

**THIS INSTRUMENT PREPARED BY:**

**BALCH & BINGHAM**  
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Birmingham, Alabama 35201  
(205)251-8100

1415

**STATE OF ALABAMA**

**PROJECT: BIRMINGHAM-MONTGOMERY**

**COUNTY OF SHELBY**

**TRACT NUMBER: AL-SH-000400**

**COMMUNICATIONS SYSTEMS EASEMENT**

KNOW ALL MEN BY THESE PRESENTS that on this 8<sup>TH</sup> day of FEBR, 1989 WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP, a Delaware limited partnership, 1035 3rd Avenue, P.O. Box 2827, Huntington, WV 25727 and CSX TRANSPORTATION, INC., a Virginia corporation by its attorney-in-fact, WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP (hereinafter referred to as "Grantor", whether one or more), for and in consideration of Six Hundred Fifty and no/100 Dollars (\$650.00) and the promise of Grantee (as defined below) to pay Grantor an Annual Charge as described and set forth below and other good and valuable consideration, including without limitation the first Annual Charge in the amount of \$750.00, in hand paid to the undersigned by AMERICAN TELEPHONE AND TELEGRAPH COMPANY, a New York corporation, by and through AT&T Communications, Inc., a Delaware corporation, as agent (herein referred to as "Grantee"), receipt and sufficiency of which is hereby acknowledged, have remised, released and forever quitclaimed and by these presents do hereby remise, release, and forever quitclaim unto the Grantee, its successors and assigns an easement to construct, operate, maintain, inspect, test, replace and remove (i) underground communications systems as the Grantee may from time to time require, consisting of, by way of example, underground lightwave fiber optics systems, cables, splice boxes, wires, and (ii) related above-ground surface testing terminals, manholes, and markers (i and ii collectively referred to herein as the communications systems) upon, over and under a strip of land 16.5 feet wide (hereinafter described and referred to herein as the "Easement Area"), upon, over, under and across the land which the undersigned owns in Section 3, Township

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20 South, Range 3 West, Shelby County, State of Alabama, as shown on the plat drawing referenced as EXHIBIT "A" attached hereto as a part hereof, together with rights of ingress and egress from public roads and existing rights of way and over and across the lands of the undersigned at locations reasonably approved, in advance, by Grantor as long as such lands remain unsubdivided but if and when such lands shall become subdivided such rights of ingress and egress across the lands of the undersigned shall be limited to that which is necessary to provide reasonably convenient access not otherwise available from public roads and rights-of-way at locations approved by Grantor which such approval shall not be unreasonably withheld, to and from said Easement Area for the purpose of exercising the rights herein granted; the right to clear and keep cleared all trees, roots, brush and other obstructions from the surface and subsurface of said Easement Area; the right to install gates in any fences crossing said Easement Area; and the right to enter upon the lands of the undersigned to survey and engineer the proposed communications systems. Further, during construction, Grantor hereby releases and quitclaims unto Grantee a twenty (20) foot wide temporary easement abutting and parallel to the west side(s) of said Easement Area, along with such additional temporary widths necessary to the construction in crossing waterways, existing utilities or roads, if appropriate, to the property described herein.

The Easement Area conveyed by this instrument is further described as follows:

A 16.5 foot wide strip of land running across a tract of land containing 40 acres, more or less, located in the NE/4 of the SW/4 of Section 3, T20S, R3W, Shelby County, Alabama, such strip being generally shown on the map attached hereto as Exhibit A and being situated parallel and abutting to the east boundary of a right of way to Colonial Pipeline as shown thereon.

The east boundary of said Easement Area shall be parallel to and 11.5 feet east of the first cable laid, which cable shall have its location indicated by surface markers set at intervals along said Easement Area or in the vicinity thereof.

