# STATE OF ALASKA
## DEPARTMENT OF NATURAL RESOURCES
### Northern Regional Lands Office

### Regional Manager's Decision

ADL 420813
MTA Communications, LLC
Private, Non-Exclusive Easement
AS 38.05.850

**REQUESTED ACTION**
The Department of Natural Resources (DNR), Division of Mining, Land, and Water (DMLW), Northern Region Office (NRO) has received an application from MTA Communications, LLC. (MTA), for the authorization to operate and maintain a preexisting fiber optic cable (FOC). The applicant has requested a private, non-exclusive easement in perpetuity.

**RECOMMENDED ACTION**
DMLW proposes to issue a private, non-exclusive easement under the casefile ADL 420813 for a period of 30 years.

**SCOPE OF DECISION**
The scope of this decision is to determine if it is in the State's interest to issue a private, non-exclusive easement to MTA for the operation and maintenance of a FOC.

**STATUTORY AUTHORITY**
AS 38.05.850

**ADMINISTRATIVE RECORD**
The administrative record for the proposed action consists of the Constitution of the State of Alaska, the Alaska Land Act as amended, applicable statutes and regulations referenced here-in, the 2015 Eastern Tanana Area Plan and other classification references described herein, Golden Valley Election Electric Association (GVEA) easements under ADL 16965, and the casefile for the application serialized by DNR as ADL 420813.

**LOCATION INFORMATION**

**Geographic Location**
Located in Delta Junction off Donnely Street, Block 3, North and West addition to Delta Junction Townsite, Plat NO. 63-7859, Fairbanks Recording District; and Lots 39 and 40, Block B, USS 3292.

**Meridian, Township, Range, Section**
Fairbanks Meridian, Township 10 South, Range 10 East, Section 23, SW¼.

**Dimensions**
Width: 30 feet Approximate Length: 1,666.33 feet Approximate Acreage: 0.89

**Other Land Information**
Municipality: City of Delta Junction
Regional Corporation: Doyon Ltd

See attached map.

**TITLE**
Lots 39 and 40 were patented to the State via Patent 1221054 on July 6, 1961 with a reservation for a right-of-way for railroads, telegraph, and telephone lines constructed by the United States. Patent subject to any vested and accrued water rights and associated ditches and reservoirs as well as ditches and canals constructed by the United States. State title is serialized within DNR casefile CG 3.

Lots 27 and 26, the SE ¼ SE ¼ SW 1/4 , and the W ½ SE ¼ SW ½ were patented to the State via Patent 1230322 on January 9, 1963 with a reservation for a right-of-way for railroads, telegraph, and telephone lines constructed by the United States as well as a reservation for highway purposes under PLO 1613. Additionally, there is a reservation for a material site right-of-way under 23 USC 317. Patent subject to any vested and accrued water rights and associated ditches and reservoirs as well as ditches and canals constructed by the United States. State title is serialized within DNR casefile CG 3.

**THIRD PARTY INTERESTS**
GVEA holds an easement under ADL 16965 for the electric lines. DOT&PF has a material sale contract (ADL 420419) within the DMLW designated material site (ADL 419669). The utility easements are existing and should not be impacted by the material site. The Alaska Department of Transportation & Public Facilities (DOT&PF) is aware of the utilities and their continued existence should not impact DOT&PF's ability to mine within the material site.

**PLANNING & CLASSIFICATION**
The subject area is within the ETAP unit D-36. Lands within this unit are designated as settlement-commercial. Disposal of land for possible commercial or industrial development is appropriate for this unit, as the parcel has been cleared of vegetation and the ground has been disturbed. A FOC is consistent with the management intent of this unit.

**ACCESS**
The FOC infrastructure was placed on existing GVEA electrical poles (authorized by ADL 16965) and will be accessed via this utility easement.

**BACKGROUND**
On February 16, 2017 MTA submitted an application requesting authorization to operate and maintain a preexisting FOC. GVEA originally installed the FOC within a powerline easement, ADL 16965, and the FOC was then sold to MTA in 2016. The FOC was installed in 1999, approximately.

