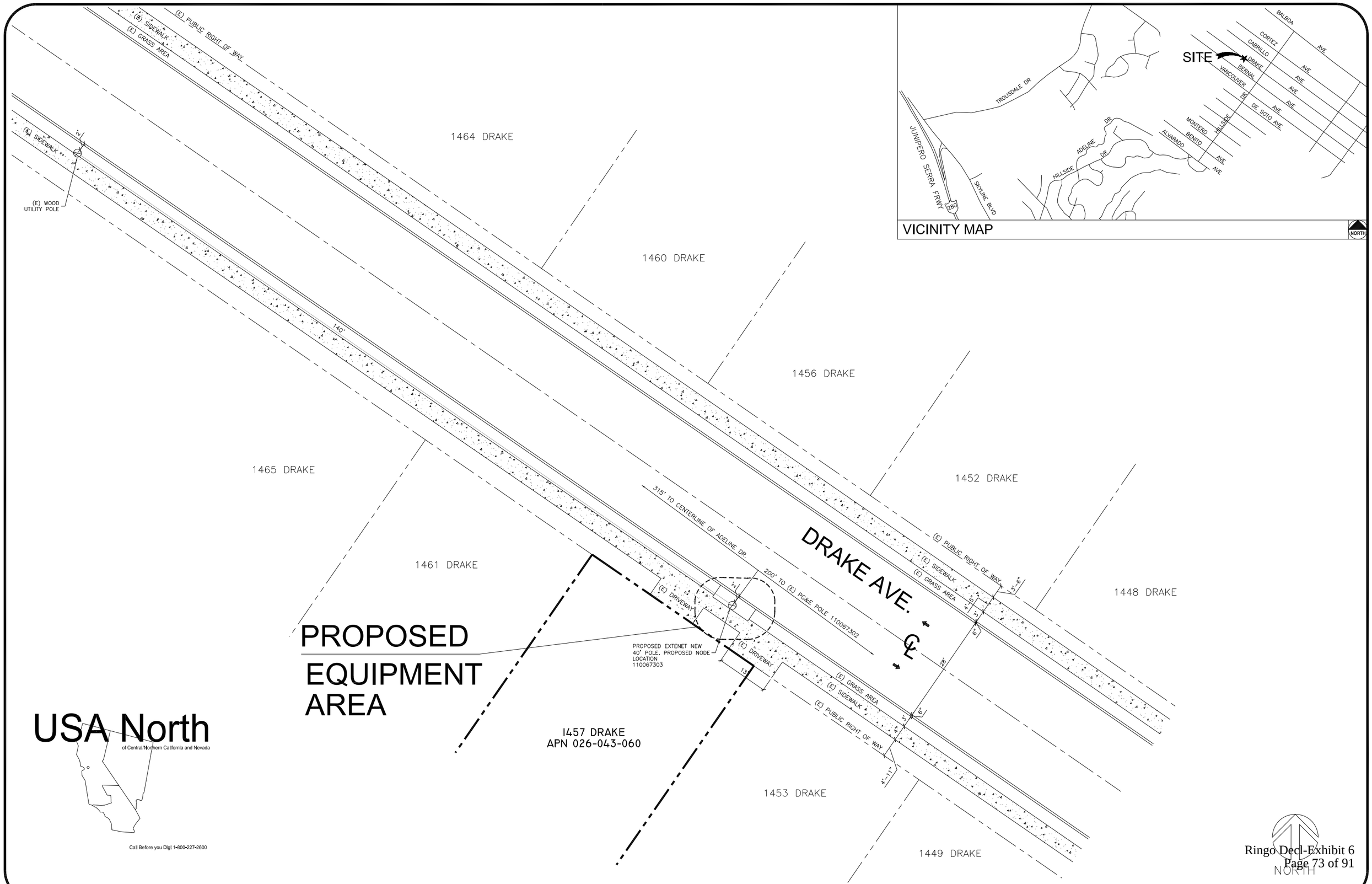
1457 Drake Ave. Burlingame, Ca 94010

Date of Final : 5/27/2011

