

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of PAXIO, Inc. for a Certificate of
Public Convenience and Necessity in Order to
Provide Limited Facilities-Based and Resold
Competitive Local Exchange, Access, and
Interexchange Service

Application 03-08-010
(Filed August 14, 2003)

O P I N I O N

I. Summary

PAXIO, Inc. (Applicant) seeks a certificate of public convenience and necessity (CPCN) under Pub. Util. Code § 1001 for authority to provide limited facilities-based and resold competitive local exchange, access and interexchange telecommunications services. By this decision, we grant the requested authority subject to the terms and conditions set forth below.

II. Background

In prior decisions we authorized the provision of competitive local exchange service, by carriers meeting specified criteria, within the service territories of Pacific Bell Telephone Company (Pacific), Verizon California Inc. (Verizon), Roseville Telephone Company (RTC), and Citizens Telecommunications Company of California, Inc. (CTC).

Applicant, a California corporation, seeks authority to provide limited facilities-based and resold local exchange, access and interexchange services as a competitive local carrier (CLC) throughout Pacific and Verizon's service territories. Applicant's principal place of business is located at 16787 Beach Boulevard, #341, Huntington Beach, CA 92647.

Applicant filed its initial application on August 14, 2003, followed on September 16, 2003 by an amended application that "supercedes the discussion in the initial Application generally and specifically with regard to Section 5 (CEQA Compliance), Section 6 (Description of Proposed Construction) and Exhibit B (Proponent's Environmental Assessment.)"

Paxio's amendment explains that using facilities that it will either lease or own, it intends to provide high-speed Internet access and data services to private residences and create community intranets in new master-planned housing developments. Paxio states that the equipment it owns will be installed during the infrastructure construction phase of new master-planned housing developments, when a "Joint Utility Contractor will excavate trenches and install conduit and other infrastructure for the utilities that will serve the development....[as well as] the conduit and vaults to be used by Paxio."¹ Paxio notes that its facilities will share the utility trench with electric, gas, telephone and cable television facilities, and that it will operate in planned housing developments that are part of the General Plan of the city in which the development is located. Paxio states that following placement of the conduit in the joint trench and construction of homes, it will pull fiber through the conduit to a termination point adjacent to the entry point of other utilities serving the

¹ Amendment, Page 1.

home, and that its network will interconnect with the network of the Incumbent Local Exchange Carrier for the housing development.

III. Financial Qualifications

To be granted a CPCN, an applicant for authority to provide facilities-based and resold local exchange services must demonstrate that it has a minimum of \$100,000 of cash or cash equivalent to meet the firm's start-up expenses.² An applicant must also demonstrate that it has sufficient additional resources to cover all deposits required by local exchange carriers (LECs) and/or interexchange carriers (IECs) in order to provide the proposed service.³ Applicant, a corporation, provided financial statements that demonstrate that it has sufficient cash to satisfy the financial requirement, including any required deposits.

IV. Technical Qualifications

Applicants for CLC authority are required to make a reasonable showing of technical expertise in telecommunications or a related business. Applicant has submitted biographical information on its officers and key employees that demonstrates that it possesses sufficient experience and knowledge to operate as a competitive local carrier.

² The financial requirement for CLCs is contained in Decision (D.) 95-12-056, Appendix C. The financial requirement for nondominant interexchange carriers (NDIECs) is contained in D.91-10-041.

³ The requirement for CLC applicants to demonstrate that they have additional financial resources to meet any deposits required by underlying LECs and/or IECs is set forth in D.95-12-056, Appendix C. For NDIECs, the requirement is found in D.93-05-010.

V. Tariffs

Commission staff reviewed Applicant's draft tariffs for compliance with Commission rules and regulations. The deficiencies are noted in Attachment A to this decision. Applicant shall correct these deficiencies in its tariff compliance filing as a condition of our approval of its tariffs.

VI. California Environmental Quality Act (CEQA)

CEQA applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision makers and the public about the potential significant environmental effects of the proposed activities."⁴ Because the Commission must issue a discretionary decision before the proposed activity can proceed, the Commission must consider whether the proposed activity requires environmental review, and, if so, act as either a lead agency or responsible agency for CEQA purposes and assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible.

