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Decision 92-06-069 June 17, 1992

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking on the Commission's own)
motion for the purpose of modifying)
existing tariff filing rules for)
telecommunications utilities, other)
than local exchange carriers and)
AT&T-C, and for the purpose of)
addressing other issues concerning)
the regulation of these utilities.)

ORIGINAL

R.85-08-042

(Filed August 21, 1985)

**ORDER MODIFYING AND GRANTING LIMITED
REHEARING OF DECISION 91-10-041**

Marin Telemanagement Corporation (MTC) has filed an application for rehearing of Decision (D.) 91-10-041. Among other things, D.91-10-041 reduced from \$420,000 to \$75,000 the financial requirement for "switchless reseller" applicants for nondominant interexchange carrier (NDIEC) certificates of public convenience and necessity (CPCNs) because it believed that applicants who do not plan to own, control, operate, or manage telephone lines will have lower operating costs than facilities-based NDIECs.

MTC argues that in D.91-10-041 the Commission: exceeded its jurisdiction by regulating switchless resellers, which do not directly own, operate, or control facilities used to complete telephone calls and are thus not public utilities; had no evidentiary basis for requiring such entities to have \$75,000 cash in order to obtain a CPCN; violated MTC's due process rights by converting its private property to public use without the owner's consent or just compensation; failed to consider anti-trust issues; failed to consider the impact of its decision on MTC's regulatory status, and erred by making a major rule change during a review of a petition to modify rather than an application.

We have examined all the allegations of error in the application and are of the opinion that there are sufficient grounds for granting rehearing with regard to financial resource requirements for resellers, and that although sufficient grounds for rehearing have not been shown with regard to the remaining allegations, certain of these allegations require discussion and others present us with good reasons to modify D.91-10-041. After discussing MTC's allegations that we erred by failing to address anti-trust issues and by using an improper procedural forum, we will set forth our modifications to D.91-10-041 and the issues to be considered in the rehearing.

We find no merit in MTC's allegation that we failed to address its concerns that D.91-10-041 may limit the number of NDIEC resellers and thus reduce competition and cause anti-trust problems. While Northern California Power Agency v. Public Utilities Commission (5 C. 3d 370, 380) requires us to consider the anti-trust implications of our decisions regarding the issuance of CPCNs, we are not required to similarly scrutinize our decisions to retain current regulatory practices. Since switchless resellers are already regulated as NDIECs, our decision to continue such regulation does not require anti-trust analysis. If in the future we significantly change the way we regulate switchless resellers, we will, of course, address the competitive impact of the change.

We also find no merit in MTC's allegation that we violated Rule 43 by making major changes in the regulation of switchless resellers in response to a petition to modify rather than an application. Rule 43 states that petitions to modify can only be used to seek minor changes in Commission decisions. Since the AGS&M petition to modify sought only an alteration in the financial requirements for certain types of NDIECs, and did not ask us to regulate any formerly unregulated businesses or make any other major changes, it falls within the scope of Rule 43 petitions.

D.91-10-041 created different financial requirements for one type of NDIEC reseller, essentially granting one aspect of the AGS&M petition to modify, but it did not otherwise modify the regulation of NDIECs. Our indication that we may reconsider switchless reseller regulation was not in itself a regulatory change. Thus, D.91-10-041 did not grant relief beyond that typically requested by way of petitions to modify.

We note that even if we had gone beyond the requested relief, our action would not have violated Rule 43. Although Rule 43 limits what a party can seek through a petition for modification, it does not limit our response to such a petition.

With regard to the procedural due process concerns underlying Rule 43, we note that the Administrative Law Judge (ALJ) made sure all participants in the original NDIEC rulemaking were notified and given an opportunity to comment on AGS&M's proposals. We do not believe that our consideration of the switchless reseller issue in response to a petition to modify rather than an application deprived MTC of due process or constituted legal error.[1]

Having addressed MTC's contentions of legal error regarding due process and the scope of the decision, we will now discuss our own concerns.

