ALJ/TRP/jva

Mailed 3/18/99

Decision 99-03-050 March 18, 1999

**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) (Petition Nos. 127, 128, 129, 130, and 131) |

ORIGINAL

# OPINION

By this decision, we grant the petitions for certificates of public convenience and necessity (CPCN) to operate as facilities-based competitive local carriers (CLCs) and to offer resold local exchange services within the territories of Pacific Bell (Pacific), GTE California Incorporated (GTEC), Roseville Telephone Company (RTC), and Citizens Telephone Company (CTC), for those petitioners as set forth in Appendix B of this decision, subject to the terms and conditions included herein. We also grant petitioners' requests for intrastate interLocal Access and Transport Areas (interLATA) and intraLATA authority on a statewide basis as designated in Appendix B.

## I. Background

We initially established rules for entry of facilities-based CLCs in Decision (D.) 95-07-054. Under those procedures, we processed a group of candidates that filed petitions for CPCNs by September 1, 1995, and granted authority effective January 1, 1996, for qualifying CLCs to provide facilities-based competitive local exchange service in the territories of Pacific and GTEC. We authorized CLCs seeking to provide resale-based services to begin operations on March 1, 1996.

We further advised prospective entrants that any filings from nonqualifying CLCs, and any filing for CLC operating authority made after September 1, 1995, would be treated as standard applications and processed in the normal course of the Commission's business.

By D.96-12-020, effective January 1, 1997, we instituted quarterly processing cycles for granting CPCN authority for facilities-based CLCs in order to streamline the approval process for these particular carriers. Since we had been processing the environmental impact review required under the California Environmental Quality Act (CEQA) on a consolidated basis for groups of qualifying facilities-based CLCs, we concluded in D.96-12-020 that it would be more efficient and consistent to process other aspects of the CLC filings on a consolidated basis, as well. Accordingly, we directed that any CLC filing on or after January 1, 1997, for facilities-based CPCN authority was to make its filing in the form of a petition to be docketed in Investigation (I.) 95-04-044 that would be processed quarterly on a consolidated basis. CLCs seeking only resale authority continued to file individual applications.

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 for facilities-based service were to be filed in the form of a petition docketed in I.95-04-044, while resellers have sought authority through applications. In D.98-01-055, we approved the first group of petitions for facilities-based CPCNs to offer local exchange service within the MSLEC territories.

In this decision, we approve CPCNs for those facilities-based CLCs which filed petitions during the fourth quarter of 1998 and satisfied all applicable rules for certification as established in Rulemaking (R.) 95-04-043. The Petitioners identified in Appendix B will be authorized to begin offering service upon the filing of tariffs and compliance with the terms and conditions set forth in this order.

## II. 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 needs a Negative Declaration or an Environmental Impact Report (EIR).

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).)

On January 26, 1999, the 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 February 24, 1999. 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 will be reviewed and answered, as necessary. The Commission staff then finalized the MND covering all facilities-based CLC petitions listed in Appendix B. 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 D. 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.

## III. Review of CPCN Petitions

### A. Overview

The CLC petitions have been reviewed for compliance with the certification-and-entry rules (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 during the fourth quarter of 1998 and met the 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 facilities-based local exchange service. Petitioners were also required to submit proposed tariffs which conform to the consumer protection rules set forth in Appendix B of D.95-07-054. In response to a notice of tariff deficiencies, the various petitioners submitted tariff corrections. Except for the outstanding deficiencies noted in Appendix C, the petitioners' proposed tariffs are found to be satisfactory with no deficiencies noted.

As prescribed in Rule 4.B.(1), prospective facilities-based CLCs must also show that they possess a minimum of $100,000 in cash or cash-equivalent resources, as defined in the Rules. In order to demonstrate that they possess the requisite financial resources, petitioners submitted copies of recent financial statements. Because the financial statements contain commercially sensitive information, the petitioners filed motions for limited protective orders to restrict the financial statements and related documents containing commercially sensitive information from public disclosure pursuant to General Order (GO) 66-C. We grant those motions as prescribed in our order below.