Applicant represents that it will not construct any facilities for the purpose of providing local exchange services, but instead expects to purchase conduit and vaults installed by the Joint Utilities Contractor in a trench excavated for purposes of installing electric, gas, telephone and cable television facilities. Applicant notes that "in most cases, the utility line mapping will have been subject to review under [CEQA] in conjunction with the city's adoption of its General Plan," and that [t]o the extent supplemental CEQA review is required, it will be conducted by the City.

⁴ Title 14 of the California Code of Regulations, hereafter CEQA Guidelines, Section 15002.

Although the Joint Utilities Contractor will install the conduit and vaults that Applicant expects to purchase, Paxio describes a scenario where its purchase of the conduit and vaults is the expected outcome of the transaction, so even if Paxio does not install the vaults and conduit, the installation would be for Paxio's benefit. Nevertheless, we believe that the activities Paxio describes—installation of conduit and vaults in a joint utilities trench as part of a master-planned housing development—falls within the Commission's definition of limited-facilities based authority. Limited-facilities based authority allows carriers to install "UNEs [unbundled network elements] or other equipment placed within previously existing buildings or structures" without environmental review, since it can be seen with certainty that such activities do not adversely impact the environment.⁵

The joint utilities trench, which contains the infrastructure for gas, electricity, telephone and cable television, will be excavated whether or not the Joint Utilities Contractor installs additional facilities for Applicant. Under these circumstances—installation of infrastructure in a trench excavated to contain other utilities, and which must comply with General Plan requirements and in some cases, the California Environmental Quality Act—we believe that the trench can be considered an "existing structure" and that Applicant's described activities are consistent with "limited facilities-based" authority, which allows the installation of facilities in existing structures.

⁵ (D.99-12-050, p. 5 and Ordering Paragraph 4.)

Because the trenching activities will be conducted in accordance with General Plan and, in some cases, local CEQA requirements, and because the applicant's activities will be limited to simply installing its facilities during the trench excavation, it can be seen with certainty that there is no possibility that granting this application will have an adverse effect upon the environment. Applicant must file for additional authority, and submit to any required CEQA review, before it can construct facilities other than equipment to be installed in existing buildings or structures, or during trench excavation as described above.

VII. Request to File Under Seal

Applicant requests that the financial information filed with the application be kept under seal. The financial information consists of bank statements and estimated numbers of customers. The applicant represents that the information is sensitive and proprietary. The information, if revealed, would place Applicant at an unfair business disadvantage. We have granted similar requests in the past and will do so here.

VIII. Categorization and Need for Hearings

In Resolution ALJ 176-3117 dated August 21, 2003, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. No protests have been received in response to the application or its subsequent amendment. There is no apparent reason why the application should not be granted. Given these developments, a public hearing is not necessary, and it is not necessary to disturb the preliminary determinations.

Comments on Draft Decision

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

IX. Conclusion

We conclude that the application conforms to our rules for authority to provide competitive local exchange telecommunications services. Accordingly, we shall approve the application subject to the terms and conditions set forth herein.

X. Assignment of Proceeding

Loretta M. Lynch is the assigned Commissioner and Karl J. Bemesderfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of the application appeared in the Daily Calendar on August 18, 2003, and notice of the amendment “to clarify the nature of the proposed operations” appeared in the Daily Calendar of September 19, 2003.

2. No protests have been filed.

3. A hearing is not required.

4. In prior decisions the Commission authorized competition, by carriers meeting specified criteria, in providing local exchange telecommunications services within the service territories of Pacific, Verizon, RTC and CTC.

5. Applicant has a minimum of \$100,000 of cash or cash equivalent that is reasonably liquid and readily available to meet its start-up expenses.

6. Applicant has sufficient additional cash or cash equivalent to cover any deposits that may be required by other telecommunications carriers in order to provide the proposed service.

7. Applicant possesses sufficient experience and knowledge to provide telecommunications services.

8. As part of its application, Applicant submitted a draft of its initial tariff that contained the deficiencies identified in Attachment A to this decision. Except for those deficiencies, its draft tariffs complied with the Commission's requirements.

9. Applicant will not be constructing facilities to provide telecommunications services, but will install conduit and vaults in trenches excavated to install gas, electricity, telephone and cable television as part of master-planned housing developments, which must comply with the applicable General Plan and in some cases, CEQA.

