

SETTLEMENT AGREEMENT

This Settlement Agreement (the “Agreement”) is entered into as of the last date written below, by and between NORTH COAST RAILROAD AUTHORITY, a public agency created by the California Legislature by Government Code Sections 93000 et seq. (hereinafter “NCRA”), and PACIFIC BELL TELEPHONE COMPANY, a California Corporation doing business as “AT&T CALIFORNIA” (hereinafter “PACIFIC BELL”). The parties are collectively referred to herein from time-to-time as the “Parties.”

RECITALS

A. NCRA has filed a First Amended Complaint (the “Complaint”) in the action entitled NORTH COAST RAILROAD AUTHORITY, a public agency, v. PACIFIC BELL TELEPHONE COMPANY, et al; Mendocino Superior Court Case No. SCUJ-CVPO-15-66151 (the “Action”), pursuant to which Plaintiff NCRA seeks declaratory relief and damages against Defendant PACIFIC BELL, all relating to the maintenance of facilities and structures by PACIFIC BELL on property owned or controlled by NCRA (“NCRA Premises”) (the “Claims”).

B. The Parties wish to settle and resolve all disputes and claims between them relating to or arising out of the Complaint, the Action, and the Claims, as of the last date set forth below, and to enter into an agreement to provide for the procedures regarding, and the consideration for, future installation of PACIFIC BELL facilities and structures on NCRA Premises.

NOW, THEREFORE, in reliance upon the above recitals and in consideration of the mutual covenants contained herein, and intending to be legally bound, **THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. Easement Agreement. The Parties shall enter into that Easement Agreement attached hereto as Exhibit A.
2. Settlement Amount. On or before February 1, 2017, PACIFIC BELL shall make a one-time payment to NCRA in the amount of ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000).
3. 1959 Agreement Superseded. The Parties agree that the attached Exhibit A supersedes and replaces the 1959 agreement entitled RJL 3/26/59 (and all amendments thereto), which is attached as Exhibit B hereto.
4. Release by NCRA. NCRA does for itself, its officers, directors, agents, insurers, employees, predecessors, successors, subsidiaries, and assigns, hereby forever release and discharge PACIFIC BELL, its officers, directors, agents, insurers, employees, predecessors, successors, subsidiaries, assignees, licensees, attorneys, contractors, subcontractors, parent and affiliated companies (including Nevada Bell Telephone Company, AT&T Inc., AT&T Corp., AT&T Services, Inc., and AT&T Mobility, LLC) (collectively referred to hereinafter as “Releasees”), of and from any and all liability, claims and/or causes of action of whatever nature which NCRA had or now has, including without limitation, claims for damages, interest, costs, expenses, and attorney’s fees, that arise out of, or relate to in any way the Complaint, the

Action, or the Claims (the “Released Matters”). Expressly excluded from the definition of Released Matters are any and all claims arising out or related to the Parties’ respective rights and obligations set out in this Agreement, and/or the Easement Agreement attached as Exhibit A.

5. Release by PACIFIC BELL. PACIFIC BELL does for itself, its officers, directors, agents, insurers, employees, predecessors, successors, subsidiaries, assignees, licensees, attorneys, contractors, subcontractors, parent and affiliated companies, hereby forever release and discharge NCRA, its officers, directors, agents, insurers, employees, predecessors, successors, subsidiaries, assignees, licensees, attorneys, contractors, and subcontractors (collectively referred to hereinafter as “Releasees”), of and from any and all liability, claims and/or causes of action of whatever nature which PACIFIC BELL had r now has, including without limitation, claims for damages, interest, costs, expenses, and attorney’s fees, that arise out of, or relate to in any way the Complaint, or the Claims (the “Released Matters”). Expressly excluded from the definition of Released Matters are any and all claims arising out of or related to the Parties’ respective rights and obligations set out in this Agreement.

6. Release. With regard to the Released Matters, the Parties expressly waive any rights to and assume the risk of loss of any and all claims, demands, rights, and causes of action for damages or other relief or remedies which exist in their favor against Releasees, but which they do not presently know of or suspect to exist in their favor, whether that lack of knowledge results from ignorance, oversight, error, negligence or some other cause, and which, if known by them to exist would materially affect their decision to enter into this Release. In connection with such waiver, the Parties acknowledge they are aware that their attorneys may hereafter discover claims or facts in addition to or different from those which they now know or believe exist with respect to the Released Matters, but that it is their intention hereby to fully, finally, and forever settle and release all of the Released Matters, known or unknown, suspected or unsuspected, which do now exist, may exist in the future, or heretofore have existed arising out of or related to the Released Matters. In furtherance of such intention, this Release shall be and remain in effect as a full and a complete release notwithstanding the discovery of the existence of any such additional or different claims or facts arising out of or in connection with the Released Matters.