Site Map

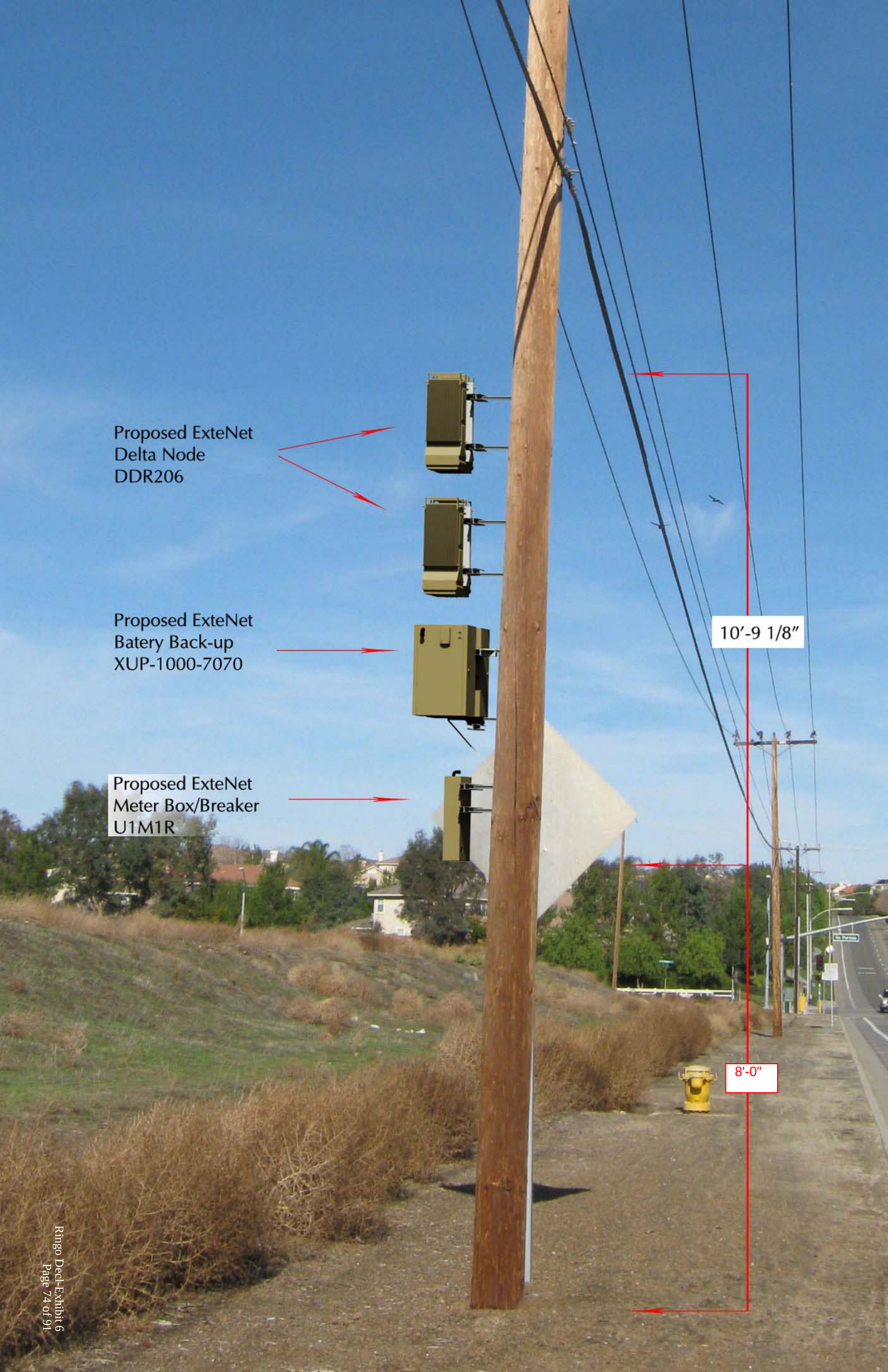
Existing

Proposing



SITE PLAN - NODE 139A (1457 DRAKE AVE.)