## PUBLIC NOTICE & AGENCY REVIEW

**Agency Review Summary**

On March 31, 2017, a request for agency comment was sent to:
Alaska DNR, Mining Section
Alaska DNR, Reality Services
Alaska Department of Fish and Game (ADF&G), Habitat
FNSB
U.S. Fish and Wildlife Services
U.S. Army Corp of Engineers
DOT&PF

**Agency Review Comment and Response**

ADF&G: No objection to these easement authorizations.

**Public Notice Summary**

Public Notice was posted to the DNR Online Public Notice webpage on March 31, 2017 for 30 days.

**Public Notice Comment and Response**

No comments were received in response to this notice.

## ENVIRONMENTAL CONSIDERATIONS

The environmental risk for the proposed activity is determined to be minimal. Access and maintenance as described in the application should present only the minimal risk of leaks from vehicles used to access the easement. These risks may be minimized by requirements described in the stipulations attached to the easement and associated Entry Authorization, including *Fuel and Hazardous Substances, Notification of Discharge, Removal of Improvements and Site Restoration, and Operation of Vehicles.*

## ECONOMIC BENEFIT AND DEVELOPMENT OF STATE RESOURCES

Per 38.05.850(a), the DNR must consider whether this easement will provide direct and/or indirect benefits to the State, and whether it will encourage development of the State's resources. Granting a private non-exclusive easement for a FOC in the proposed locations will provide better telecommunication connectivity for the public.

## DISCUSSION

In adjudicating an easement, DMLW seeks to facilitate development, conservation, and enhancement of state resources for present and future Alaskans, while minimizing disturbance to vegetation, hydrology and topography of the area that may impair water quality and soil stability.

As the FOC infrastructure was installed within an existing easement on existing poles, DNR did not consider alternatives when adjudicating this decision. The presence of the FOC infrastructure provides the benefit of improved communications within the service area. The alternative of compelling MTA to remove the infrastructure would not provide a meaningful benefit to the State. By authorizing the FOC, DMLW would be able document its existence and collect fees on

the previously unauthorized infrastructure. Therefore, authorization of the FOC was the only course of action considered.

Fiber optic is currently considered to be a public utility if operating within a company's Certificate of Public Convenience and Necessity (CPCN) service area. If MTA expends their service area to include this area and MTA continues to maintain a CPCN for this region, it would make this activity eligible for conversion to a public utility easement. To eliminate the need to do an additional decision in the future, this easement may be converted into a public utility easement upon receipt of an updated CPCN from MTA which includes the subject area or a change in the regulatory interpretation.

**PERFORMANCE GUARANTY**

A performance guaranty is intended to incentivize performance of the conditions of the entry authorization and easement and provide a mechanism for the State to ensure that the applicant shares in the financial burden in the event of noncompliance (including fee payment, survey, appraisal, etc.), restoration (interim and final), and any associated costs after termination or expiration of the easement.

**History of Compliance:** This applicant has no open trespass casefiles.

**Performance Guaranty Narrative:** No performance guarantee will be required as the FOC is already in place.

**INSURANCE**

The applicant is required to submit proof of insurance in an amount the insurance company determines necessary to protect both the State and the applicant from risks associated with the planned activities under the easement for ADL 420813. The applicant will be responsible for maintaining the necessary insurance during the term of the easement. The insurance may be adjusted to reflect updates and changes in the associated project and the applicant may be required to furnish additional insurance if DMLW determines there is additional risk to the State. A certificate of insurance listing the State of Alaska, Department of Natural Resources as an additional insured on the policy, or other insurance acceptable to the State, must be submitted to DMLW prior to entry on State land and must be maintained throughout the term of the easement.