The Parties acknowledge that the foregoing waiver was separately bargained for, and further expressly acknowledge that the release provisions contained herein shall be given full force and effect in accordance with each and all of the terms and provisions expressed herein, including those terms and provisions relating to known or suspected damages, claims, demands and causes of action, if any.

7. No Admission of Liability. The Parties acknowledge and understand that liability for the Released Matters described herein is disputed by the parties herein released, and this Agreement is part of and pertinent to a compromise of a disputed claim, and shall not be construed as an admission of liability.

8. Warranty of Capacity. The Parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Agreement, and that they have the sole right and exclusive authority to execute this Agreement and receive the consideration specified herein, and that they have not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations, or

causes of action referred to in the Agreement.

9. Headings. The titles and headings of the various sections of this Agreement are intended for means of reference and are not intended to place any construction on the provisions of this Agreement.

10. Severability. If any provision of this Agreement shall be invalid or unenforceable, the remaining provisions shall not be affected, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

12. Confidentiality. This Agreement, and all of its terms and conditions, shall remain confidential. The Parties agree not to make any public disclosure of any of the terms and conditions of this Agreement to any person or entity other than their attorneys or financial professionals, absent prior court order, or as required by law.

13. Advice of Counsel. The Parties acknowledge that they have sought the advice of counsel prior to executing this Agreement, or decided not to seek such advice, after being encouraged to do so. The Parties further acknowledges have read this Agreement in its entirety prior to signing, and freely consents to the terms contained herein.

14. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Signatures may be delivered by facsimile or .pdf copy; such signatures shall have the same force and effect as if the original executed copy were physically delivered.

15. Time is of the Essence. Time is of the essence for all obligations of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below.

NORTH COAST RAILROAD AUTHORITY

Dated: _____

By: _____
Its: _____

PACIFIC BELL TELEPHONE COMPANY

Dated: _____

By: _____

Its:

EXHIBIT A

EASEMENT AGREEMENT

This Easement Agreement (the “Agreement”) is entered into as of the last date written below (the “Effective Date”), by and between NORTH COAST RAILROAD AUTHORITY, a public agency created by the California Legislature by Government Code Sections 93000 et seq. (hereinafter “NCRA”), and PACIFIC BELL TELEPHONE COMPANY, a California Corporation doing business as “ATT CALIFORNIA” (hereinafter “Pacific Bell” or “PBTC”). The parties are collectively referred to herein from time-to-time as the “Parties.”

RECITALS

A. NCRA owns or controls real property or an interest in real property throughout the State of California, for the operation of its railroad business as a common carrier and/or passenger carrier (the “Railroad Operating Property”).

B. Pacific Bell currently maintains certain facilities, encroachments, and/or equipment, in the form of poles, boxes, wires, cable, and/or vaults, as crossings, or longitudinally, on, along, over, and/or under property owned or controlled by NCRA (the “Encroachments”), all of which were depicted in that certain North Coast Railroad Map Book produced by PBTC in discovery on or about December 7, 2016 as PBTC Bates ## 455-597, inclusive, in that certain lawsuit entitled “North Coast Railroad Authority v. Pacific Bell Telephone Co. et al.,” Superior Court of California, County of Mendocino, Case Number SCUJ-CVPO-15-66151, and all existing Encroachments on property owned or controlled by NCRA between Fortuna and Arcata, (the “Existing PBTC Facilities”). The Maps of the Existing PBTC Facilities are attached hereto as **Exhibit 2**.

C. The Parties wish to enter into an agreement for the continued maintenance of the Existing PBTC Facilities and the possible future installation of PBTC facilities on, along, over, and/or under Railroad Operating Property from approximately MILEPOST 68.22 in Healdsburg, California in Sonoma County to MILEPOST 285 in Arcata, California, in Humboldt County. “MILEPOST” means a post along the railroad right-of-way indicating the distance in miles to or from One Market Street in San Francisco, the traditional business address of Southern Pacific Railroad, with Sausalito, California being marked as MILEPOST 6. The Railroad Operating Property upon which the Existing PBTC Facilities (including any Unidentified Existing PBTC Facilities) are currently installed, between MILEPOST 68.22 in Healdsburg, California in Sonoma County to MILEPOST 285 in Arcata, California, in Humboldt County, shall be referred to herein as the “Encumbered Property.”