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has sufficient technical expertise to operate as a telecommunications carrier.
3. Public convenience and necessity require that Applicant's competitive local exchange be subject to the terms and conditions set forth herein.
4. Since Applicant will install conduit and vaults in joint utility trenches excavated for purposes of installing gas, electricity, telephone and cable television as part of a master-planned housing development subject to General Plan, and in some cases CEQA requirements, it can be seen with certainty that there will be no significant effect on the environment.
5. The application should be granted to the extent set forth below.
6. Applicant, once granted a CPCN, should be subject to the applicable Commission rules, decisions, General Orders, and statutes that pertain to California public utilities.

7. Applicant's initial tariff filing should correct the deficiencies in its draft tariffs as indicated in Attachment A to this decision.

8. Applicant's request to file its financial information under seal should be granted for two years.

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

O R D E R

IT IS ORDERED that:

1. A certificate of public convenience and necessity (CPCN) is granted to PAXIO, Inc. (Applicant) to operate as a limited facilities-based and resale provider of competitive local exchange, access and interexchange services subject to the terms and conditions set forth below.

2. Applicant is authorized to provide local exchange and access services in the service territories of Pacific Bell Telephone Company and Verizon California Inc. and interexchange services throughout the State of California.

3. Applicant is authorized to file tariff schedules for the provision of competitive local exchange services with the deficiencies noted in Attachment A corrected. Applicant may not offer services until tariffs are on file. Applicant's initial filing shall be made in accordance with General Order (GO) 96-A, excluding Sections IV, V, and VI. The tariff shall be effective not less than 1 day after tariff approval by the Commission's Telecommunications Division. Applicant shall comply with its tariffs.

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

5. The corporate identification number assigned to Applicant, U-6850-C, shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

6. Applicant shall comply with all applicable rules adopted in the Local Exchange Competition proceeding (Rulemaking 95-04-043/Investigation 95-04-044), as well as all other applicable Commission rules, decisions, general orders, and statutes that pertain to California public utilities, subject to the exemptions granted in this decision.

7. Applicant shall comply with the requirements applicable to competitive local exchange carriers included in Attachment B to this decision.

8. Applicant is not authorized to construct facilities, other than equipment to be installed in existing buildings or structures, including the installation of conduit and vaults in trenches that have been excavated to install gas, electricity, telephone and cable television as part of a master-planned housing development subject to General Plan and in some cases CEQA requirements.

9. Applicant's request to have the financial information filed with the application kept under seal is granted for two years from the effective date of this decision. During that period, the information shall not be made accessible or disclosed to anyone other than the Commission staff except on the further order or ruling of the Commission, the Assigned Commissioner, the assigned Administrative Law Judge (ALJ), or the ALJ then designated as Law and Motion Judge.

10. If Applicant believes that further protection of the information kept under seal is needed, it may file a motion stating the justification for further withholding of the information from public inspection, or for such other relief as the Commission's rules may then provide. This motion shall be filed no later than one month before the expiration date.

11. This application is closed.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A
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List of deficiencies in tariffs filed by Paxio, Inc. in Application (A.) 03-08-010 to be corrected in its tariff compliance filing.

1. Sheet 11: If the competitive local carrier (CLC) intends to provide residential service, it must offer Universal Lifeline Telephone Service (ULTS). The ULTS must be tariffed.
2. Sheet 13: Include the fees and surcharges shown in Attachment B to this decision.
3. Tariff must be available for inspection at an office in California.
4. Sheet 16, Rule 3: Incomplete rule on Application for Service. Include Rule 2 of Appendix B of Decision (D.) 95-07-054 in the CLC tariff.
5. Sheet 19, Rule 8: Remove Rule 8(a) and include Rule 8A and 8B from Appendix B of D.95-07-054 in CLC tariff.
6. Sheet 24, Rule 10: Remove the 1st paragraph from Rule 10 and include Rule 6B(1) from Appendix B of D.95-07-054 in CLC tariff.
7. Sheet 26, Rule 6A: State in the tariff that credit cannot be denied for failure to provide social security number. Refer to Rule 4A of Appendix B of D.95-07-054.
8. Sheet 27, Rule 18: State in the tariff that the CLC concurs with SBC or Verizon's Limitation of Liability tariffs regarding credit for service interruptions. Refer to D.95-12-057.
9. Include Rule 10C from Appendix B of D.95-07-054 in the CLC tariff.
10. Include sample forms in the CLC tariff.

(END OF ATTACHMENT A)

ATTACHMENT B**Page 1****REQUIREMENTS APPLICABLE TO COMPETITIVE LOCAL EXCHANGE CARRIERS
AND NON-DOMINANT INTEREXCHANGE CARRIERS**

1. Applicant shall file, in this docket, a written acceptance of the certificate granted in this proceeding within 30 days of the effective date of this order.