After much deliberation, we have decided to revisit the concept of financial entry requirements on a broader basis. While such requirements provide certain safeguards for consumers and suppliers, they may also serve as an inappropriate barrier to new competitive entrants. The retention of an entry barrier based on financial requirements thus may run counter to our objective of reducing or eliminating bottlenecks in the telecommunications industry. Because we want to make sure that

1 In addition, D.91-10-041 did not specifically identify, by type, MTC's ongoing business enterprise (whatever it may be), and did not order MTC to apply for a CPCN.

our regulatory programs meet our current policy objectives, we will order new hearings to address the issue of financial requirements generally. We remain, of course, concerned about safeguards to consumers and recognize that if we ultimately decide to reduce or eliminate financial fitness requirements, we must replace them with mechanisms which will afford similar protection to consumers faced, among other things, with the insolvency of NDIECs. Therefore, our new hearings will also include an examination of alternative consumer safeguards.

We are fully aware that we will be exploring issues discussed in earlier Commission decisions such as D.90-02-019 and D.90-08-032. As indicated above, this exploration may persuade us to alter or even eliminate the financial entry requirements program developed in those decisions. Rather than revise D.91-10-041 in detail to reflect our intention to re-evaluate financial requirements from a policy perspective, we will only make the modifications necessary to respond to MTC's application for rehearing in today's order, and hold all other possible modifications in abeyance pending the outcome of the new hearings.

We will, of course, comply with Public Utilities (PU) Code § 1708 by providing notice and an opportunity to be heard before we rescind, alter, or amend any previous Commission order or decision. Notice of the new hearings regarding the need for and/or appropriate size of financial requirements for NDIECs will be served on all parties to this proceeding and all others who may be interested in the regulation of NDIECs.

Finally, in response to MTC's remaining allegations, we modify D.91-10-041 as set forth below.

**THEREFORE, for good cause appearing,
IT IS HEREBY ORDERED that:**

1. Decision 91-10-041 is modified as follows:
 - a. The section labelled "A. Switchless Resellers" on

page 13 of D.91-10-041 is replaced with the following:

A. Switchless Resellers

AGS&M presumes that by definition the "Switchless Reseller" has no investment in switching equipment or leased physical telephone plant and recommends a reduced financial requirement for such businesses.

MTC argues that switchless resellers are not public utilities because they have not dedicated their private property to public use, and questions our regulation of such businesses.

We will address the jurisdictional issue first.

We are not persuaded by MTC's contention that switchless resellers have not dedicated their property to public use and cannot be subject to regulation. Our authority to regulate depends first, upon whether the business at issue falls within the statutory definition of a public utility, and second, upon whether the business has dedicated its property to public utility use. The first criterion requires analysis of the physical and financial operations of the business, while the second involves an analysis of the manner in which the business presents itself to the public.

Our analysis of the public utility status of switchless resellers requires a review of applicable constitutional and statutory definitions. We begin with the California Constitution.

Article XII, Section 3 of the California Constitution states in part that:

"[p]rivate corporations and persons that own, operate, control, or manage a line, plant, or system for ... the transmission of telephone or telegraph messages directly or indirectly to or for the public, ... are public utilities subject to control by the Legislature."

Next, we look to the Public Utilities (PU) Code. Public Utilities (PU) Code § 216 states in pertinent part that:

"(b) Whenever any ... telephone corporation... performs a service for, or delivers a commodity to, the public or any portion thereof for which any compensation ... is received, that ... telephone corporation ... is a public utility subject to the jurisdiction, control, and regulation of the commission ..."

PU Code § 233 states that:

"Telephone line" includes all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone, whether such communication is had with or without the use of transmission wires."

PU Code § 234 states in part that:

"Telephone corporation" includes every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state."

This proceeding reveals that there are at least two types of NDIEC reseller, those that own or lease, and operate facilities such as telephone cable and switching equipment, and those which provide telephone services over facilities owned by others. In our opinion, both types of resellers are public utilities as defined in the California Constitution and the Public Utilities Code.

In a determination of public utility status, it does not matter whether the ownership, control, operation, or management of the telephone line is direct or indirect. As Article XII, Section 3 of the California Constitution states, "[p]rivate corporations and persons that own, operate, control, or manage a line, plant, or system for ... the transmission of telephone directly or indirectly to or for the public, ... are public utilities" (Emphasis added.)

We conclude that MTC's emphasis on the switchless resellers' reliance on someone else's switching equipment is a regulatory red herring. The fact that a company does not own or physically operate a switch does not determine whether it operates or

manages facilities in connection with the provision of telecommunications services.[2] From the customers' viewpoint, the switchless reseller is the telephone company; it orders the establishment of service to the customers' premises and controls the rates that will be charged, and is the business they will look to when problems arise. The switchless nature of a business is irrelevant to its status as a public utility.