NOW, THEREFORE, in consideration of the foregoing, and for good and valuable consideration paid to NCRA by Pacific Bell, the adequacy and receipt of which are hereby acknowledged, **THE PARTIES HEREBY AGREE AS FOLLOWS:**

1. Any and all license, easement, and/or lease agreements between the Parties, and/or their predecessors or assignors, shall be ended in their entirety, and shall be made subject to the terms and conditions stated herein.

2. This Agreement shall apply to any and all Existing PBTC Facilities located on the Encumbered Property as of the Effective Date of this Agreement, as well as those PBTC facilities or structures existing on the Encumbered Property as of the Effective Date which are unknown to the Parties (the "Unidentified Existing PBTC Facilities"). Unidentified Existing PBTC Facilities and PBTC facilities or structures installed after the Effective Date of this Agreement ("Future PBTC Facilities") shall be subject to the terms set forth herein, except that consideration for construction, installation, and maintenance of Unidentified Existing PBTC Facilities and Future PBTC Facilities on the Encumbered Property and continued maintenance of Existing PBTC Facilities shall be subject to the Fee Schedule attached hereto as **Exhibit 1**. Unidentified Existing PBTC Facilities, Future PBTC Facilities and Existing PBTC Facilities are from time-to-time collectively referred to herein as simply "PBTC Facilities."

3. The consideration for easement rights granted by this Agreement for the Existing PBTC Facilities and any Unidentified Existing PBTC Facilities shall be a one-time payment of One Hundred Twenty Thousand Dollars (\$120,000), and an annual payment of Thirty Thousand Dollars (\$30,000), which annual payment shall be adjusted every five (5) years, in the same annual percentage evidenced by the Consumer Price Index for All Urban Consumers (Base Year 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics as published for the preceding twelve months for which data is available (the "Annual Payment")

4. The first Annual Payment under this Agreement, in the amount of \$30,000, shall be paid to NCRA by Pacific Bell on the third business day following January 1, 2018. Each Annual Payment due thereafter shall be paid to NCRA by Pacific Bell on the third business day after January 1 of each succeeding calendar year.

5. The Parties agree that the amounts set out in this Agreement are reflective of the approximate value of the crossing or longitudinal easements granted hereby over the Encumbered Property. Each Party hereby agrees not to attempt to use or offer this amount as evidence of value in any eminent domain action or other legal proceeding between the parties.

6. NCRA hereby grants, to the extent of its interest, to Pacific Bell, its successors and assigns, an easement to inspect, construct, reconstruct, replace, remove, repair, operate, maintain and use the PBTC Facilities.

7. NCRA agrees that the consideration paid by Pacific Bell to NCRA for the execution of this Agreement has been received and constitutes adequate consideration for the grant of an easement to Pacific Bell on the terms and conditions set forth herein, and that no further fees for the Existing PBTC Facilities, beyond those set forth in Paragraph 3, shall be levied. Consideration for Future PBTC Facilities shall be governed by the terms set forth in the attached **Exhibit 1**.

8. The rights hereby granted are subject and subordinate to the prior and continuing right of NCRA to use all of the Encumbered Property for any purpose, provided that any of such

uses, or any facilities installed or changed by NCRA after the Effective Date of this Agreement shall not interfere with the rights granted to Pacific Bell herein.

9. Pacific Bell shall have the right to install its own gates in any right of way fence, provided Pacific Bell consults with NCRA regarding the location of such gates, and Pacific Bell maintains such gates at its sole expense and such gates do not violate General Orders of the Public Utilities Commission of the State of California (the "PUC").

10. Pacific Bell shall maintain all PBTC Facilities that are overhead at no less than the minimum height above the top of the existing rails of railroad as defined and required by General Order 95 (overhead) of the PUC, as in effect from time-to-time.

11. Pacific Bell shall maintain all PBTC Facilities that are underground in conformity with the appropriate specifications prescribed in applicable General Order(s) of the PUC.

12. Markers for underground facilities in form and size satisfactory to the parties hereto shall be installed and reasonably maintained by Pacific Bell at NCRA's property lines.

