

PUBLIC VERSION

May 25, 2004

ADVICE 1799-E
(U 338-E)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA
ENERGY DIVISION

SUBJECT: Informational Advice Letter

Contract for Access to Support Structures, Pursuant to Decision No.
98-10-058, Appendix A, Rule VI

PURPOSE

In compliance with Decision (D.) 98-10-058, dated October 22, 1998, Southern California Edison Company (SCE) hereby submits for filing the attached contract for access to utility support structures.

BACKGROUND

On October 22, 1998, the California Public Utilities Commission (Commission) issued D. 98-10-058 containing rules governing the access of telecommunications carriers and cable television companies to public utility rights-of-way and support structures. The rules, as stated in Rule I.A., are to be applied as guidelines by parties in negotiating rights of way access agreements.

In Rule VI of Appendix A to D. 98-10-058, the Commission orders utilities providing or negotiating agreements with telecommunications carriers or cable TV companies for access to support structures, to file the executed contracts with the Commission. The contracts are to be available for public inspection. Any third party that qualifies for access under the mandatory access rules of D. 98-10-058 may obtain access under these terms.

Pursuant to Rule VI of D. 98-10-058, SCE is filing the agreement negotiated with
REDACTED in April 2004. The conduit rate for

the current year is \$1.79 per linear foot. This mandatory access rate is recalculated once annually for all carrier, goes into effect on July 1 and remains in effect until June 30, when the new access rate takes effect.

No cost information is required for this advice filing.

This filing will not increase any rate or charge, cause withdrawal of service, or conflict with any other schedule or rule.

EFFECTIVE DATE

This advice filing will become effective on the 40th calendar day after the date filed, which is July 4, 2004.

NOTICE

Anyone wishing to protest this advice filing may do so by letter via U.S. Mail, facsimile, or electronically, any of which must be received by the Energy Division and SCE no later than 20 days after the date of this advice filing. 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

Copies should also be mailed 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

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

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 furnishing copies of this advice filing to the interested parties shown on the attached service list and R.95-04-043/I.95-04-044. Address change requests to the attached GO 96-A Service List should be directed to AdviceTariffManager@sce.com or (626) 302-4039. 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.

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, please contact Larry Tonsick (626) 302-6675 or by electronic mail at Larry.Tonsick@sce.com.

Southern California Edison Company

Akbar Jazayeri

AJ:mm
Enclosures

**PUBLIC
VERSION**

UNDERGROUND CONDUIT LICENSE AGREEMENT

BETWEEN

SOUTHERN CALIFORNIA EDISON COMPANY

AND

REDACTED

This **Underground Conduit License Agreement** ("Agreement") made as of this 8th day of April, 2004 ("Effective Date"), by and between **Southern California Edison Company** ("SCE"), and **REDACTED** a Delaware limited liability company ("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 **REDACTED**.

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 95-04-043/1.95-04-044 ("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.

REDACTED

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. This Agreement shall automatically renew in one-year renewal terms unless this Agreement is terminated by one of the parties as set forth herein.

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 **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 is \$1.76 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 is \$1.76 per linear foot of Cable and 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.

(4) 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, 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.

b. SCE remedies for such an Event of Default, without limiting SCE's right to pursue other remedies available to it at law or equity, shall include: (1) termination of this Agreement, effective upon notice to Carrier, (2) an immediate right to remove the Cable and/or other property of Carrier, if the Event of Default is of a type listed in subpart a above, and/or (3) invocation of the dispute resolution process, provided for in Article 14 of this Agreement.

c. In the event of a default involving any non-performance or inadequate performance of work required to be performed by the Carrier hereunder, except where such failure raises safety concerns in SCE's sole judgment, Carrier will have 30 days from the date of the default to cure the default to SCE's satisfaction.

d. 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.

e. 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.

f. 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 gross negligence or 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, product/completed operations liability, and ISO 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 with respect to Carrier's acts or omissions; 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 material 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 any additional proof of creditworthiness and or a bond or security agreement in such form as SCE deems appropriate for an amount equal to the current total annual fee under this Agreement and all unpaid amounts including annual license fees and processing fees. 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. Failure to provide a required performance bond or security agreement shall be an event of default 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

REDACTED

With copy to:

REDACTED

17. Miscellaneous.

a. Assignment. Carrier shall not assign, transfer or sublet any of the privileges, rights, duties or obligations described in this Agreement. Under the Decision, a cable television company, competitive local exchange carrier, or fixed wireless carrier has the right to obtain a license from SCE to use excess capacity in certain Support Structures that are part of Sce's existing Underground Systems further described in the Decision. While SCE does not permit assignment of this Agreement for administrative reasons, it acknowledges that a successor in interest to Carrier may, if it meets the criteria set forth in the Decision, have the right to enter into its own license with SCE for the use of the Support Structures covered by this Agreement upon the same terms and conditions generally applicable under the Decision.

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

k. 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.

l. 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.

m. 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. If any agreements requested from Carrier are subject to confidentiality restrictions, SCE recognizes that Carrier may have to obtain permission to give SCE a copy of such agreement. Carrier shall use reasonable efforts to obtain such permission. SCE agrees to cooperate with Carrier in obtaining such permission or finding alternatives to proof of any rights described above.

n. 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.

o. 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.

p. 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, but only to the extent necessary to protect SCE's rights; and (ii) pay, purchase, contest or compromise any encumbrance, charge or lien that directly affects SCE's rights or interests. Carrier shall promptly reimburse, defend, and indemnify SCE against all liability, loss, cost or expense arising from its performance pursuant to this provision.


q. 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.

REDACTED

**SOUTHERN CALIFORNIA EDISON
COMPANY**

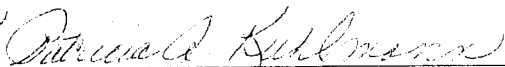
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By: 

Date: **Redacted**

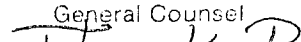
Date: 5-21-04

WITNESS:
Attest: **Redacted**

Witness
Attest: 

By: **Redacted**

By: PATRICIA H. KUHLMANN

APPROVED
STEPHEN E. PICKETT
Sr. Vice President and
General Counsel


REDACTED

**Exhibit A
Route Diagram**