2. Applicant is subject to the following fee and surcharges that must be regularly remitted per the instructions in Appendix E to Decision (D.) 00-10-028. The Combined California PUC Telephone Surcharge Transmittal Form must be submitted even if the amount due is zero.

- a. The current 1.10% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service Trust Administrative Committee Fund (Pub. Util. Code § 879; Resolution T-16795, December 18, 2003);
- b. The current 0.30 % surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (Pub. Util. Code § 2881; D.98-12-073 and Resolution T-16816, January 22, 2004);
- c. The user fee provided in Pub. Util. Code §§ 431-435, which is 0.11% of gross intrastate revenue (Resolution M-4810);
- d. The current surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (Pub. Util. Code § 739.3; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16793 at 0.17%, December 18, 2003);
- e. The current 2.20% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-B (D.96-10-066, p. 191, App. B, Rule 6.F., Resolution T-16794, December 18, 2003); and
- f. The current 0.0 % surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Teleconnect Fund (D.96-10-066, p. 88, App. B, Rule 8.G, Resolution T-16782, December 18, 2003).

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3. Applicant is a competitive local exchange carrier (CLC). The effectiveness of its future tariffs is subject to the schedules set forth in Appendix C, Section 4E of D.95-12-056:

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

- (1) Uniform rate reductions for existing tariff services shall become effective on five (5) working days’ notice. Customer notification is not required for rate decreases.
- (2) Uniform major rate increases for existing tariff services shall become effective on thirty (30) days’ notice to the Commission, and shall require bill inserts, or first class mail notice to customers at least 30 days in advance of the pending rate increase.
- (3) Uniform minor rate increases, as defined in D.90-11-029, shall become effective on not less than (5) working days’ notice to the Commission. Customer notification is not required for such minor rate increases.
- (4) Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- (5) Advice letter filings revising the text or location of text material which do not result in an increase in any rate or charge shall become effective on not less than five (5) days’ notice to the Commission.
- (6) Contracts shall be subject to GO 96-A rules for NDIECS, except interconnection contracts.
- (7) CLCs shall file tariffs in accordance with PU Code § 876.”

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4. Applicant is a nondominant interexchange carrier (NDIEC). The effectiveness of its future NDIEC tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032 (37 CPUC2d 130 at 158), as modified by D.91-12-013 (42 CPUC2d 220 at 231) and D.92-06-034 (44 CPUC2d 617 at 618):

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

- a. Inclusion of FCC-approved rates for interstate services in California public utilities tariff schedules shall become effective on one (1) day’s notice.
- b. Uniform rate reductions for existing services shall become effective on five (5) days’ notice.
- c. Uniform rate increases, except for minor rate increases, for existing services shall become effective on thirty (30) days’ notice, and shall require bill inserts, a message on the bill itself, or first class mail notice to customers of the pending increased rates.
- d. Uniform minor rate increases, as defined in D.90-11-029, for existing services shall become effective on not less than five (5) working days’ notice. Customer notification is not required for such minor rate increases.
- e. Advice letter filings for new services and for all other types of tariff revisions, except changes in text not affecting rates or relocations of text in the tariff schedules, shall become effective on forty (40) days’ notice.
- f. Advice letter filings merely revising the text or location of text material which do not cause an increase in any rate or charge shall become effective on not less than five (5) days’ notice.”

5. Applicant may deviate from the following provisions of GO 96-A:

(a) paragraph II.C.(1)(b), which requires consecutive sheet numbering and prohibits the reuse of sheet numbers; and (b) paragraph II.C.(4), which requires that “a separate sheet or series of sheets should be used for each rule.” Tariff filings incorporating these deviations shall be subject to the approval of the Commission’s Telecommunications

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Division. Tariff filings shall reflect all fees and surcharges to which Applicant is subject, as reflected in 2 above.

6. Applicant shall file a service area map as part of its initial tariff.

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

8. Applicant shall notify this Commission in writing of the date that local exchange service is first rendered to the public, no later than five days after service first begins.

9. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within five days after service begins, and again within five days after intraLATA service begins.⁶

10. Applicant shall keep its books and records in accordance with the Generally Accepted Accounting Principles.

11. In the event Applicant's books and records are required for inspection by the Commission or its staff, it shall either produce such records at the Commission's offices or reimburse the Commission for the reasonable costs incurred in having Commission staff travel to its office.