13. All inspections, reconstruction, replacement, removal, repair, operation, maintenance and use of PBTC Facilities that shall be undertaken from time-to-time during the term of this Agreement shall comply with all applicable local, state and federal laws. All Existing PBTC Facilities shall be inspected, reconstructed, replaced, removed, repaired, operated and maintained at Pacific Bell's expense, so as not to interfere with then existing improvements of NCRA at the time this Agreement is executed. PBTC Facilities shall be maintained by Pacific Bell in a good and safe condition. Any reconstruction by Pacific Bell shall require the prior notification of NCRA to insure that said reconstruction shall not interfere with then existing and/or planned railroad facilities.

14. Except as otherwise provide herein, all notices required or permitted hereunder shall be in writing and shall be served personally or by other express mail which requires a signed receipt addressed as follows:

North Coast Railroad Authority

Attn: Executive Director
419 Talmage Road, Suite M
Ukiah, Ca. 95482

With Copy to:
Neary and O'Brien
110 South Main Street
Willits, CA 95490

Pacific Bell Telephone Company

Greg Miller
Area Manager
305 Stephenson Street
Ukiah, Ca. 95482

Notices shall be deemed effective on receipt (or refusal of delivery). Any party by written notice to the other may change its address for notice. If an emergency should arise requiring immediate attention, Pacific Bell shall provide as much notice as practicable to NCRA before commencing any work on PBTC Facilities upon Encumbered Property. In non-emergency situations, Pacific Bell shall notify NCRA at least 24 hours in advance of the commencement of any work in connection with the modification, reconstruction, relocation or removal of PBTC Facilities, excepting periodic inspection of PBTC Facilities. In such notice, Pacific Bell shall specify whether any person or equipment will be within 25 feet of any track or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of such notice, NCRA will determine and inform Pacific Bell within 24 hours whether a flagman need be present and whether Pacific Bell need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by NCRA, such services will be provided in a timely manner with the understanding that if NCRA provides any flagging or other services, Pacific Bell shall not be relieved of any of its responsibilities or liabilities set forth herein.

15. All work of Pacific Bell shall be performed diligently and completed within a reasonable time. Upon completion of any construction, Pacific Bell and/or its contractors or subcontractors shall leave the Encumbered Property in good condition.

16. Pacific Bell shall, at its sole expense, comply with all applicable laws, regulations, rules, and orders, regardless of when they became or become effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality.

17. Pacific Bell shall not cause any mechanics' or materialmen's liens to be enforced against the Encumbered Property for work done or materials furnished at Pacific Bell's insistence or request, and Pacific Bell hereby agrees to indemnify and hold harmless NCRA against the same, plus all reasonable costs and expenses (including but not limited to reasonable attorney's fees) incurred in connection therewith.

18. Pacific Bell shall bear the entire cost and expense incurred in connection with the maintenance, repair, and renewal and any and all modification, improvement, revision, expansion, removal or reconstruction of all PBTC Facilities, including any expenses which may be incurred by NCRA in connection therewith, except such cost and expense incurred by Pacific Bell or NCRA as a result of the negligence or intentionally wrongful acts of NCRA.

19. Pacific Bell shall not permit any taxes, charges and assessments to be levied upon NCRA or NCRA's property with respect to, or on account of, the PBTC Facilities.

20. Pacific Bell agrees to defend, indemnify, and hold harmless NCRA, its officers, employees, agents, successors and assigns from and against any and all claims, loss, damages, causes of action, liability, costs, and expenses, for loss of or damage to property and for injuries to or death of persons arising out of the construction, maintenance, location, presence or use of the PBTC Facilities, except to the extent caused or contributed to by the acts of NCRA.

21. NCRA agrees to defend, indemnify, and hold harmless Pacific Bell, its officers, employees, agents, successors, affiliates, parents, and assigns from and against any and all claims, loss, damages, causes of action, liability, costs, and expenses, for loss of or damage to property and for injuries to or death of persons arising out of or related to the Encumbered Property, except to the extent caused or contributed to by the acts of Pacific Bell. "NCRA" as used in these paragraphs 20 and 21 shall be construed to include, in addition to NCRA, the successors, assigns, and affiliated companies of NCRA, and any other railroad company that may be lawfully operating upon and over the said tracks and the officers, agents and employees thereof. In no event shall either NCRA or Pacific Bell be liable to the other, or any other party, for consequential damages.