1


Proposed ExteNet
Delta Node
DDR206
Proposed ExteNet
Batery Back-up
XUP-1000-7070
Proposed ExteNet
Meter Box/Breaker
U1M1R
10'-9 1/8"
8'-0"

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 7

Channel Law Group, LLP

207 EAST BROADWAY
SUITE 201
LONG BEACH, CA 90802-8824

Fax: (562) 394-1940
www.channellawgroup.com

ROBERT JYSTAD
JULIAN K. QUATTLEBAUM, III *
JAMIE T. HALL **
CHARLES McLURKIN

*ALSO Admitted in Colorado
**ALSO Admitted in Texas

Writer's Direct Line: (310) 209-8515
rjystad@channellawgroup.com

By Electronic Mail and First Class Mail

August 17, 2011

Gus Guinan
City Attorney
CITY OF BURLINGAME
501 Primrose Road
Burlingame, CA 94010

Re: Proposed Moratorium for Wireless Facilities

Dear Mr. Guinan:

In your August 10, 2011 email, you asked my opinion on the City adopting a short moratorium "in order to get a comprehensive zoning ordinance in place." I understand that the City is considering a wireless ordinance but as you understand and as we have discussed, ExteNet operates pursuant to a state license that authorizes the construction of its DAS networks throughout the state subject to the conditions in its license. ExteNet's facilities are not subject to the City's discretionary zoning authority and, aside from the fact that a moratorium cannot retroactively apply to ExteNet's applications (see below), ExteNet in any event should be exempt from such a moratorium.

ExteNet has worked in good faith with the City under the Right-of-Way regulations and is committed to continuing that process. ExteNet is also committed to continuing to work with residents on reasonable time, place and manner concerns, subject, of course, to the time frames under the FCC's shot clock and the Right-of-Way regulations.

To the extent that residents' concerns are reasonable, ExteNet is working with them and has sent out multiple responses. However, the public notification process in the Right-of-Way regulations is not open ended and has a built-in limitation. The process is triggered solely by the DPW's preliminary approval of the "location and design of the project (including equipment appearance and size, height and compatibility)." Right-of-Way regulations, at subsection (B)(4). Public comment on this approval is therefore limited to questions concerning design and location, just as it should be restricted to reasonable concerns regarding the City's time, place and manner authority over the project. In particular, the notification process should not be allowed to become a vehicle for residents to demand that ExteNet identify the qualifications of its employees, the details of its relationship with its tenants, the technical characteristics of its DAS, or justify its project under the protections against prohibition, discrimination,

etc., afforded to it under 47 U.S.C. § 332. These demands are inappropriate and fall outside the City's scope of authority.

It has become apparent that some of the respondents are not aware of these limitations and, as you are aware, ExteNet is being pummeled with discovery-like information requests from various respondents, some lawyers, who seem intent on discouraging ExteNet. We hope that the City recognizes both the excessive and improper nature of many of the requests as well as their unduly burdensome nature.

With regard to the proposed moratorium, ExteNet has two primary objections.

First, because ExteNet cannot be made subject to the City's discretionary zoning process, we should be exempt from any moratorium enacted to stop all activity while the City get a comprehensive zoning ordinance in place. "Local governments may regulate the time, location, and manner of installation of telephone facilities in public streets, but they may not arbitrarily deny requests for access by public utilities in public roads or highways that are located in the rights of way." Decision 11-01-027, *Application of NextG Networks of California, Inc. (U6745C) for Authority to Engage in Ground-Disturbing Outside Plant Construction And Related Matter,* 2011 Cal. PUC LEXIS 25, at *23 (Cal. PUC 2011, Jan. 13, 2011); *see also* Dec. No. 10-12-056, at 30 ("Local Agencies may not use their discretionary land use authority to effectively prohibit projects that are in compliance with the operating authority granted by the Commission"). In Decision No. 11-01-027, the CPUC not only affirmed its exclusive authority to certify DAS providers as telephone companies, it also affirmed its exclusive authority to determine that Cal. Pub. Util. Code § 7901 applies to DAS providers and, accordingly, that the City's authority over DAS providers is limited to the time, place and manner of NextG's access to public rights-of-way.

Second, even if the contemplated moratorium arguably could be applied to public utility projects such as ExteNet's DAS, it still cannot be applied retroactively to ExteNet's Burlingame DAS. *See Selinger v. City Council* (1989) 216 Cal. App. 3d 259, 269 ("We conclude that a moratorium, **enacted after an application is complete, does not toll the time period for action on the application** under [the California Permit Streamlining Act]").

I look forward to our meeting on August 18, 2011 at 11 a.m. to discuss these issues further. If you have any questions, please do not hesitate to contact me at rjystad@channellawgroup.com or (310) 209-8515.

Sincerely,

Robert Jystad
Attorney for ExteNet Systems, Inc.

C: Ratti Ringo, ExteNet Systems, Inc.