Next, we address MTC's dedication argument. As MTC points out, businesses which fall within the statutory definition of a public utility are not subject to our regulation unless they have dedicated their property to public use. (Richfield Oil Corporation v. Public Utilities Commission (1960) 54 C. 2d 419.)

The concept of dedication relates to PU Code § 216, which states in pertinent part that "b) whenever any ... telephone ... corporation ... performs a service for, or delivers a commodity to the public or any portion thereof for which any compensation ... is received, that ... telephone ... corporation

2 There is another reason for finding that switchless resellers are public utilities. Such resellers undoubtedly have offices, desks, files, computers, telephones, and so on which they use in their telecommunication services businesses. This "equipment, appliances, real estate, fixtures, and personal property," is owned, controlled, operated and/or managed in order "to facilitate communication by telephone," and thus is "telephone line." (PU Code § 233.) If a reseller owns, controls, operates, or manages any telephone line for compensation, it is a "telephone corporation." (PU Code § 234.) "[S]uch ownership may be of 'any part' of such plant or equipment." (Commercial Communications, Inc. v. Public Utilities Commission (1958) 50 C. 2d 512, at 520-521.) Thus, it does not matter if a reseller does not own equipment over which calls actually move. If a telephone corporation provides a commodity or service to the public for compensation, it is a public utility. (PU Code § 216.)

... is a public utility..." In S. Edwards Associates v. Railroad Commission (1925) 196 C. 62, 70, the California Supreme Court stated that the test of dedication was "whether or not those offering the service have expressly or impliedly held themselves out as engaging in the business of supplying [the commodity or service at issue] to the public as a class, not necessarily to all the public, but to any limited portion of it, such portion, for example, as could be served from his system...". This test has been repeatedly affirmed. (See, e.g., Yucaipa Water Company No. 1 v. Public Utilities Commission (1960) 54 C. 2d 823, 827.)

Each dedication case turns on a review of the specific facts presented. (See, e.g., Richfield Oil Co., supra, at 436-439.) For this reason, we cannot determine in this rulemaking whether MTC itself or any other specific business is a public utility subject to our regulation.[3]

Although we find unpersuasive MTC's contention that D.91-10-041 forces a new class of businesses to become public utilities, we note that any individual company may contest its inclusion within the class of regulated businesses at issue and argue that it had not dedicated its property to public use. It may also argue about the scope of dedication and the compensation it deserves for dedicating its property to public use.[4]

- 3 The issue of MTC's regulatory status will be addressed in the two proceedings currently before us. (MTC's application for a CPCN and concurrent motion to dismiss A.91-01-009, MTC v. Pacific Bell (C.90-11-021) and Pacific Bell v. MTC (C.91-09-030).)
- 4 The fact that a company has been found to be a public utility does not mean it will receive inadequate compensation. Rate base regulated utilities are well compensated through the return they earn on their utility plant investment. Switchless resellers, and other

(Footnote continues on next page)

We believe that it would be a regulatory nightmare if switched NDIECs were regulated, but switchless resellers were not. As DRA pointed out in response to AGS&M's petition, from the ratepayer's point of view, there is little difference between resellers and facilities-based carriers. Yet if switched NDIECs were regulated, but switchless resellers were not, the customers of certain resellers would be left without recourse to the Commission's assistance in circumstances where it would be available to the customers of other NDIECs providing similar, if not identical, services. A customer's right to redress of grievances should not depend on whether the customer happened to do business with a company that owned a switch or one that simply indirectly managed one.

MTC asks whether Centrex-based service providers that "market" exchange services for local exchange carriers (LECs) are switchless resellers subject to Commission regulation. We do not find it necessary to address this issue here, although we believe it may warrant further review in an appropriate proceeding.

We will now address AGS&M's request for lower financial requirements for switchless reseller applicants.

We agree with AGS&M that certain classes of NDIECs may have lower operating costs than others and that it may be reasonable to reduce the start-up financial requirement for such businesses. We cannot justify any specific financial requirement reduction for switchless resellers, however, without more information regarding estimated start-up costs such as rent, management, sales and clerical salaries, vehicle expenses, insurance, office supplies and necessary business forms, utilities, postage, and other routine business

(Footnote continued from previous page)

non-rate base regulated NDIECs, are free to set their own rates, and thus their return on investment, subject to certain limitations. (See, eg., D.90-08-032.)

expenses for the first six months of operation in anticipation of revenues. We also need to explore the possibility that reduced financial requirements might encourage unqualified entrants, increase the likelihood that a reseller would provide substandard performance, and lessen consumer confidence in CPCNs.

