



Metro

Los Angeles County
Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

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TO: BOARD OF DIRECTORS

THROUGH: PHILLIP A. WASHINGTON *PAW*
CHIEF EXECUTIVE OFFICER

FROM: MARTHA WELBORNE, FAIA *MW*
CHIEF PLANNING OFFICER

SUBJECT: BINDING ARBITRATION-SPRINT FIBER OPTIC EASEMENT

ISSUE

US Sprint Communications Company ("Sprint") and Metro are parties to a Master Fiber Optic Cable Easement Agreement dated June 1, 1983 ("Agreement") The Agreement permits Sprint to install, maintain and operate fiber optic cable within a 42-mile segment within the Metro's Valley Subdivision right of way (ROW). The easement extends from Taylor Yard, north of downtown Los Angeles, continues north through Burbank and ends in Lancaster. The Agreement requires annual payments and periodic adjustments to the annual payments to adjust the fair market rental value. If the parties are unable to reach agreement on the adjusted fair market rental value, the Agreement provides for binding arbitration to determine the adjusted rental rate. Negotiations between Sprint and Metro staff to adjust Sprint's rent to fair market value have reached an impasse.

DISCUSSION

The rent during the first thirty (30) years started at an annual rate of \$6,749 per mile in the "urban territories" and \$158 per mile in the "rural territories," payable in advance. Adjustments to the rental amounts were applied in the tenth and twentieth years based on a consumer price index increase formula. The current annual rent is \$93,723.

The Agreement provides that Metro has the right to order an appraisal at the end of the thirtieth year (May 31, 2013) and each ten years thereafter for the purpose of determining the fair market rental value of the use of the easement by Sprint. A Metro staff appraisal was prepared to determine the fair market rental value of the Easement area. Based on the data and analysis in this appraisal, Metro staff believes that the minimum annual fair market rental value for the easement area is approximately \$650,000 annually. Sprint disagrees with the appraisal and their latest offer to adjust the minimum annual rent was \$195,293; however, they have not provided an appraisal supporting this amount.

The Agreement provides that if Sprint disagrees with the appraisal, Metro can negotiate with Sprint to establish an agreed upon rental value. If the parties are unable to reach a negotiated agreement, either party may cause the matter to be submitted to binding arbitration. Metro and Sprint staff have held negotiations in an attempt to reach an agreement on the fair market rental value of the easement area since June 2013. These negotiations have been unsuccessful and have reached an impasse. Sprint has continued to pay the current annual rent. Metro staff has consulted with County Counsel and they concur that proceeding with binding arbitration is appropriate at this time. Pursuant to the terms of the Agreement, each party shall bear its own expense, including attorney fees. The arbitrator fees shall be borne equally by the parties. A summary of the terms of the Agreement is included in Attachment A.

NEXT STEPS

In order to determine the fair market rental of the easement area, Metro will notify Sprint that it will seek to resolve the dispute through the binding arbitration process. The parties will elect a panel of arbitrators and submit evidence supporting their opinion of the fair market rental value of the Easement. Pursuant to the Agreement, the arbitrators will make the final determination of the Minimum Annual Rent. The Agreement also provides that the arbitration is to be held in San Francisco, California.

ATTACHMENTS

- A. Summary of Easement Agreement Key Terms

ATTACHMENT A

SUMMARY OF EASEMENT AGREEMENT KEY TERMS

Easement	Permanent, non-exclusive easement to use Metro's Valley subdivision ROW from Lancaster to Taylor yard to install, maintain and operate fiber optic system.
Use	Sprint shall use the Easement Area to install, maintain, repair, replace and operate subterranean conduits, fiber optic cables and ancillary equipment.
Minimum Annual Rent	Current minimum annual rent is \$93,723. During the first 30 years of the term of the Easement, the rent started with annual rates of \$6,749 per mile in the "urban territories" and \$158 per mile in the "rural territories." Adjustments to the rental amounts were applied in the tenth and twentieth years based on a consumer price index increase formula. The Easement provides that Metro has the right to order an appraisal to be made at the end of the thirtieth year and each ten years thereafter for the purpose of determining the fair market rental value of the use of the Easement area by Sprint for the purpose of adjusting the urban / rural classifications of the Burdened Property, the per mile/foot charges, and the minimum annual rental. If Sprint disagrees with the appraisal, Metro is to negotiate with Sprint to establish fair rental value.
Dispute Resolution	If the parties are unable to reach agreement, either party may cause the matter to be arbitrated. The arbitration is to be held in San Francisco, California. In no event shall the rent be reduced from the amount immediately preceding the adjustment.
Maintenance	Sprint, at its sole expense, shall maintain, repair, and replace its conduit, fiber optic cables and ancillary equipment.
Indemnification	Sprint will indemnify and hold the Metro and the harmless from all claims, liabilities and damages arising from the use of the easement area or performance of activities by Sprint or its parties.
Insurance	Sprint will provide appropriate insurance to Metro naming Metro as additional insured.