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 8

STAFF REPORT

AGENDA ITEM # 6a
MTG. DATE September 6, 2011

TO: HONORABLE MAYOR AND CITY COUNCIL

DATE: September 6, 2011

SUBMITTED BY Gus Guinan

FROM: Gus Guinan, City Attorney

APPROVED By Ann Nortell by

SUBJECT: Temporary Wireless Telecommunications Facilities Moratorium

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RECOMMENDATION: Adopt Interim Urgency Ordinance Establishing a Temporary Moratorium on the Placement and Construction of Wireless Telecommunication Facilities in the City of Burlingame

BACKGROUND: In October of last year, the Public Works Department received applications from two companies, Extenet and T-Mobile, for the installation of wireless cell phone antennae on the top of telephone poles and a few city light poles in some areas of the City. The only City regulation regarding any form of antenna, in the building provisions of the Municipal Code, Chapter 18.18, only addresses satellite dishes, "ham" radio towers and "other antennae" which are mounted on the roof of a structure. And, that section does not apply to the public right-of-way. In order to address this lack of regulation, the Public Works Department, with assistance from the City Attorney, developed an administrative procedure regarding the placement of these facilities. That process includes notification of residents near the proposed facilities. Once they received notification of the proposed wireless antenna, residents voiced their strong opposition in emails and appearances at City Council meetings. As a result, a study session of the City Council and the Planning Commission to address this issue has been scheduled for Wednesday October 5, 2011 at 6:30pm in the Lane Room at the Public Library.

LEGAL LIMITATIONS OF CITY REGULATIONS: As has been mentioned previously, the authority of the City to regulate the location and placement of wireless telecommunications antenna and related facilities is limited by both state and federal law. State Public Utilities Code section 7901 limits local regulation over the placement of utility facilities in the public right-of-way to "time place and manner" requirements. The Federal Telecommunications Act of 1996 (TCA), while it specifically reserves to local agencies their land use authority over the placement of wireless telecommunications facilities, prohibits cities from discriminating among wireless providers, from making decisions which effectively prohibit a wireless carrier from providing service and from denying facility placement on the grounds of the environmental health effects of radio frequency (RF) emissions. Any denial must be in writing and based upon substantial evidence in the record. Cities can deny a particular location of a facility on aesthetic grounds as long as the decision does not effectively prohibit the carrier from providing service.

The TCA also prohibits local agencies from "unreasonably delaying" the installation of wireless telecommunications antenna and related facilities. Although it might be argued as an "unreasonable delay", the delay that would be caused by a moratorium is temporary in nature and would, with extension, probably not last more than ninety days, time enough to conduct a study session in October and allow for the introduction and adoption of a comprehensive ordinance in November.

ANALYSIS OF MORATORIUM:

The purpose of the moratorium is to provide time for the City Council and the City to study and consider this issue prior to adopting a comprehensive city ordinance addressing this matter. The moratorium will NOT apply to the current two applications (T-Mobile and Extenet) submitted almost one year ago; those

applications will continue to be processed by the Public Works Department pursuant to the procedures adopted for wireless telecommunication facilities in the right-of-way.

California Government Code section 65858 requires that the Council find that a "current and immediate threat to the public health, safety and welfare exists" requiring a temporary freeze on new approvals of telecommunication antenna and related facilities until the City has time to put in place new regulations addressing the threat. Should the Council determine that the outpouring of organized opposition to placement and construction of wireless telecommunications antenna has caused it to question whether current general plan and/or zoning ordinance provisions adequately promote and protect the public health, safety or welfare, it may adopt the ordinance presented, instruct staff to undertake a review of land use policies and ordinances relevant to this issue, conduct a study session regarding all aspects of the issue and direct staff to present proposed revisions to current general plan and/or zoning ordinance provisions for consideration of enactment.

Section 65858 also requires that a moratorium ordinance be adopted by a 4/5 vote of the Council and be valid for no more than 45 days from the date of enactment; if adopted, the ordinance would expire on October 21, 2011. The ordinance would become effective immediately upon adoption. The moratorium can be extended for an additional period of up to 10 months and 15 days upon notice and public hearing. A moratorium ordinance cannot be extended more than twice and it cannot exceed a total of two years. Additionally, ten days prior to the expiration of this interim urgency ordinance, the Council must issue a report describing the measures taken to alleviate the condition which led to the adoption of the ordinance.

FISCAL IMPACT: There would be no fiscal impact from the enactment of the ordinance (with the exception of the cost of possible litigation).

OPTIONS:
1. Adopt Interim urgency ordinance to temporarily prohibit approvals of wireless telecommunications facilities within the city.
2. Decline to adopt interim urgency ordinance.
3. Refer the proposed ordinance back to staff with direction.

ACTION REQUIRED: Adopt Interim Urgency Moratorium Ordinance (pursuant to Government Code 65858) to temporarily prohibit the approval of the placement or construction of wireless telecommunications antenna and related facilities within the City of Burlingame because such approvals would be in conflict with a contemplated zoning proposal that the City is intending to study within a reasonable time.

cc: City Manager

ORDINANCE NO. ____

AN INTERIM URGENCY ORDINANCE OF THE CITY OF BURLINGAME ESTABLISHING A MORATORIUM TO TEMPORARILY PROHIBIT GRANTING OF APPROVALS FOR, OR ISSUANCE OF PERMITS FOR, WIRELESS TELECOMMUNICATIONS ANTENNA AND RELATED FACILTIES UNDER GOVERNMENT CODE §65858

WHEREAS, pursuant to Government Code §65858, the City may, in order to protect the public health, safety or welfare, enact an Interim Urgency Ordinance to prohibit certain uses which may be in conflict with a contemplated General Plan or zoning proposal that the Legislative Body or Planning Commission, or the planning division of the Community Development Department, is studying or intends to study within a reasonable time; and

WHEREAS, in October of 2010, the City's Public Works Department received encroachment permit applications from two telecommunications companies, Extenet and T-Mobile, for the installation of wireless telecommunication antenna in the public right-of-way, to be placed on the top of utility poles and on a few city light poles in some areas of the City, as well as related facilities; there were and are no City regulations addressing the placement of cell phone antennae in the public right-of-way; and

WHEREAS, the only City regulation regarding any form of antenna is in the building provisions of the Municipal Code, Chapter 18.18; but this ordinance only addresses satellite dishes, "ham" radio towers and "other antennae" which are mounted on the roof of a structure; these regulations are inapplicable to the public right-of-way; and

WHEREAS, in order to provide some guidance for the placement of wireless antenna in the public right of way, the Public Works Department developed administrative procedures for the grant of wireless telecommunication antenna encroachment permits; however, these procedures are limited and do not provide a comprehensive regulatory approach to the placement of wireless telecommunications facilities within the City; and

WHEREAS, upon receipt of notification of the proposed facilities, a great number of residents, by letter, telephone and email, vehemently raised objections and concerns regarding the placement of the wireless telecommunications antenna near their residences, including adverse aesthetic impacts, negative health effects of radio frequency emissions, impacts on property values and lack of necessity for the facilities; and

WHEREAS, at a public hearing held before the City's Planning Commission on July 25, 2011, numerous residents appeared to ask the Commission to protect their neighborhoods, to state their opposition to the placement of wireless telecommunications antenna in residential districts, to request that the City enact a moratorium and to ask that the City Council conduct a study session prior to adopting any ordinance; and

WHEREAS, the City Council desires to review and study, and to also have the Planning Division of the Community Development Department and the Planning Commission review and study, the current design criteria, zoning regulations and building regulations relating to the placement of wireless telecommunications facilities and appropriate design and suitable location for these facilities; and

WHEREAS, the uncontrolled siting of wireless telecommunications antenna, towers and other facilities may have potentially significant adverse effects and cause irreparable harm to the City's residential neighborhoods; and,

WHEREAS, long delays and uncertainty of the permit process due to lack of clear siting and development standards is an unreasonable limitation upon the wireless telecommunications companies seeking to provide wireless telecommunications services to the residents of the City; and,

WHEREAS, it is necessary for the City to act thoughtfully, carefully and deliberately in a field with rapidly evolving technology and to undertake a deliberative public process in order to establish policy, standards, and procedures related to the siting of wireless telecommunications facilities in a fair, equitable and rational manner;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURLINGAME DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1.

