

Decision 98-01-055 January 21, 1998

JAN 22 1998

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the Commission's  
Own Motion into Competition for Local Exchange  
Service.

Rulemaking 95-04-043  
(Filed April 26, 1995)

Order Instituting Investigation on the Commission's  
Own Motion into Competition for Local Exchange  
Service.

Investigation 95-04-044  
(Filed April 26, 1995)

**O P I N I O N**

**ORIGINAL**

By today's decision, we approve the first group of petitions for certificates of public convenience and necessity (CPCN) to operate both as resellers and as facilities-based competitive local carriers (CLCs) offering local exchange service within the territories of Roseville Telephone Company (RTC) and Citizens Telephone Company (CTC) for the petitioners set forth in Appendix B of this decision, subject to the terms and conditions contained herein.

**A. Background**

We initially established rules for resale and facilities-based CLCs to be granted CPCNs in Decision (D.) 95-07-054. Under those procedures, we processed a group of CLC candidates that filed petitions for CPCN approval by September 1, 1995, and granted authority effective January 1, 1996, for qualifying CLCs to provide facilities-based competitive local exchange service within the territories of incumbents Pacific Bell (Pacific) and GTE California, Inc. (GTEC). Since January 1, 1996, we have continued to review and approve individual CPCN applications and petitions for a number of CLCs seeking authority to offer facilities- or resale-based local exchange service within the service territories of Pacific and GTEC.

On September 24, 1997, we adopted D.97-09-115 in which we extended the coverage of our adopted rules for local exchange competition to include the service

territories of California's two midsized local exchange carriers (MSLECs), RTC and CTC. In that decision, we also authorized candidates seeking CLC CPCN authority within the MSLECs' territories to immediately begin making filings following the applicable entry rules previously adopted in D.95-07-054 and subsequent decisions. Specifically, requests for CLC CPCN authority were to be filed in the form of a petition docketed in Investigation (I.) 95-04-044, following the same rules and procedures previously adopted for filings to compete within the Pacific and GTEC service territories.

We established two separate groups of consolidated petitions: (1) those seeking facilities-based authority (a CLC may also request authority to offer resale-based local exchange service as part of its facilities-based petition) and (2) those seeking only resale authority. Petitions fitting the first group filed with the Commission's Docket Office by November 1, 1997, were to be processed and approved by February 1, 1998. After review of the filings, we herein grant CPCN authority to offer local exchange service in the MSLECs' territory to this first group of qualifying CLCs. Those CLC petitions for facilities-based authority which are filed after November 1, 1997, shall be included in subsequent CLC groups subject to consideration during future quarterly reviews<sup>1</sup> in accordance with the procedure adopted in D.96-12-020.<sup>2</sup>

In this decision, we approve CPCNs for those CLCs which filed petitions by November 1, 1997, for authority to provide resale and facilities-based service within the MSLECs' territories and satisfied all applicable rules for certification as established in Rulemaking (R.) 95-04-043/I.95-04-044. The petitioners identified in Appendix B will be

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<sup>1</sup> In D.96-12-020, we adopted a schedule for the quarterly processing of facilities-based CLC petitions covering the Pacific and GTEC territories on a consolidated basis to correspond to the processing of the Mitigated Negative Declaration required under the California Environmental Quality Act (CEQA).

<sup>2</sup> The CPCN application previously filed by Electric Lightwave, Inc. (ELI) on April 30, 1997, was converted into a petition to be included within this first group of petitioners seeking facilities-based CLC CPCN authority within the MSLECs' territory. ELI indicated its plan was to serve the RTC territory.

authorized to begin facilities-based service on or after February 1, 1998, and to begin resale service on or after April 1, 1998, upon the filing of tariffs in accordance with the terms and conditions set forth in the ordering paragraphs of this decision.

In the case of those CLC candidates in the second group who filed by December 1, 1997, seeking resale-based authority exclusively, the CPCN filings were also to be made as a petitions docketed in I.95-04-044. We established the deadline of December 1, 1997, for these filings in D.97-09-115. They shall be processed for approval in an initial consolidated group for authority to offer resale by April 1, 1998. Any requests from CLCs for resale-based authority only filed after December 1, 1997, shall be docketed as separate applications.

As we stated in D.97-09-115, until the time that tariffed wholesale discount rates are adopted for RTC and CTC, individual CLCs may enter into negotiations with each of the MSLECs to seek agreement on an interim wholesale discount rate. Disputes over the terms of resale arrangements may be submitted to the Commission for arbitration pursuant to the provisions of Section 252(b)(1) of the Act and Commission Resolution ALJ-174. Any negotiated agreements containing interim discount rates are subject to revision once tariffed wholesale discount rates are adopted in the OANAD proceeding.

#### **B. CEQA Review**

We have reviewed the petitions for compliance with CEQA. CEQA requires the Commission to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. To achieve this objective, Rule 17.1 of the Commission's Rules requires the proponent of any project subject to Commission approval to submit with the petition for approval of such project a Proponent's Environmental Assessment (PEA). The PEA is used by the Commission to focus on any impacts of the project which may be of concern, and prepare the Commission's Initial Study to determine whether the project would need a Negative Declaration or an Environmental Impact Report.

Based on its assessment of the facilities-based petitions and PEAs, the Commission staff prepared a Negative Declaration and Initial Study generally describing the facilities-based petitioners' projects and their potential environmental effects. The Negative Declaration prepared by the Commission staff is considered a Mitigated Negative Declaration (MND). This means that, although the initial study identified potentially significant impacts, revisions which mitigate the impacts to a less than significant level have been agreed to by the petitioners. (Pub. Res. Code § 21080(c)(2).)

The draft Negative Declaration and Initial Study were sent to various city and county planning agencies, as well as public libraries throughout the state for review and comment by January 5, 1998. The Commission staff prepared a public notice which announced the preparation of the draft negative declaration, the locations where it was available for review, and the deadline for written comments. The public notice was advertised in newspapers throughout the state. The draft Negative Declaration was also submitted to the Governor's Office of Planning and Research where it was circulated to affected state agencies for review and comment.

Public comments on the draft Negative Declaration have been reviewed and answered, as necessary. The Commission staff then finalized the MND covering all facilities-based CLC petitions listed in Appendix B.<sup>3</sup> The finalized MND includes a list of mitigation measures with which the CLCs must comply as a condition of their CPCN authority. The MND includes a Mitigation Monitoring Plan to ensure that the mitigation measures are followed and implemented as intended. A copy of the MND is attached to this decision as Appendix C. We hereby approve the MND as finalized by staff. Concurrently with our approval of the MND, we grant the request of the Petitioners in Appendix B for CPCN authority, subject to the terms and conditions set forth in our order below.

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<sup>3</sup> The environmental review of ELI's proposed project was previously covered in Negative Declaration VII which was approved in D.97-12-084.

**C. Review of CPCN Petitions**

The CLC petitions have been reviewed for compliance with the certification and interim entry rules adopted in Appendices A and B of D.95-07-054 and subsequent decisions in R.95-04-043/I.95-04-044. Consistent with our goal of promoting a competitive market as rapidly as possible, we are granting authority to all of the facilities-based CLCs that filed by November 1, 1997, to provide service in the MSLECs' incumbent territories, and have met the certification and entry requirements set forth in our local-exchange-competition rules. The rules are intended to protect the public against unqualified or unscrupulous carriers, while also encouraging and easing the entry of CLC providers to promote the rapid growth of competition.

Petitioners had to demonstrate that they possessed the requisite managerial qualifications, technical competence, and financial resources to provide resale and facilities-based local exchange service. As prescribed in Rule 4.B.(1), the facilities-based CLCs in question had to demonstrate that they possessed a minimum of \$100,000 in cash or cash-equivalent resources, as defined in the rule. This showing also satisfies the CLC reseller requirement calling for the CLC to have a minimum of \$25,000 in cash or cash-equivalent resources. Petitioners were also required to submit proposed tariffs which conformed to the consumer protection rules set forth in Appendix B of D.95-07-054.

**D. Protests of RTC**

On December 10, 1997, RTC filed separate protests to each of the facilities-based petitions. For certain of the petitions (i.e., Brooks Fiber and TCG San Francisco), RTC requested evidentiary hearings to resolve the issues it alleges in its protests. For other petitions, RTC does not request hearings, but asks the Commission to expressly require that the petitioner must submit its actual proposed initial rates for services by advice letter served upon RTC no less than 30 days before their proposed effective date. RTC claims such a period will provide it with an adequate opportunity to review the proposed rates and raise any issue of below-cost pricing that may be presented. Finally,

RTC asks the Commission to explicitly order that each petitioner may not price its services below cost.

Each of the petitioners filed responses objecting to RTC's protests as being without basis, and proposed denial of the protests.

RTC raises essentially the same concerns and arguments in each of its protests. Therefore, for the sake of economy, we shall address all of the protests in a consolidated fashion. Under existing tariffing filing rules set forth in General Order (GO) 96-A, CLCs must file tariffs 40 days before they become effective. Thus, RTC's request for service of a copy of each CLC's advice letter tariff filing is already adequately addressed through the provisions of GO 96-A which require each utility to serve a copy of its tariff filing on competing utilities, and any other party requesting such notification. RTC may therefore review a CLC's tariff during the 40-day waiting period before it becomes effective and file a protest if it believes the rates are improper. No additional obligations need to be imposed on CLCs.

Likewise, we find no reason to impose an additional provision in our order approving CLCs' CPCN authorities, explicitly ordering that any CLC may not price its services below cost. RTC provides no basis to show that any CLC intends to price its services below cost; it is merely speculation for RTC to assume any of the CLCs seeking competitive entry would in fact set prices below cost.