So long as Grantee retains all the rights and interests herein granted and shall not have abandoned the Easement Area and such Easement Area shall not have reverted to the Grantor, its successors or assigns; Grantee, in addition to the first Annual Charge in hand paid to Grantor on even date hereof, shall pay to Grantor an Annual Charge on each anniversary date of this instrument,

however, any such Annual Charge shall not be due and payable until 45 days have elapsed since Grantee's receipt of written notice from Grantor requesting payment of such Annual Charge. Such Annual Charge shall be equal to \$750 per year for the first five consecutive years. Upon the fifth anniversary of this instrument, Febr 8, 1994, and thereafter, on each successive fifth year anniversary, the Annual Charge shall increase by ten percent (10%) over the Annual Charge for the immediately preceding year up to a maximum Annual Charge of \$2,250. In no event shall the Annual Charge ever exceed \$2,250 per year.

All notices and communications concerning this easement to Grantee shall be in writing addressed to Grantee at 1200 Peachtree St., N.E., P.O. Box 7800, Atlanta, Georgia 30357, or at such other addresses as Grantee may designate in written notice to Grantor; and all notices and communications concerning this easement to Grantor shall be in writing addressed to Grantor at P. O. Box 2827, Huntington, West Virginia 25727, or at such other addresses as Grantor may designate in written notice to Grantee. All payments or annual rentals to be paid by Grantee to Grantor herein, shall be paid to Western Pocahontas Properties Limited Partnership and shall be sent to: Western Pocahontas Properties, Department 97504, Louisville, Kentucky 40297, unless Grantee is notified otherwise.

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The Grantor covenants that no physical structure or obstruction shall be erected or permitted on said Easement Area and that no change will be made by grading or otherwise to the surface or subsurface of the Easement Area or the ground immediately adjacent to said Easement Area without prior written consent of Grantee; provided, however, that nothing herein shall be construed to prevent Grantor, its agents, successors or assigns, from (i) constructing and maintaining streets, parking lots, highways, fences, sanitary and storm sewers, water lines, gas lines, electric lines and other utilities across the easement herein granted, or (ii) from conducting deep underground mining activities under the Easement Area, so long as such improvements and installations described in (i) above and mining activities described in (ii) above are made or conducted in such a manner as not to interfere with, endanger, hinder or disrupt the construction, maintenance or operation of Grantee's communications systems or appurtenances, and provided prior notification of ninety-six (96) hours is given to AT&T Communications, Inc. at 1-800-292-8525 (or other numbers, addresses or methods

of communication furnished in writing to Grantor) prior to the commencement of any such improvements, installations or activities. Provided further, that in the event that, in connection with the construction or conduct of any of the improvements or activities of Grantor set forth in the preceding sentence, it becomes practically necessary, in Grantor's sole judgment which such judgment shall not be unreasonably exercised, to lower the communications cable in the Easement Area in order to allow the use of said Easement Area for improvements, installations and activities as permitted above, then Grantee agrees to lower said communications cable at Grantee's expense, within ninety (90) days after receipt of written notice from Grantor requesting such lowering.

The Grantee agrees to restore the entire disturbed area as nearly as practicable to its original condition and/or to pay for reasonable damages arising from the surveying, engineering, construction and maintenance of the aforesaid systems.

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Grantee shall protect, defend, indemnify and hold harmless Grantor, its successors and assigns, lessees, or licensees and their officers, directors, agents, employees, representatives and limited and general partners (including without limitation, Western Pocahontas Corporation, a corporation, and its officers, directors and employees) for and from any and all liability, claims, loss and/or expense resulting from the death of or injury to any persons whatsoever (including, without limitation, the agents, employees, representatives, contractors and subcontractors of Grantee, and/or Grantor) and destruction of or damage to any property proximately caused by Grantee's negligence in constructing, laying, maintenance, protection, repair, replacement and removal of the communications systems. The obligations of Grantee to provide such indemnification shall survive the termination of the easement granted herein.