Based upon our review, we conclude that each of the facilities-based Petitioners identified in Appendix B, has satisfactorily complied with our certification requirements for entry, including the consumer protection rules set forth in D.95-07-054, subject to correcting the tariff deficiencies in Appendix E, and satisfying the conditions set forth in the ordering paragraphs below. Accordingly, we grant these Petitioners authority to offer facilities-based and resold local exchange service within the territories of Pacific and GTEC, and

where requested, within the CTC and RTC territories. We also grant the statewide inter- and intraLATA authority as requested.

Pursuant to D.97-09-115, CLC resale authority within the RTC and CTC territories was authorized to become effective on or after April 1, 1998. As we stated in D.97-09-115, until the time that tariffed wholesale discount rates are adopted for RTC and CTC, individual CLCs certificated to resell local service within the CTC/RTC territories 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 Telecommunication Act of 1996 and Commission Resolution ALJ-174.

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

## Findings of Fact

1. Five petitioners filed requests during the fourth quarter of 1998 seeking a CPCN to provide competitive local exchange services in the territories of various California incumbent local exchange carriers as set forth in Appendix B.
2. No protests have been filed.
3. A hearing is not required.
4. By prior Commission decisions, we authorized competition in providing local exchange telecommunications service within the service territories of Pacific, GTEC, RTC, and CTC for carriers meeting specified criteria.

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

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

7. Except as noted in Appendix E, Petitioners have each submitted a complete draft of their initial tariff which complies with the requirements established by the Commission, including prohibitions on unreasonable deposit requirements.

8. By D.97-06-107, petitioners or applicants for CLC authority are exempt from Rule 18(b).

9. Exemption from the provisions of Public Utilities (Pub. Util.) Code §§ 816-830 has been granted to other nondominant carriers. (*See*, e.g., D.86-10-007 and D.88-12-076.)

10. The transfer or encumbrance of property of nondominant carriers has been exempted from the requirements of Pub. Util. 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 0.0% 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 (Pub. Util. Code § 879; Resolution T-16245, December 3, 1998);

b. The current 0.192% 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 (Pub. Util. Code § 2881; Resolution T-16234; D.98-12-073, , December 17, 1998);

c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue for the 1998-1999 fiscal year (Resolution M-4789);

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 (Pub. Util. Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; Resolution T-16242 at 0.0% for 1999, December 3, 1998);

e. The current 3.8% 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., Resolution T-16244, December 3, 1998); and,

f. The current 0.05% 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, Resolution T-16165; August 1, 1998).

4. Petitioners should be exempted from Rule 18(b).

5. Petitioners should be exempted from Pub. Util. Code §§ 816-830.

6. Petitioners should be exempted from Pub. Util. Code § 851 when the transfer or encumbrance 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 Mitigated Negative Declaration (MND), attached as Appendix D, 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 CPCNs 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.

## O R D E R

**IT IS ORDERED** that:

1. A certificate of public convenience and necessity (CPCN), shall be granted to each of the Petitioners listed in Appendix B (Petitioners) to permit each of them to operate as a facilities-based provider of competitive local exchange telecommunications services, as a reseller of competitive local exchange telecommunications services within the service territories as noted in Appendix B and, as a statewide nondominant interexchange carrier (NDIEC), as noted in Appendix B, contingent on compliance with the terms of this order.

2. Each Petitioner shall file a written acceptance of the certificate granted in this proceeding.

3. a. The Petitioners are authorized to file with this Commission tariff schedules for the provision of competitive local exchange, intraLATA (Local Access Transport Area) toll and intrastate interLATA services, as applicable. The Petitioners may not offer these services until tariffs are on file, (and in the case of ASCI Local Switched Services, Inc. and Commcotec Corporation) until deficiencies noted in Appendix C have been corrected. 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 Decision (D.) 95-07-054, Appendix A, § 4E.

A. "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 Public Utilities (Pub. Util.) 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 the Petitioner's designated contact persons for purposes of resolving consumer complaints and the corresponding telephone numbers. This information shall be updated if the names or telephone numbers change or at least annually.

7. Where applicable, 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. The same procedure shall be followed for the authorized intraLATA and interLATA services, where applicable.

8. Each Petitioner shall keep its books and records in accordance with generally accepted accounting principles.

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 Pub. Util. 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 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 Pub. Util. 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 Pub. Util. Code §§ 816-830.

15. Each Petitioner is exempted from Pub. Util. 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 D 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 shall comply with the consumer protection rules set forth in Appendix B of D.95-07-054.

21. 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.

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

23. Petitioners' respective motions for a limited protective order keeping designated documents containing financial and other operating information confidential is granted. Such documents will remain under seal for one year from today unless a petitioner makes a timely request for extension of confidential treatment of its documents by filing a separate motion with good cause shown.

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

This order is effective today.

Dated March 18, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

**APPENDIX A**


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 31st 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


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 AUTHORITY

| Name of Petitioner | Petition No. | Utility U-No. | Requested Authority Granted | | |
|---|---|---|---|---|---|
| | | | Local Exchange* Facilities-based | Resale | Statewide Inter/Intra-LATA |
| ACSI Local Switched Services, Inc. dba e.spire | 127 | U-5921-C | X** | X** | |
| Time Warner Telecom of California, L.P. | 128 | U-5358-C | X** | | |
| Ernest Communications, Inc. | 129 | U-6077-C | X | | |
| Digital Telecommunications Services, LLC | 130 | U-6134-C | X | X | X |
| Commco Tec Corporation | 131 | U-6135-C | X | X | X |

* Unless otherwise indicated, the authorized local exchange service territory of each CLC petitioner is limited to the ILEC service territories of Pacific, GTEC.

** The authorized local exchange territory for this carrier encompasses the ILEC service territories of Pacific, GTEC, RTC, and CTC.

(END OF APPENDIX B)

## APPENDIX C
## DEFICIENCIES IN THE PROPOSED TARIFFS OF ACSI LOCAL SWITCHED SERVICES, INC., DBA E.SPRIE


1. Include sample forms. The forms must be submitted with the initial tariff filing after certification by the Commission.

2. On each tariff sheet, show a vertical line on both the right and left margins and a horizontal line on both the top and bottom margin. Check with the Tariff Section of the Telecommunications Division for the appropriate tariff format.

3. Sheet 6, Application of Tariff. Include tariff language to indicate that the company intends to provide service in the service areas of Pacific Bell and GTEC. Although the company intends to concur in the rates, charges, terms and conditions of Pacific Bell (delete Southwestern Bell Telephone Company, the company must include in its tariffs those rates, charges, terms and conditions.

4. Sheet, 9, Definitions. Include the definition of a (1) major rate increase, and (2) minor rate increase. The definitions are on Appendix B to Decision 95-07-054, page 3.

5. Sheets 16 thru 18, Liability of the Company. Adopt either Pacific Bell's or GTEC's provisions on liability. The liability tariffs of these companies are appended to Decision 95-12-057.

6. Sheet 36, Discontinuance of Service. Include tariff language on the information to be included in each discontinuance of service notice. (See Appendix B, Rule 6(B) of Decision 95-12-054.)

7. Sheet 64, Application of Rates. Include the rates or specify the exact section where the rates are located.

8. Include tariffs on the following: (1) special information required on forms; (2) credit establishment; (3) disputed bills; (4) bills past due; (5) change of service provider; (6) privacy; (7) blocking access to 900 and 976 information services; (8) demarcation points; (9) service area map; (1) surcharges applicable in California; (11) switched access rates; (12) access to 911. (See Appendix b of Decision 95-07-054.)

## APPENDIX C
## DEFICIENCIES IN THE PROPOSED TARIFFS OF ACSI LOCAL SWITCHED SERVICES, INC., DBA E.SPRIE


List of deficiencies in tariffs filed by Commcotec Corporation , in I. 95-04-044, Petition No. 131 to be corrected in tariff compliance filing.

1. Include sample forms

2. Sheet 50: Need to update all CPUC mandated surcharge amounts.

3. Sheet 54, need to replace rule 2.10 (B) 1 with the following language, "the non-prevailing party may be liable for reasonable court costs and attorney fees as determined by the CPUC or by the court".

4. Sheet 64, Limitations of Liability: Per D. 95-12-057 you must concur in the limitations of liability tariffs of either Pacific Bell or GTEC as appended to the decision in appendices B and C respectively.

5. The company must include its own Switched Access tariff or concur in another carrier's tariff.

6. Number Portability: D. 96-04-054 requires that CLC's offer RCF under reciprocal rates and terms as those adopted in that decision.

7. Per D. 95-12-057, the tariff must be revised to state which provider the company will use to administer the Deaf and Disabled Equipment Distribution Program.

8. Tariff must provide the customers with the option of blocking 900/976 numbers per Rule 15 in Appendix B in D. 95-07-054.

(END OF APPENDIX C)

APPENDIX D
Page 1

# NEGATIVE DECLARATION (13)

**Competitive Local Carriers' (CLCs)**
**Projects for Local Exchange Telecommunications Service throughout California.**

**The subject of this Negative Declaration are five 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 five current petitioners are similar, with some modifications, to the projects proposed by the past petitioners, the Commission incorporates, in whole, Negative Declaration 12 for these five petitions/applications, and will refer to the incorporated documents as "Negative Declaration 13" (Section 15150 of CEQA Guidelines). **The public comment period for the draft Negative Declaration 13 begins on January 26, 1999 and expires on February 24, 1999.** Comments should be addressed to John Boccio, Project Manager, California Public Utilities Commission, Energy Division, 505 Van Ness Avenue, San Francisco, CA 94102, Fax: (415) 703-2200, E-Mail: jbx@cpuc.ca.gov. For further information call Mr. Boccio at (415) 703-2641.

## 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,[1] 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

1 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.

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 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, nine subsequent Negative Declarations, Negative Declaration IV (D.97-04-011), Negative Declaration V (D.97-06-100), Negative Declaration VI (D.97-09-110), Negative Declaration VII (D97-12-084), Negative Declaration IX (D.98-03-066), Negative Declaration X (D. 98-06-067), Negative Declaration 11 (D.98-09-66), and Negative Declaration 12 (D.98-12-083) have been adopted by the Commission in granting authority to provide facilities based local telecommunication services under essentially the same circumstances. (Negative Declaration VIII addressed telecommunication companies petitioning to provide services in the Roseville Telephone Company and Citizens Telephone Company of California service areas only). Negative Declaration IV addressed nine petitioners, Negative Declaration V addressed six petitioners, Negative Declaration VI addressed eight petitioners Negative Declaration VII addressed five petitioners, Negative Declaration VIII addressed eleven petitioners, Negative Declaration IX addressed eleven petitioners, Negative Declaration X addressed, two petitioners and Negative Declaration 11 addressed eight petitioners and Negative Declaration 12 addressed twelve petitioners.

## PROJECT DESCRIPTION

Following the adoption of Negative Declaration 12, the Commission received five more petitions/applications for facilities-based services. These petitioners are the subject of this Negative Declaration. *(See Appendix B for a list of the current facilities-based petitioners.)*

Similar to the earlier petitioners, most of the current petitioners are initially targeting local telephone service for areas where their telecommunications infrastructure is already established, and therefore only minor construction is envisioned. Services provided will include but not be limited to voice, data, video, internet and other telecommunications services. 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 the 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 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.

While most of the petitioners will initially compete for customers in urban, commercial and residential zones where telecommunication infrastructure is already in place, some petitioners state their intention or right to compete on a state wide basis wherever competition is permitted. However it is unclear at this time if all areas will be affected by the projects because many petitioners are not specific where they intend to compete in the long-run.

## 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 numerous 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[2] 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 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,

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.

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 the 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 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 archeologist shall consult with appropriate federal, state and local agencies concerned with cultural resources; so that any potential impacts upon cultural resources are assessed and properly avoided or mitigated. The archeologist shall, in coordination with agencies, develop a plan for avoiding or mitigating any potential impacts 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 right-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 disturbance to existing utility right-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, 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[3] 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 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

3 See Footnote #2.

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 the 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 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 treatment plan will be designed through coordination with relevant agencies. 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.

Natalie Walsh

Natalie Walsh, Program Manager
Analysis Branch
Energy Division

Jan 20, 1999

Date

APPENDIX D


## 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.

| | | |
|---|---|---|
| ☒ Land Use and Planning | ☒ Transportation/Circulation | ☒ Public Services |
| ☐ Population and Housing | ☐ Biological Resources | ☒ Utilities and Service Systems |
| ☒ Geological Problems | ☐ Energy and Mineral Resources | ☒ Aesthetics |
| ☒ Water | ☒ Hazards | ☒ Cultural Resources |
| ☒ Air Quality | ☒ Noise | ☐ Recreation |
| | ☒ 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. ☐

Natalie Walsh
Signature

Jan 20, 1999
Date

Natalie Walsh
Printed Name

Program Manager
Analysis Branch
Energy Division
California Public Utilities Commission

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

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? | ☐ | ☐ | ☐ | ☒ |
| b) Induce substantial growth in an area either directly or indirectly (e.g. through projects in an undeveloped area or extension of major infrastructure? | ☐ | ☐ | ☐ | ☒ |
| c) Displace existing housing, especially affordable housing? | ☐ | ☐ | ☐ | ☒ |

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 |
|---|---|---|---|---|
| III. GEOLOGIC PROBLEMS. Would the proposal result in or expose people to potential impacts involving: | | | | |
| a) Fault rupture? | ☐ | ☐ | ☐ | ☒ |
| b) Seismic ground shaking? | ☐ | ☐ | ☐ | ☒ |
| c) Seismic ground failure, including liquefaction? | ☐ | ☐ | ☐ | ☒ |
| d) Seiche, tsunami, or volcanic hazard? | ☐ | ☐ | ☐ | ☒ |
| e) Landslides or mudflows? | ☐ | ☒ | ☐ | ☐ |
| f) Erosion, changes in topography or unstable soil conditions from excavation, grading, or fill? | ☐ | ☒ | ☐ | ☐ |
| g) Subsidence of land? | ☐ | ☐ | ☐ | ☒ |
| h) Expansive soils? | ☐ | ☐ | ☐ | ☒ |
| i) Unique geologic or physical features? | ☐ | ☐ | ☐ | ☒ |

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? | ☐ | ☐ | ☐ | ☒ |
| b) Exposure of people or property to water related hazards such as flooding? | ☐ | ☐ | ☐ | ☒ |

| | | 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)? | ☐ | ☒ | ☐ | ☐ |
| d) | Changes in the amount of surface water in any water body? | ☐ | ☐ | ☐ | ☒ |
| e) | Changes in currents, or the course or direction of water movements? | ☐ | ☐ | ☐ | ☒ |
| 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? | ☐ | ☒ | ☐ | ☐ |
| g) | Altered direction or rate of flow of groundwater? | ☐ | ☒ | ☐ | ☐ |
| h) | Impacts to groundwater quality? | ☐ | ☒ | ☐ | ☐ |
| i) | Substantial reduction in the amount of groundwater otherwise available for public water supplies? | ☐ | ☐ | ☐ | ☒ |

The projects will involve alterations to existing telecommunication facilities (underground conduits or overhead poles) but could expose additional risks if more than one petitioner decide 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? | ☐ | ☒ | ☐ | ☐ |
| b) | Expose sensitive receptors to pollutants? | ☐ | ☒ | ☐ | ☐ |

| | | 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? | ☐ | ☐ | ☐ | ☒ |
| d) | Create objectionable odors? | ☐ | ☐ | ☐ | ☒ |

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 decide 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? | ☐ | ☒ | ☐ | ☐ |
| b) | Hazards to safety from design features (e.g. sharp curves or dangerous intersections) or incompatible uses (e.g. farm equipment)? | ☐ | ☒ | ☐ | ☐ |
| c) | Inadequate emergency access or access to nearby uses? | ☐ | ☒ | ☐ | ☐ |
| d) | Insufficient parking capacity on-site or off-site? | ☐ | ☒ | ☐ | ☐ |
| e) | Hazards or barriers for pedestrians or bicyclists? | ☐ | ☒ | ☐ | ☐ |
| f) | Conflicts with adopted policies supporting alternative transportation (e.g. bus turnouts, bicycle racks)? | ☐ | ☐ | ☐ | ☒ |
| g) | Rail, waterborne or air traffic impacts? | ☐ | ☒ | ☐ | ☐ |

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 |
|---|---|---|---|---|---|
| VII. BIOLOGICAL RESOURCES. 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)? | ☐ | ☐ | ☐ | ☒ |
| b) | Locally designated species (e.g. heritage trees)? | ☐ | ☐ | ☐ | ☒ |
| c) | Locally designated natural communities (e.g. oak forest, coastal habitat, etc.)? | ☐ | ☐ | ☐ | ☒ |
| d) | Wetland habitat (e.g. marsh, riparian and vernal pool)? | ☐ | ☐ | ☐ | ☒ |
| e) | Wildlife dispersal or migration corridors? | ☐ | ☐ | ☐ | ☒ |

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? | ☐ | ☐ | ☐ | ☒ |
| b) | Use non-renewable resources in a wasteful and inefficient manner? | ☐ | ☐ | ☐ | ☒ |
| 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? | ☐ | ☐ | ☐ | ☒ |

The projects will 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 |
|---|---|---|---|---|
| IX. HAZARDS. Would the proposal involve: | | | | |
| a) A risk of accidental explosion or release of hazardous substances (including, but not limited to: oil, pesticides, chemicals or radiation)? | ☐ | ☐ | ☐ | ☒ |
| b) Possible interference with an emergency response plan or emergency evacuation plan? | ☐ | ☒ | ☐ | ☐ |
| c) The creation of any health hazard or potential health hazard? | ☐ | ☐ | ☐ | ☒ |
| d) Exposure of people to existing sources of potential health hazards? | ☐ | ☐ | ☐ | ☒ |
| e) Increased fire hazard in areas with flammable brush, grass, or trees? | ☐ | ☐ | ☐ | ☒ |

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? | ☐ | ☒ | ☐ | ☐ |
| b) Exposure of people to severe noise levels? | ☐ | ☒ | ☐ | ☐ |

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 |
|---|---|---|---|---|---|
| XI. | PUBLIC SERVICES. 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? | ☐ | ☐ | ☐ | ☒ |
| b) | Police protection? | ☐ | ☐ | ☐ | ☒ |
| c) | Schools? | ☐ | ☐ | ☐ | ☒ |
| d) | Maintenance of public facilities, including roads? | ☐ | ☒ | ☐ | ☐ |
| e) | Other government services? | ☐ | ☐ | ☐ | ☒ |

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? | ☐ | ☐ | ☐ | ☒ |
| b) | Communication systems? | ☐ | ☒ | ☐ | ☐ |
| c) | Local or regional water treatment or distribution facilities? | ☐ | ☐ | ☐ | ☒ |
| d) | Sewer or septic tanks? | ☐ | ☐ | ☐ | ☒ |
| e) | Storm water drainage? | ☐ | ☐ | ☐ | ☒ |
| f) | Solid waste disposal? | ☐ | ☐ | ☐ | ☒ |
| g) | Local or regional water supplies? | ☐ | ☐ | ☐ | ☒ |

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 |
|---|---|---|---|---|---|
| XIII. AESTHETICS. Would the proposal: | | | | | |
| a) | Affect a scenic vista or scenic highway? | ☐ | ☒ | ☐ | ☐ |
| b) | Have a demonstrated negative aesthetic effect? | ☐ | ☒ | ☐ | ☐ |
| c) | Create light or glare? | ☐ | ☐ | ☐ | ☒ |

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? | ☐ | ☒ | ☐ | ☐ |
| b) | Disturb archaeological resources? | ☐ | ☒ | ☐ | ☐ |
| c) | Affect historical resources? | ☐ | ☒ | ☐ | ☐ |
| d) | Have potential to cause a physical change which would affect unique ethnic cultural values? | ☐ | ☒ | ☐ | ☐ |
| e) | Restrict existing religious or sacred uses within the potential impact area? | ☐ | ☒ | ☐ | ☐ |

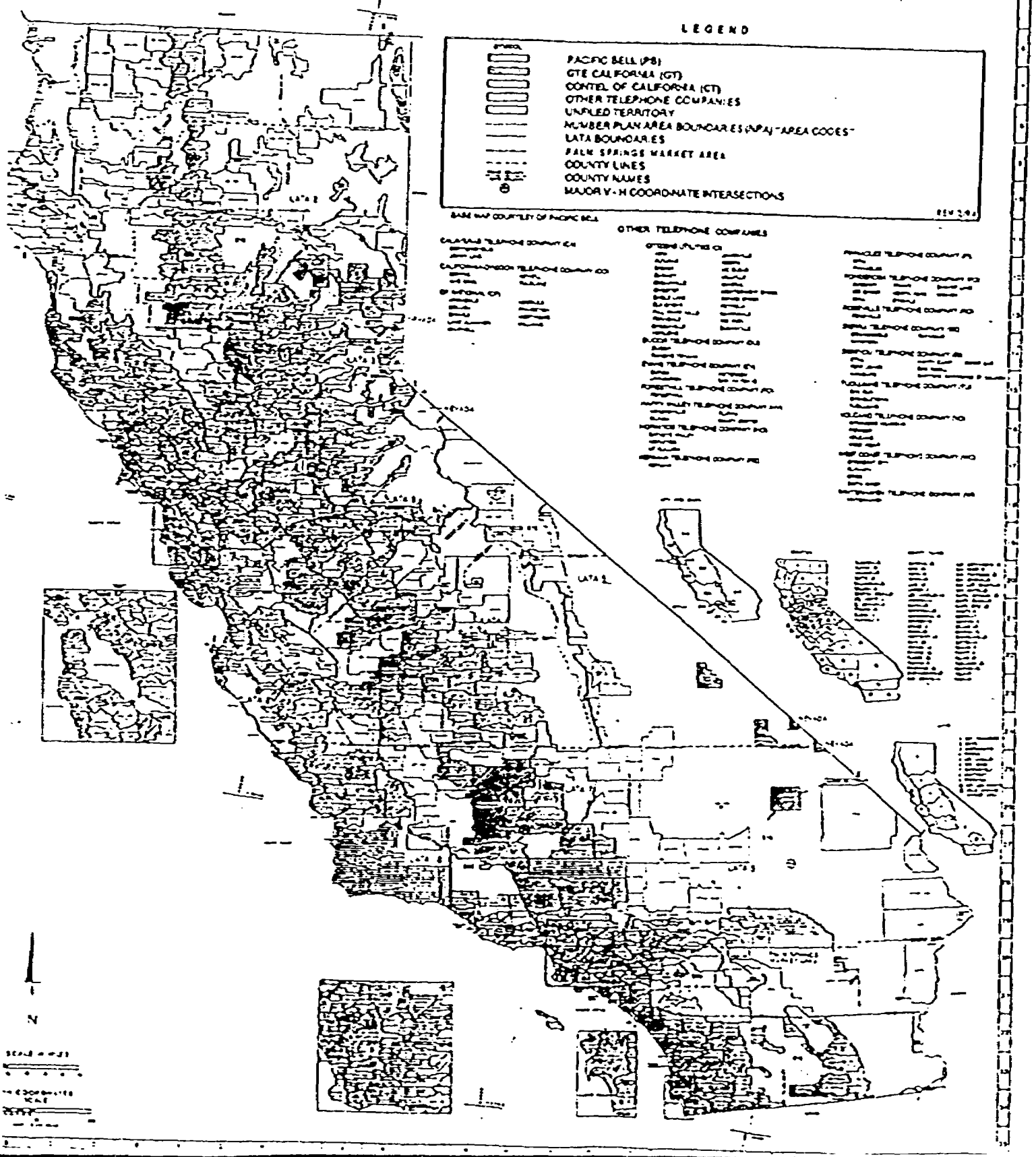
The projects will involve existing utility facilities or established rights-of-way that are assumed to be clear from any paleontological, historical or archaeological resources. However, some projects may require excavation or trenching of utility rights-of-way, or outside the rights-of-way. If *known 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? | ☐ | ☐ | ☐ | ☒ |
| b) Affect existing recreational opportunities? | ☐ | ☐ | ☐ | ☒ |

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? | ☐ | ☐ | ☐ | ☒ |
| b) Does the project have the potential to achieve short-term, to the disadvantage of long-term, environmental goals? | ☐ | ☐ | ☐ | ☒ |
| 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.) | ☐ | ☒ | ☐ | ☐ |
| d) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly? | ☐ | ☐ | ☐ | ☒ |

# TELEPHONE EXCHANGE AREAS
## CALIFORNIA PUBLIC UTILITIES COMMISSION



## APPENDIX B

## PROJECT SPONSORS AND ADDRESSES

| | |
|---|---|
| 1. ACSI Local Switched Services, Inc.<br>dba e.spire<br>I.95-04-044 (Pet. 127) | 133 National Business Parkway,<br>Suite 200<br>Annapolis Junction, MD 20701 |
| 2. Time Warner Telecom of California, L.P.<br>I.95-04-044 (Pet. 128) | 8925 Ware Court, Suite D<br>San Diego, CA 92121 |
| 3. Ernest Communications, Inc.<br>I.95-04-044 (Pet. 129) | 6475 Jimmy Carter Blvd., Suite 300<br>Norcross, GA 30071 |
| 4. Digital Telecommunications Services, LLC<br>I.95-04-044 (Pet. 130) | 520 W. Santa Ana Blvd.<br>Santa Ana, CA 92701 |
| 5. CommcoTec Corporation<br>I.95-04-044 (Pet. 131) | 4513 Pin Oak Court<br>Sioux Falls, SD 57103 |

# 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, GTE California, Roseville Telephone Company and Citizens Telephone Company of California. The current petitioners notified the Commission of their intent to compete in the territories throughout 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 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, 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 Action | Action Effectiveness Criteria | Responsible Agency* | Timing |
|---|---|---|---|---|---|
| **ALL FACTORS** | | | | | |
| Extension or work beyond or outside of 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 |
| **CUMULATIVE EFFECTS** | | | | | |
| 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 |
| **GEOLOGICAL RESOURCES** | | | | | |
| 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 contruction. |
| **WATER RESOURCES** | | | | | |
| Potential impact on water resouces, 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 resouces. 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 |
|---|---|---|---|---|---|
| **AIR QUALITY** | | | | | |
| 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. |
| **TRANSPORTATION & CIRCULATION & PUBLIC SERVICES** | | | | | |
| 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. |
| **HAZARDS** | | | | | |
| 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 |
|---|---|---|---|---|---|
| **HAZARDS** | | | | | |
| Potential increase in overhead poles and communication lines. | G. Petitioner shall obtain all necessary building permits for the poles.<br><br>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<br>Local agencies. | Before and during construction. |
| **NOISE** | | | | | |
| Noise standards for the area are exceeded due to construction. | H. All applicable noise standards shall be complied with by the petitioners.<br><br>Petitioners shall notice the surrounding area of construction dates and times. | Quarterly reports. | Noise from construction is kept to levels that do not exceed local standards. | Local agencies | Before and during construction. |
| **AESTHETICS** | | | | | |
| 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. |
| **CULTURAL RESOURCES** | | | | | |
| 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. |

(END OF APPENDIX D)