

## PUBLIC UTILITIES COMMISSION

SAN FRANCISCO, CA 94102-3298



September 24, 2003

Advice Letter 1737E

SEP 30 2003

REVENUE &amp; TARIFFS DEPT.

Mr. Akbar Jazayeri, Director  
Revenue and Tariffs  
Southern California Edison Company  
P O Box 800  
Rosemead, CA 91770

Reference: Request for Resolution Approving as Reasonable Replacement Agreements  
to the Lease Agreement Between SCE and ICG Access Services

Dear Mr. Jazayeri:

Advice Letter 1737E is effective September 29, 2003. A copy of the advice letter is sent  
herewith for your records.

Sincerely,

A handwritten signature in cursive script that reads "Paul Clamor".

Director  
Energy Division

Filed: 8/20/03  
Effective: 9/29/03

**Public – Redacted**

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August 20, 2003

**ADVICE 1737-E**  
**(U 338-E)**

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA  
ENERGY DIVISION

**SUBJECT:** Request for Resolution Approving as Reasonable  
Replacement Agreements to the Lease Agreement  
Between SCE and ICG Access Services

**PURPOSE**

In Decision (D.) 96-11-058, the California Public Utilities Commission (Commission) granted the request of Southern California Edison Company (SCE) for authority pursuant to Section 851 of the Public Utilities (PU) Code to enter into a lease agreement with ICG Access Services, Inc. and its parent company, IntelCom Group, Inc. (together, "ICG"). Ordering Paragraph 4 (a) of the decision directed SCE to notify the Office of Ratepayer Advocates (ORA) and the Energy Division in writing of "all substantive amendments to, extensions of, or terminations of" the agreement approved therein.<sup>1</sup>

Pursuant to Ordering Paragraph 4, SCE hereby submits its notification to ORA and the Energy Division that it has entered into four new agreements with ICG replacing the lease agreement approved in D.96-11-058, which ICG "terminated" on or about March 21, 2003. In discussions between the Energy Division, ORA and SCE, it was agreed that SCE should submit the replacement agreements for approval through the advice letter process. Therefore, SCE is filing an advice letter rather than a Section 851 application because the replacement agreements do not constitute a further encumbrance of utility assets. Rather, ICG is: (1) retaining use of only a portion of the originally encumbered assets approved in D.96-11-058 and is giving up its interest in the

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<sup>1</sup> Ordering Paragraph 4 specifies that notice is to be given within thirty days after the triggering event. SCE is filing this notice beyond the thirty-day period because the parties were still compiling exhibits to the agreements for several weeks after the agreements were signed and the parties also desired to informally discuss this notice with Energy Division and ORA staff before making any filing.

remainder of the fibers; and (2) agreeing to a new lease term for the fibers it retains that is shorter than the remaining term of the replaced lease.

## **BACKGROUND**

On February 20, 1996, SCE and ICG entered into an agreement titled, "Cable and Facilities License and Lease Agreement" ("1996 Agreement"). The 1996 Agreement granted ICG two leases: (1) the exclusive right to use a specified number of currently available SCE-owned optical fibers extending a distance of approximately [Redacted] miles; and (2) the non-exclusive right to use SCE-owned facilities such as conduit and poles to install as much as [Redacted] miles. The term of the 1996 Agreement was [Redacted] years, beginning on February 20, 1996 and expiring on [Redacted].

The "dark fiber" lease portion of the 1996 Agreement gave ICG use of all of the then-available "dark fiber" capacity that SCE did not expect to use for electric utility operations during the term of the 1996 Agreement or that were not already committed to another third party. The aggregate distance in fiber miles of the leased optical fibers was approximately [Redacted] miles. The "facilities" lease portion of the 1996 Agreement permitted ICG to lease currently-available conduit, pole, and tower space for new ICG cable routes not to exceed [Redacted] miles. SCE would pay the first [Redacted] of any acquisition, installation or upgrade costs for extensions of, or improvements to, SCE facilities. SCE was also responsible for all repair and maintenance costs for the "dark fibers" and any leased facilities, while ICG was responsible for installation, repair, and maintenance for the new cable segments they installed.

ICG was obligated to pay SCE annual rental payments for [Redacted] years after the February 20, 1996 commencement date. Additionally, for the entire [Redacted] -year term of the 1996 Agreement, ICG was obligated to pay SCE fixed quarterly payments and quarterly payments based upon their revenues from certain services involving the leased fiber and facilities.

The last several years have been difficult for many sectors of the economy, especially the telecommunications sector. ICG's financial position worsened significantly during this period. In October 2000, ICG stopped making its required payments to SCE. On November 14, 2000, ICG filed voluntary petitions for relief under chapter 11 of title 11 of the U.S. Bankruptcy Code. ICG emerged from bankruptcy on October 12, 2002. As part of its reorganization, ICG "accepted" (or confirmed) the 1996 Agreement and was required by the federal bankruptcy court to pay all outstanding amounts due under the agreement. ICG owed SCE [Redacted] for amounts not paid prior to its bankruptcy filing and SCE petitioned the bankruptcy court for full payment

of amounts owed, which the court ordered on April 1, 2003. ICG paid these amounts on April 4, 2003.

SCE was also attempting to collect the fees that accrued during the period when ICG was in bankruptcy. As this was occurring, ICG proposed that the parties renegotiate the 1996 Agreement. ICG informed SCE that the approximately [Redacted] due under the lease in 2003 through 2005 would deplete ICG's cash reserves and cause it to be in violation of its financing covenants with its lenders. If ICG were to violate its financing covenants, the likely consequence was that ICG would have to reopen its bankruptcy proceeding to seek relief from its obligations to SCE. SCE declined to discuss renegotiating the 1996 Agreement until ICG caught up on missed payments from the period when it was in bankruptcy.

On March 21, 2003, ICG notified SCE it was terminating the 1996 Agreement on the grounds that, inter alia, SCE's current financial condition rendered it unable to "pay its debts as such debt become due" as required in Article 26.2 (c) of the 1996 Agreement and that ICG had overpaid SCE for the fiber because of SCE's alleged use of unfair competitive practices. SCE vigorously denied ICG's claims and reiterated that ICG would have to cure its delinquent payments before SCE would discuss any contract changes. As required by Ordering Paragraph 4 (a) of D.96-11-058, SCE notified the Commission of ICG's contract termination by letter dated March 26, 2003.

Immediately after ICG brought its payments current through March 31, 2003 and made partial payment of the amounts that became due on April 1, 2003, SCE began negotiations to replace the 1996 Agreement. SCE had confirmed ICG's claim that it would be in violation of its cash covenants if the contract was not restructured. In light of the substantial likelihood that ICG would seek to reject the 1996 Agreement in whole or in part, SCE determined it was in the best interest of SCE's ratepayers and shareholders to enter into negotiations to restructure the relationship with ICG. On May 22, 2003, ICG and SCE executed the agreements needed to terminate the old fiber lease, and replace it with a new fiber lease and mandatory access agreements for the use of the conduit and poles that ICG was using for its network.

### **OVERVIEW OF THE NEW AGREEMENTS**

SCE and ICG agreed to replace the 1996 Agreement with a greatly simplified arrangement that allows ICG to continue to use the fiber that it needs without being burdened with long-term obligations for fiber for which it has no current or forecasted need. The arrangement also allows ICG to utilize the "mandatory access" procedures introduced in D.98-10-058 for use of certain utilities' poles

and conduits. Mandatory access to SCE's poles and conduits was not available to ICG when it entered into the 1996 Agreement.

The new arrangement between SCE and ICG consists of four agreements, which are described below.

- The Integration Agreement has several functions. First, it terminates the 1996 Agreement, to the extent not already terminated by ICG through its March 21, 2003 termination letter (Para. 4). Second, it releases both parties from claims of any kind that either ICG or SCE might have against the other arising out of the 1996 Agreement (Para. 4). Third, it specifies that the [Redacted] payment that ICG made on or about April 11, 2003 would serve as a "bridge" payment for ICG's continued use of SCE's fiber and related facilities between April 1, 2003 and June 30, 2003 (Para. 5). Finally, it sets forth the terms and conditions related to Commission approval of the new agreements (Para. 2).
- The Fiber Use Agreement replaces the fiber lease portion of the 1996 Agreement, and is significantly narrower in scope than the former agreement. Under the Fiber Use Agreement, ICG leases only [Redacted] miles of the original [Redacted] miles leased under the 1996 Agreement (Para. 1). ICG will also have the right to use a total of [Redacted] self-standing rack spaces at [Redacted] facility (Para. 2). The term of this agreement ends on [Redacted] (Para. 11). During the term, ICG will pay SCE an annual fee of \$[Redacted] per fiber mile (in two semi-annual installments) for use of the specified fibers and [Redacted] per rack space (Para. 12).
- Pole License Agreement #1 replaces the above-ground portion of the facilities lease in the 1996 Agreement. The Pole License Agreement is the standard agreement that SCE uses for pole access requests pursuant to the "mandatory access" decision, D.98-10-058. The terms and conditions in this standard agreement were negotiated in 1999 between the California Cable Television Association and certain of its members on the one hand, and SCE, on the other hand. SCE used the same standard agreement as the pole attachment contract with Nextlink of California LLC, which SCE filed for approval in Advice 1395-E on July 30, 1999.<sup>2</sup> The only substantive differences between Pole License Agreement #1 with ICG, and the Nextlink agreement, are the dates of the agreement, the name, location and notice address of the lessee, and the current annual license fee shown in the third sentence of Paragraph 4.

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<sup>2</sup> By letter of August 24, 1999, the Energy Division notified SCE that Advice 1395-E would be effective September 8, 1999.

SCE computes the new annual license fee for poles once each year according to the pricing formula approved for SCE in D.98-04-062 and puts the new rate into effect for all mandatory access users on July 1 of each year. The current rate shown in the third sentence of paragraph 4 represents the rate in effect for all mandatory access users at the time when the pole access agreement was signed.

- The Underground Conduit License Agreement replaces the underground portion of the facilities lease in the 1996 Agreement. SCE and ICG agreed to the terms of this agreement and that the terms are consistent with the “mandatory access” requirements of D.98-10-058. As with its “mandatory access” pole license agreements, SCE computes the new annual conduit fee for poles once each year according to the pricing formula approved for SCE in D.98-04-062 and puts the new rate into effect for all mandatory access users on July 1 of each year.

It is important to note that these agreements do not further encumber SCE assets. All of the fibers that ICG retains use of, under the Fiber Use Agreement, were among the fibers that the PUC approved for lease in D.96-11-058. No new fibers have been added to the ICG leased fibers. Rather, ICG has returned a significant number of fiber segments to SCE for possible use by other carriers. Moreover, the encumbrance period under the Fiber Use Agreement does not extend the encumbrance period for the original fiber lease approved in D.96-11-058. The new Fiber Use Agreement expires on [Redacted], while the original lease would have expired on [Redacted]. Finally, facilities such as poles and conduit that were leased to ICG are now unencumbered and a portion of them are being used pursuant to standard license agreements under the “mandatory access” rules in D.98-10-058.

### **RATEPAYER IMPACT**

In its March 21, 2003 termination letter, ICG informed SCE that it intended to obtain replacement services from alternate providers rather than continue to operate under the 1996 Agreement. Had ICG carried through on this threat, SCE would have stopped receiving any further payments from ICG, with the possible exception of temporary payments for use of a limited amount of utility infrastructure during the “transition period” ICG demanded in its March 21 termination letter. By agreeing to these new contracts, SCE is able to maintain a relationship with ICG that benefits both SCE’s ratepayers and its shareholders.

If the 1996 Agreement had continued in effect until its termination [Redacted], SCE would have accrued approximately [Redacted] of additional revenue under the agreement, including deferred revenues. Ratepayers would have received

approximately [Redacted] of this revenue under SCE's Gross Revenue Sharing Mechanism adopted in D.99-09-070.

Under the new Fiber Use Agreement, the total fiber lease revenue subject to the Gross Revenue Sharing Mechanism will be [Redacted], including deferred revenues, with [Redacted] of this amount allocated to ratepayers.

SCE cannot be as precise about revenues or revenue allocation from the pole and conduit license agreements as it is for the 1996 Agreement or the new Fiber Use Agreement. The uncertainty results from two factors. First, SCE must recalculate the rates for all "mandatory access" license agreements on an annual basis using actual financial data from the prior year. Second, the revenue credit ratepayers receive depends on the total revenues from all tariffed Other Operating Revenue (OOR), including mandatory access agreements, in the applicable General Rate Case (GRC).

Using the rates in effect when the SCE and ICG executed the new pole and conduit license agreements and holding those rates constant through [Redacted], the revenues from those agreements total [Redacted], of which [Redacted] would be reflected as a revenue credit on a forecast basis in SCE's GRC. Thus, even under this conservative model (since pole and conduit rates are likely to show some increase over the [Redacted] years) ratepayers would receive [Redacted] from the pole and conduit licenses and [Redacted] from the Fiber Use Agreement. This compares favorably to the ratepayers would have expected to receive under the 1996 Agreement or the *de minimus* revenues ratepayers would have received if ICG carried through on its plan to sever its connection with SCE after a short "transition" period.

Attachments to this advice letter contain Confidential Protected Material pursuant to Public Utilities Code Section 583<sup>3</sup> and General Order 66C, and are being redacted in the public version.

### **EFFECTIVE DATE**

This advice filing shall become effective on the 40<sup>th</sup> calendar day after the date filed, which is September 29, 2003.

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<sup>3</sup> No information furnished to the Commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a Corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the Commission, or by the Commission or a Commission in the course of a hearing or proceeding. Any present or former officer or employee of the Commission who divulges any such information is guilty of a misdemeanor.

**NOTICE**

Anyone wishing to protest this advice filing may do so by letter of facsimile and received by the Commission's Energy Division and SCE no later than 20 days after the date of this advice filing. Pursuant to Rule VII.E.3 of the Affiliate Transaction Rules, the protest must include:

- a. An explanation of the specific Rules, or any law, regulation, decision, or Commission policy the utility will allegedly violate by offering the proposed product or service, with reasonable factual detail; and
- b. An explanation of the specific harm the Protestant will allegedly suffer.

Protests should be mailed to:

IMC Program Manager  
c/o Jerry Royer  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue, Room 4002  
San Francisco, California 94102  
Facsimile: (415) 703-2200  
E-mail: [jjr@cpuc.ca.gov](mailto:jjr@cpuc.ca.gov)

Copies should also be sent to the attention of the Director, Energy Division, Room 4004 (same address above).

In addition, protests and all other correspondence regarding this advice letter should also be sent by letter and transmitted via facsimile or electronically to the attention of:

Akbar Jazayeri  
Director of Revenue and Tariffs  
Southern California Edison Company  
2244 Walnut Grove Avenue, Quad 3D  
Rosemead, California 91770  
Facsimile: (626) 302-4829  
E-mail: [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com)

Bruce Foster  
Vice President of Regulatory Operations  
c/o Karyn Gansecki  
Southern California Edison Company  
601 Van Ness Avenue, Suite 2040  
San Francisco, California 94102  
Facsimile: (415) 673-1116  
E-mail: [Karyn.Gansecki@sce.com](mailto:Karyn.Gansecki@sce.com)

There are no restrictions on who may file a protest, but the protest shall set forth specifically the grounds upon which it is based and shall be submitted expeditiously.

In accordance with Section III, Paragraph G, of General Order No. 96-A, SCE is mailing copies of this advice filing to the interested parties shown on the attached service list and R.97-04-011/O.97-04-012. Address change requests should be directed to [AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com) or (626) 302-3985. For changes to all other service lists, please contact the Commission's Process Office at (415) 703-2021 or by electronic mail at [Process\\_Office@cpuc.ca.gov](mailto:Process_Office@cpuc.ca.gov).

Further, in accordance with Public Utilities Code Section 491, notice to the public is hereby given by filing and keeping the advice filing open for public inspection at SCE's corporate headquarters. To view other SCE advice letters filed with the Commission, log on to SCE's web site at <http://www.sce.com/adviceletters>.

For questions to this advice letter, please contact John Minnicucci at (626) 302-4813 or by electronic mail at [Zach.Buhler@sce.com](mailto:Zach.Buhler@sce.com).

**Southern California Edison Company**

Akbar Jazayeri

AJ:zb  
Enclosures

cc: Michael D. McNamara, ORA

**MAY 22, 2003 INTEGRATION AGREEMENT**

**[REDACTED]**

**EXHIBIT A**

**TO THE**

**MAY 22, 2003 INTEGRATION AGREEMENT**

**UNDERGROUND CONDUIT LICENSE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA EDISON COMPANY  
AND  
ICG TELECOM GROUP, INC.**

**UNDERGROUND CONDUIT LICENSE AGREEMENT**  
**BETWEEN**  
**SOUTHERN CALIFORNIA EDISON COMPANY**  
**AND**  
**ICG TELECOM GROUP, INC.**

This **Underground Conduit License Agreement** ("Agreement") made as of this 22nd day of May, 2003 ("Effective Date"), by and between **Southern California Edison Company** ("SCE"), and **ICG Telecom Group, Inc.**, a Colorado corporation ("Carrier") (individually, "Party" and collectively "Parties").

**RECITALS**

SCE is a public utility company regulated by the California Public Utilities Commission ("CPUC") and provides electric services to its customers throughout southern and central California using, in part, an existing underground system comprised of ducts, conduit, manholes, handholes ("Support Structures") and related appurtenances (collectively, the "Underground System").

Carrier is certified by the CPUC to operate within the state and Carrier has the right to install its facilities in, under, and along the public streets and roads. Carrier currently provides services in the Los Angeles and San Francisco areas.

Carrier desires to use excess capacity in certain Support Structures that are part of SCE's existing Underground System under a license issued pursuant to CPUC Decision 98-10-058, issued on October 22, 1998 in Docket R.95-04-043/L.95-04-044 ("Decision") and the rules contained therein, for telecommunications purposes. Both parties hereto agree that the terms and conditions in this license are consistent with the Decision.

**NOW, THEREFORE**, in consideration of the mutual covenants, agreements and undertakings contained herein, the Parties agree as follows:

1. Term: The term of this Agreement is one year, beginning on the Effective Date of this Agreement.

2. Grant of License: SCE hereby grants to Carrier a license to use excess capacity in certain Support Structures, identified on the map attached hereto as Exhibit "A" ("Route"), to install approximately [REDACTED] of fiber optic cable, as described further herein (the "Cable"). This license shall include a right to access and use these Support Structures for installation and maintenance of the Cable, subject to the conditions described in Article 3 below.

3. License Conditions. In addition to the conditions and requirements set forth elsewhere, this Agreement shall be subject to the following terms and conditions, all of which Carrier hereby agrees to comply with and perform in full:

3.1. G.O. 69-C. This license is subject to the conditions prescribed by CPUC General Order No. 69-C, dated and effective July 10, 1985, incorporated herein by reference, as updated or modified from time to time.

3.2. SCE's Right to Use of the Underground System. SCE reserves for itself, its successors and assigns, the right to use its Support Structures and the Underground System, or any portion thereof, for any purpose that SCE may require in connection with SCE's utility operations, together with the right to enter upon, under and/or into the Underground System, or any portion thereof, at all times, for any and all purposes.

3.3. Carrier's Access and Use of the Underground System. Carrier must provide SCE with at least 48 hours prior notice before it can access any part of the Underground System (including the Cable), even when Carrier is otherwise authorized to do so under this Agreement. Further, Carrier must comply with any instructions, requirements or procedures of SCE that are applicable to the part of the Underground System that Carrier plans to access and with any general access requirements that may be included as part of the Performance Standards described in Section 3.4 below. Carrier may use the Cable for any authorized telecommunication purposes.

3.4. Performance Standards for Underground Work. Carrier shall construct improvements and install, repair and maintain the Cable (collectively, "Underground Work"): (1) in compliance with and in conformity with all applicable ordinances, codes, statutes, regulations and laws in effect at the time, including, but not limited to, the specifications in the CPUC's General Orders 95 and 128 and CAL/OSHA Title 8 (as supplemented by the National Electrical Safety Code); (2) in accordance with standard industry practices; and (3) in a manner that is reasonably satisfactory to SCE. Where the Performance Standards described above are consistent or additive, then all shall apply; in the event of any conflict, then the strictest standard for performance shall apply. In addition, Carrier shall make no changes to the Support Structures. Carrier shall not make any changes or repairs

to the Cable without the prior written consent of SCE and shall at all times maintain the Cable in safe condition and good repair. Whenever SCE believes, in its sole discretion, that Carrier is not in compliance with any of these Performance Standards, SCE can require Carrier to immediately stop any work. Carrier shall not resume the work until notified by SCE that it may do so. SCE shall not be liable for any costs or expenses that result from stopping work pursuant to this provision.

3.5. Non-interference: Carrier agrees that its use of the Cable and its performance of any Underground Work shall not in any way adversely affect or interfere with SCE's utility services or operations, or with the services or operations of a third party. Upon written or oral notification from SCE, Carrier must immediately cease the interference and prevent any reoccurrence of the interference.

3.6. Priority of Use: Restoration of SCE's utility services shall take priority over Carrier's restoration of its service; provided, however, that SCE shall not unreasonably delay Carrier's opportunity to restore its service and SCE shall permit Carrier to make repairs to restore its service as long as these restoration efforts do not interfere with SCE's restoration activities.

3.7. Unauthorized Attachments: Any use of a Support Structure in a manner that is not approved in advance by SCE shall constitute an "Unauthorized Attachment". Carrier shall not make any such Unauthorized Attachments and acknowledges that any Unauthorized Attachment may justify SCE's termination of this License and shall subject the Carrier to the other penalties associated with an Unauthorized Attachment.

3.8. Modifications. If a modification to the Cable is required by a governmental agency or because of electric system needs, then any costs associated with such a modification, including any costs to relocate the Cable, that are not paid by a third party, shall be the sole responsibility of Carrier; however, Carrier shall not be responsible for the costs associated with a modification to the Underground System that is unrelated to the Cable.

4. Payment by Carrier: The annual license fee shall go into effect on July 1 of each year and remain in effect until June 30 of the next year. The current annual license fee for conduit \$1.49 per foot. The annual license fee due upon execution of this Agreement or upon approval shall be prorated based upon the number of days from the date of execution until July 1. Not later than June 1 of each year this Agreement is in effect, SCE will mail a written notice to Licensee setting forth the new annual license fee taking effect on July 1 of that year. SCE will invoice the annual license fee in two installments, on or about January 1 and July 1, and Licensee shall pay each installment in full within 30 days thereafter.

The fee for the initial term shall be subject to adjustment as provided for in the Decision. The Cable length used to calculate this license fee shall be taken from the approved engineering maps, which are described further in Article 5 below. This license fee shall be in addition to Carrier's reimbursement of any costs or expenses that result from this Agreement, except where such reimbursement is prohibited by the Decision. Interest will accrue on any overdue and unpaid balance at the greater of 1.5% per month, or the maximum rate allowed by law, until paid in full. Further, unless Carrier notifies SCE of a dispute about the invoice within this thirty (30) day period, Carrier will be deemed to have waived any and all rights to dispute the invoice and the invoice shall conclusively be deemed to have been proper, correct and complete as submitted by SCE. Unless SCE otherwise specified in writing, all amounts due shall be payable to SCE. Payments should be made to SCE at the following address:

Southern California Edison Company  
14005 South Benson Avenue  
Chico, CA 91710-7026  
Attn: License/Lease Department

5. Installation, Maintenance and Repair of Cable.

a. At least sixty (60) days prior to its commencement of any Underground Work, Carrier must provide the following information to SCE for its review and approval: (1) detailed technical specifications; (2) an engineering map showing the Route, (3) a description of the methods that will be used to perform the Underground Work; (4) design, engineering and construction plans and drawings; and (5) a detailed schedule for performance of the Underground Work.

b. Carrier can use either an SCE-approved licensed general contractor or its own personnel to perform any Underground Work that is authorized hereunder. In either case, Carrier's personnel (including contractors and subcontractors) must be trained, licensed and qualified to work on or in the Underground System. Further, Carrier shall be solely responsible for ensuring that its contractors fully comply with the obligations and requirements of this Agreement.

c. After Carrier has satisfied the requirements in subpart a above, Carrier shall notify SCE, at least seventy-two (72) hours in advance, of its desired commencement date for the Underground Work. If SCE cannot oversee performance of the Underground Work on the requested date, then Carrier and SCE will agree on a different date that is within a week of the date requested by Carrier.

d. Once the Underground Work commences, Carrier shall diligently perform this work and complete all authorized Underground Work by the

agreed-upon completion date. If the work is not satisfactorily completed by this date, then SCE may terminate this Agreement by written notice to Carrier and/or pursue other remedies for default. Upon any such termination, Carrier's rights shall immediately cease and Carrier shall promptly, at its sole cost and expense, and as directed by SCE, restore the Underground System to its original condition.

e. All Underground Work shall be made in accordance with the stricter of the Performance Standards set forth in Section 3.4 above, or any Route-specific construction and safety requirements provided by SCE. Carrier shall be solely responsible for the design, engineering and installation of the Cable, including all related costs or expenses. Notwithstanding this, SCE shall have a reasonable opportunity to review and approve of the design, engineering and construction plans for the Cable prior to performance of any Underground Work, as further described in part (a) above, and shall be reimbursed for any related costs or expenses.

f. Carrier shall notify SCE when the Underground Work is complete. SCE shall have the right to inspect the Underground Work at any time and Carrier shall pay the costs incurred by SCE as a result of any such inspection. Further, if the Underground Work does not conform with the requirements in part d above, then Carrier shall repair, replace, or rework, as necessary, until these requirements are satisfied.

g. If Carrier fails to install and use the Cable within nine months, then the permissions granted by SCE under this Agreement shall be automatically revoked and this Agreement, and all rights granted herein, shall be deemed terminated by default of the Carrier. Carrier shall not be entitled to a refund of any of the Annual License Fee.

h. In the event that Carrier must make emergency repairs, Carrier shall notify SCE of the emergency and Carrier and SCE shall work together in good faith to expedite the timeframes set forth in subsections (a) and (c) and to determine the appropriate scope and timing of documentation for the emergency repairs.

6. Franchise and Real Property Rights. Carrier represents that, to its knowledge after due inquiry, its existing franchise rights are in full force and effect and are sufficient to permit Carrier to install the Cable, as further described in Article 5 above, and to otherwise perform as required hereunder. Carrier further warrants that it has all licenses, permits, authorizations and rights necessary for it to engage in the telecommunications business in the State of California and to qualify for access to utilize public rights of way pursuant to the Decision and that Carrier shall be solely responsible for obtaining, and maintaining in full force and effect, any necessary franchises, easements, licenses, permits, certificates or grants from state, county, regulatory or local authorities and private owners of real

property, necessary for this Agreement and to install the improvements and operate and maintain the Cable within private or public rights-of-way.

Nothing in this Agreement shall be construed to confer any permit, license, or grant to use the property of any persons other than SCE. This written revocable license to permit carrier to install the Cable under Article 5 and to use the Cable is expressly subject to the requirement, as further described above, that the Carrier obtain any necessary third party rights to access and/or use any non-SCE owned property before doing so.

Further, nothing herein shall be deemed to grant to Carrier: (i) any rights or property interests in the Underground System, including to any Support Structures, or (ii) any license, easement, assignment, lease, sublease, transfer or conveyance or other property or other legal right to exercise any of SCE's rights to construct or maintain the Underground System in, over, through, under, across, along or upon any property of another. Further, no such rights are given, created or transferred to Carrier pursuant to this Agreement despite the installation and maintenance of the Cable, no matter how long maintained. Carrier specifically agrees that it shall never claim any such rights based on this Agreement.

7. Taxes and Encumbrances. During the term hereof, Carrier shall pay, when due, all taxes (including taxes payable by SCE because of "contributions in aid of construction," if applicable), special assessments and governmental fees of any kind whatsoever that may be levied or assessed upon any improvements or personal property which Carrier has caused to be placed or maintained upon or within the Underground System, or against Carrier's business, and shall keep the Underground System, including any improvements made thereto, free from all liens, including but not limited to mechanics liens, and encumbrances by reason of the use or occupancy of the Underground System by Carrier or any person claiming under Carrier. It is further agreed that in the event Carrier shall fail to pay any taxes, assessments, or liens when due, SCE shall have the right to pay the same and charge the amount thereof to Carrier, who shall pay the same upon demand together with interest at the maximum rate allowed by law from the date of such expenditure by SCE. SCE shall notify Carrier as soon as is reasonably practical after any such tax or taxes is levied and/or assessed and SCE shall provide Carrier with copies of notices, bills, and other pertinent documentation as well as SCE's apportionment calculations. Carrier shall pay the amount of any such assessment and/or levy to SCE within 45 days of receipt of such notification.

8. Termination/Revocability of License. Except as may be limited by the Decision, this license may be revoked at any time by written notice to Carrier when the Support Structures licensed to Carrier hereunder are needed by SCE for electric utility service or when SCE's operation of its electric utility system is best served by removal or abandonment of the Underground System. Carrier specifically

acknowledges that nothing in this Agreement obligates SCE to maintain the Underground System for a period longer than SCE determines is necessary to meet its electric service requirements.

This Agreement shall continue in effect for a term of one year from the Effective Date hereof and said term will be automatically extended for another one year term on the anniversary of the effective Date, unless either Party gives notice not less than thirty (30) days before the anniversary of the effective Date that the License will not be renewed.

Upon any termination of this license, including by expiration of term or revocation, all rights to the Cable shall be deemed to have been abandoned by Carrier unless Carrier notifies SCE prior to this that Carrier will remove the Cable and pay any costs incurred by SCE as a result of removal. If the Cable is abandoned, then title to the Cable shall unconditionally vest in SCE. Carrier shall execute whatever documents are required to memorialize this transfer of ownership.

Any termination hereunder shall not release Carrier from any liability or obligation (whether for indemnity or otherwise) that may have attached or accrued previous to or that may be accruing at the time of, or by reason of, such termination. Carrier shall peaceably quit and surrender the Cable to SCE in good order and condition, reasonable wear and tear excepted.

#### 9. Remedies In the Event of Default.

a. The occurrence of any one or more of the following events shall constitute an "Event of Default" hereunder by Carrier:

(1) The failure by Carrier to make any payment required to be made hereunder, as and when due;

(2) The failure by Carrier to obtain and maintain in effect any third party approvals or authorizations required for performance under this Agreement or any failure to comply with any applicable regulations governing any activities authorized under this Agreement;

(3) The failure by Carrier to observe or perform any of the covenants, conditions, or provisions of this Agreement after notice from SCE.

b. The occurrence of any of the following events shall constitute financial insolvency and shall serve as a default hereunder: (i) Carrier files for protection under the Bankruptcy Code of the United States or any similar provisions under the laws for the State of California; (ii) Carrier has a receiver,

c. trustee, custodian or similar official appointed for all or substantially all of its business or assets; or (iii) Carrier makes an assignment for the benefit of its creditors.

d. In the event of a default by the Carrier hereunder, except where such default e (1) raises public safety concerns in SCE's sole judgment, (2) poses a danger to a portion of SCE's transmission or distribution system in SCE's sole judgment (3) arises because ICG has made Unauthorized Attachments, Carrier will have 30 days from the date of the default to cure the default to SCE's satisfaction.

e. The above remedies in the event of a default shall not limit SCE's right to seek CPUC authorization to seek suspension or other penalties in the event of multiple or continuing defaults by evoking the expedited dispute resolution process in the Decision.

f. If SCE fails to comply with a term or condition of this Agreement, Carrier shall provide written notice to SCE of such non-compliance. SCE shall then have a reasonable period of time from receipt thereof to reasonably cure such non-compliance. If the non-compliance cannot be reasonably cured within this reasonable period, then SCE and Carrier shall work together to effect a cure until such time as it becomes evident that no cure can be effected.

g. SCE and Carrier agree that, as of the Effective Date of this Agreement, it is impractical if not impossible to reasonably ascertain the extent of damages which would be incurred by Carrier and/or its customers as a result of a material breach by SCE of its obligations under this Agreement. Accordingly, when it is established that there has been material breach of the Agreement, SCE and Carrier agree to the payment of liquidated damages in the total amount of the Annual License Fee. This provision for liquidated damages is intended to be compensatory and not punitive and shall be deemed an exclusive remedy and afford the exclusive procedure for remedying a material breach of this Agreement by SCE. In no event shall SCE be liable to Carrier, anyone claiming under Carrier, or any of Carrier's customers for any consequential, incidental or special damages or lost profits incurred or alleged to have been incurred by anyone. A material breach of this Agreement, for purposes of this Agreement, shall consist of any failure by SCE to complete any of its obligations under this Agreement unless such failure is caused by conditions or actions not under SCE's control.

#### 10. Duty of Care/Responsibilities For Damages.

Carrier shall exercise special precautions to avoid causing damages to SCE property or the property of any third party. Carrier shall be fully responsible for any and all loss from any failure to exercise such care, including damages due to any loss of use or liability for consequential damages. Carrier shall make an immediate report of the occurrence of any such damage to the owner of the damaged

properties and to SCE. Carrier covenants and agrees that SCE shall not be liable for any damage or injury of any kind or nature to Carrier's property, equipment, employees, agents, servants, or independent contractors or any other third party invitees of Carrier, except where SCE is determined to have caused this damage by its sole negligence or willful misconduct.

#### 11. Indemnification.

Carrier ("Indemnitor") hereby agrees to defend, indemnify and hold harmless SCE, its parent company, affiliates, directors, shareholders, officers, agents, contractors, invitees, assigns, successors in interest and employees (individually and collectively, "Indemnitee") from and against: (1) any and all claims, demands, actions, causes of action, damages, costs, expenses, losses or liabilities, in law or in equity, of every kind and nature whatsoever, including attorney's fees and expenses (hereinafter, a "Claim"), resulting from the death or injury to any person or loss or damage to any property (including any data or any SCE-owned property), caused by Carrier or its contractors or subcontractors, invitees, officers, agents, or employees, or any of them, in connection with or arising out of this Agreement, except where such is due solely to the willful misconduct of SCE; (2) any and all penalties imposed due to a failure of Carrier to fully comply with any applicable legal, governmental or regulatory requirements, including any consequential damages that are due to the unauthorized presence of Carrier, its employees, contractors, invitees or equipment on third party property or any unauthorized use by Carrier of its equipment, regardless of any negligence of SCE, whether sole, active or passive, joint or concurrent or contributory; and (3) any and all Claims or penalties due to any interruption, discontinuance, or interference with Carrier's service to any of its subscribers occasioned or claimed to have been occasioned by any action of SCE under this Agreement, regardless of whether SCE was contributorially, concurrently, jointly, independently, or solely negligent.

The Indemnitee shall, as soon as practicable, notify Indemnitor of any Claim covered under the prior paragraph. Upon request, Indemnitor shall, at no cost or expense to any Indemnitee, defend any Indemnitee against any such Claim. Further, Indemnitor shall: (1) pay any costs and attorneys' fees that may be incurred by any Indemnitee in connection with any such Claim; (2) keep any Indemnitees subject to such Claim fully informed as to the progress of such defense; and (3) afford such Indemnitees, each at its own expense, an opportunity to participate on an equal basis with Indemnitor in the defense or settlement of such Claim. This indemnification shall survive any termination of this Agreement.

12. Insurance. At all times during the term of this Agreement, Carrier shall maintain, and shall require its subcontractors that do any work on or concerning the Cable or any related improvements to maintain, insurance coverage as described below:

Worker's compensation Insurance with statutory limits, in accordance with the laws of the State of California, and Employer's Liability Insurance with limits of not less than \$1,000,000. Carrier shall require its insurer to waive all rights of subrogation against SCE, its officers, agents and employees.

Commercial General Liability Coverage, including owner's and contractor's protective liability, product/completed operations liability, and contractual liability, with a combined single limit of \$1,000,000 each occurrence. Such insurance shall (a) name SCE, its officers, agents, and employees as additional insureds, but only for Carrier's acts or omissions; (b) be primary for all purposes; and (c) contain standard cross-liability provisions.

Commercial Automobile Insurance Coverage with a combined single limit of \$1,000,000 each occurrence. Such insurance shall cover liability arising out of the use of owned, non-owned and hired automobiles. Such insurance shall name SCE, its officers, agents, and employees as additional insured.

Excess liability/umbrella coverage with a combined limit of not less than \$1,000,000 and with a excess limit of \$1,000,000 for each occurrence. Such insurance shall name SCE, its officers, agents, and employees as additional insured.

Carrier shall provide SCE with proof of such insurance coverage (satisfactory to SCE in both form and content) prior to commencement of installation of the Cable, and such insurance policies shall provide that SCE shall receive not less than 30 days written notice prior to the cancellation or reduction in coverage of such insurance.

13. Performance Bond or Security Agreement. SCE may, at its option, whenever the credit rating of the Carrier falls below the rating level of CCC require Carrier to furnish a bond or security agreement in such sum and in such form, as SCE deems appropriate and/or any additional proof of credit worthiness. If proof of credit worthiness is requested by SCE, then Carrier shall provide such proof within 30 days. Moreover, if required, this bond or security agreement shall remain in force for the term of this Agreement or for any longer period in which Carrier has any unsatisfied obligations under this Agreement.

14. Resolution Of Disputes. The Parties shall attempt to resolve any dispute promptly, equitably and in good faith. Furthermore, the Parties shall provide each other reasonable access to any non-confidential records, data and other information pertaining to such dispute. As a first step, any dispute arising under this Agreement shall be referred to a Vice President of each of the Parties. Such Vice Presidents shall meet promptly thereafter and attempt to resolve the dispute. Within fifteen (15) days after such referral (unless the Vice Presidents have agreed to a shorter or longer time), each Party shall submit to the other its written

statement of the dispute and why it believes an impasse exists. Unless the matter is thereupon settled within ten (10) additional days to the satisfaction of both Parties, the Parties shall agree on a process to resolve the matter. If the Parties are unable to agree, then the process in the Decision shall be used.

15. DISCLAIMER. SCE MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, INCLUDING WITHOUT LIMIT ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR USE, ABOUT THE SUITABILITY OF SCE'S EXISTING UNDERGROUND SYSTEM OR SUPPORT STRUCTURES FOR THE USE DESIRED BY CARRIER. CARRIER MUST MAKE ITS OWN ASSESSMENT ABOUT THE UNDERGROUND SYSTEM AND THE DESIRABILITY TO CARRIER OF INSTALLING ITS CABLE. CARRIER FURTHER ACKNOWLEDGES THAT NEITHER SCE NOR ANY OF SCE'S OFFICERS, EMPLOYEES OR AGENTS HAVE MADE, NOR IS CARRIER ENTERING INTO THIS AGREEMENT IN RELIANCE UPON, ANY REPRESENTATIONS CONTRARY TO THIS DISCLAIMER.

16. Notices. Notice required hereunder must be in writing and transmitted by United States mail or by personal delivery to SCE. Such notice shall be deemed given: (a) upon receipt in the case of personal delivery or confirmed facsimile transmittal; (b) two (2) days after it is sent by certified mail, with a return receipt requested, (c) three (3) days after deposit in the mail, or the next day in the event of overnight delivery.

If to SCE: Southern California Edison Company  
14005 South Benson Ave.  
Chino, CA 91710-7026  
Attn: License/lease Department  
Phone: 909-548-7187  
Fax: 909-548-7049

With copy to: Southern California Edison Company  
Law Department, G.O.1, Room 360  
2244 Walnut Grove Avenue  
Rosemead, CA 91770  
Attn: Telecommunications Section  
Phone: 626-302-4413  
  
Fax: 626-302-4106

If to CARRIER: ICG Telecom Group, Inc.  
161 Inverness Drive West,  
Englewood, Colorado 80112

Attn: President  
Phone: 303-414-5500  
Fax:

With copy to: ICG Telecom Group, Inc.  
161 Inverness Drive West,  
Englewood, Colorado 80112

Attn: General Counsel  
Phone: 303-414-5872  
Fax:

17. Miscellaneous.

a. Assignment. Carrier shall not assign, transfer or sublet any of the privileges, rights, duties or obligations described in this Agreement without the prior written consent of SCE.

b. Independent Contractual Relationship. Nothing in this Agreement shall create any special relationship between SCE and Carrier, such as an agency relationship or joint venture relationship; the Parties' only relationship under this Agreement is one of independent contracting parties.



c. No Rights to Trademarks. Carrier shall not use "SCE", "Southern California Edison Company", or any other words and marks owned by or used by SCE in identifying itself, or by others in referring to it, without specific written permission from SCE to do so.

d. No Property Rights. Nothing herein shall be construed to confer to Carrier any rights or property interest in the Underground System, including any Support Structures.

e. Confidential Information and CPUC Submittal. This Agreement contains confidential information and the Parties agree to protect the confidential information in this Agreement from disclosure to a third party. Notwithstanding this, Carrier recognizes that SCE will be required to submit this Agreement to the CPUC and agrees that SCE may do so pursuant to Section 583 of the Public Utility Code without violating this provision.

f. California Law. This Agreement and the rights and obligations of the Parties hereunder shall for all purposes be governed, interpreted, construed and regulated in accordance with the laws of the State of California.

g. No Third Party Beneficiaries. All of the terms, conditions, rights and duties provided for in this Agreement are, and shall always be, solely for the benefit of the Parties hereto. It is the intent of the Parties that no third party shall ever be the intended beneficiary of any performance, duty or right created or required pursuant to the terms and conditions of this Agreement.

h. Attorney's Fee. If SCE should bring any suit, action, or other legal proceeding against Carrier hereunder or in connection herewith, it shall be entitled to recover, in addition to any judgment or decree for costs, such reasonable attorney's fees as it may have incurred in such suit, action, or other legal proceeding, together with other reasonable litigation expenses.

i. Waiver. The failure of SCE to enforce any provision of this Agreement or the waiver thereof in any instance, including but not limited to the rights to terminate, shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

j. Invalidity of Provisions. To the extent that any terms or provisions of this Agreement shall be finally determined by a court of competent jurisdiction to be invalid, (i) such invalidity shall not affect, release or modify any other terms or provisions, and (ii) in lieu of each such provision which is invalid, illegal or unenforceable, there shall be substituted or added as part of this Agreement a legal, valid and enforceable provision which shall be selected to be as

k. similar as possible, in achieving the economic and business objectives of the Parties, to such illegal, invalid or unenforceable provision.

l. Scope of Agreement and Modifications to Agreement. This Agreement, including the attached exhibits, incorporates all covenants and understandings between SCE and the Carrier. No other verbal or written agreements or understandings exist between the Parties regarding use of the Underground System. Any modification to this Agreement shall be ineffective unless reduced to writing and signed by the Parties. This Agreement supersedes any prior agreements between the Parties which set forth the terms and conditions for use of the Underground System or for the installation of authorized equipment as an adjunct to such authorized use.

m. Headings and Exhibits. The captions of the paragraphs and sections of this agreement are for convenience in reference only and shall not affect the interpretation of this Agreement. Exhibits referenced herein are incorporated by said reference and may only be modified by written agreement of the Parties.

n. Maintenance of Records by Carrier: For the term of this Agreement and for one year thereafter, SCE shall have the right to require that Carrier provide SCE with copies of: (1) any or all permits, consents, authorization, or approvals issued by a governmental agency or authority, including regulatory agency, with jurisdiction over Carrier, the operation of its system or the performance of the any work authorized under this Agreement, including but not restricted to, zoning or building permits, and (2) any or all easements, licenses or approvals from private property owners that are required to access or use the Cable or Underground System. Carrier shall promptly comply with any request made by SCE under this provision.

o. Review or Inspection Rights of SCE: Any review of information submitted by Carrier to SCE for review or any inspection by SCE of work performed by Carrier, whether made or not, shall not relieve Carrier of any responsibility, obligation, or liability assumed under this Agreement. Carrier further agrees that it will not hold SCE liable for any loss or damages resulting directly or indirectly from any review or inspection by SCE, or SCE's failure to review or inspect, and to indemnify SCE from any third-party claim that SCE's review or inspection or failure to review or inspect resulted, directly or indirectly, in any loss or damage.

p. Nature of Rights: Nothing in this Agreement shall obligate SCE to grant Carrier permission to use other parts of the Underground System under the terms and conditions set forth herein.

q. Performance in Stead: Should Carrier fail to make any payment or perform any act or obligations required under this Agreement, then SCE, at its option (without any obligation to do so and without releasing Carrier from any

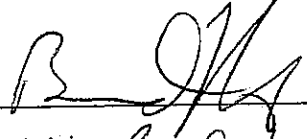
consequences hereunder due to its failure to perform as required hereunder) may: (i) make such payment or perform such act or obligation in such manner and to such extent as SCE deems necessary to protect SCE's rights; (ii) commence, appear in and defend any action or proceeding purporting to affect SCE's rights or interests; (iii) pay, purchase, contest or compromise any encumbrance, charge or lien that, in the sole judgment of SCE affects or may affect SCE's rights or interests; and (iv) in exercising any such powers, incur any liability and expend such reasonable amounts as SCE, in its sole discretion, may deem necessary. Carrier shall promptly reimburse, defend, and indemnify SCE against all liability, loss, cost or expense arising from its performance pursuant to this provision.

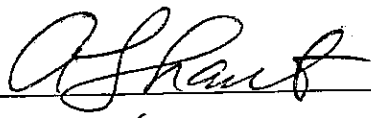
r. Incorporation. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and it supersedes all prior oral or written Agreements, commitments or understanding with respect to the subject matter hereof.

**IN WITNESS WHEREOF**, each of the signatories hereto represent and warrant that they have been duly authorized to sign this Agreement on behalf of the Party for whom they sign.

**ICG TELECOM GROUP, INC.**

**SOUTHERN CALIFORNIA EDISON COMPANY**

By:   
Title: Vice President

By:   
Title: V.P.



**EXHIBIT B**  
**TO THE**  
**MAY 22, 2003 INTEGRATION AGREEMENT**

**POLE LICENSE AGREEMENT # 1**

**BETWEEN**

**SOUTHERN CALIFORNIA EDISON COMPANY**

**AND**

**ICG TELECOM GROUP, INC.**

**POLE LICENSE AGREEMENT  
BETWEEN  
SOUTHERN CALIFORNIA EDISON  
AND  
ICG TELECOM GROUP, INC.**

This Pole License Agreement ("Agreement") is made as of this 22nd day of May, 2003, ("Effective Date") by and between Southern California Edison Company ("SCE"), a California corporation, and ICG Telecom Group, Inc., a Colorado corporation ("Licensee"), individually "Party" and collectively "Parties."

SCE herein provides Licensee with a license to install cables and ancillary equipment on or near certain specified poles owned solely or jointly by SCE, pursuant to Public Utilities Code Section 767.5 and California Public Utilities Commission ("CPUC") Decision 98-10-058, issued on October 22, 1998 in Docket R.95-04-043/L.95-04-044 ("Decision") and the rules contained therein. Both Parties hereto agree that the terms and conditions in this License are consistent with the Decision.

These terms and conditions of this Agreement are as follows:

1. Grant of License.

SCE hereby grants Licensee a nonexclusive license permitting the attachment of Licensee's cables and ancillary equipment, as described below (collectively, an "Attachment") to the SCE space on each of the poles specifically identified in Exhibit A ("SCE Pole Space"), subject to the terms and conditions set forth herein. This license will include permission to make one cable attachment in a portion of the pole known as the "communications space," and to attach risers in the "common space," to the extent that common space is available. Ancillary equipment, such as meters or power supply units, shall be placed on pedestals located near the pole whenever possible; provided, however, that Licensee is not required to relocate ancillary equipment which SCE authorized Licensee to install in the common space prior to the effective date of this Agreement. In the event that it is not feasible to locate ancillary equipment on a pedestal near the pole, written authorization from SCE shall be required to install such equipment in the "common space". Licensee acknowledges that it is not authorized to use hereunder any SCE poles which are not specifically identified in Exhibit A, and that SCE has not made any representation or warranty whatsoever concerning the availability of any other SCE pole or poles. If Licensee requires electric service to operate any ancillary equipment located on or near

such a pole, then Licensee shall comply with SCE's procedures for requesting such service. If electric service is requested, it will be supplied pursuant to the terms and conditions of SCE's applicable electric service tariffs.

2. Non-Interference With Utility Services or Attachments.

a. SCE reserves to itself the right to maintain SCE Pole Space and to operate its facilities in such a manner as will enable it to provide utility services and perform related utility operations.

b. Licensee agrees that its Attachments must not in any way adversely affect or interfere with SCE's utility services or operations, or with the services or operations of other third parties using the pole. If SCE determines that any such Attachment is adversely affecting or interfering with SCE's utility services, or is notified by a third party that the Attachment is adversely affecting or interfering with other services or operations, upon oral or written notice by SCE, Licensee must immediately cease said interference and repair the condition.

c. Licensee acknowledges that its license right may be terminated by SCE in accordance with the terms of this Agreement for reasons related to SCE's operation of its electric utility system, including removal or abandonment of the pole. Licensee specifically acknowledges that nothing in this Agreement obligates SCE to maintain any pole for a period longer than the period SCE determines said pole is needed to meet the utility's electric service requirements.

d. If an incident occurs whereby SCE's utility services and Licensee's service on a pole are both adversely affected, and restoration of both Parties' services cannot be accomplished at the same time, then restoration of SCE's utility services shall take priority over Licensee's restoration of its service; provided, however, that SCE shall not unreasonably delay Licensee's opportunity to restore its service. SCE shall permit Licensee to make repairs to restore its service, as long as such restoration efforts do not interfere with SCE's restoration activities.

e. Licensee agrees that before installing a new Attachment or modifying an existing Attachment, Licensee shall notify SCE of the schedule for such work, at least 30 days prior to the start of any work, and obtain SCE's written approval, which approval shall not be unreasonably withheld. Where an emergency modification to an Attachment is requested by the Licensee to repair an interruption of existing service to Licensee's customers, then SCE will respond in writing, if possible, to Licensee's request within one business day of receipt of the emergency request. The making of an Attachment without SCE's prior written approval shall constitute an "unauthorized attachment" under the Decision and shall subject the Licensee

to the penalties specified therein or otherwise agreed upon by the Parties.

3. Technical Specifications for Attachment by Licensee.

Any Attachment authorized hereunder shall conform to and be installed or maintained in accordance with applicable construction and safety requirements, including the anchorage requirements included in Attachment A. Further, all ancillary equipment placed on or near the pole shall be clearly and visibly marked in such a way as to identify it as Licensee's property.

4. Annual License Fee.

Licensee shall pay an Annual License Fee that shall be calculated each year in accordance with Rule VI.B.1.b.(1) of the Decision. The Annual License Fee shall go into effect on July 1 of each year and remain in effect until June 30 of the next year. The current Annual License Fee is \$5.52 per pole. The Annual License Fee due upon execution of this Agreement or upon approval of additional Attachments pursuant to Section 5 below, shall be prorated based upon the number of days from the date of execution until July 1. Not later than June 1 of each year this Agreement is in effect, SCE will mail a written notice to Licensee setting forth the new Annual License Fee taking effect on July 1 of that year. SCE shall calculate a total Annual License Fee by applying the new Annual License Fee to the total number of SCE Pole Attachments. SCE will invoice the Annual License Fee in two installments, on or about January 1 and July 1, and Licensee shall pay each installment in full within 30 days thereafter.

5. Addition, Deletion or Termination of a Pole Attachment.

a. If Licensee wishes to add an additional attachment under this Agreement, then Licensee must request approval of the new attachment pursuant to SCE's current Request for Access procedure, which is attached as Attachment A. Attachment A may be modified by SCE from time to time in a manner that is not inconsistent with the Decision. If SCE approves the Licensee's request for a new pole Attachment under this procedure, as evidenced by SCE's signature on the approval line of SCE's Request for Access form, then Exhibit A of this Agreement will be deemed updated and the new Attachment will be subject to the terms and conditions applicable to existing Attachments under this Agreement.

b. If the Licensee wishes to terminate an existing Attachment, then it will submit written notice to SCE using the applicable SCE form (a current copy of this form SCE 34-4 is included in Attachment A). If the notice is submitted at least two months prior to either one of the two invoice dates specified in Section 4, above, then the Annual License Fee

calculation for poles for the next invoice will not include the terminated pole(s). Termination of a pole Attachment, however, shall not release the Licensee from its obligations to pay the current installment of the Annual License Fee which is due under Section 4 and any amounts otherwise due to SCE as of the termination date.

c. In the event of a termination of an Attachment, unless otherwise directed by SCE, Licensee shall promptly remove any cable or ancillary equipment associated with the terminated Attachment in accordance with the standards for performing work on or near a pole identified in Section 11(a) and at Licensee's sole risk and expense. If the Licensee does not promptly remove the terminated Attachment as described above, then SCE may remove the cable or ancillary equipment associated with the terminated Attachment and invoice the Licensee for any costs incurred by SCE as a result, including any storage costs. In addition, SCE may suspend the Licensee's right to make new attachments pursuant to Section 5a and pursue remedies for a default under Section 16.

## 6. Installation, Maintenance and Repair.

a. Licensee shall, at its sole risk and expense, make any authorized Attachments and install, maintain and repair ancillary equipment authorized for placement upon an SCE pole. Licensee shall be solely responsible for all work and materials required for the Attachment, including any required for the installation, maintenance and repair of such ancillary equipment. If Licensee elects not to use its own personnel to perform the work, then Licensee shall select and supervise the licensed general contractor used by Licensee to perform the installation, maintenance or repair work and the Licensee shall remain responsible for the work. In addition, the Licensee shall be responsible for ensuring that said contractor fully complies with the obligations of Licensee under this Agreement, including complying with any applicable requirements and specifications as such are further described in Section 6(b) and Section 11 below. Licensee further agrees to require insurance from said independent contractor, as further identified below, and to require that SCE be an additional named insured and loss payee on any liability insurance policy required under this Agreement, as further described in Section 15 below. SCE shall have the right to require Licensee and its contractor to suspend immediately, upon oral notice, any work being performed or to be performed by Licensee or its contractor hereunder whenever such work is being performed or is to be performed in a manner contrary to this Agreement, or in any manner which is likely to cause injury to persons or damage to property. Licensee or its contractor shall not resume any such work until SCE has given its approval to do so.

b. The Attachment shall at all times be maintained in a safe condition and in good repair. Installation, maintenance and repair by the Licensee, or as a result of work performed under Licensee's direction, shall be done in conformity with any requirements and specifications prescribed by all applicable laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to pole construction.

c. Licensee shall notify SCE when installation is complete. SCE shall have the right to inspect Licensee's Attachment and any installation of equipment upon a pole which is made under this Agreement once installation is complete. If SCE elects to exercise this right, then Licensee shall pay the actual costs incurred by SCE to perform this inspection within 30 days of receiving an invoice from SCE and SCE shall provide Licensee with the results of its inspection, including identification of any deficiencies identified by SCE as part of this inspection. SCE further reserves the right, at such other times as SCE in its judgment deems appropriate, to conduct additional inspections of the Attachment, including any related equipment, at no additional cost to Licensee. Any inspection under this section, whether made or not, shall not relieve Licensee of any responsibility, obligation, or liability assumed under this Agreement to install, maintain and operate an Attachment in a safe manner, and in compliance with all applicable ordinances, codes, statutes, regulations laws, and rules as set forth in Sections 6(b) and 11. Licensee further agrees not to hold SCE liable for any loss or damages resulting directly or indirectly from any inspection by SCE or SCE's failure to inspect, and to indemnify SCE from any third party claim that SCE's inspection or failure to inspect resulted, directly or indirectly in any loss or damage.

d. If Licensee fails to install and use an Attachment within the nine month period specified in the Decision, then the approval granted by SCE for Attachment under this Agreement shall be automatically revoked, and the access rights granted herein shall revert back to SCE, and this Attachment shall be deemed terminated by default to the Licensee. Licensee shall not be entitled to a refund of any of the Annual License Fee.

## 7. Changes to an Attachment or to a Pole.

a. Authorized Changes to an Attachment by the Licensee. Licensee, with SCE's prior written approval, may make changes to an Attachment authorized hereunder where the change does not involve any change in the position of any SCE equipment or facilities or third party equipment or facilities.

b. Authorized Changes to an Attachment by SCE. In the event that SCE must rearrange any existing attachments to accommodate a new or modified Attachment by Licensee, then Licensee agrees to pay SCE's

costs for said rearrangement promptly upon demand. Licensee understands that SCE may, from time to time, have to rearrange Licensee's Attachments to permit additional attachments in the communication space. SCE shall provide written notice to Licensee before Licensee's Attachment is rearranged. When the rearrangement is being made to accommodate new or modified attachments for the provision of SCE's electric utility service, Licensee will, upon demand, promptly pay its share of the rearrangement costs, which shall equal SCE's total cost to rearrange non-SCE attachments divided by the total number of attachments that are rearranged.

c. Expansion or Replacement of a Pole. In the event that SCE, or a joint owner with SCE of a jointly-owned pole, must expand or replace an existing pole to accommodate a new or modified Attachment by Licensee, then Licensee agrees to pay the costs associated with the replacement or expansion of the existing pole. If SCE notifies Licensee that an expansion or replacement of a pole is otherwise needed to permit additional attachments in the communications space, then SCE shall provide written notice to Licensee of the proposed replacement or expansion. Licensee will fully cooperate with SCE in making the needed changes, including promptly notifying SCE about whether the Licensee desires to maintain its Attachment. If Licensee elects to maintain its Attachment, said election to be presumed unless SCE is notified to the contrary by the Licensee, then Licensee will upon demand promptly pay its share of the costs of the pole expansion or replacement, including the costs associated with the change-out, as specified in the Decision.

d. Reclamation of Pole Space. SCE may reclaim any space occupied by the Licensee upon written notification to Licensee that the space is needed so SCE can provide utility services and that there are no other feasible alternatives to meet SCE's utility needs. In the case where SCE has need of existing space which is occupied by the equipment of Licensee, SCE must first give Licensee the option to pay for the cost of the rearrangement or expansion necessary to maintain its attachment. In order to justify a reclamation of space, SCE must justify that the space is reasonably and specifically needed to serve its customers and that there are no other cost effective, feasible solutions to meet its needs, other than reclamation or rearrangement, and that there are no technological means of increasing capacity of the support structure for additional attachments. In such event, SCE shall attempt to negotiate with the Licensee to reach a solution to the capacity problem in good faith. In the event of a dispute over reclamation of space and displacement of the Licensee, SCE may not displace Licensee, or require that Licensee remove its attachments, without obtaining CPUC authorization to do so, which shall be sought pursuant to the expedited dispute resolution process in the Decision.

e. Undergrounding. If SCE is required to underground cable or other equipment attached to a pole, then SCE will notify the Licensee. If Licensee wishes to use the new underground facilities, then Licensee may request such access under SCE's current terms and conditions for providing access to such facilities pursuant to Rule 20, or any successor regulation, and shall be responsible for paying any associated charges.

8. Non-Exclusive and Non-Precedential Nature of Rights.

Nothing in this Agreement shall preclude SCE from granting any third party permission to use available space on a pole, nor shall this Agreement restrict Licensee from negotiating with other pole owners for use of space on their poles.

9. Joint Use of Pole After Attachment by Licensee.

a. Nothing in this Agreement shall be construed as affecting any rights or privileges conferred by SCE, by contract or otherwise, to others not Parties to this Agreement to use any poles covered by this Agreement; and SCE shall have the right to confer, continue or extend such rights or privileges. The privileges herein granted to Licensee shall at all times be subject to any such contracts and arrangements.

b. Neither SCE, nor a joint owner with SCE of a jointly-owned pole, shall be liable to Licensee for any interruptions to Licensee's service or for any interference with the Licensee's Attachment, or with the operation of Licensee's equipment arising in any manner from use by SCE, or other owners, of the pole or from use of any equipment located on or near the poles.

10. Property Rights.

a. Licensee warrants that it has all necessary licenses, permits, authorizations, and rights necessary for it to engage in communications and/or cable businesses in the State of California, to utilize public rights of way, and to qualify for access to utility rights of way and poles pursuant to the Decision.

b. The Decision requires that where SCE does not own the property on which its poles or other support structures are located, then the Licensee must obtain the necessary access and/or use rights from the owner(s) of the property before attaching or installing any equipment. Licensee shall be solely responsible for obtaining, and maintaining in full force and effect, any necessary franchises, easements, licenses, permits, certificates or grants from state, county, regulatory or local authorities and

private owners of real property to make an Attachment, as well as to install, operate and maintain any related equipment, within private or public rights-of-way.

c. Nothing in this Agreement shall be construed to confer any permit, license, or grant to use the property of any persons other than SCE. This written revocable license to Licensee to use SCE-owned poles, or space on a pole that is partially owned or controlled by SCE, is expressly subject to the requirement, as further described above, that the Licensee obtain any necessary third party rights to access and/or use the non-SCE owned property before making any Attachments hereunder.

d. Nothing herein shall be deemed to grant to Licensee: (i) any rights or property interests in any of SCE's property, including to any poles, or (ii) any license, easement, assignment, lease, sublease, transfer or conveyance or other property or other legal right to exercise any of SCE's rights to erect or maintain any poles, electrical lines or other equipment or facilities, in, over, through, under, across, along or upon any property of another. Further, no such rights are given, created or transferred to Licensee pursuant to this Agreement, including without limit any aerial rights, despite the installation and maintenance of any type or form of improvements or equipment, no matter how long maintained. Licensee specifically agrees that it shall never claim any such rights based on this Agreement.

e. Licensee's interest under this Agreement shall be and remain a revocable license. Any assertion, statement, or claim by Licensee that Licensee has acquired any rights other than a revocable license to make the Attachment which is authorized hereunder, shall constitute a default. Notwithstanding the restrictions in the previous sentence, Licensee may assert that under the decision in Salvaty v. Falcon Cable Television, 165 Cal. App. 3d 798; 212 Cal. Rptr. 31 (Mar. 1985), Licensee is entitled to use certain of Licensor's easements for the placement of Licensee's cable and ancillary equipment, and Licensor may contest this assertion.

f. Upon notice from SCE to Licensee that the use by Licensee of any pole is, or may be, forbidden by federal, state or municipal authorities, or private owners of real property, or that such use would constitute a trespass because of the expiration, termination, cancellation or revocation of any of Licensee's property rights, any permission to attach to such pole or poles which was provided under this Agreement shall immediately terminate and Licensee shall forthwith terminate its Attachment and remove any equipment from the pole unless the governmental authority or private owner consents to Licensee's continued occupancy while Licensee is pursuing administrative or judicial review or the owner is enjoined from demanding removal of the Attachment and equipment.

11. Duty of Care and Responsibilities for Damages.

a. Licensee shall, at all times and at its sole expense, keep and maintain the Attachment and any related equipment in conformity with the requirements of this Agreement. Licensee shall install, operate and maintain the Attachment in compliance with SCE's standards for performance of such work, as updated from time to time, and in conformity with all applicable ordinances, codes, statutes, regulations and laws, including, but not limited to, the specifications in the CPUC's General Orders 95 and 128, as updated from time to time, and any other regulations subsequently issued by the CPUC applicable to Attachments, the National Electrical Safety Code and CAL/OSHA Title 8. Where the requirements of a General Order and a CAL/OSHA requirement are consistent or additive, then they both shall apply; in the event of any conflict between a General Order and a CAL/OSHA requirement, then the General Order shall govern. Licensee's rights hereunder also shall be subject to the provisions of applicable ordinances, codes, statutes, regulations and laws, including General Order 69-C, dated and effective July 10, 1985, as updated or modified from time to time.

b. Licensee shall exercise special precautions to avoid causing damages to SCE property or the property of any third party. Licensee shall be fully responsible for any and all loss from any failure to exercise such care, including damages due to any loss of use or liability for consequential damages. Licensee shall make an immediate report of the occurrence of any such damage to the owner of the damaged properties and to SCE.

c. Licensee covenants and agrees that SCE shall not be liable for any damage or injury of any kind or nature to Licensee's property, equipment, employees, agents, servants, or independent contractors or any other third party invitees of Licensee, except where SCE is determined to have caused this damage by its sole negligence or willful misconduct.

12. Subsequent Modifications to the Decision.

The Parties are aware that Attachment services are being offered by SCE in response to a requirement contained in the Decision and pursuant to Public Utilities Code Section 767.5. If the Decision is invalidated or changed in any material respect after the effective date of this Agreement by law or regulation or by a regulatory, administrative or judicial decision, then the Parties agree to meet in good faith to discuss modifications to this contract, as appropriate. If the Parties are unable to agree on modifications, then the Parties may seek resolution of the dispute by the California Public Utilities Commission. Any agreed-upon modifications shall not affect any obligations to make payments which have accrued prior to the modification.

13. Liability and Indemnification.

a. Except as provided in Section 13b, the Parties mutually agree to indemnify and hold harmless as Indemnitees, each other, and their parent and affiliates, and their agents, consultants, employees, officers, directors and shareholders from and against any and all fines, penalties, losses, costs, damages, judgments, expenses or liabilities (hereinafter individually and collectively called "Liabilities") including, but not limited to, Liabilities claimed to result from the injury to or death of any person, or damage to or loss or destruction of any property arising out of the Party's negligent performance or nonperformance of its obligations to the extent such Liabilities exceed the applicable insurance coverage in Section 15 of this Agreement. Liabilities covered under this Section 13 shall include, any liability that SCE may suffer or incur arising out of any actual or alleged invasion or interference with the property rights of any third parties. Notwithstanding the foregoing, neither Party shall be required to indemnify the other for Liabilities which take the form of indirect, special, or consequential damages (including, without limit, loss of business, prospective business, revenues or profits); except where such Liabilities arise out of the willful misconduct of a Party. Each party shall, as soon as practicable, notify the other Party of any suit or other legal proceeding asserting a claim for Liabilities.

b. If the Licensee fails to comply with any provision of Section 15 of this Agreement, including, without limit, any failure to: (1) obtain and maintain the required insurance; (2) name SCE as an additional insured and loss payee; or (3) require its insurance provider to pay a third party claim which is covered by the insurance required under Section 15, or if the claim for Liabilities relates to an Attachment for which the Licensee was required to obtain written authorization from SCE and did not do so, then Licensee shall indemnify, defend and hold harmless as "Indemnitees" SCE its parent and affiliates, and the agents, consultants, employees, officers, directors and shareholders of SCE and its affiliates, and, at the option of SCE, defend it or them from and against any and all "Liabilities") including, but not limited to, Liabilities claimed to result from the injury to or death of any person, or damage to or loss or destruction of any property arising in whole or in part out of the negligent performance or nonperformance by Licensee or its contractors of their obligations regardless of the negligence of any Indemnitee. Notwithstanding the foregoing, Licensee shall not be required to indemnify, defend and hold harmless SCE for Liabilities that take the form of indirect, special, or consequential damages, (including without limit, loss of business, prospective business, revenues or profits, except where such liabilities arise in whole or in part out of the willful misconduct of the Licensee or its contractors.)

c. In no event shall SCE be liable to Licensee, anyone claiming under Licensee, or any of Licensee's customers for any consequential, incidental or special damages or lost profits incurred or alleged to have been incurred by anyone.

d. This Section 13 shall survive the termination, expiration or cancellation of this Agreement.

14. Performance Bond or Security Agreement.

SCE may, at its option, whenever the credit rating of the Licensee falls below the rating level of CCC and as a condition to permitting an Attachment or the use of a pole hereunder, require Licensee to furnish a bond or security agreement in such sum and in such form, as SCE deems appropriate and/or any additional proof of credit worthiness. If proof of credit worthiness is requested by SCE, then Licensee shall provide such proof within 30 days. Moreover, if required, this bond or security agreement shall remain in force for such time as Licensee has an Attachment, any related equipment on SCE property, or any unsatisfied obligations under this Agreement.

15. Insurance.

At all times during the term of this Agreement, Licensee shall maintain and shall require its subcontractors that do any work pursuant to this Agreement to maintain insurance coverage, as described below:

a. Worker's Compensation Insurance with statutory limits, in accordance with the laws of the State of California, and Employer's Liability Insurance with limits of not less than One Million Dollars (\$1,000,000). Licensee shall require its insurer to waive all rights of subrogation against SCE, its officers, agents and employees.

b. Comprehensive Bodily Injury and Property Damage Liability Insurance, including owner's and contractor's protective liability, product/completed operations liability, contractual liability and automobile liability, with a combined single limit of not less than \$2,000,000 for each occurrence. Such insurance shall (a) name SCE, its officers, agents, and employees as additional insureds and loss payees, but only for Licensee's acts or omissions; (b) be primary for all purposes; and (c) contain standard cross-liability provisions.

Written proof of compliance with the requirements of this section, consisting of Certificates of Insurance and a copy of the Additional Insured Endorsement to Licensee's insurance policy(s), in a form acceptable to SCE, will be provided to and approved by SCE prior to any Attachment hereunder, or the related installation of any equipment on or near a pole, and

prior to the expiration of each policy year thereafter. Notwithstanding the previous sentence, SCE shall have the right at any time to notify the Licensee of any deficiency in insurance coverage which comes to its attention and Licensee shall be required to promptly provide acceptable proof of full compliance with these insurance requirements. The Certificates of Insurance shall provide that this insurance shall not be terminated, canceled or reduced except on thirty days' prior written notice to SCE. In the event of any termination, cancellation or reduction in the insurance coverage reflected by a Certificate of Insurance, Licensee shall promptly obtain replacement insurance, so as not to reduce or impair the coverage required to be maintained herein, and shall submit a new Certificate of Insurance reflecting the new insurance coverage to SCE. Failure to provide and maintain such insurance, without any lapse or reduction in coverage, shall constitute a default under this Agreement.

16. Remedies In the Event of Default.

a. In addition to the other events of default specified herein, if Licensee should default in performance of any other obligations placed on Licensee under this Agreement, including by a failure to perform work required to be performed by the Licensee or its contractor or subcontractor hereunder, then this failure may be declared by SCE to be an event of default hereunder and SCE may seek any remedy available to it at law or equity. If the event of a default involving any non-performance or inadequate performance of work required to be performed by the Licensee hereunder, except where such failure raises safety concerns in SCE's sole judgement, Licensee will have 30 days from the date of the default to cure the default to SCE's satisfaction.

b. The occurrence of any of the following events shall constitute financial insolvency and shall serve as a default hereunder:

(i) Licensee files for protection under the Bankruptcy Code of the United States or any similar provisions under the laws for the State of California;

(ii) Licensee has a receiver, trustee, custodian or similar official appointed for all or substantially all of its business or assets;  
or

(iii) Licensee makes an assignment for the benefit of its creditors.

In the case of any financial insolvency event, as described above, SCE may also immediately suspend Licensee's right to make any new

Attachments under Section 5a until Licensee demonstrates to SCE's satisfaction that the financial insolvency has been remedied.

c. In addition to any other rights of SCE hereunder or at law or equity, if the Licensee fails to cure a default to SCE's satisfaction by the end of the cure period specified in section 16.a, then SCE may elect to: (1) perform any unperformed or inadequately performed work at Licensee's sole risk and expense, and Licensee, on demand, will reimburse SCE for the entire expense thereby incurred or (2) terminate the Attachment and require that Licensee remove the terminated Attachment in accordance with Section 5.d.

d. In addition to the above remedies for an uncured default, SCE can suspend Licensee's ability to make new Attachments pursuant to Section 5a until Licensee establishes the event of default has been cured to SCE's satisfaction.

e. The above remedies in the event of a default shall not limit SCE's right to seek CPUC authorization to seek suspension or other penalties in the event of multiple or continuing defaults by evoking the expedited dispute resolution process in the Decision.

f. If SCE fails to comply with a term or condition of this Agreement, Licensee shall provide written notice to SCE of such non-compliance. SCE shall then have a reasonable period of time from receipt thereof to reasonably cure such non-compliance. If the non-compliance cannot be reasonably cured within this reasonable period, then SCE and Licensee shall work together to affect a cure until such time as it becomes evident that no cure can be effected.

g. SCE and Licensee agree that, as of the effective date of this Agreement, it is impractical if not impossible to reasonably ascertain the extent of damages which would be incurred by Licensee and/or its customers as a result of a material breach by SCE of its obligations under this Agreement. Accordingly, when it is established that there has been material breach of the Agreement, SCE and Licensee agree to the payment of liquidated damages in the total amount of the Annual License Fee. This provision for liquidated damages is intended to be compensatory and not punitive and shall be deemed an exclusive remedy and afford the exclusive procedure for remedying a material breach of this Agreement by SCE. A material breach of this Agreement, for purposes of this Agreement, shall consist of any failure by SCE to complete any of its obligations under this Agreement unless such failure is caused by conditions or actions not under SCE's control.

17. Payment of Bills.

All amounts payable to SCE under the provisions of this Agreement shall, unless otherwise specified, be due and payable within thirty (30) days of the invoice date. Unless SCE otherwise specifies in writing, the amount shall be made payable to SCE and forwarded to the person to whom notices are sent under Section 21 of this Agreement. If payment is not made when due, then the unpaid amount shall accrue interest from the original payment date in the invoice at the maximum rate allowed by law. In addition, if payment is not received within three months of this date, then Licensee shall be in default and SCE may pursue the remedies set forth in Section 16, subparts c through e above.

18. Term and Termination.

a. This Agreement shall continue in effect for a term of one year from the Effective Date hereof and said term will be automatically extended for another one-year term period on the anniversary of the Effective Date.

b. Any termination of this Agreement in whole or in part shall not release Licensee from any liability or obligation hereunder, whether of indemnity or otherwise, which may have accrued or which may be accruing, or which arises out of any claim that may have accrued or may be accruing at the time of termination.

19. Assignment.

Licensee may not assign, transfer, sublease, or sublet any right, obligation, or privilege given to it hereunder without SCE's prior written consent; the execution of a new agreement by any approved successor shall be required as a condition to such consent.

20. Taxes.

Licensee shall pay when due all taxes as a result of any Attachment or installation of equipment on a SCE pole including, but not limited to, special assessments and government fees of any kind whatsoever which may be levied or assessed upon any personal property which Licensee has caused to be placed or maintained upon SCE's facilities, or against Licensee's business and shall keep SCE's facilities free from all liens, including but not limited to mechanics liens, and encumbrances by reason of the use, occupancy, or maintenance of SCE's facilities by Licensee or by any person claiming under Licensee. It is further agreed that in the event Licensee fails to pay the above-mentioned taxes, assessments, or liens when

due, SCE shall have the right to pay the same and charge the amount thereof to Licensee, who shall pay the same upon demand together with interest at the maximum rate allowed by law from the date of such expenditure by SCE.

21. Notice.

Whenever in this Agreement notice is provided or required to be given by one Party hereto to another, such notice shall be in writing and transmitted by United States mail or by personal delivery to SCE (Attention: Joint Pole Administration) at its office at 14005 South Benson Avenue, Chino, CA 91710 or to Licensee, ATTN: Contact Manager, or as the case may be or to such other address as either Party hereto may, from time to time, designate for that purpose, and shall be deemed given two (2) days after it is sent by certified mail, with a return receipt requested.

22. General Provisions.

a. Encumbrances. Licensee shall prevent any and all liens from attaching, as a result of Licensee's activities respectively under this Agreement, to any property of SCE upon which Licensee has made an Attachment or upon which any of Licensee's equipment is attached or installed.

b. Independent Contractual Relationship. Nothing in this Agreement shall create any special relationship between SCE and Licensee, such as an agency relationship; the Parties' only relationship under this Agreement is one of independent contracting parties.

c. No Rights to Trademarks. Licensee shall not use "SCE," "Southern California Edison Company," "SCE" or any other words and marks owned by or used by SCE in identifying itself, or by others in referring to it, without specific written permission from SCE to do so.

d. Choice of Law. This Agreement and performance under this Agreement shall be governed, interpreted, construed, and regulated by the laws of the State of California.

e. No Third Party Beneficiaries. All of the terms, conditions, rights and duties provided for in this Agreement are and always shall be solely for the benefit of SCE and Licensee, as specified herein. No third party (including customers of either SCE or Licensee) shall ever be the intended beneficiary of any performance, duty or right created or required pursuant to the terms and conditions of this Agreement.

f. Force Majeure. Except for the payment of monies due under this Agreement, neither Party shall be deemed in default hereunder to the extent that any delay or failure in the performance of its obligations

results from causes beyond its reasonable control and without its fault or negligence. In the event of any such excused delay, the time for performance shall be extended for a period equal to the time lost by reason of the delay. If any excused delay occurs, the Party unable to perform shall give immediate notice to the other Party, while simultaneously seeking, in good faith to utilize reasonable alternative means for accomplishing the purposes of this Agreement and preventing delay.

g. Attorney's Fee. If SCE should bring any suit, action, or other legal proceeding against Licensee hereunder or in connection herewith, it shall be entitled to recover, in addition to any judgment or decree for costs, such reasonable attorney's fees as it may have incurred in such suit, action, or other legal proceeding, together with other reasonable litigation expenses.

h. Waiver. The failure of SCE to enforce any provision of this Agreement or the waiver thereof in any instance, including but not limited to the rights to terminate, shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall nevertheless be and remain in full force and effect.

i. Void or Voidable Provisions. If any part or parts of this Agreement conflicts with any law or shall be held to be void, voidable, unenforceable or invalid by any court of competent jurisdiction, for reasons which are independent of those addressed in Section 12 of this Agreement, then such portion shall be deemed modified to the extent necessary in such court's opinion to render such portion enforceable and, as so modified, such portion and the balance of the Agreement shall continue in full force and effect.


j. Scope of Agreement. This Agreement, including the attached exhibits, incorporates all covenants and understandings between SCE and the Licensee. No other verbal or written agreements or understandings exist between the Parties regarding an Attachment to SCE poles. Any modification to this Agreement shall be ineffective unless reduced to writing and signed by the Parties. This Agreement supersedes any prior agreements between the Parties which set forth the terms and conditions for Attachment to a SCE pole or for the installation of authorized equipment as an adjunct to such Attachment.

k. Headings and Exhibits. The captions of the paragraphs and sections of this agreement are for convenience in reference only and shall not affect the interpretation of this Agreement. Exhibits referenced herein are incorporated by said reference and may only be modified by written agreement of the Parties.

By signing below, the signatories hereto represent and warrant that they have been duly and properly authorized to sign this Agreement on behalf of the Party for whom they sign.

Southern California Edison Company

Licensee

By:   
A. L. Grant  
Vice President

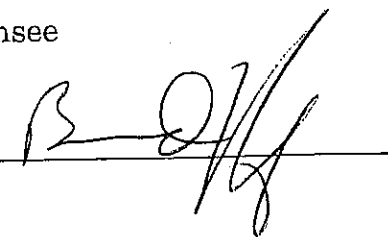
By: 

EXHIBIT A  
ICG - SCE POLE ATTACHMENT HEIGHTS

POLE

ATT.

POLE

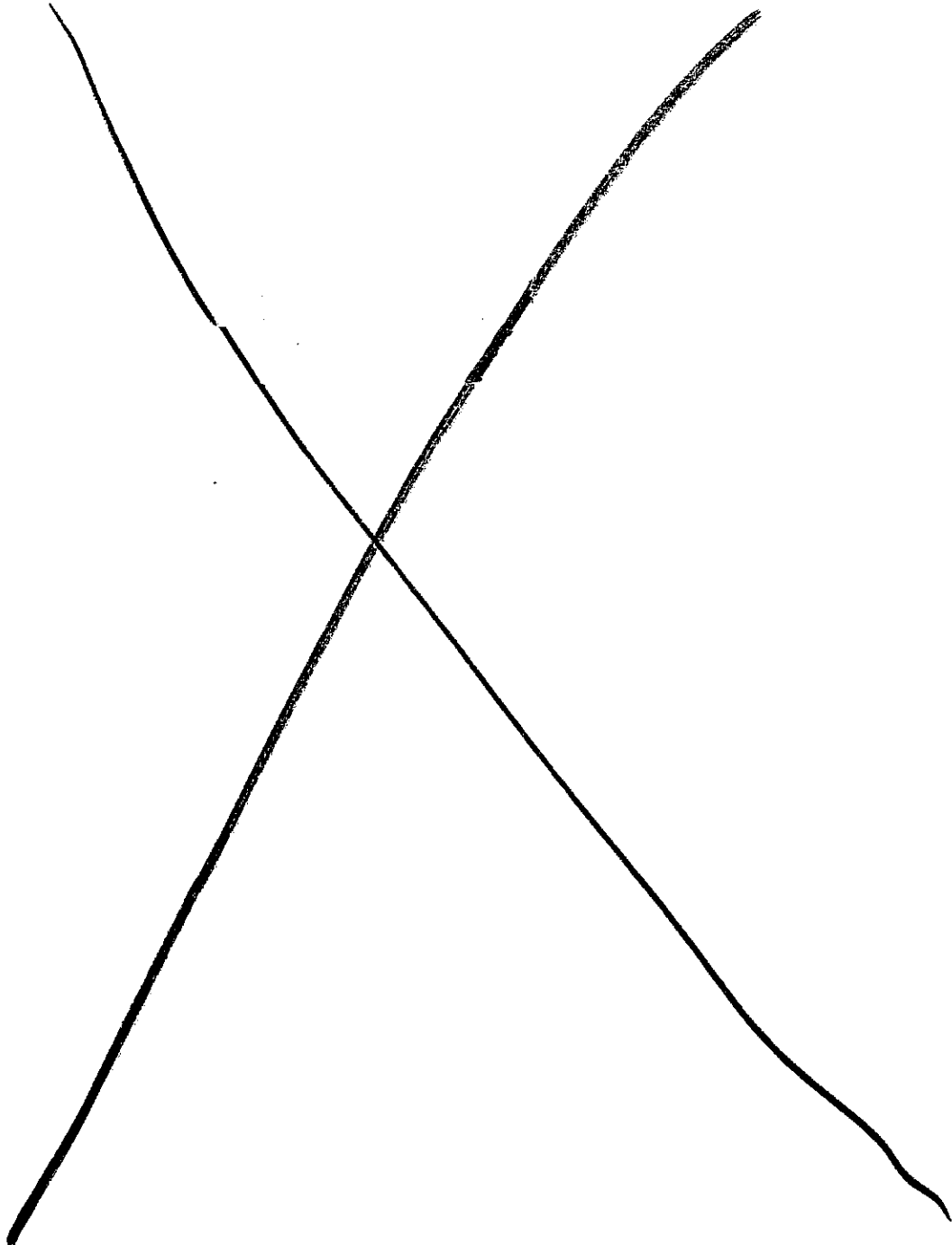
ATT.

POLE

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**EXHIBT C**

**TO THE**

**MAY 22, 2003 INTEGRATION AGREEMENT**

**[REDACTED]**