Therefore, we find no basis to grant the relief sought in RTC's protests of the pending CLC petitions.

Based upon our review, we conclude that, of the facilities-based petitioners that filed, all have satisfactorily complied with our certification requirements for entry, including meeting the consumer protection rules set forth in D.95-07-054. Accordingly, we grant these petitioners authority to offer facilities-based local exchange service. As noted earlier, we shall separately address petitioners' requests for resale authority in a later order. The list of petitioners eligible to commence service subject to the terms and conditions in the order below are identified in Appendix B, herein.

### **Findings of Fact**

1. Several facilities-based CLC candidates filed petitions for CPCN authority within the territories of the mid-sized LECs on or before November 1, 1997, as set forth in Appendix B.

2. Protests to the petitions have been filed by RTC and responses have been filed by petitioners.

3. A hearing is not required to resolve the protests filed by RTC.

4. There is no basis to grant the relief sought by RTC's protests of the pending CLC petitions.

5. RTC's request for service of a copy of the advice letter tariff filing is already adequately addressed through the provisions of GO 96-A.

6. RTC provides no basis to show that any CLC intends to price its services below cost.

7. By D.95-07-054, D.95-12-056, and D.96-02-072, we authorized resale and facilities-based CLC services within the Pacific and GTEC territories for carriers meeting specified criteria.

8. By D.97-09-115, we authorized rules governing local exchange competition in the territories of RTC and CTC.

9. The Petitioners listed in Appendix B have demonstrated that each of them has a minimum of \$100,000 of cash or cash equivalent reasonably liquid and readily available to meet their start-up expenses.

10. Petitioners' technical experience is demonstrated by supporting documentation which provides summary biographies of their key management personnel.

11. Petitioners have each previously submitted a complete draft of their initial tariffs in connection with their certification in the Pacific and GTEC territories which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements.

12. By D.97-06-107, the Petitioners are exempt from Rule 18(b).

13. Exemption from the provisions of Public Utilities (PU) Code §§ 816-830 has been granted to other non-dominant carriers. (See, e.g., D.86-10-007 and D.88-12-076.)

14. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of PU Code § 851 whenever such transfer or encumbrance serves to secure debt. (See D.85-11-044.)

### Conclusions of Law

1. Each of the Petitioners listed in Appendix B has the financial ability to provide the proposed services, and has made a reasonable showing of technical expertise in telecommunications.

2. Public convenience and necessity require the competitive local exchange services to be offered by petitioners.

3. Each Petitioner is subject to:

- a. The current 2.4% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (PU Code § 879; Resolution T-16098, December 16, 1997);
- b. The current 0.25% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-16090, December 16, 1997);
- c. The user fee provided in PU Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1997-1998 fiscal year (Resolution M-4786);
- d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-15987 at 0.0% for 1997, effective February 1, 1997);
- e. The current 2.87% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F.); and
- f. The current 0.41% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G.).

4. Petitioners are exempt from Rule 18(b).

5. Petitioners are exempt from PU Code §§ 816-830.



6. Petitioners are exempt from PU Code § 851 when the transfer or encumbrance of property serves to secure debt.

7. Each of the Petitioners must agree to, and is required to, carry out any specific mitigation measures adopted in the Negative Declaration to be in compliance with CEQA.

8. With the incorporation of the specific mitigation measures in the final MND, the petitioners' proposed projects will not have potentially significant adverse environmental impacts.

9. The Petitioners should be granted CPCN authority to the extent set forth in the order below.

10. Any CLC which does not comply with our rules for local exchange competition adopted in R.95-04-043 shall be subject to sanctions including, but not limited to, revocation of its CLC certificate.

11. Because of the public interest in competitive local exchange services, the following order should be effective immediately.

## **O R D E R**

### **IT IS ORDERED that:**

1. Authority shall be granted to each of the Petitioners set forth in Appendix B (Petitioners) for a certificate of public convenience and necessity to permit each of them to operate within the territories of Roseville Telephone Company and Citizens Telephone Company as both a facilities-based provider and a reseller of competitive local exchange telecommunications services. The facilities-based authority shall be effective on or after February 1, 1998, and the resale authority shall be effective on or after April 1, 1998.

2. The Petitioners shall file a written acceptance of the certificate authority granted in this proceeding.

3. a. The Petitioners are authorized to file with this Commission tariff schedules for the provision of resale and facilities-based competitive local exchange services. The

Petitioners may not offer these services before tariffs are on file. Petitioners' initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI, and shall be effective not less than one day after approval by the Telecommunications Division.

b. The Petitioners are competitive local carriers (CLCs). The effectiveness of each of their future tariffs is subject to the schedules set forth in Appendix A of D.95-07-054:

"E. CLCs shall be subject to the following tariff and contract-filing, revision and service-pricing standards:

"(1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days' notice to the Commission. Customer notification is not required for rate decreases.

"(2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days' notice to the Commission, and shall require bill inserts, or a message on the bill itself, or first class mail notice to customers at least 30 days in advance of the pending rate increase.

"(3) Uniform minor rate increases, as defined in D.95-07-054, shall become effective on not less than five (5) working days' notice to the Commission. Customer notification is not required for such minor rate increases.

"(4) Advice letter filing 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 schedules, shall become effective on forty (40) days' notice to the Commission.

"(5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days' notice to the Commission.

"(6) Contracts shall be subject to GO 96-A rules for NDIECs, except interconnection contracts.

"(7) CLCs shall file tariffs in accordance with PU Code Section 876."

4. The Petitioners may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers, and (b) paragraph II.C.(4), which requires that "a separate sheet or series of sheets should be used for each rule." Tariff filings incorporating these

deviations shall be subject to the approval of the Commission's Telecommunications Division. Tariff filings shall reflect all fees and surcharges to which Petitioners are subject, as described in Conclusion of Law 3. Petitioners are also exempt from GO 96-A Section II.G.(1) and (2) which require service of advice letters on competing and adjacent utilities, unless such utilities have specifically requested such service.

5. Each Petitioner shall file as part of its initial tariffs, after the effective date of this order and consistent with Ordering Paragraph 3, a service area map.

6. Prior to initiating service, each Petitioner shall provide the Commission's Consumer Services Division with its designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number(s). This information shall be updated if the name(s) or telephone number(s) change, or at least annually.

7. Each Petitioner shall notify this Commission in writing of the date local exchange service is first rendered to the public within five days after service begins.

8. Each Petitioner shall keep its books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.

9. Petitioners shall each file an annual report, in compliance with GO 104-A, on a calendar-year basis using the information-request form developed by the Commission Staff and contained in Appendix A.

10. Petitioners shall ensure that its employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.

11. The certificate granted and the authority to render service under the rates, charges, and rules authorized will expire if not exercised within 12 months after the effective date of this order.

12. The corporate identification number previously assigned to each Petitioner, as set forth in Appendix B, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. Within 60 days of the effective date of this order, each Petitioner shall comply with PU Code § 708, Employee Identification Cards, reflecting its authority, and notify the Director of the Telecommunications Division in writing of its compliance.

14. Each Petitioner is exempted from the provisions of PU Code §§ 816-830.

15. Each Petitioner is exempted from PU Code § 851 for the transfer or encumbrance of property, whenever such transfer or encumbrance serves to secure debt.

16. If any Petitioner is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, Telecommunications Division shall prepare for Commission consideration a resolution that revokes that Petitioner's CPCN, unless that Petitioner has received written permission from Telecommunications Division to file or remit late.

17. The Final Mitigated Negative Declaration, including the Mitigation Monitoring Plan, attached as Appendix C of this decision is hereby approved and adopted.

18. Each of the Petitioners listed in Appendix B shall comply with the conditions and carry out the mitigation measures outlined in the adopted Mitigated Negative Declaration.

19. Each of the Petitioners shall provide the Director of the Commission's Energy Division with reports on compliance with the conditions and implementation of mitigation measures under the schedule outlined in the Mitigated Negative Declaration.

20. Petitioners' motions for protective orders for their financial data and customer base are granted, and the confidential data covered by the protective orders shall remain under seal for one year from the date of this decision.

21. Petitioners shall comply with the consumer protection set forth in Appendix B of D.95-07-054.

22. Petitioners shall comply with the Commission's rules for local exchange competition in California that are set forth in Appendix C of D.95-12-056, including the requirement that CLCs shall place customer deposits in a protected, segregated, interest-bearing escrow account subject to Commission oversight.

23. Petitioners shall comply with the customer notification and education rules adopted in D.96-04-049 regarding the passage of calling party number.

24. The petitions listed in Appendix B are granted only as set forth above.

This order is effective today.

Dated January 21, 1998, at San Francisco, California.

P. GREGORY CONLON

President

JESSIE J. KNIGHT, JR.

HENRY M. DUQUE

JOSIAH L. NEEPER

RICHARD A. BILAS

Commissioners

**APPENDIX A**

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**TO: ALL COMPETITIVE LOCAL CARRIERS AND INTEREXCHANGE TELEPHONE UTILITIES**

Article 5 of the Public Utilities Code grants authority to the California Public Utilities Commission to require all public utilities doing business in California to file reports as specified by the Commission on the utilities' California operations.

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31<sup>st</sup> of the year following the calendar year for which the annual report is submitted.

Address your report to:

California Public Utilities Commission  
Auditing and Compliance Branch, Room 3251  
505 Van Ness Avenue  
San Francisco, CA 94102-3298

Failure to file this information on time may result in a penalty as provided for in §§ 2107 and 2108 of the Public Utilities Code.

If you have any question concerning this matter, please call (415) 703-1961.

**APPENDIX A**

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**Information Requested of California Competitive Local Carriers and Interexchange Telephone Utilities.**

To be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3251, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).  
If incorporated, specify:
  - a. Date of filing articles of incorporation with the Secretary of State.
  - b. State in which incorporated.
6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
  - a. Regulated public utility.
  - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

**(END OF APPENDIX A)**

**APPENDIX B**

**Listing of Petitioners Granted CPCN  
for Resale and Facilities-Based Local Service**

<u>Name of Petitioner</u>	<u>Petition No.</u>	<u>Utility U No.</u>
AT&T Communications, Inc.	83	U-5002
Electric Lightwave, Inc. (ELI)*		U-5377
Pac-West Telecom, Inc.	84	U-5266
TCG-San Francisco	85	U-5454
Nextlink California, Inc.	86	U-5553
GTB California, Inc.	87	U-1002
GTE Communications Corp.	88	U-5494
Brooks Fiber Communications of Sacramento, Inc.	89	U-5419
Worldcom Technologies, Inc.	90	U-5378
Covad Communications	91	U-5752
ICG Telecom Group	92	U-5406

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\* ELI initially filed its CPCN request as an application which was subsequently converted into a petition.



## APPENDIX C

## **NEGATIVE DECLARATION (VIII)**

### **Competitive Local Carriers' (CLCs)**

**Projects for Local Exchange Telecommunications Service in the telephone service territory of Roseville Telephone Company and Citizens Telephone Company of California**

**The subject of this Negative Declaration is eleven current petitions/applications for authorization to provide facilities based local telephone services. (See Appendix B).**

The California Public Utilities Commission is the lead agency in approving these petitioners' intent to compete in the local exchange market. Additional approvals by other agencies may be required depending upon the scope and type of construction proposed by the petitioner (e.g. federal, other state agencies, and ministerial permits by local agencies).

Because the subject projects of the eleven current petitioners are basically the same as the projects proposed by the past petitioners, the Commission incorporates, in whole, Negative Declaration VII for these eleven petitions, and will refer to the incorporated documents as "Negative Declaration VIII" (Section 15150 of CEQA Guidelines).

## **BACKGROUND**

The California Public Utilities Commission's Decision 95-07-054 enables telecommunications companies to compete with local telephone companies in providing local exchange service. Previous to this decision, local telephone service was monopolized by a single utility per service territory. The Commission initially received 66 petitions from companies to provide competitive local telephone service throughout areas presently served by Pacific Bell and GTE California. The 66 petitioners included cable television companies, cellular (wireless) companies,<sup>1</sup> long-distance service providers, local telephone service providers, and various other telecommunication companies that specialize in transporting data.

Forty of the sixty-six petitions were for approval of facilities-based services, which means that the petitioners proposed to use their own facilities in providing local telephone service. The remaining 26 petitions were strictly for approval of resale-based services, meaning that telephone service will be resold using another competitor's facilities. (Most of the facilities-based petitioners offer resale-based services as well.) The 40 facilities-based petitions indicated that physical modifications to existing facilities may be required, and construction of new facilities was a possibility in the long-term. The 26 resale-based petitions were strictly financial and

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<sup>1</sup> Wireless companies covered in the Negative Declarations adopted by the Commission for entry in the local telephone market are also subject to Commission General Order (G.O. 159A). G.O. 159A delegates to local governments the authority to issue discretionary permits for the approval of proposed sites for wireless facilities. Commission adoption of the Negative Declarations is not intended to supersede or invalidate the requirements contained in General Order 159A.

was a possibility in the long-term. The 26 resale-based petitions were strictly financial and billing arrangements that involved no construction and were therefore considered to be exempt from the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21000 et seq.).

The Commission issued a draft Negative Declaration for the initial 40 facilities-based petitioners in October, 1995. Comments on the draft Negative Declaration covered issues such as traffic congestion, public safety, cumulative impacts, aesthetic impacts, and physical wear on streets. These comments were addressed and the Negative Declaration was modified to some extent in response to the comments. In December, 1995, Commission Decision D.95-12-057 adopted a final mitigated Negative Declaration finding that the proposed projects of the initial 40 facilities-based petitioners would not have potentially significant environmental effects with specified mitigation measures incorporated by the projects.

Following the adoption of D.95-12-057, the Commission received eight additional petitions for facilities-based services. The eight petitioners included cable television companies, resale-based providers approved by D.95-12-057, and other telecommunication companies. Following the public comment period, the Commission made minor modifications to the first Negative Declaration, and in September, 1996, the Commission adopted the second Negative Declaration for these eight companies (D.96-09-072). (This Negative Declaration is sometimes referred to as "Negative Declaration II"). In January, 1997, the Commission adopted a third Negative Declaration for eight more facilities-based petitioners. "Negative Declaration III" is virtually the same document as Negative Declaration II because the proposed projects of the eight petitioners were no different from the projects proposed by the two groups of petitioners that preceded them. Following the issuance of Negative Declaration III, three subsequent Negative Declarations, Negative Declaration IV (D.97-04-011), Negative Declaration V (D.97-06-100), and Negative Declaration VI (D.97-09-110) have been adopted by the Commission in granting authority to provide facilities based local telecommunication services under essentially the same circumstances. Negative Declaration IV addressed nine petitioners, Negative Declaration V addressed six petitioners, Negative Declaration VI addressed eight petitioners, and Negative Declaration VII addressed 5 petitioners but has not yet been adopted by the Commission.

By Decision 97-09-115, the Commission extended the coverage of its rules, and authorized CLCs to file for authority to offer competitive local exchange service within the incumbent territories of Roseville Telephone Company and Citizens Telephone Company. The Commission ruled that petitions for CLC facilities-based authority in those designated service territories filed by November 1, 1997, would be subject to Commission consideration for approval by February 1, 1998.

### PROJECT DESCRIPTION

Following the adoption of Negative Declaration VI, the Commission received eleven more petitions/applications for facilities-based services in the Roseville and Citizens service territories.

These petitioners are the subject of this Negative Declaration. *(See Appendix B for a list of the eleven current facilities-based petitioners.)*

Similar to the earlier petitioners, the eleven current petitioners are initially targeting local telephone service for areas where their telecommunications infrastructure is already established, and therefore only minor construction is envisioned. The petitioners will need to make some modifications to their existing facilities; these modifications are minor in nature, the most common being the installation of a switch that connects potential customers to outside systems. Switch installation is necessary because customers receiving a particular type of service may not have access to local telephone networks. For example, customers receiving cable television service are presently unable to connect to local telephone networks because of the differences in modes of service. A switch installation by a cable television provider is one step that makes the connection possible. Switch installation is considered a minor modification because it typically involves a single installation within an existing central communication facility or building.

Besides the minor modifications, some of companies are planning to install their own fiber optic cables to provide adequate service. Cables will be installed within existing utility underground conduits or ducts, or attached to utility poles with existing overhead lines whenever possible. Fiber optic cables are extremely thin, and existing conduits will likely be able to hold multiple cables. However, if existing conduits or poles are unable to accommodate additional cables, then new conduits or poles will need to be constructed by the petitioner. In this case, the petitioners will construct within existing utility rights-of-way. There is also the possibility that the petitioners may attempt to access other rights-of-way (such as roads) to construct additional conduits. Extension of existing rights-of-way into undisturbed areas is not likely, but a possibility.

The installation of fiber optic cables into underground conduits will vary in complexity depending upon the conditions of the surrounding area. For example, in urban, commercial areas, utility conduits can be accessible with minimal groundbreaking and installation simply requires stringing the cable through one end of the conduit and connecting it to the desired end. In this case, major excavation of the right-of-way is unnecessary. However, there may also be conditions where access to the conduit will require trenching and excavation.

Some of the petitioners have no plans to construct service boxes or cabinets which contain batteries for the provision of power or emergency power. The dimensions of the boxes vary, but basically range from three to five feet in height. Depending upon the type of technology and facilities operated by the petitioner, smaller service boxes (approximately 3 inches in height) would be used for power supply and backup power. Those petitioners who have no plans to use such boxes already have capable power and backup power within their existing facilities. The petitioners who will need such boxes, have committed to placing the boxes in existing buildings, or in underground vaults. If conditions do not permit building or underground installation, the petitioners would use small low-profile boxes that are landscaped and fenced.

Some of the eleven current petitioners state their intention or right to compete on a state wide basis. However it is unclear at this time if all areas will be affected by the projects because the petitioners are not specific where they intend to compete in the long-run.

It is expected that most of the petitioners will initially compete for customers in urban, dense commercial areas and residential zones where their telecommunication infrastructures already exist. In general, the petitioners' projects will be in places where people live or work.

The public comment period for the draft Negative Declaration VIII began on December 5, 1997 and expired on January 5, 1998. Public notices were placed in 12 newspapers throughout the state for two consecutive weeks. These notices provided the project description, the location of the Negative Declaration for review, and instructions on how to comment. The notices also provided the Commission's website address for those interested in viewing the document via the Internet. One comment was received by the Commission. This comment is addressed in Appendix D. The Commission also filed the draft Negative Declaration VIII with the State Clearinghouse and received no written comments from other agencies.

#### **ENVIRONMENTAL DETERMINATION**

An Initial Study was prepared to assess the projects' potential effects on the environment, and the respective significance of those effects. Based on the Initial Study, the CLCs' projects for competitive local exchange service have the potential to cause significant adverse effects on the environment in the area of Land Use and Planning, Geological Resources, Water, Air Quality, Transportation and Circulation, Hazards, Noise, Public Services, Aesthetic, and Cultural Resources. The projects will have less than a significant effect in other resource areas of the checklist. It should be noted that Findings 2 through 10 are for those projects which require work within existing utility rights-of-way for the purpose of modifying existing facilities or installing new facilities. Finding 1 is applicable for work outside of the existing utility rights-of-way.

In response to the Initial Study, the following specific measures should be incorporated into the projects to assure that they will not have any significant adverse effects on the environment. (*See Public Resources Code Section 21064.5.*)

As a general matter, many of the mitigation measures rely on compliance with local standards and the local ministerial permit process. Although local safety and aesthetic input is essential in minimizing the impact of the petitioner's construction, local jurisdictions cannot impose standards or permit requirements which would prevent petitioners from developing their service territories, or otherwise interfere with the statewide interest in competitive telecommunication service. Therefore, the petitioners' required compliance with local permit requirements is subject to this limitation.

*The findings of the draft Negative Declaration were modified in response to comments filed*

*during the public comment period from Negative Declarations II and IV. Changes are marked by italics.*

1. The proposed projects could have potentially significant environmental effects for all environmental factors if a proposed project extends beyond the utility right-of-way into undisturbed areas or into other rights-of-way. ("Utility right-of-way" means any utility right-of-way, not limited to only telecommunication utility right-of-way.) For the most part, the petitioners do not plan to conduct projects that are beyond the utility right-of-way. However, should this occur, the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN). An appropriate environmental analysis of the impacts of these site specific activities shall be done.

2. The proposed projects will not have any significant effects on Population and Housing, Biological Resources, Energy and Mineral Resources, and Recreation if the proposed projects remain within existing utility right-of-way. There are no potential environmental effects in these areas, or adequate measures are incorporated into the projects to assure that significant effects will not occur.

3. The proposed projects could have potentially significant environmental effects on Geological Resources because possible upgrades or installations to underground conduits may induce erosion due to excavation, grading and fill. It is unclear as to how many times underground conduits may be accessed by the petitioners, but it is reasonable to assume that constant excavation by various providers could result in erosion in areas where soil containment is particularly unstable.

In order to mitigate any potential effects on geological resources, the petitioners shall comply with all local design, construction and safety standards by obtaining all applicable ministerial permits from the appropriate local agencies. In particular, erosion control plans shall be developed and implemented for areas identified as particularly unstable or susceptible to erosion. If more than one petitioner plans to excavate geologically sensitive areas, coordination of their plans shall be necessary to minimize the number and duration of disturbances.

4. The proposed projects could have potentially significant environmental effects on Water Resources because possible upgrades or installation to underground conduits may be in close proximity to underground or surface water sources. While the anticipated construction will generally occur within existing utility rights-of-way, the projects have the potential to impact nearby water sources if heavy excavation is required as the method of access to the conduits.

In order to mitigate any potential effects on water resources, the petitioners shall comply with all local design, construction and safety standards. This will include consultation with all appropriate local, state *and federal* water resource agencies for projects that are in

close proximity to water resources, underground or surface. The petitioners shall comply with all applicable local, state *and federal* water resource regulations. Appropriate site specific mitigation plans shall be developed by the petitioners if the projects impact water quality, drainage, direction, flow or quantity. If there is more than one petitioner for a particular area that requires excavation, coordination plans shall be required to minimize the number and duration of disturbances.

5. The proposed projects could have potentially significant environmental effects on Air Quality because possible excavation efforts for underground conduits may result in vehicle emissions and airborne dust for the immediate areas of impact. This is especially foreseeable if more than one petitioner should attempt such work in the same locale. While the impact will be temporary, the emissions and dust could exceed air quality standards for the area.

The petitioners shall develop and implement appropriate dust control measures during excavation as recommended by the applicable air quality management district. The petitioners shall comply with all applicable air quality standards as established by the affected air quality management districts. If there is more than one petitioner for a particular area that requires excavation, coordination plans shall be required to minimize the number and duration of disturbances.

6. The proposed projects could have potentially significant environmental impacts on Transportation and Circulation and Public Services because uncoordinated efforts by the petitioners to install fiber optic cable could result in a cumulative impact of traffic congestion, insufficient parking and hazards or barriers for pedestrians. This is foreseeable if the competitors choose to compete in the same locality and desire to install their own cables. If the selected area is particularly dense with heavy vehicular or pedestrian traffic, the impacts could be enormous without sufficient control and coordination. Uncoordinated efforts may also adversely impact the quality and longevity of public street maintenance because excavation activity depreciates the life of the surface pavement. *Impacts from trenching activity may occur in utility rights-of-way that contain other Public Services such as irrigation water lines.*

The petitioners<sup>2</sup> shall coordinate their efforts to install fiber optic cables or additional conduits so that the number of encroachments to the utility rights-of-way are minimized. These coordination efforts shall also include affected transportation and planning agencies to coordinate other projects unrelated to the petitioners' projects. *For example, review of a planning agency's Capital Improvement Plan (CIP) to identify impacted*

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2 The petitioners discussed in this Negative Declaration shall coordinate with all CLCs including those listed in the first Negative Declaration adopted by the Commission (D.95-12-057) and all CLCs in future Negative Declarations. CLCs covered in the first Negative Declaration shall likewise be expected coordinate with those CLCs listed in this Negative Declaration or any subsequent one adopted by the Commission.

*street projects would be an expected part of the coordination effort by the petitioner.* Besides coordinating their efforts, the petitioners shall abide by all local construction, maintenance and safety standards *(and state standards, if applicable)* by acquiring the necessary ministerial permits from the appropriate local agency or CalTrans *(if within a State right-of-way)*. Examples of these permits are excavation, encroachment and building permits. Appropriate construction start and end times, and dates if appropriate, shall be employed to avoid peak traffic periods and to minimize disruption, especially if the petitioners' work encroaches upon transportation rights-of-way. *Petitioners shall consult with local agencies on appropriate restoration of public service facilities that are damaged by the construction and shall be responsible for such restoration.*

7. The proposed projects could have potentially significant hazard-related effects because uncoordinated construction efforts described above could potentially interfere with emergency response or evacuation plans. There is also potential for an increase in overhead lines and poles which carry hazard-related impacts.

The same mitigation plan as described in the previous section is applicable here as well, and shall be augmented by notice to, and consultation with, emergency response or evacuation agencies if the proposed project interferes with routes used for emergencies or evacuations. The coordination efforts shall include provisions so that emergency or evacuation plans are not hindered. If the projects result in an increase in overhead communication lines, the petitioner shall obtain the necessary ministerial permits to erect the necessary poles to support the lines. The Commission shall include these facilities as part of its overhead line regular inspections so that the requirements of G.O. 95 are met.

8. The proposed projects could have potentially significant environmental effects on Noise because it is possible some projects may require excavation or trenching. Although the effect is likely to be short-term, existing levels of noise could be exceeded.

If the petitioner requires excavation, trenching or other heavy construction activities which would produce significant noise impacts, the petitioner shall abide by all applicable local noise standards and shall inform surrounding property owners and occupants (particularly school districts, hospitals and residential neighborhoods) of the day(s) when most construction noise would occur. Notice shall be given at least two weeks in advance of the construction.

9. The proposed projects could have potentially significant environmental effects on aesthetics because it is possible that additional lines on poles in utility rights-of-way could become excessive for a particular area. *Aesthetic impacts may also occur in utility rights-of-way that are landscaped.* Moreover, there is potential for an increase in above grade utility service boxes or cabinets which also carry aesthetic impacts.

Local aesthetic concerns shall be addressed by the petitioners for all facilities that are



above-ground, in particular all types of service boxes or cabinets. The local land use or planning agency shall be consulted by the petitioner so that any site-specific aesthetic impacts are assessed and properly mitigated. *For example, this may include restoration of the landscaped utility rights-of-way.*

10. The proposed projects could have potentially significant environmental effects on cultural resources because situations involving additional trenching may result in *disturbing known or unanticipated archaeological or historical resources.*

*The petitioners shall conduct appropriate data research for known cultural resources in the proposed project area, and avoid such resources in designing and constructing the project. Should cultural resources be encountered during construction, all earthmoving and other activity which would adversely impact such resources shall be halted or altered so as to avoid such impacts, until the petitioner retains the service of a qualified archaeologist who will do the appropriate examination and analysis. The archaeologist shall provide proposals for any procedures to mitigate the impact upon those resources encountered.*

In summary, the Mitigation Measures recommended in this environmental determination are:

**A) All Environmental Factors:** if a proposed project extends beyond the utility right-of-way into undisturbed areas or other rights-of-way, the petitioner shall file a Petition to Modify its Certificate for Public Convenience and Necessity (CPCN). ("Utility right-of-way" means any utility right-of-way, not limited to only telecommunications utility right-of-way.) An appropriate environmental analysis of the impacts of these site specific activities shall be done.

If the projects remain within the utility right-of-way, the following Mitigation Measures are recommended:

**B) General Cumulative Impacts:** in the event that more than one petitioner seeks modifications or additions to a particular locality, the petitioners shall coordinate their plans with each other, and consult with affected local agencies so that any cumulative effects on the environment are minimized. These coordination efforts shall reduce the number and duration of disturbances to existing utility rights-of-way. Regardless of the number of petitioners for a particular locality, the petitioner shall consult with, and abide by the standards established by, all applicable local agencies. Each petitioner shall file a quarterly report, one month prior to the beginning of each quarter, that summarizes the construction projects that are anticipated for the coming quarter. The summary will contain a description of the type of construction and the location for each project so that the local planning agencies can adequately coordinate multiple projects if necessary. The reports will also contain a summary of the petitioner's compliance with all Mitigation

Measures for the projects listed. The quarterly reports will be filed with the local planning agencies where the projects are expected to take place and the Commission's Telecommunications Division. The Commission filing will be in the form of an informational advice letter. Subsequent quarterly reports shall also summarize the status of the projects listed in previous quarterly report, until they are completed.

**C) Geological Resources:** the petitioners shall comply with all local design construction and safety standards by obtaining all applicable ministerial permits from the appropriate local agencies including the development and approval of erosion control plans. These shall be developed and implemented for areas identified as particularly unstable or susceptible to erosion. If more than one petitioner plans to excavate sensitive areas, coordination of their plans shall be necessary to minimize the number of disturbances. The petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.

**D) Water Resources:** the petitioners shall consult with all appropriate local, state *and federal* water resource agencies for projects that are in close proximity to water resources, whether underground or surface. The petitioners shall comply with all applicable local, state *and federal* water resource regulations including the development of site-specific mitigation plans should the projects impact water quality, drainage, direction, flow or quantity. If there is more than one petitioner for a particular area that requires excavation, coordination plans shall be required to minimize the number of disturbances. The petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.

**E) Air Quality:** the petitioners shall develop and implement appropriate dust control measures during excavation as recommended by the applicable air quality management district. The petitioners shall comply with all applicable air quality standards as established by the affected air quality management districts. If there is more than one petitioner for a particular area that requires excavation, coordination plans shall be required to minimize the number of disturbances. The petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.

**F) Transportation and Circulation and Public Services:** the petitioners<sup>3</sup> shall coordinate their efforts to install fiber optic cables or additional conduits so that the number of disturbances to the utility rights-of-way are minimized. These coordination efforts shall include affected transportation and planning agencies to coordinate other projects unrelated to the petitioners' projects. *For example, review of a planning agency's Capital Improvement Plan (CIP) to identify impacted street projects would be an expected part of the coordination effort by the petitioner.* Besides coordinating their efforts, the petitioners shall abide by all local construction, maintenance and safety

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<sup>3</sup> See Footnote #2.

standards *(and state standards, if applicable)* by acquiring the necessary ministerial permits from the appropriate local agency *and/or CalTrans (if within State right-of-way)*. Examples of these permits are excavation, encroachment and building permits. Appropriate construction start and end times, and dates if appropriate, shall be employed to avoid peak traffic periods, especially if the petitioners' work encroaches upon transportation rights-of-way. Notice to the affected area (surrounding property owners and occupants) shall be given at least two weeks in advance of the construction. The notice will provide the time and dates of the proposed construction and discussion of potential impacts on traffic and circulation. *Petitioners shall consult with local agencies on appropriate restoration of public service facilities that are damaged by the construction and shall be responsible for such restoration.* The notice required for Mitigation Measures F and H shall be consolidated. The petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.

**G) Hazards:** the petitioners shall use the Transportation and Circulation mitigation measure and augment it by informing and consulting with emergency response or evacuation agencies if the proposed project interferes with routes used for emergencies or evacuations. The coordination effort shall include provisions so that emergency or evacuation plans are not hindered. If the projects result in an increase in overhead communication lines, the petitioner shall obtain the necessary ministerial permits to erect the necessary poles to support the lines. The Commission shall include these facilities as part of its overhead line regular inspections so that the requirements of G.O. 95 are met. The petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.

**H) Noise:** the petitioner shall abide by all applicable local noise standards and shall inform surrounding property owners and occupants, particularly school districts, hospitals and residential neighborhoods, of the day(s) when most construction noise would occur if the petitioner plans excavation, trenching or other heavy construction activities which would cause any significant noise. Notice shall be given at least two weeks in advance of the construction. The notice required for Mitigation Measures F and H shall be consolidated. The petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.

**I) Aesthetics:** All applicable local aesthetic standards will be addressed by the petitioners for all facilities that are above-ground, in particular all types of service boxes or cabinets. The local land use agency shall be consulted by the petitioner so that any site-specific aesthetic impacts are assessed and properly mitigated *by the petitioner. For example, this may include restoration of the landscaped utility rights-of-way.* Petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.

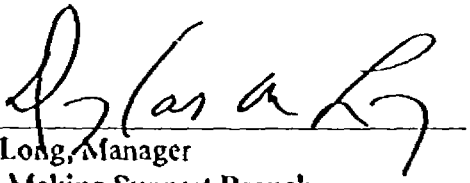
**J) Cultural Resources:** *The petitioners shall conduct appropriate data research for known cultural resources in the proposed project area, and avoid such resources in*

*designing and constructing the project. Should cultural resources be encountered during construction, all earthmoving and other activity which would adversely impact such resources shall be halted or altered until the petitioner retains the service of a qualified archaeologist who will do the appropriate examination and analysis. The archaeologist will provide proposals for any procedures to mitigate the impact upon those resources encountered. The petitioner's compliance with this Mitigation Measure shall be included in its quarterly report.*

***General Statement for all Mitigation Measures:***

*Although local safety and aesthetic input is essential in minimizing the impact of the petitioner's construction, local jurisdictions cannot impose standards or permit requirements which would prevent petitioners from developing their service territories, or otherwise interfere with the statewide interest in competitive telecommunication service. Therefore, the petitioners' required compliance with local permit requirements is subject to this limitation.*

With the implementation of the mitigation measures listed in A) - J) above, the Commission should conclude that the proposed projects will not have one or more potentially significant environmental effects. The Commission should also adopt a Mitigation Monitoring Plan which will ensure that the Mitigation Measures listed above will be followed and implemented. The Mitigation Monitoring Plan is included with this Negative Declaration as Appendix C.

  
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Douglas Long, Manager  
Decision-Making Support Branch  
Energy Division

*January 7 1998*  
\_\_\_\_\_  
Date

## INITIAL STUDY CHECKLIST

### Environmental Factors Potentially Affected:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

- |   |  |   |
|---|--|---|
| <input checked="" type="checkbox"/> Land Use and Planning | <input checked="" type="checkbox"/> Transportation/Circulation         | <input checked="" type="checkbox"/> Public Services               |
| <input type="checkbox"/> Population and Housing           | <input type="checkbox"/> Biological Resources                          | <input checked="" type="checkbox"/> Utilities and Service Systems |
| <input checked="" type="checkbox"/> Geological Problems   | <input type="checkbox"/> Energy and Mineral Resources                  | <input checked="" type="checkbox"/> Aesthetics                    |
| <input checked="" type="checkbox"/> Water                 | <input checked="" type="checkbox"/> Hazards                            | <input checked="" type="checkbox"/> Cultural Resources            |
| <input checked="" type="checkbox"/> Air Quality           | <input checked="" type="checkbox"/> Noise                              | <input type="checkbox"/> Recreation                               |
|   | <input checked="" type="checkbox"/> Mandatory Findings of Significance |   |

**Note:** For construction outside of the utility rights-of-way, potential environmental impacts are too variable and uncertain to be specifically evaluated in this Initial Study, but are addressed in Environmental Determination 1 and Mitigation Measure (A) in the Negative Declaration.

### Determination:

On the basis of this initial evaluation:

I find that the proposed projects COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared. ☐

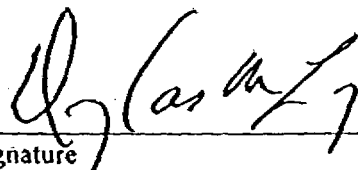
I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the projects. A NEGATIVE DECLARATION will be prepared. ☒

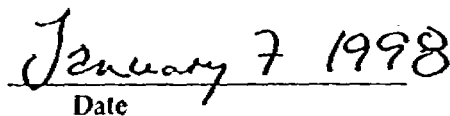
I find that the proposed projects MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required. ☐

I find that the proposed projects MAY have a significant effect(s) on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on an earlier analysis as described on attached sheets, if the effect is a "potentially significant impact" or "potentially significant unless mitigated." An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed. ☐

I find that although the proposed project could have a significant effect on the environment, there WILL NOT be a significant effect in this case because all potentially significant effects (a) have been analyzed adequately in an earlier EIR pursuant to applicable standards and (b) have been avoided or mitigated pursuant to that earlier EIR, including revisions or mitigation measures that are imposed upon the proposed project.

□

  
Signature

  
Date

Douglas M. Long  
Printed Name

Manager  
Decision-Making Support Branch  
Energy Division  
California Public Utilities Commission

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>I. LAND USE AND PLANNING. Would the proposal:</b>				
a) Conflict with general plan designation or zoning?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with applicable environmental plans or policies adopted by agencies with jurisdiction over the project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Be incompatible with existing land use in the vicinity?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Affect agricultural resources or operations (e.g. impacts to soils or farmlands, or impacts from incompatible land uses)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Disrupt or divide the physical arrangement of an established community (including a low-income or minority community)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The proposed projects are not anticipated to have any significant impacts on general or environmental plans, zoning, existing land usage, or agricultural resources. The projects are essentially modifications to existing facilities within established utility rights-of-way. Since these rights-of-way are already designed to be in compliance with zoning and land use plans, disruption of such plans are not foreseeable. In the event that the petitioners need to construct facilities that extend beyond the rights-of-way, see Mitigation Measure A in the Negative Declaration.

**II. POPULATION AND HOUSING. Would the proposal:**

a) Cumulatively exceed official regional or local population projections?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Induce substantial growth in an area either directly or indirectly (e.g. through projects in an undeveloped area or extension of major infrastructure?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Displace existing housing, especially affordable housing?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The proposed projects will not have impacts upon population or housing. The purpose of the projects is to

introduce competition into the local telephone service market. Since competition will be generally statewide and not centered in one locale, it is not anticipated that the projects will have an effect on population projections or housing availability of any particular area. The areas that will not initially receive the competition are rural, less populated areas; it cannot be seen that the initial lack of competitive services in these areas will result in significant movements of people to areas where competition will be heavy.

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>III. GEOLOGIC PROBLEMS.</b> Would the proposal result in or expose people to potential impacts involving:				
a) Fault rupture?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Seismic ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Seiche, tsunami, or volcanic hazard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Landslides or mudflows?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Erosion, changes in topography or unstable soil conditions from excavation, grading, or fill?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Subsidence of land?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
h) Expansive soils?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Unique geologic or physical features?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The projects will be constructed within existing utility facilities or established utility rights-of-way and will therefore not expose people to new risks for any of these impacts, except possibly erosion. Should additional cable facilities require the installation of new or upgraded conduits, trenching, excavation, grading and fill could be required. For appropriate mitigation, see Mitigation Measures (B) and (C) for details in the Negative Declaration.

**IV. WATER.** Would the proposal result in:

a) Changes in absorption rates, drainage patterns, or the rate and amount of surface runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Exposure of people or property to water related hazards such as flooding?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>



	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Discharge into surface waters or other alteration of surface water quality (e.g. temperature, dissolved oxygen or turbidity)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Changes in the amount of surface water in any water body?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Changes in currents, or the course or direction of water movements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Change in the quantity of ground waters, either through direct additions or withdrawals, or through interception of an aquifer by cuts or excavations or through substantial loss of groundwater recharge capability?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g) Altered direction or rate of flow of groundwater?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
h) Impacts to groundwater quality?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
i) Substantial reduction in the amount of groundwater otherwise available for public water supplies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The projects will involve alterations to existing telecommunication facilities (underground conduits or overhead poles) but could expose additional risks if more than one petitioner decides to compete in the same locality. Efforts to install cables, or if necessary, new conduits, in utility rights-of-way that are in close proximity to an underground or surface water sources could carry significant effects for quality, flow, quantity, direction or drainage if done improperly and without coordination. See Mitigation Measures (B) and (D) in the Negative Declaration for details.

**V. AIR QUALITY.** Would the proposal:

a) Violate any air quality standard or contribute to an existing or projected air quality violation?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Expose sensitive receptors to pollutants?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
c) Alter air movement, moisture, or temperature, or cause any change in climate?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Create objectionable odors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If the projects do not require excavation or trenching of underground conduits, they will not have an effect upon air quality, movement, temperature or climate. However, should the projects require such work and, if more than one petitioner decides to work in the same locale, there is potential for an increase in dust in the immediate area. See Mitigation Measures (B) and (E) in the Negative Declaration for details.

#### VI. TRANSPORTATION/CIRCULATION.

Would the proposal result in:

a) Increased vehicle trips or traffic congestion?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Hazards to safety from design features (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Inadequate emergency access or access to nearby uses?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Insufficient parking capacity on-site or off-site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Hazards or barriers for pedestrians or bicyclists?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f) Conflicts with adopted policies supporting alternative transportation (e.g. bus turnouts, bicycle racks)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Rail, waterborne or air traffic impacts?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The petitioners plan to modify existing utility conduits or poles within existing utility rights-of-way initially in urban, commercial zones and residential areas. Modification of these facilities by a single party does not present significant impacts upon traffic or circulation since the installation process is not expected to be lengthy. However, if more than one of the petitioners decide to compete in the same locality, their efforts to install their own cables will have a significant cumulative effect on circulation, especially in dense, urban commercial areas. As a result, increases in traffic congestion, insufficient parking, and hazards or barriers for pedestrian are possible. See Mitigation Measures (B) and (F) in the Negative Declaration for details.

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>VII. BIOLOGICAL RESOURCES.</b>				
Would the proposal result in impacts to:				
a) Endangered, threatened, or rare species or their habitats (including but not limited to plants, fish, insects, animals, and birds)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Locally designated species (e.g. heritage trees)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Locally designated natural communities (e.g. oak forest, coastal habitat, etc.)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Wetland habitat (e.g. marsh, riparian and vernal pool)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Wildlife dispersal or migration corridors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The projects will not affect any biological resources since all anticipated work will occur within existing utility facilities or established utility rights-of-way. Established utility rights-of-way are assumed to be outside of locally designated natural communities, habitats or migration corridors.

#### **VIII. ENERGY AND MINERAL RESOURCES.**

Would the proposal result in:

a) Conflict with adopted energy conservation plans?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Use non-renewable resources in a wasteful and inefficient manner?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Result in the loss of availability of a known mineral resource that would be of future value to the region and the residents of the State?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The projects will have no impact upon mineral resources or the use of energy. The projects provide competitive telecommunication services that have no direct relationship to efficient energy use or mineral resources. The installation of additional fiber optic cables are within existing facilities or rights-of-way that are assumed to have adequate mitigation designs to avoid impacts on any mineral resources within proximity.

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>IX. HAZARDS. Would the proposal involve:</b>				
a) A risk of accidental explosion or release of hazardous substances (including, but not limited to: oil, pesticides, chemicals or radiation)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Possible interference with an emergency response plan or emergency evacuation plan?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) The creation of any health hazard or potential health hazard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Exposure of people to existing sources of potential health hazards?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Increased fire hazard in areas with flammable brush, grass, or trees?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The installation of fiber optic cables can be a quick, clean and simple procedure with little use of heavy machinery. However there may be situations where excavation and trenching of underground conduits is necessary if the conduits are not easily accessible. Should this occur, uncoordinated efforts by the petitioners in one concentrated area could potentially affect emergency response or evacuation plans for that locale. See Mitigation Measures (B) and (G) in the Negative Declaration for details. Once the project is completed, the additional cables do not represent any additional hazards to people nor do they increase the possibility of fires.

**X. NOISE. Would the proposal result in:**

- |   |                          |                                     |                          |                          |
|---|--------------------------|-------------------------------------|--------------------------|--------------------------|
| a) Increases in existing noise levels?        | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b) Exposure of people to severe noise levels? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

The anticipated projects can be a quick and simple procedure, but in some cases could require heavy machinery or construction activity such as excavation, trenching, grading and refill. There is also the possibility that uncoordinated efforts by the petitioners in one locale could increase existing noise levels, if their activities involve the construction described. See Mitigation Measures (B) and (H) in the Negative Declaration for details.

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XI. PUBLIC SERVICES.</b> Would the proposal have an effect upon, or result in a need for new or altered government services in any of the following areas:				
a) Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Maintenance of public facilities, including roads?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Other government services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The proposed projects will increase competition in the local telephone service. The construction associated with the projects have potential impacts on the maintenance of public streets and roads. Numerous disturbances to the street surfaces depreciates the quality and longevity of the pavement. Trenching projects may also impact other existing public service facilities (e.g. irrigation lines) in the utility rights-of-way. Mitigation Measure F addresses this impact.

**XII. UTILITIES AND SERVICE SYSTEMS.** Would the proposal result in a need for new systems or supplies, or substantial alterations to the following utilities:

a) Power or natural gas?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Communication systems?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Local or regional water treatment or distribution facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Sewer or septic tanks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e) Storm water drainage?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
f) Solid waste disposal?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
g) Local or regional water supplies?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The proposed projects could substantially alter communication systems in the event that existing facilities are unable to accommodate all of the participants in the market. If this should occur, additional conduits or poles for telecommunication equipment will need to be inserted in existing utility rights-of-way or the petitioners may seek entry to other rights-of-way. If the petitioners are forced to construct outside of the existing utility rights-of-way,

Mitigation Measure A is applicable. For work within the rights-of-way, see Mitigation Measure B in the Negative Declaration.

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>XIII. AESTHETICS. Would the proposal:</b>				
a) Affect a scenic vista or scenic highway?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Have a demonstrated negative aesthetic effect?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Create light or glare?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The proposed projects will occur within utility rights of way that will be either be undergrounded or on existing poles. Undergrounded facilities will have no demonstrated negative aesthetic effects. *However, landscaped utility rights-of-way may be impacted by trenching activities.* Additional lines on the poles may be a concern, but the proposed cables are not easily discernible and will unlikely have a negative impact. The only scenario where an aesthetic effect can occur is if the number of competitors for a particular area become so heavy that the cables on the poles become excessive. There is potential for an increase in service boxes if the boxes cannot be installed within buildings or underground. Should this occur, the petitioners should follow Mitigation Measures (B) and (I) as described in the Negative Declaration.

**XIV. CULTURAL RESOURCES. Would the proposal:**

a) Disturb paleontological resources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Disturb archaeological resources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Affect historical resources?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Have potential to cause a physical change which would affect unique ethnic cultural values?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Restrict existing religious or sacred uses within the potential impact area?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The projects will involve existing utility facilities or established rights-of-way that are assumed to be clear from any paleontological, historical or archaeological resources. However, some projects may require excavation or trenching of utility rights-of-way, or outside the rights-of-way. If *known or unanticipated* cultural resources are encountered during such work, then the Mitigation Measures (B) and (J) should be followed. See Negative Declaration for details.

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less Than Significant Impact	No Impact
--	--------------------------------------	--	------------------------------------	--------------

**XV. RECREATION. Would the proposal:**

- |   |                          |                          |                          |                                     |
|---|--------------------------|--------------------------|--------------------------|-------------------------------------|
| a) Increase the demand for neighborhood or regional parks or other recreational facilities? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Affect existing recreational opportunities?  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

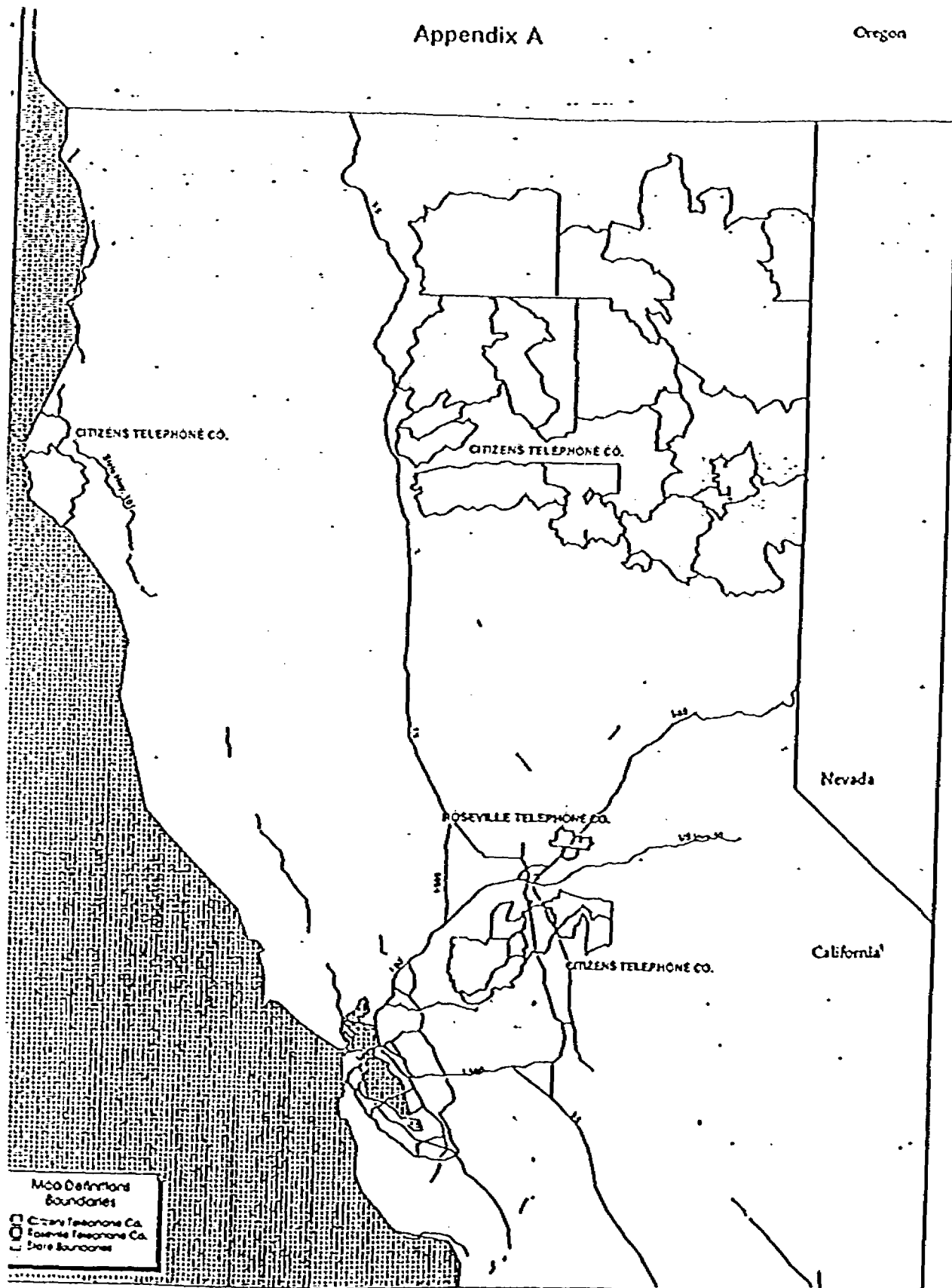
The projects will have no impact on recreational facilities or opportunities since these resources have no direction relationship to increased competition in local telephone services.

**XVI. MANDATORY FINDINGS OF SIGNIFICANCE.**

- |   |                          |                                     |                          |                                     |
|---|--------------------------|-------------------------------------|--------------------------|-------------------------------------|
| a) Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory? | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| b) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals?  | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| c) Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probably future projects.)  | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/>            |
| d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?   | <input type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

# Appendix A

Oregon





## Appendix B

### Project Sponsors and Addresses

- |     |  |  |
|-----|--|--|
| 1.  | Electric Lightwave, Inc.<br>A. 97-04-061                       | 8100 N.E. Parkway Drive, Suite 150<br>Vancouver, WA 98662          |
| 2.  | AT&T Communications of California, Inc.<br>I. 95-04-044        | 795 Folsom Street, Room 208<br>San Francisco, CA 94107             |
| 3.  | Pac-West Telecomm, Inc.<br>I. 95-04-044                        | 4210 Coronado Drive<br>Stockton, CA 95204                          |
| 4.  | TCG San Francisco, dba TCG Northern California<br>I. 95-04-044 | One Bush Street<br>San Francisco, CA 94104                         |
| 5.  | Nextlink California, Inc.<br>I. 95-04-044                      | 1924 Deere Avenue<br>Santa Ana, CA 92705                           |
| 6.  | GTE California, Inc.<br>I. 95-04-044                           | One GTE Place<br>Thousand Oaks, CA 91362-3811                      |
| 7.  | GTE Communications Corporation<br>I. 95-04-044                 | 1200 Walnut Hill Lane, Suite 2600<br>Irving, TX 75038              |
| 8.  | Brooks Fiber Communication of Sacramento, Inc.<br>I. 95-04-044 | 464 Oakmead Parkway<br>Sunnyvale, CA 94086-4708                    |
| 9.  | WorldCom Technologies, Inc.<br>I. 95-04-044                    | 225 Bush Street, 19 <sup>th</sup> Floor<br>San Francisco, CA 94104 |
| 10. | Covad Communications Company<br>I. 95-04-044                   | 3560 Bassett Street<br>Santa Clara, CA 95054                       |
| 11. | ICG Telecom Group, Inc.<br>I. 95-04-044                        | 9605 East Maroon Circle<br>Englewood, CO 80112                     |

## **Appendix C**

### **Mitigation Monitoring Plan**

#### **Competitive Local Carriers (CLCs)**

#### **Projects for Local Exchange Telecommunication Service throughout California**

##### **Introduction:**

The purpose of this section is to describe the mitigation monitoring process for the CLCs' proposed projects and to describe the roles and responsibilities of government agencies in implementing and enforcing the selected mitigation measures.

##### **California Public Utilities Commission (Commission):**

The Public Utilities Code confers authority upon the Commission to regulate the terms of service and safety, practices, and equipment of utilities subject to its jurisdiction. It is the standard practice of the Commission to require that mitigation measures stipulated as conditions of approval be implemented properly, monitored, and reported on. Section 21081.6 of the Public Utilities Code requires a public agency to adopt a reporting and monitoring program when it approves a project that is subject to the adoption of a mitigated negative declaration.

The purpose of a reporting and monitoring program is to ensure that measures adopted to mitigate or avoid significant environmental impacts are implemented. The Commission views the reporting and monitoring program as a working guide to facilitate not only the implementation of mitigation measures by the project proponents, but also the monitoring, compliance and reporting activities of the Commission and any monitors it may designate.

The Commission will address its responsibility under Public Resources Code Section 21081.6 when it takes action on the CLCs' petitions to provide local exchange telephone service. If the Commission adopts the Negative Declaration and approves the petitions, it will also adopt this Mitigation Monitoring Plan as an attachment to the Negative Declaration.

##### **Project Description:**

The Commission has authorized various companies to provide local exchange telephone service in competition with Pacific Bell and GTE California. The current eleven petitioners notified the Commission of their intent to compete in the territories presently served by Roseville Telephone Company and Citizens Telephone Company of California, all of which are facilities-based services meaning that they propose to use their own facilities to provide service.

Since many of the facilities-based petitioners are initially targeting local telephone service for areas where their telecommunications infrastructure is already established, very little construction is envisioned. However, there will be occasion where the petitioners will need to install fiber optic cable within existing utility underground conduits or attach cables to overhead lines. There is the possibility that existing utility conduits or poles will be unable to accommodate all the planned facilities, thereby forcing some petitioners to build or extend additional conduits into other rights-of-way, or into undisturbed areas. For more details on the project description please see Project Description in the Negative Declaration.

#### **Roles and Responsibilities:**

As the lead agency under the California Environmental Quality Act (CEQA), the Commission is required to monitor this project to ensure that the required mitigation measures are implemented. The Commission will be responsible for ensuring full compliance with the provisions of this monitoring program and has primary responsibility for implementation of the monitoring program. The purpose of this monitoring program is to document that the mitigation measures required by the Commission are implemented and that mitigated environmental impacts are reduced to insignificance or avoided outright.

Because of the geographic extent of the proposed projects, the Commission may delegate duties and responsibilities for monitoring to other environmental monitors or consultants as deemed necessary. For specific enforcement responsibilities of each mitigation measure, please refer to the Mitigation Monitoring Table attached to this plan.

The Commission has the ultimate authority to halt any construction, operation, or maintenance activity associated with the CLC's local telephone service projects if the activity is determined to be a deviation from the approved project or adopted mitigation measures. For details refer to the mitigation monitoring plan discussed below.

#### **Mitigation Monitoring Table:**

The table attached to this plan presents a compilation of the Mitigation Measures in the Negative Declaration. The purpose of the table is to provide the monitoring agencies with a single comprehensive list of mitigation measures, effectiveness criteria, the enforcing agencies, and timing.

#### **Dispute Resolution Process:**

The Mitigation Monitoring Plan is expected to reduce or eliminate many potential disputes. However, in the event that a dispute occurs, the following procedure will be observed:

**Step 1:** Disputes and complaints (including those of the public) shall be directed first to the Commission's designated Project Manager for resolution. The Project Manager will attempt to resolve the dispute.

**Step 2:** Should this informal process fail, the Commission Project Manager may initiate enforcement or compliance action to address deviation from the proposed project or adopted Mitigation Monitoring Program.

**Step 3:** If a dispute or complaint regarding the implementation or evaluation of the Mitigation Monitoring Program or the Mitigation Measures cannot be resolved informally or through enforcement or compliance action by the Commission, any affected participant in the dispute or complaint may file a written "notice of dispute" with the Commission's Executive Director. This notice shall be filed in order to resolve the dispute in a timely manner, with copies concurrently served on other affected participants. Within 10 days of receipt, the Executive Director or designee(s) shall meet or confer with the filer and other affected participants for purposes of resolving the dispute. The Executive Director shall issue an Executive Resolution describing his or her decision, and serve it on the filer and the other participants.

Parties may also seek review by the Commission through existing procedures specified in the Commission's Rules of Practice and Procedure, although a good faith effort should first be made to use the foregoing procedure.

#### **Mitigation Monitoring Program:**

1. As discussed in Mitigation Measure B, the petitioners shall file a quarterly report which summarizes those projects which they intend to construct for the coming quarter. The report will contain a description of the project and its location, and a summary of the petitioner's compliance with the Mitigation Measures described in the Negative Declaration. The purpose of the report is to inform the local agencies of future projects so that coordination of projects among petitioners in the same locality can be done. The quarterly report shall be filed with the appropriate planning agency of the locality where the project(s) will occur. The report shall also be filed as an informational advice letter with the Commission's Telecommunications Division so that petitioner compliance with the Mitigation Measures are monitored..

In order to ensure that the Mitigation Measures are fulfilled, the Commission will make periodic reviews of the projects listed in quarterly reports. The projects will be generally chosen at random, although the Commission will review any project at its discretion. The reviews will follow-up with the local jurisdictions so that all applicable Mitigation Measures are addressed.

If any project is expected to go beyond the existing utility rights-of-way, that project will require a separate petition to modify the CPCN. The petitioner shall file the petition with the Commission and shall also inform the affected local agencies in writing. The local agencies are also responsible for informing the Commission of any project listed in the quarterly reports which may potentially go out of the existing utility right-of-way. As discussed in Mitigation Measure A under the circumstances, a complete environmental review of the project will be triggered under CEQA, with the Commission as the lead agency.

2. In the event that the petitioner and the local agency do not agree if a project results in work outside of the utility rights-of-way, the Commission will review the project and make the final determination. See Dispute Resolution Process discussed above.

3. For projects that are in the utility rights-of-way, the petitioners shall abide by all applicable local standards as discussed in the Mitigation Measures. If a petitioner fails to comply with local regulatory standards by either neglecting to obtain the necessary permits, or by neglecting to follow the conditions of the permits, the local agency shall notify the Commission and Dispute Resolution Process begins.

4. The Commission is the final arbiter for all unresolvable disputes between the local agencies and the petitioners. If the Commission finds that the petitioner has not complied with the Mitigation Measures in the Negative Declaration, it may halt and terminate the project.

Mitigation Monitoring Table

Impact	Mitigation Measure	Monitoring/Reporting	Effectiveness Criteria	Responsible Agency	Timing
<b>ALL FACTORS</b>					
Extension or work beyond or outside of the existing utility right-of-way into undisturbed areas.	A. Petitioner must file a Petition to modify its CPCN. An appropriate environmental study of the project is done.	Quarterly reports.	Any work outside of existing utility right-of-way is assessed through an environmental study.	CPUC	Before construction
<b>CUMULATIVE EFFECTS</b>					
Cumulative impacts due to multiple disturbances to a particular area.	B. Coordination efforts among the petitioners and the affected local agencies so that construction projects in the same location can be combined or simultaneous.	Quarterly reports.	The number and duration of disturbances to a particular area are minimized.	Local agencies.	Before construction
<b>GEOLOGICAL RESOURCES</b>					
Potential erosion due to excavation, grading and fill.	C. Petitioners shall comply with all local design, construction and safety standards through permit process. Erosion control plans for areas identified as susceptible to erosion.	Quarterly reports.	Erosion at the project areas is contained.	Local agencies.	Before and during construction.
<b>WATER RESOURCES</b>					
Potential impact on water resources, underground or surface due to excavation or grading work.	D. Petitioners shall consult with all appropriate water resource agencies for projects in close proximity to water resources. Appropriate mitigation plans shall be developed and compliance to all local and state water regulations is required.	Quarterly reports.	Impacts to water quality, drainage, flow, direction and quantity are averted.	Federal agencies. Local agencies. Applicable state water resource agencies.	Before and during construction.

\* The CPUC is ultimately responsible for compliance with the mitigation measures listed in this document, but shall defer the responsibility to federal, state and local agencies, unless otherwise designated.

Mitigation Monitoring Table

Impact	Mitigation Measure	Monitoring/Reporting Action	Effectiveness Criteria	Responsible Agency	Timing
<b>AIR QUALITY</b>					
Excessive dust and other air emissions due to construction.	E. Appropriate dust control measures by petitioner.  Compliance with all applicable air quality standards as established by air quality management districts.	Quarterly reports.	Dust and other emissions are contained.  Air quality standards for area are met.	Air quality management districts.	Before and during construction.
<b>TRANSPORTATION &amp; CIRCULATION &amp; PUBLIC SERVICES</b>					
Traffic congestion, insufficient parking, and hazards for pedestrians.  Impacts upon public service facilities located in utility right-of-way.	F. Coordination by petitioners through local agencies to minimize right-of-way encroachments.  All local safety and construction standards shall be met through the local permit process.  Advance notice to surrounding area of construction date and time.  Consultation w/ local agencies on appropriate restoration of impacted public service facilities in right-of-way.	Quarterly reports.	Traffic congestion is minimized.  Public service facilities restored appropriately.	Caltrans Local agencies.	Before and during construction.
<b>HAZARDS</b>					
Construction in right-of-way may interfere with emergency or evacuation plans.	G. Measure F above shall be augmented by informing and consulting with emergency and evacuation agencies if the proposed project impacts a route used for emergencies or evacuations.	Quarterly reports.	Construction projects do not interfere with emergency or evacuation routes.	Local agencies.	Before and during construction.

Mitigation Monitoring Table

Impact	Mitigation Measure	Monitoring/Reporting / Action	Effectiveness Criteria	Responsible Agency	Timing
<b>HAZARDS</b>					
Potential increase in overhead poles and communication lines.	G. Petitioner shall obtain all necessary building permits for the poles.  CPUC will inspect the overhead lines.	Quarterly reports.	Poles are built in compliance with local safety standards. Lines are inspected and maintained as safe.	CPUC Local agencies.	Before and during construction.
<b>NOISE</b>					
Noise standards for the area are exceeded due to construction.	H. All applicable noise standards shall be complied with by the petitioners.  Petitioners shall notice the surrounding area of construction's dates and times.	Quarterly reports.	Noise from construction is kept to levels that do not exceed local standards.	Local agencies	Before and during construction.
<b>AESTHETICS</b>					
Service boxes or cabinets may be a visual blight. Landscaping in utility right-of-way may be impacted by trenching.	I. All applicable aesthetic standards will be met by petitioners for above ground facilities, especially service cabinets. Consult with local agencies on proper restoration of landscaping.	Quarterly reports.	Cabinets are placed within existing buildings, underground, or in areas that are landscaped so that aesthetic impacts are minimized. Landscaping restored to original form.	Local agencies.	Before and during construction.
<b>CULTURAL RESOURCES</b>					
Cultural resources are encountered during construction; resources are damaged or moved.	J. All earthmoving that would impact the resources shall cease or be altered until the petitioner retains the service of an archaeologist who will propose mitigation. Thorough research done prior to construction to avoid known resources	Quarterly reports.	Cultural resources that are encountered are not destroyed or adversely impacted.	Local, state and/or federal agencies.	Before and during construction.



## Appendix D

### Response to Comments

One comment letter was received.

1. Jeffrey Pulverman, Chief, Office of Transportation Planning - Metropolitan, District 3, Department of Transportation, State of California-Business, Transportation and Housing Agency

Comment: Any utility project work to be performed within State right of way will require an encroachment permit. For permit assistance in the Caltrans District 3 geographical area, please contact Rich Jones at (916) 741-5347. Construction operations which may pose a disruption to nearby traffic facilities should not coincide with AM and PM peak hour commute periods.

Response: In locating its projects, the petitioners will need to cooperate with and obtain any ministerial local permits or approvals required for construction and operation of projects to ensure safety and compliance with local standards. The fact that petitioners must obtain local ministerial permits does not indicate that the Commission has relinquished its authority. General land use and zoning authority does not permit local agencies to thwart any legitimate construction project necessary to provide utility service. The Mitigation Monitoring Plan (Appendix C) designates the Commission as the final arbiter for disputes between local agencies and the petitioner(s)

(END OF APPENDIX G)