22. If Pacific Bell does not have reasonable access to PBTC Facilities, Pacific Bell shall have the right of access at all times over NCRA's property adjoining the PBTC Facilities as shall be necessary to Pacific Bell's access to and use of the PBTC Facilities, provided that such access does not interfere with the transportation operations of the railroad at that time, and provided further that NCRA shall have no obligation to construct or maintain any improvements therefor. If requested by NCRA, Pacific Bell shall execute and deliver to NCRA a document releasing its access rights over any land owned by NCRA which is no longer reasonably necessary to provide access to the PBTC Facilities.

23. PBTC may abandon any PBTC Facilities governed by this Agreement, upon thirty (30) days' notice to NCRA. PBTC shall remove any such abandoned aerial facilities from the Encumbered Property at PBTC's sole expense. PBTC may abandon any buried PBTC Facilities subject to this Agreement, in place. However, NCRA may advise PBTC that it has a need to have the PBTC Facilities removed, in which case PBTC shall remove the PBTC Facilities in question from the necessary portion of the Encumbered Property. For each individual PBTC Facility abandoned pursuant to this paragraph that is a latitudinal crossing not within a public street, PBTC may reduce its annual payment obligation to NCRA under this Agreement by Five Hundred Dollars (\$500) per year. For any longitudinal PBTC Facility abandoned pursuant to this Agreement, PBTC may reduce its annual payment obligation to NCRA under this Agreement by Thirty-Three Cents (\$0.33) per linear foot, based on the length of the abandoned installation. Such reduction in PBTC's annual payment obligation shall take effect for any such abandoned longitudinal installation, even if the instant PBTC Facility is abandoned in place.

24. NCRA shall keep the Encumbered Property free from explosives and combustible materials (except those being transported by NCRA) and any and all other obstructions not used or useful in connection with NCRA's rights hereunder (which include the right to utilize the Encumbered Property for any use which will not unreasonably interfere with, or is not inconsistent with, the rights granted herein to Pacific Bell) or which may endanger the PBTC Facilities or any part thereof, or interfere with the exercise of Pacific Bell's rights hereunder. Pacific Bell, its contractors, agents and employees shall have the right, at Pacific Bell's expense, to trim or remove any brush, trees or shrubs which in the reasonable opinion of Pacific Bell may interfere with the PBTC Facilities or interfere with Pacific Bell's rights hereunder.

25. If Pacific Bell, in connection with the maintenance, repair, renewal, modification or reconstruction of the PBTC Facilities, or in the performance of any work contemplated by this Agreement, or by the failure to do or perform anything for which Pacific Bell is responsible under the provisions of this Agreement, shall injure, damage or destroy any property of NCRA

or of any other person lawfully occupying or using the property of NCRA, such property shall be replaced or repaired by Pacific Bell at Pacific Bell's sole cost and expense, except to the extent any such injury, damage or destruction is caused by or contributed to by the acts of NCRA, or of any other person lawfully occupying or using the property of NCRA.

26. If NCRA shall injure, damage or destroy any property of Pacific Bell, such property shall be replaced or repaired by NCRA at NCRA's sole cost and expense, except to the extent any such injury, damage or destruction is caused by or contributed to by the acts of Pacific Bell, or of any other person acting at the direction or under the authority of Pacific Bell.

27. If either party shall fail to perform or abide by its obligations and covenants herein, the other party shall, before pursuing any remedy, give written notice of default to the defaulting party. If the alleged default is for nonpayment of sums due hereunder, the defaulting party shall have sixty (60) days from receipt of said written notice to cure the default. Failure to cure such a default within this sixty (60) day period shall be deemed a material breach of this Agreement and grounds for suit.

28. If the alleged default is non-monetary in nature, the defaulting party shall have sixty (60) days from the receipt of the written notice of default to commence the cure of the default, and shall thereafter diligently pursue said cure to completion. Failure to commence the cure of the default within this sixty (60) day period, or to thereafter diligently pursue it to completion, shall be deemed a material breach of this Agreement and grounds for suit. The non-defaulting party may, at its election, and in addition to any other legal or equitable remedies to which it may be entitled, cure the defaulting party's breach, and the defaulting party shall reimburse the non-defaulting party for the costs incurred by it in curing said default, within thirty (30) days of a written request therefore.

29. Except as otherwise provided herein, this Agreement shall inure to the benefit of and bind the successors and assigns of the respective parties hereto.

30. This Agreement constitutes the complete expression of the agreement between the parties and supersedes any prior agreements, whether written or oral, concerning the subject of this Agreement which are not fully expressed in this Agreement. Any modification of or addition to this Agreement must be in writing signed by both parties.