If said easement should ever cease to be used for such communication purposes within the above-mentioned tract, or any tract as relocated, and such non-use shall continue for two (2) years or longer, then and in that event said easement shall cease as to such tract and all right, title and interest therein shall revert to Grantor, its successors or assigns. Periods of time during which the Grantee is using its diligent efforts to use the easement as set forth above shall not be considered as "non-use" for purposes of determining the two (2) year period. Grantee shall, within six (6) months after the reversion of the easement, remove its communications systems from said tract in

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a good and workmanlike manner. Should Grantee fail to remove such communications systems, such communications systems shall be deemed to be abandoned by Grantee and (a) Grantor may give written notice to Grantee that Grantor accepts title to all or any of such communications systems; and the giving of such notice shall immediately vest in Grantor all of Grantee's right, title and interest in the communications systems; or (b) Grantor may seek specific performance to require Grantee to remove such communications systems; or (c) Grantor may remove or cause to be removed any such communications systems and may dispose of such communications systems and retain any salvage received, and Grantee shall be liable to Grantor for all costs and expenses of removing such communications systems in excess of such salvage received. However, nothing herein shall require Grantor to remove or salvage any of the communications systems abandoned by Grantee or require Grantor to obtain a reasonable salvage value for any such communications systems. The failure of Grantor to take any action with respect to any abandoned communications systems shall not waive Grantor's right to exercise any of the aforesaid or other available rights or remedies with respect to such abandoned communications systems and shall not relieve Grantee from responsibility for assuring the safe condition and proper disposal of all such communications systems. All of the rights herein granted Grantor or elsewhere in this instrument shall be deemed cumulative and are not exclusive and shall not deprive Grantor of any of its other legal or equitable rights or remedies which it might otherwise have. The obligations of Grantee to remove such equipment shall survive the abandonment of the easement granted herein.

This instrument states the entire agreement between Grantor and Grantee, and merges in this instrument all statements, representations, and covenants heretofore made by either Grantor or Grantee, or any of their representatives, and any agreements or representations not incorporated herein are void and of no force or effect.

This instrument shall be binding upon the heirs, executors, administrators, successors and assigns of the undersigned, and shall inure to the benefit of the Grantee, its successors and assigns.

IN WITNESS WHEREOF, American Telephone and Telegraph Company has caused its corporate name to be signed hereto and its corporate seal to be hereunder affixed by its proper officer thereunto duly authorized, and CSX Transportation, Inc. has caused its name to be signed hereto by its attorney-in-fact, Western Pocahontas Properties Limited Partnership, and Western Pocahontas Properties Limited Partnership, has caused its name to be signed hereto by its general partner, all as of the date and year first above written.

**GRANTOR:**

**WESTERN POCAHONTAS PROPERTIES  
LIMITED PARTNERSHIP**

Attest:

By: Western Pocahontas Corporation  
Its: general partner

By: \_\_\_\_\_  
Its

By: *W. J. [Signature]*  
Its *President*

**CSX TRANSPORTATION, INC., a Virginia  
corporation**

By: Western Pocahontas Properties Limited  
Partnership, its Attorney-in-Fact

By: Western Pocahontas Corporation  
its General Partner

Attest:

By: \_\_\_\_\_  
Its

By: *W. J. [Signature]*  
Its *President*

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Attest:

**GRANTEE:**

**AMERICAN TELEPHONE AND TELEGRAPH  
COMPANY**

By: \_\_\_\_\_

Its

By: *[Signature]*

Its

**DISTRICT ATTORNEY-CLERKS & CONST.**

Approved  
as to form  
*[Signature]* 2/7/89  
Attorney

STATE OF West VA

COUNTY OF CABELL

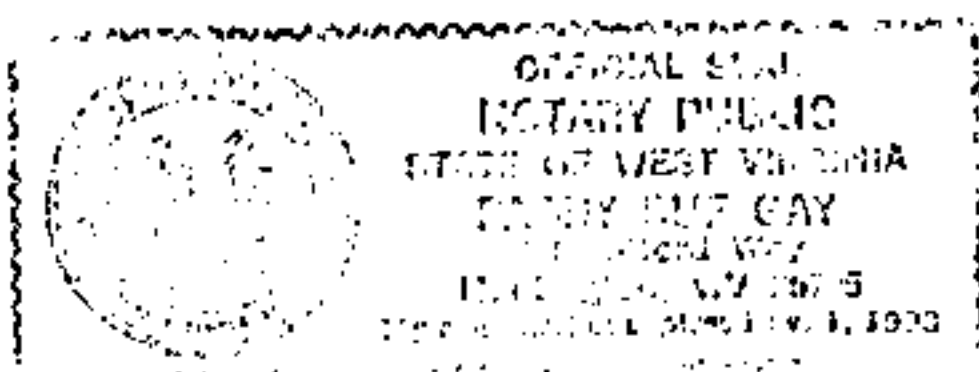
I, the undersigned, Notary Public in and for said County in said State, hereby certify that H. P. HENDRAW, whose name as PRESIDENT of Western Pocahontas Corporation, a TEXAS corporation, as general partner of **WESTERN POCAHONTAS PROPERTIES LIMITED PARTNERSHIP**, a Delaware limited partnership, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, as general partner of said partnership.