**FEES**

Fiber Optic Cables are authorized with one of two authorization types; a public utility easement (including installation within an existing easement), or a private non-exclusive easement. If the applicant has a Certificate of Public Convenience and Necessity for telecom activities, and the applicant is operating within their designated service area, an FOC would be authorized through a public utility easement. If the applicant does not have a telecom related CPCN for the proposed location, the FOC is authorized with a private non-exclusive easement. MTA does not have a CPCN for the Fairbanks area. Per 11 AAC 05.070 (d)(2)(A)(i), a private non-exclusive easement has an annual fee of $480 for up to 2 acres of state land, and $240 per additional acre.

The final survey shows the area of the easement as 0.89 acres, therefore, **the annual fee for this easement will be $480.** The fees shall accrue starting at the date of application.

**Back-fees**
Although utilities are now required to coordinate with DNR prior to placement, past practice has been to allow qualifying utilities to merely coordinate with the easement Grantee when placing additional infrastructure within a utility easement. This line was originally installed by GVEA and its associated business, Alasconnect. As of 1999, both entities were operating under various CPCN's, and all lines were installed within existing public utility easements. Because the FOC was installed by a qualifying entity operating within their service area (CPCN 600) within an existing public utility easement, no back fees prior to the date of application for MTA are due.

## ENTRY AUTHORIZATION

**Easement Term:** 30 years from the effective date of the decision, or until platted via local platting authority.

**Term Discussion:** The term of this private, non-exclusive easement shall be for a period of 30 years from the effective date of the decision; however, if an easement authorizing the operation and maintenance of the FOC is platted and dedicated by the local platting authority, that portion of the easement shall terminate. Although the applicant requested an easement in perpetuity, this is not consistent with private non-exclusive easements, which are typically term-limited.

**Recommendation**
Based on information provided by the applicant, inter-agency review and review of relevant planning documents, statutes, and regulations related to this application, it recommended DNR issue this easement to the MTA pursuant to AS 38.05.850. During the term of the easement, periodic inspections may be conducted, at the discretion of the DNR, to ensure compliance and that no unexpected environmental disturbance or degradation is occurring. The State of Alaska reserves the right to issue other compatible uses within this same area.

Jaclyn Cheek

10/17/2019
Date

## REGIONAL MANAGER'S DECISION

When adjudicating an easement authorization pursuant to AS 38.05.850, DMLW seeks to responsibly develop Alaska's resources by making them available for maximum use and benefit consistent with the public interest. In consideration of all events and criteria listed above, I hereby determine that the authorizations to be granted by this decision are consistent with DMLW's mission, that this project is consistent with the overall classification and management intent for this land, and that issuance of an authorization as described above is in the interest of the State of Alaska. DNR assumes no responsibility for maintenance or liability for injury or damages attributable to this authorization.

This decision may be rescinded by written notification if, after 60 days from the effective date of this decision, the applicant has not completed all requirements outlined in this decision for issuance of the authorization. Additional time may be allotted to complete these requirements, however this will not extend the total term of the authorizations issued under this decision.