12. Applicant shall file an annual report, in compliance with GO 104-A, on a calendar-year basis with the information contained in Attachment C to this decision.

⁶ California is divided into ten Local Access and Transport Areas (LATAs), each containing numerous local telephone exchanges. InterLATA describes services, revenues and functions relating to telecommunications originating within one LATA and terminating in another LATA. IntraLATA describes services, revenues and functions relating to telecommunications originating within a single LATA.

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13. Applicant shall file an affiliate transaction report with the Director of the Telecommunications Division, in compliance with D.93-02-019, on a calendar year basis using the form developed by Commission Staff and contained in Attachment D.

14. Applicant shall ensure that its employees comply with the provisions of Public Utilities (Pub. Util.) Code § 2889.5 regarding solicitation of customers.

15. Within 60 days of the effective date of this order, Applicant shall comply with Pub. Util. Code § 708, Employee Identification Cards, and notify the Director of the Telecommunications Division in writing of its compliance.

16. Applicant is 90 days or more late in filing an annual report, or in remitting the surcharges and fee listed in 2 above, the Commission's Telecommunications Division shall prepare for Commission consideration a resolution that revokes Applicant's CPCN unless it has received written permission from the Telecommunications Division to file or remit late.

17. Applicant is exempt from GO 96-A, subsections III.G (1) and (2), and Commission Rule of Practice and Procedure 18(b).

18. Applicant is exempt from Pub. Util. Code §§ 816-830.

19. Applicant is exempt from the requirements of Pub. Util. Code § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt.

20. Applicant shall send a copy of this decision to concerned local permitting agencies not later than 30 days from the date of this order.

(END OF ATTACHMENT B)

ATTACHMENT C**Page 1****ANNUAL REPORT**

An original and two copies shall be filed with the California Public Utilities Commission, 505 Van Ness Avenue, Room 3107, San Francisco, CA 94102-3298, no later than March 31st of the year following the calendar year for which the annual report is submitted.

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

Required information:

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.
- b. State in which incorporated.
6. The number and date of the Commission decision granting the Utility's CPCN.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.
11. Income statement for California operations for the calendar year for which information is submitted.

For answers to any questions concerning this report, call (415) 703-2883.

(END OF ATTACHMENT C)

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CALENDAR YEAR AFFILIATE TRANSACTION REPORT

1. Each utility shall list and provide the following information for each affiliated entity and regulated subsidiary that the utility had during the period covered by the annual Affiliate Transaction report.

- ◆ Form of organization (e.g., corporation, partnership, joint venture, strategic alliance, etc.);
- ◆ Brief description of business activities engaged in;
- ◆ Relationship to the utility (e.g., controlling corporation, subsidiary, regulated subsidiary, affiliate);
- ◆ Ownership of the utility (including type and percent ownership)'
- ◆ Voting rights held by the utility and percent;
- ◆ Corporate officers.

2. Utility shall prepare and submit a corporate organization chart showing any and all corporate relationships between the utility and its affiliated entities and regulated subsidiaries in #1 above. The chart should have the controlling corporation (if any) at the top of the chart; the utility and any subsidiaries and/or affiliates of the controlling corporation in the middle levels of the chart and all secondary subsidiaries and affiliates (e.g. a subsidiary that in turn is owned by another subsidiary and/or affiliate) in the lower levels. Any regulated subsidiary should be clearly noted.

3. For a utility that has individuals who are classified as "controlling corporations" of the competitive utility, the utility must only report under the requirements of #1 and #1 above any affiliated entity that either a) is a public utility or b) transacts any business with the utility filing the annual report excluding the provision of tariffed services.

4. Each annual report must be signed by a corporate officer of the utility stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

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5. Any required material that a utility is unable to provide must be reasonably described and the reasons the data cannot be obtained, as well as the efforts expended to obtain the information, must be set forth in the utility's annual Affiliate Transaction Report and verified in accordance with Section I-F of Decision 93-02-019.

6. Utilities that do not have affiliated entities must file, in lieu of the annual transaction report, an annual statement to the commission stating that the utility had no affiliated entities during the report period. This statement must be signed by a corporate officer of the utility, stating under penalty of perjury under the laws of the State of California (CCP 2015.5) that the annual report is complete and accurate with no material omissions.

(END OF ATTACHMENT D)