In the absence of real world estimates regarding specific switchless reseller costs, and of a comprehensive evaluation of the possible consumer consequences of reduced financial requirements, we will establish an interim financial requirement for switchless resellers of \$75,000. This will ensure that such resellers have a reasonable minimum level of financial resources and will serve as a temporary proxy for specific financial requirements until we obtain additional evidence regarding the desirability and appropriate size, if any, of financial requirement for NDIECs.

b. Findings of Fact 6 through 11 on pages 23 through 24 of D.91-10-041 are replaced with the following:

6. AGS&M's petition seeks a lesser cash requirement for a "switchless reseller" class of NDIECs on the ground that such businesses do not operate their own telecommunications switches and thus have lower cash requirements than other NDIECs.

7. It is reasonable to assume that NDIECs which do not own or directly operate telecommunications switches can operate with a lower cash requirement than can NDIECs which own switches and directly provide switching services.

7a. This proceeding has not developed a sufficient evidentiary record to justify a permanent specific financial requirement reduction for applicants wishing to obtain certificates of public convenience and necessity to operate as switchless resellers.

7b. The equipment ownership and operational characteristics of switchless resellers can serve as a useful basis for creating a new subcategory of NDIECs to be accorded favorable financial requirements, pending further evidentiary review of this issue.

8. It is possible to control, operate, or manage telephone line without owning it.

9. Resellers which do not own or directly operate their own telephone wires, cables, and switches almost certainly have offices, desks, files, computers, and telephones, and so on which they use in connection with their provision of telecommunications service to the public. This office equipment is owned, controlled, operated and/or managed in order "to facilitate communication by telephone."

10. Switchless resellers are currently regulated as NDIECs. From the customers' viewpoint, a switchless reseller is a telephone company just like any other; it orders the establishment of service to the customers' premises and controls the rates that will be charged, and is the business they will look to when problems arise."

c. Conclusions of Law 3 through 7 on page 25 of D.91-10-041 are replaced by the following:

3. AGS&M's recommendation that the minimum cash requirement of D.90-08-032 be reduced for switchless reseller applicants should be implemented through the use of a temporary \$75,000 financial requirement until we obtain additional evidence regarding the desirability and appropriate size, if any, of financial requirements for NDIECs.

4. Absent a specific evidentiary record, we have no basis for determining whether, and/or by how much, the minimum financial requirement for switchless resellers should be reduced.

5. Standard office "equipment, appliances, real estate, fixtures, and personal property," is "telephone line" as defined by PU Code § 233, if it is used in connection with the provision of telecommunication services to the public, since it is being owned, controlled, operated, or managed in order "to facilitate communications by telephone."

6. To the extent that a business owns, controls, operates, or manages any telephone line for compensation, it is a "telephone corporation" as defined by PU Code § 234.

7. If a telephone corporation provides a commodity or service to the public for compensation, it is a "public utility" as defined by PU Code § 216, and is thus subject to our jurisdiction.

8. In a determination of public utility status, it does not matter whether the ownership, control, operation, or management of the telephone line is direct or indirect. Article XII, Section 3 of the California Constitution states, "[p]rivate corporations and persons that own, operate, control, or manage a line, plant, or system for ... the transmission of telephone directly or indirectly to or for the public, ... are public utilities" (Emphasis added.)

9. Businesses which fall within the statutory definition of a public utility are not subject to our regulation unless they have dedicated their property to public use.

10. The test of dedication is "whether or not those offering the service have expressly or implied held themselves out as engaging in the business of supplying [the commodity or service at issue] to the public as a class, not necessarily to all the public, but to any limited portion of it, such portion, for example, as could be served from his system..." (S. Edwards Associates v. Railroad Commission (1925) 196 C. 62, 70.)

11. Each dedication case turns on a review of the specific facts presented. (See, e.g., Richfield Oil Co., supra, at 436-439.) For this reason, we cannot determine in this rulemaking whether MTC itself or any other specific business is a public utility subject to our regulation.

12. Any company may contest its inclusion within the class of regulated businesses at issue and argue that it has not dedicated its property to public use.

13. All businesses which provide public utility telecommunications service must have certificates of public convenience and necessity.

d. Conclusions of Law 9 and 10 on page 26 of D.91-10-041 are renumbered as Conclusions of Law 14 and 15.

e. Subsection b of Ordering Paragraph 1, on page 26 of D.91-10-041, is replaced with the following:

b. Two new paragraphs should be inserted on p. 148, between the fourth and fifth full paragraphs as follows:

It is reasonable to reduce the minimum 1991 uncommitted cash standard supporting the financial requirements of 'Switchless Reseller' applicants to \$75,000, with an annual 5% escalation of that amount after 1991, until a thorough analysis of the desirability and appropriate size, if any, of financial requirements for NDIECs can be undertaken.

Any certificated switchless reseller who desires to offer the expanded services of a facilities-based reseller, shall file an advice letter demonstrating that it meets the standard financial requirement (\$420,000 in 1991). The advice letter will require Commission approval.

f. Subsection c of Ordering Paragraph 1, on page 27 of D.91-10-041, is replaced with the following:

c. Finding of Fact 21 on p. 156 is changed entirely to read:

21. It is reasonable to reduce the minimum 1991 uncommitted cash standard supporting the financial requirements of 'Switchless Reseller' applicants to \$75,000, with an annual 5% escalation of that amount after 1991, until a thorough analysis of the desirability and appropriate size, if any, of financial requirements for NDIECs can be undertaken.

IT IS FURTHER ORDERED that:

2. Limited rehearing of D.91-10-041 is granted in order to determine: 1) the operational characteristics that might be used to define a switchless reseller category of NDIECs; 2) the extent, if any, to which the start up costs of a switchless reseller may be lower than the start up costs of other NDIECs [these costs include rent, management, sales and clerical salaries, vehicle expenses, insurance, office supplies and necessary business forms, utilities, postage, and other routine business expenses for the first six months of operation in anticipation of revenues]; 3) the probability that reduced financial requirements for switchless resellers might encourage unqualified entrants, increase the likelihood that a reseller would provide substandard performance, and lessen consumer confidence in CPCNs; 4) the desirability and appropriate size, if any, of financial entry requirements for any and all classes of NDIECs; and 5) concomitant consumer protection measures which should be adopted in the event the financial entry requirements are reduced or eliminated.

3. This limited rehearing shall be held at such time and place and before such Administrative Law Judge as shall hereafter be determined.

4. The Executive Director shall provide notice of this limited rehearing to all parties who have appeared in R.85-08-042 and all others who may be interested in regulations applicable to NDIECs.

5. Except as granted herein, rehearing of D.91-10-041 is denied.

6. The ordering paragraphs and other requirements of D.90-08-032, dated August 8, 1990, except as expressly modified herein

and by D.91-10-041, dated October 23, 1991, D.91-12-013, dated December 4, 1991, and D.92-06-034, dated June 3, 1992 continue to apply in full force after the effective date of this order. Appendix A to this order restates the currently applicable ordering paragraphs of D.90-08-032 as modified by D.91-10-041, D.91-12-013, D.92-06-034 and this order.

This order is effective today.

Dated June 17, 1992, at San Francisco, California.

DANIEL Wm. FESSLER
President
JOHN B. OHANIAN
PATRICIA M. ECKERT
NORMAN D. SHUNWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. SULMAN, Executive Director

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COMPLETE ORDERING PARAGRAPHS OF D.90-08-032
AS REVISED BY D.91-10-041, D.91-12-013,
D.92-06-034 AND D.92-06-069

O R D E R

IT IS ORDERED that:

1. All respondents and interested parties to this OIR and all nondominant interexchange telecommunications utilities (NDIEC) with utility identifying numbers U-5001-C to U-5279-C (and subsequent) are hereby placed on notice that hereafter their recordkeeping, reporting requirements, tariff filings, financing transactions and new and transfer applications, before this Commission, will be processed in accordance with the narrative, findings of fact, and conclusions of law set forth in this order, as modified by D.91-10-041, D.91-12-013, D.92-06-034 and D.92-06-069, except as may be later changed or amended again by further order of this Commission.

2. All NDIECs operating in California with utility identifying numbers U-5001-C through U-5218-C and subsequent are hereby directed to revise their tariff schedules, within 120 days after the effective date of this order to conform with the deposits, interest on deposits, and discontinuance and restoration of service provisions of this order as set forth in the narrative, findings of fact, and conclusions of law of this order.