for Dianna Leinberger 10/17/19

Jeanne Proulx
Regional Manager

Date

**ATTACHMENTS**

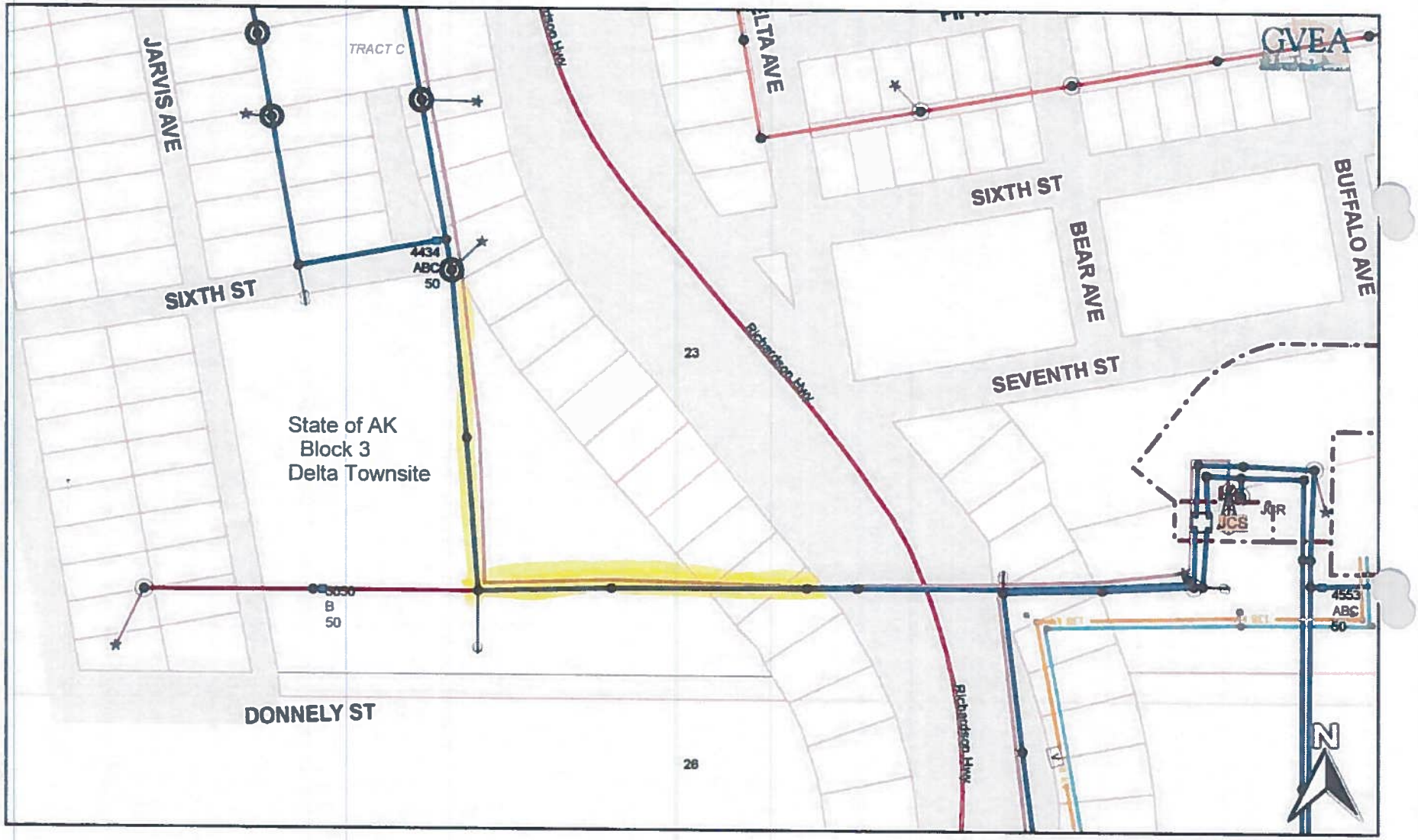
- Easement
- Map

A person affected by this decision may appeal it in accordance with 11 AAC 02. Any appeal must be received within 20 calendar days after the date of "issuance" of this decision, as defined in 11 AAC 02.040(c) and (d) and may be mailed or delivered to the Commissioner, Department of Natural Resources, 550 W. 7th Avenue, Suite 1400, Anchorage, Alaska 99501; faxed to 1-(907) 269-8918, or sent by electronic mail to dnr.appeals@alaska.gov. Under 11 AAC 02.030, appeals and requests for reconsideration filed under 11 AAC 02 must be accompanied by the fee established in 11 AAC 05.160(d)(6), which has been set at $200 under the provisions of 11 AAC 05.160(a) and (b).

If no appeal is filed by the appeal deadline, this decision becomes a final administrative order and decision of the department on the 31st calendar day after issuance. An eligible person must first appeal this decision in accordance with 11 AAC 02 before appealing this decision to the Superior Court. A copy of 11 AAC 02 may be obtained from any regional information office of the Department of Natural Resources.

**GVEA AIMS - jdg1**

Donnely Street, Delta Jct.




70 m
200 ft

Nov/10/2016
Scale 1:7500

Township-Range: 10S010E
System Map: 2-1010d

The materials available from the GVEA AIMS map are for informational purposes only and do not constitute a legal document.