The City Council finds that the City has received hundreds of communications from City residents and representatives of neighborhood groups detailing significant issues and concerns regarding the sufficiency of the City's current zoning regulations to address public health, safety, and welfare issues regarding the appropriate design restrictions on the placement of wireless telecommunications antenna and related facilities within the City. In particular, the public comments strongly suggest an immediate need to examine whether the current Zoning Ordinance provisions should be revised to establish a comprehensive regulatory structure for the placement and construction of wireless telecommunications antenna and related facilities within the City in order to preserve the integrity of residential neighborhoods, prevent degradation to the property interests of residents and preserve the aesthetic charm and character of those residential neighborhoods. These expressions of concern and opposition to the construction of wireless telecommunications antenna and related facilities occurred at the Planning Commission meeting of July 25, 2011 and at public comment period during City Council meetings on July 18, 2011 and August 15, 2011.

The City's current Zoning Ordinance has limited restrictions for certain types on antenna in the City and no regulations at all regarding the placement of wireless telecommunications antenna and related facilities in the public right-of-way. Because of the outpouring of public opposition to the current wireless antenna applications, because of staff review of the current Zoning Ordinance provisions concerning same, because the City Council wants an opportunity to examine all issues related to the placement and construction of wireless telecommunications antenna and related facilities, the City has determined it necessary to adopt this moratorium ordinance to allow the City time to study, prepare and consider a revision of the Zoning Ordinance to provide for comprehensive regulations for the placement and construction of wireless telecommunications antenna and related facilities in such locations and in such manner, as are appropriate and in furtherance of the public health, safety or welfare.

SECTION 2.

Based upon the foregoing, the City Council hereby finds and declares that there exists a current and immediate threat to the public health, safety or welfare in that approval of additional land use

entitlements, and/or issuance of building or other permits for wireless telecommunications antenna and related facilities will result in authorizing design and construction of such facilities prejudicial to and potentially inconsistent with the contemplated review and revision to the City's planning and zoning regulations.

SECTION 3.

Accordingly, pursuant to the provisions of California Government Code §65858, and based upon the recited facts herein, the City Council of the City of Burlingame does hereby adopt this Interim Urgency Ordinance to prohibit the issuance of approvals and permits for the placement of wireless telecommunications facilities within the City of Burlingame because the placement of such facilities may be in conflict with contemplated amendments of the Zoning Ordinance relating to the design and location of wireless telecommunications antenna and related facilities within the City of Burlingame.

SECTION 4.

Notwithstanding any other provisions of the Burlingame Municipal Code or any other ordinances, regulations, or policies of the City of Burlingame to the contrary, no zoning or rezoning changes, land use permits, building permits, grading permits, environmental design review permits, other entitlements for use or environmental documents, or special encroachment permits shall be approved or granted involving the placement or construction of wireless telecommunications antenna and related facilities, while this ordinance, or any lawfully enacted extension thereof, remains in effect. With the exception of those applications referenced in section 5, below, in regard to any special encroachment permit applications, zoning or rezoning changes, land use permits, building permits, grading permits, environmental design review permits, other entitlements, or environmental documents involving or related to wireless telecommunications facilities which are under review by the City on the date of adoption of this ordinance, no building permit shall be issued in connection with any such wireless telecommunications antenna and related facilities application within the City. City staff shall not approve and/or issue any, building permits, environmental design review permits, grading permits, special encroachment permits or any other land use entitlements relating to the design or construction of such wireless telecommunications antenna and related facilities applications after the date of adoption of this ordinance and for so long as this ordinance or any lawfully enacted extension thereof, shall remain in effect.

SECTION 5.

This moratorium ordinance shall not apply to the special encroachment permit applications of Extenet and T-Mobile, currently being processed by the City's Public Works Department, for the placement and construction of wireless telecommunications antenna and related facilities within the public right-of-way. Those special encroachment permits shall continue to be processed according to the Telecommunications Facilities Procedures currently adopted by the Public Works Department and those permits shall be excluded from this moratorium ordinance.

SECTION 6.

The City Council may, by ordinance adopted after a duly noticed public hearing, at a regularly scheduled Council meeting, upon the affirmative vote of four council members, modify, amend, delete,

extend or add to this ordinance upon a finding that such action will implement and enforce the goals, policies and purposes of this ordinance.

SECTION 7.

Pursuant to the pertinent provisions of California Government Code §65858, this interim urgency ordinance shall expire and shall be of no further force and effect forty-five (45) days from and after the date of its adoption or on October 21, 2011; provided, however, that after notice and public hearing, the City Council may, upon a four-fifths (4/5) affirmative vote, extend this interim urgency ordinance for an additional period of time, not to exceed twenty-two (22) months and fifteen (15) days.