3. The Commission Advisory and Compliance Division (CACD) is hereby directed to prepare and assemble, within 90 days after the effective date of this order, copies of sample standard tariff schedules, with rules and special conditions consistent with the narrative, findings of fact, and conclusions of law contained in this order, and make such sample standard tariff schedules available, at the Commission's standard per page charge, to any

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NDIEC, or prospective applicant for a CPC&N as an NDIEC, requesting same.

4. The CACD shall on or before January 1, 1991 and at least one time each year thereafter, prepare a list of all current NDIECs in good standing operating in California, including addresses, phone numbers and the name of the responsible contact person at each such utility, similar to Appendix C to this order, and then disseminate that list to all other telecommunications utilities including the local exchange companies and NDIECs and will provide the list at the Commission's standard per page charge to any other interested party having requested such list.

5. All NDIECs are hereby placed on notice that their California tariff filings will be processed in accordance with the following effectiveness schedule:

- a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day notice.
- b. Uniform rate reductions for existing services shall become effective on five (5) days' notice.
- c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days' notice, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- d. Uniform minor rate increases, as defined in D.90-11-029 for existing services shall become effective on not less than five (5) working days' notice. Customer notification is not required for such minor rate increases.
- e. 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

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schedules, shall become effective on forty (40) days' notice.

- f. Advice letter filings merely revising the text or location of text material which does not cause an increase in any rate or charge shall become effective on not less than five (5) days' notice.

5.1. New applicants for CPC&Ns as NDIECs shall be permitted to use any of the following financial instruments to satisfy the applicable unencumbered cash requirements established by this order.

- a. Cash or cash equivalent, including cashier's check, sight draft, performance bond proceeds, or traveler's checks;
- b. Certificate of deposit or other liquid deposit, with a reputable bank or other financial institution;
- c. Preferred stock proceeds or other corporate shareholder equity, provided that use is restricted to maintenance of working capital for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- d. Letter of credit, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- e. Line of credit or other loan, issued by a reputable bank or other financial institution, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission, and payable on an interest-only basis for the same period;
- f. Loan, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond

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certification of the applicant by the Commission, and payable on an interest-only basis for the same period;

- g. Guarantee, issued by a corporation, copartnership, or other person or association, irrevocable for a period of at least twelve (12) months beyond certification of the applicant by the Commission;
- h. Guarantee, issued by a qualified subsidiary, affiliate of applicant, or a qualified corporation holding controlling interest in the applicant, irrevocable for a period of at least twelve (12) months beyond the certification of the applicant by the Commission.

The definitions of certain of the financial instruments listed above and our intent on nondiscriminatory application of these definitions are clarified as follows:

- (1) For purposes of this order, a qualified subsidiary, affiliate, or corporation holding a controlling interest in the applicant must be either (1) a certificated going concern with active NDIEC operations in California, or (2) a going concern with active NDIEC operations outside California.
- (2) All unencumbered instruments listed in 6.a. through 6.h. above will be subject to verification and review by the Commission prior to and for a period of twelve (12) months beyond certification of the applicant by the Commission. Failure to comply with this requirement will void applicant's certification or result in such other action as the Commission deems in the public interest, including assessment of reasonable penalties. (See PU Code §§ 581 and 2112.)
- (3) Applicants for CPC&Ns as resellers shall assure that every issuer of a letter of credit, line of credit, or

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guarantee to applicant will remain prepared to furnish such reports to applicant for tendering to the Commission at such time and in such form as the Commission may reasonably require to verify or confirm the financial responsibility of applicant for a period of at least twelve (12) months after certification of the applicant by the Commission.

- (4) All information furnished to the Commission for purposes of compliance with this requirement will be available for public inspection or made public, except in cases where a showing is made of a compelling need to protect it as private or proprietary information.

5.2. Applicants who do not directly own, control, operate, or manage any conduits, ducts, poles, wires, cables, instruments, and appliances in connection with or to facilitate communications by telephone (Switchless Resellers) shall be permitted to apply for CPC&Ns with a reduced unencumbered cash requirement as discussed in the narrative, findings of fact, and conclusions of law of this order.

6. The Executive Director is hereby directed to include the applicable changes to GO 96-A from the narrative, findings of fact, and conclusions of law, of this order as applicable to NDIEC telecommunications utilities operating in California, in the next revision and printing of GO 96-A.

7. The Executive Director shall mail copies of this order to the respondents and interested parties listed in Appendices A, B, and C to this order.

This order is effective today.

Dated August 8, 1990, at San Francisco, California.

(END OF APPENDIX A)