Given under my hand this the 8th day of FEBR., 1989.

*[Signature]*  
Notary Public

My Commission Expires: NOV. 1, 1998

[NOTARIAL SEAL]





STATE OF West VA  
COUNTY OF CABELL

I, the undersigned, Notary Public in and for said County in said State, hereby certify that H.P. HENSHAW, whose name as PRESIDENT of Western Pocahontas Corporation, a TEXAS corporation, as general partner of Western Pocahontas Properties Limited Partnership, a Delaware limited partnership, as Attorney-in-Fact of CSX TRANSPORTATION, INC., a Virginia corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation, as general partner of said partnership, as Attorney-In-Fact of said corporation.

Given under my hand this the 8th day of Febr, 1989.



Paddy Sue Gay  
Notary Public

My Commission Expires: Nov. 1, 1998

STATE OF Georgia  
COUNTY OF Fulton

I, the undersigned, Notary Public in and for said County in said State, hereby certify that CA HARRIS, whose name as District Manager of AMERICAN TELEPHONE AND TELEGRAPH COMPANY, a Corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such District Manager and with full authority, executed the same voluntarily for and as the act of said Corporation.

Given under my hand this the 24th day of February, 1989.

Sally E. McKee  
Notary Public

Notary Public, Georgia, State at Large  
My Commission Expires December 17, 1989

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]



CERTIFICATE OF INCUMBENCY AND AUTHORITY

I, J. C. PETRILLO, do hereby certify that I am the duly elected, qualified and acting Vice President - Southern Region, of AT&T COMMUNICATIONS, INC.; that AT&T COMMUNICATIONS, INC. is the duly authorized and acting agent for AMERICAN TELEPHONE AND TELEGRAPH COMPANY, AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC., and AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC., pursuant to valid and current resolutions of the Boards of Directors thereof; that the person whose name, title and signature appears below is the duly appointed, qualified and acting representative of AT&T COMMUNICATIONS, INC. and holds on the date of this Certificate the office set opposite his name; that the signature appearing opposite his name is the genuine signature of the representative; that the representative is duly authorized for, in the name of, and on behalf of AT&T COMMUNICATIONS, INC., for itself and for its principals, in accordance with and subject to its Schedule of Authorizations and delegations of authority, to execute and deliver documents between said Corporation and local, state or federal governmental entities, public or private corporations, partnerships, or other business organizations, or individuals, hereinafter referred to as "outside parties," and agreements and instruments in connection therewith, including or relating to applications for permits and similar documents, easement or encroachment agreements, right-of-way agreements, options, releases of easements or modifications thereto, quitclaim deeds, and documents of similar import, and documents necessary or appropriate in connection therewith; that the execution and delivery of any such document, and all agreements and instruments in connection therewith, for and on behalf of said Corporation is not prohibited by or in any manner restricted by the terms of said Corporation's Certificate of Incorporation, its by-laws, or of any loan agreement, indenture or contract to which said Corporation is a party or under which it is bound. I do further certify that the foregoing authority shall remain in full force and effect, and outside parties shall be entitled to rely upon same, until written notice of the modification, rescission or revocation of same, in whole or in part, has been delivered to said outside parties, or until the expiration of one year following the date hereof, whichever sooner occurs, but no such modification, rescission or revocation shall, in any event, be effective with respect to any documents executed or actions taken in reliance upon the foregoing authority prior thereto. AMERICAN TELEPHONE AND TELEGRAPH COMPANY, AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC., and AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC., by and through AT&T Communications, Inc., Agent, hereby waive the corporate seal on all documents signed by the representative, and agree to be bound as fully as if the corporate seal were affixed thereto.

NAME OF  
REPRESENTATIVE

C. A. Harris

TITLE OF  
REPRESENTATIVE

District Manager  
Real Estate & Construction

SIGNATURE OF REPRESENTATIVE

*C. A. Harris*

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation the 23rd day of FEBRUARY, 1988.

AT&T COMMUNICATIONS, INC. Agent for  
AMERICAN TELEPHONE AND TELEGRAPH COMPANY,  
AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC., and  
AT&T COMMUNICATIONS OF THE SOUTH CENTRAL STATES, INC.

By:

*J. C. Petrillo*  
J. C. Petrillo

Its: Vice President - Southern Region

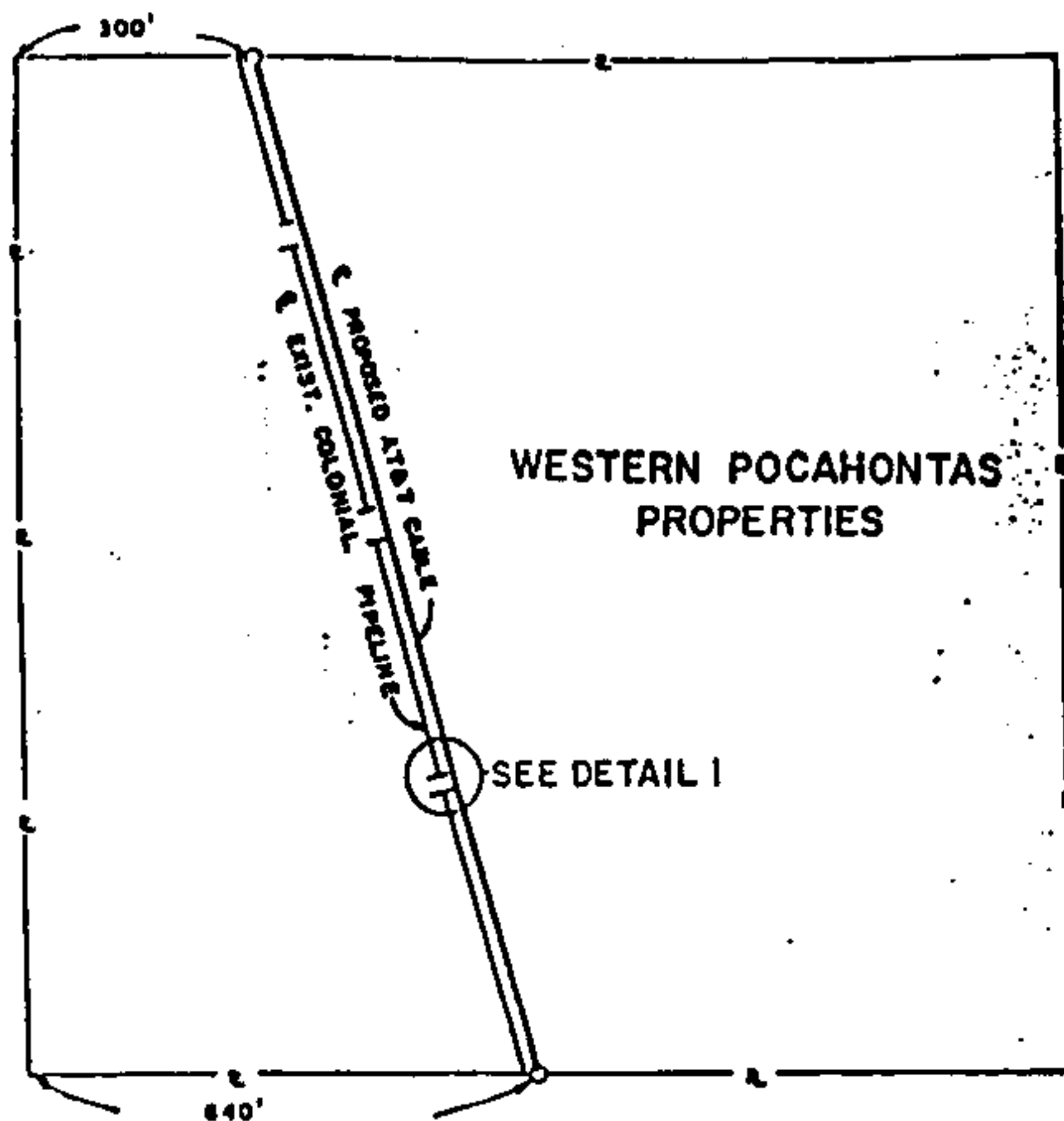
APPROVED  
AS TO FORM

ATTEST:

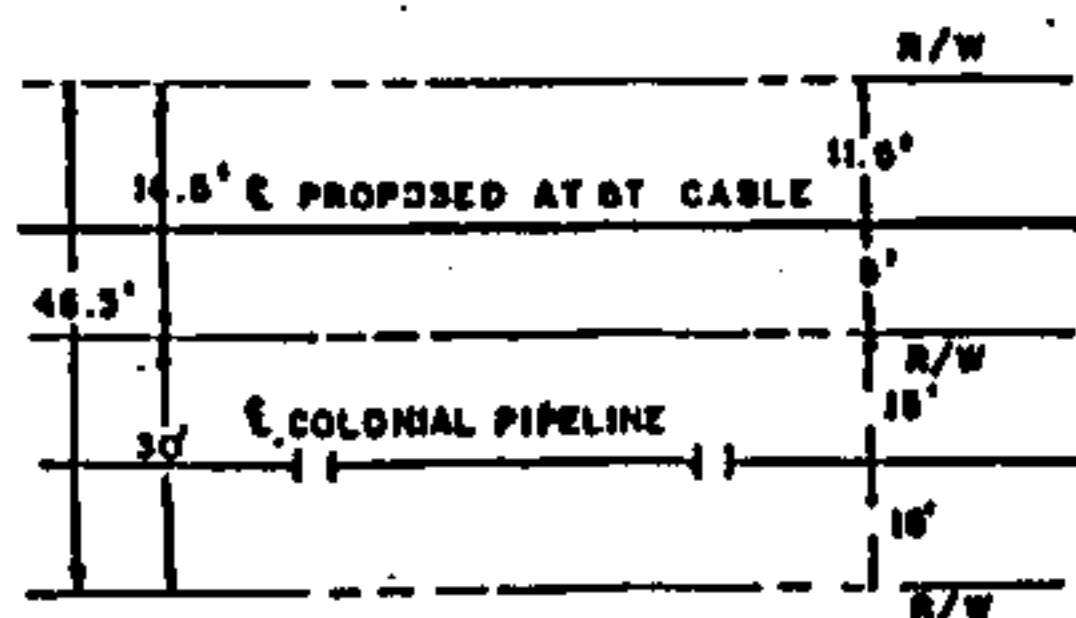
By:

*Gene V. Coker*  
Gene V. Coker

Its: Assistant Secretary



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DETAIL 1  
N.T.S.

1. Dead Tax \$ 1.00
2. Mtg. Tax \_\_\_\_\_
3. Recording Fee 25.00
4. Indexing Fee 1.00

TOTAL

27.00STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED

89 MAR 22 AM 10:39

JUDGE OF PROBATE

TOTAL FOOTAGE = 1350'

PROPOSED LIGHT GUIDE CABLE CROSSING WESTERN POCAHONTAS PROPERTIES			DRAWN BY A.E.S.I.
2	PROPERTY OWNERSHIP	8/18/88	APPV'D. BY J.L.H.
1	P/L OWNERSHIP	5/88	DWG. NO.
10	REVISION	DATE	AL-SH-000400
SCALE 1" = 300'			
DATE 4/22/88			

AT&T  
Communications