SECTION 8.

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason declared to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

SECTION 9.

This ordinance is hereby declared to be an urgency measure and shall become effective immediately upon adoption by four-fifths (4/5) vote of the City Council and shall remain in full force and effect until adoption of a superseding ordinance as more particularly prescribed in §65858 of the California Government Code The City Clerk is directed to forthwith publish a copy of this ordinance with the names of the members voting for and against the same, at least once in a newspaper of general circulation, published and circulated in the City of Burlingame.

SECTION 10.

This ordinance is hereby found to be categorically exempt from environmental review, pursuant to the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970 Guidelines as amended.

_____
Terry Nagel, Mayor

I, Mary Ellen Kearney, City Clerk of the City of Burlingame, do hereby certify that the foregoing interim urgency ordinance was introduced and adopted at a regular meeting of the City Council held on the 6th day of September, 2011, by the following 4/5ths vote:

AYES: Councilmembers:
NOES: Councilmembers:
ABSENT: Councilmembers:

_____
Mary Ellen Kearney, City Clerk

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 9

The City of Burlingame

PUBLIC WORKS DEPARTMENT
Tel:(650) 558-7230
FAX: (650) 685-9310

CITY HALL - 501 PRIMROSE ROAD
BURLINGAME, CALIFORNIA 94010-3997

CORPORATION YARD
Tel:(650) 558-7670

September 9, 2011

Patti Ringo
Director/Municipal Relations
Western Region
ExteNet Systems, Inc.
1464 Madera Road, Suite N-110
Simi Valley, CA 93065

Subject: Special Encroachment Permit – Resident Comments

Hi Patti,

As part of the Public Notification Process of the WTP Guidelines, the City is verifying with those who submitted comments on the project if they received a response back and if their concerns were adequately addressed. Based on the feedback we received, there are remaining issues that many residents feel that were not answered.

The City developed the following questions and request for information based on residents' comments. The City request that Extenet send a standard letter or email to all residents who have submitted comments addressing the following common questions/concerns:

- To address concerns regarding aesthetics: Can Extenet put the nodes underground to eliminate additional overhead fiber and/or unit boxes on the poll? The following is a list of the proposed location and the sidewalk width:

  2684 Summit Drive – No sidewalk
  1457 Drake Avenue – 4 ft
  2517 Easton Drive – 4 ft
  1900 Carmelita Avenue – 5 ft
  1430 Palm Drive – 4 ft
  129 Crescent Avenue – 5 ft
  1824 Barroilet Avenue – 5 ft

  For the sites that do not have sidewalk or insufficient sidewalk width, can the underground vault be place in the roadway in front of the existing pole? Please note that vault proposed on Valdivia Way is on 4.5 ft wide sidewalk.

- To address request for alternative location: In your responses to residents, you stated that several other sites in each proposed location was looked at but none of them were workable

solutions for one reason or another. Please provide a report for each site that includes the location of these other sites and the reasons why these other locations were not selected.

- In addition, the following sites have 10' City owned easements behind or near the property of the proposed site. See attached drawing: yellow indicates City easement near proposed site. Can the proposed equipment be placed in the easement area? If a pole does not exist in the easement, can Extent erect poles to accommodate the equipment? Please provide explanation for each site.

  1457 Drake Avenue
  2517 Easton Drive
  1900 Carmelita Ave
  1430 Palm Drive

- To address health concerns and RF Emissions: Please provide site specific Radio Frequency Emission Report for each proposed location.

- To address health concerns: Please provide site specific Equipment Compliance Report with FCC Regulations for each proposed location.

- To address questions regarding need for service: In your response to residents, you stated that some of the locations are for T-Mobile. Please provide the technical analysis for the need for the propose facilities, including information on gaps in service, for all proposed sites requested by wireless telecommunication carriers. The analysis should be of sufficient detail that a third party can review and confirm the analysis.

- To address concerns regarding aesthetics and property value: The Burlingame WTP Guidelines do require that Extenet work directly with the resident and/or property owner to address their concerns. In this case, there are concerns regarding property value. Given many comments received on this matter, a study regarding property values near proposed wireless facilities may be necessary to address these concerns.

- Anchors - to address request for aesthetics: Per resident comments/questions, please look at alternative means to install the fibers underground so to eliminate anchors and possibly the poles themselves. If that is not possible, please provide explanation for each specific site.

Please note that the Public Notification Process is not complete until all concerns have been adequately addressed.

Sincerely,

Lisha Mai
Assistant Engineer

cc: Jim Nantell, City Manager
Syed Murtuza, P.E., Director of Public Works
Gus Guinan, City Attorney
Art Morimoto, P.E., Assistant Director of Public Works

Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802

Exhibit 10

Robert Jystad <rjystad@channellawgroup.com>

Burlingame Study session

2 messages

ATTY-Guinan, Gus <gguinan@burlingame.org> **Thu, Sep 22, 2011 at 11:45 AM**
To: Robert Jystad <rjystad@channellawgroup.com>, Patti Ringo <paringo@extenetsystems.com>
Cc: "PW/ENG-Morimoto, Art" <amorimoto@burlingame.org>, "PW/ENG-Murtuza, Syed" <SMurtuza@burlingame.org>, "CD/PLG-Meeker, William" <wmeeker@burlingame.org>

9-21-2011

Bob and Patti:

I want to again extend an invitation to you to make a presentation of the industry's point-of-view regarding wireless telecommunications antenna facilities, at the upcoming City Council/City Planning Commission study session scheduled for Wednesday October 5, 2011 at 6:30 pm in the Lane Room of the City Library which is "kitty corner" across the street from City Hall on Primrose Road here in Burlingame. I spoke with Paul Albritton about making this presentation but he is unable to attend due to prior commitments. If you cannot attend or cannot make a presentation, let me know if you can recommend someone to present in this "industry" slot, please let me know.

Here is the very rough agenda for the 10-5-2011 study session:

1) -Brief introduction of the purpose of the session and the expert participants, by City Attorney

2) -presentations by experts:

a)-Jonathan Kramer: city regulation of wireless facilities; legal limits and authority of cities; types of ordinances

b)-Bill Hammett, Hammett and Edison: RF radiation; what is it, how does it work and what are its effects

c)-Deiter Preiser, RCC Consulting: cellular technology, DAS systems and future trends (what can we expect from the industry,

what can they do with their technology to lessen impacts)

d)-an industry spokesperson: the industry perspective: what is the industry is doing, why they need to do it, what is the benefit,

Can they do it a different way so as to be less impactful?)

3)-questions by council members; responses by experts

4)-public comment; responses by experts

5)-final comments and direction to staff by council

The intent is to have the experts speak for between 10-15 minutes so that we have sufficient time for questions and discussion.

I understand from Tom Miller that Bob will not be able to attend but has recommended someone else; I have asked Tom to have that person get in touch with me.

Also, the citizens have started a "blog" to list questions to present at the study session which may be of interest; it is https://www.google.com/moderator/?authuser=2#15/e=bbcc1&t=bbcc1.40

About the moratorium, it is set to expire on October 21, 2011; as no ordinance will be in place by then, I am almost positive the moratorium will be extended to allow for the completion of a draft, the public hearing before the Planning Commission and the introduction and the adoption (public hearing) before the Council. It would become effective 30 days after adoption. I would anticipate that a new ordinance would be in place by the first part of January.

I provide this information in an effort to be as transparent as I possibly can be; I know that some wireless facilities will be constructed in Burlingame and my goal is to not prevent that, but to ensure that it happens in the most constructive manner not only for the providers but also for the Community. I hope that you will continue to cooperate with the City process.

Thanks for your cooperation and patience.

Gus Guinan

City of Burlingame

Robert Jystad <rjystad@channellawgroup.com> **Fri, Sep 23, 2011 at 7:29 AM**
To: "ATTY-Guinan, Gus" <gguinan@burlingame.org>
Cc: Patti Ringo <paringo@extenetsystems.com>, "PW/ENG-Morimoto, Art" <amorimoto@burlingame.org>, "PW/ENG-Murtuza, Syed" <SMurtuza@burlingame.org>, "CD/PLG-Meeker, William" <wmeeker@burlingame.org>

Gus: As you note below, we expect to have a California Wireless representative at the meeting. I will forward the invitation to him. Thank you for the invitation but ExteNet will not be attending. Bob

Robert Jystad
Channel Law Group, LLP
207 East Broadway, Suite 201
Long Beach, CA 90802-8824
(310) 209-8515
(562) 394-1940 (fax)
(310) 871-8189 (mobile)
rjystad@channellawgroup.com

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