31. The rights and liability of the parties under this Agreement shall be interpreted in accordance with the laws of the State of California without regard to California's conflict of law provisions.

32. The below-listed signatories hereby certify that they have the full power and authority to bind the respective parties to the terms of this Agreement.

33. If any provision of this Agreement shall be invalid or unenforceable, the remaining provisions shall not be affected, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

34. This Agreement, and all of its terms and conditions, shall remain confidential. The Parties agree not to make any public disclosure of any of the terms and conditions of this Agreement to any person or entity other than their attorneys or financial professionals, absent

prior court order, or as required by law.

35. The Parties acknowledge that they have sought the advice of counsel prior to executing this Agreement, or decided not to seek such advice, after being encouraged to do so. The Parties further acknowledges have read this Agreement in its entirety prior to signing, and freely consents to the terms contained herein.

36. This Agreement may be executed in counterparts, each of which, when so executed, shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Signatures may be delivered by facsimile or .pdf copy; such signatures shall have the same force and effect as if the original executed copy were physically delivered.

37. This Agreement shall become effective upon full execution and payment by Pacific Bell to NCRA of the amounts specified in Section 2.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below.

NORTH COAST RAILROAD AUTHORITY

Dated: _____

By: _____
Its:

PACIFIC BELL TELEPHONE COMPANY

Dated: _____

By: _____
Its:

EXHIBIT 1

(Unidentified and Future PBTC Facility Installations)

Installation or construction of PBTC facilities or structures not in place as of the Effective Date of the Easement Agreement to which this document is an Exhibit ("Future PBTC Facilities"), and identification of Unidentified Existing PBTC Facilities shall be governed by the terms of the Parties' Easement Agreement, and incorporated into said Agreement, except that consideration to be paid by Pacific Bell to NCRA for such new installations, construction or identification shall be further governed by this Exhibit 1 as follows.

1. Pacific Bell shall reimburse NCRA for NCRA's costs and expenses in processing an application for the installation of Future PBTC Facilities, in the amount of One Thousand Dollars (\$1,000) per each such Pacific Bell installation.

2. In addition to the \$1,000 application fee set out in Paragraph 1, above, Pacific Bell shall pay to NCRA an annual easement fee for each Future PBTC Facility, payable on the yearly anniversary of the activation of the subject installation, based on the following fee schedule:

a. For any Future PBTC Facilities considered "latitudinal," which run above, on, across, or under Encumbered Property, and are not within a public street latitudinal crossing, PBTC shall pay to NCRA Five Hundred Dollars (\$500) annually, for the duration of PBTC's maintenance of the subject installation on the Encumbered Property.

b. For any Future PBTC Facilities considered "longitudinal," such as, inter alia, buried fiber optic cable which runs along the railroad tracks on the Encumbered Property, PBTC shall pay to NCRA an annual amount equal to Thirty-Three Cents (\$0.33) per linear foot for each such installation.

c. Consideration for the construction or installation of any Future PBTC Facility considered by the Parties to be a cell Tower shall not be governed by this Agreement. Construction or installation of any such cell Tower is to be governed by a separate agreement, to be negotiated by the parties.

3. If PBTC desires to identify and incorporate an Unidentified Existing PBTC Facility into the Agreement, it shall make written application in such form as reasonably required by NCRA, whereupon NCRA shall act on such application within a reasonable time after the application is delivered to NCRA, taking into account the nature and scope of the application, but in no event longer than sixty (60) days. Any denial or conditional approval of the application

by NCRA shall be in writing and supported by substantial evidence in a written record that as to denial demonstrates that the structure would incommode the use of the NCRA property for railroad functions, and as to conditional approval constitutes reasonable control as to the time, place and manner of the installation and access to the NCRA property. For each such application of an Unidentified Existing PBTC Facility, PBTC shall pay to NCRA a one-time application fee in the amount of Five Hundred Dollars (\$500).

4. Any price or rate set forth herein shall be adjusted every five (5) years, on the third business day in January of the appropriate year, in the same annual percentage evidenced by the Consumer Price Index for All Urban Consumers (Base Year 1982-84=100) published by the United States Department of Labor, Bureau of Labor Statistics as published for the preceding twelve months for which data is available.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below.

NORTH COAST RAILROAD AUTHORITY

Dated: _____

By: _____
Its:

PACIFIC BELL TELEPHONE COMPANY

Dated: _____

By: _____
Its: