

ENCROACHMENT AGREEMENT RE FIBER OPTIC SYSTEM

THIS ENCROACHMENT AGREEMENT is entered into this 27th day of October, 1998, by and between the CITY OF PLEASANTON, a Municipal Corporation of the State of California ("City"), and IXC Communications Services, Inc., a corporation organized and existing under the laws of the State of Delaware ("Company").

RECITALS

- A. City owns the right of way ("Right of Way") along all City streets, alleys, sidewalks, and other public places in the City of Pleasanton.
- B. Company has submitted an Application for an Encroachment Permit, dated _____, 1998, attached hereto as Exhibit "A" to construct and maintain a fiber optic system ("the Project") in the Right of Way. Applications submitted to secure permits for subsequent projects shall be attached to this Agreement as consecutive exhibits B, C, D, and so forth.
- C. The Project, as proposed, does not interfere with the City's uses of the Right of Way.

NOW, THEREFORE, in consideration of the faithful performance of the terms and conditions set forth in this Agreement, the parties agree as follows:

1. DEFINITIONS.

- a. "City" refers to the City of Pleasanton, its officers, employees, agents and contractors.
- b. "City's representative" refers to the City Engineer for the City of Pleasanton.

2. ENCROACHMENT. Subject to this Agreement, City shall allow Company to install and maintain the Project in the Right of Way but only as shown on the attached Exhibit A. Subsequent installations shall be subject to additional Encroachment Permits granted under this Agreement. Any installation or maintenance of the Project outside the approved boundaries of each Encroachment Permit granted under this Agreement is prohibited.

3. COMPANY'S RESPONSIBILITIES. Company shall be responsible for the following:

- a. Any costs, including but not limited to any reasonable attorney's fees, incurred by City at any time which are associated with Company's compliance with this Agreement shall be the sole responsibility of

Company. Company shall pay any costs within 30 days of the date of an invoice from City detailing the costs incurred.

- b. City shall at all times have access to the Project.
- c. After completion of all work, Company shall exercise reasonable care in inspecting and maintaining the area affected by the encroachment. While the Project is in the Right of Way and within one year after the Project has been removed, Company shall repair and make good any injury or damage to any portion of the Right of Way and any other affected area which the City reasonably determines would not have occurred had such work not been done. Company shall, upon notice from City, immediately repair any injury, damage or nuisance, in any portion of the Right of Way resulting from the Project's construction, installation, maintenance, or removal. If Company fails to act promptly, or should the exigencies of the injury or damage require repairs or replacement to be made before Company can be notified or can respond to the notifications, City may, at its option, make reasonably necessary repairs or replacement or perform the necessary work, and Company shall be charged with all the expenses incurred in the performance of the work.
- d. Any work or use done under the Encroachment Permit shall conform to the standards and specifications established by the City. In the absence of specific standards and specifications, recognized standards of construction or approved practices shall govern the work or use.
- e. Unless otherwise approved by the City, no material shall be stored within five feet of a public street. In addition, excess earth materials from trenching or other operations shall be removed from the pavement, traveled way, or shoulder as the trench is backfilled or other work carried forward.

4. CITY'S RESPONSIBILITIES. City shall at no time be responsible for the repair or replacement of the Project or other improvements by Company excepting any claims arising out of the City's sole negligence or willful misconduct.

5. INDEMNIFICATION. Company shall indemnify and hold City harmless against and from any and all claims or suits for damages or injury including but not limited to, the Project or any structures, foundations, or other improvements of Company, arising from the Company's use of the Right of Way or from any activity, work or thing done, permitted or suffered in or about the Right of Way, excepting such claims or suits for damages or injury arising from the sole negligence or willful misconduct of City. Company also shall indemnify, defend and hold City harmless against and from any and all claims or suits arising from any breach or default of any performance of any obligation of Company under this Agreement, and against and from all costs, reasonable attorney's fees, expenses and liabilities related to any claim

or any action or proceeding within the scope of this indemnification, excepting such claims or suits arising out of the City's sole negligence or willful misconduct. Company shall also indemnify, defend and hold City harmless from any fines or other punitive actions imposed on City arising from the Company's actions due to the existence of the Project, excepting such fines arising out of the City's sole negligence or willful misconduct. These indemnifications also shall apply to other improvements made by Company located within or adjacent to the Right of Way which are affected by any work performed by City or its representatives on the City's utilities or City's other uses within the Right of Way.

6. REMOVAL OF PROJECT AND RESTORATION.

- a. Notwithstanding Section 13.04.310 B of the Pleasanton Municipal Code, Company shall, at its sole expense, abandon or remove the Project from the Right of Way and shall restore, to the City's reasonable satisfaction, the Right of Way and any adjacent property which has been affected by the Project to as good a condition as they were in at the time of the construction of the Project upon any of the following events:
 1. the termination of this Agreement;
 2. when the Project is reasonably determined by City to be in conflict with work which must be done by City in the Right of Way or in the vicinity of the Right of Way; or
 3. when the Project is reasonably determined by City to be in conflict with the City's needs or requirements.
- b. If Company abandons the Project, fails to remove the Project pursuant to the City's instructions, or fails to restore, to the City's reasonable satisfaction, the Right of Way or any adjacent property which has been affected by the Project to as good a condition as they were in at the time of the construction of the Project, City may cause the removal or abandonment of the Project and the restoration of the Right of Way and any adjacent property which has been affected by the Project. The removal or abandonment of the Project and, if necessary, the restoration of the Right of Way and any adjacent property, whether caused by Company and/or City shall be at the sole expense of Company. If City causes the removal or abandonment of the Project or, if necessary, the restoration of the Right of Way or any adjacent property, City shall in no manner be liable to Company for any damage sustained by Company for or on account thereof, and such removal or restoration shall in no manner prejudice or impair any right of action for damages, or otherwise, that City may have against Company.

- c. Except under emergency circumstances, City shall make reasonable efforts to do the following:
 - 1. notify the Company by a minimum of thirty (30) days advance notice that the Project will need to be removed; and
 - 2. make reasonable efforts to minimize disrupting the activities of Company and shall discuss with Company the organization of the City's work in the Right of Way so that the Company's operational needs can be reasonably met.

7. NO INTERFERENCE WITH CITY'S OPERATION.

- a. The Project shall be constructed, installed, and, at all times, maintained, repaired, renewed and operated in such manner as to cause no interference whatsoever with the constant, continuous and uninterrupted use of the Right of Way and Company shall do nothing to impair the safety thereof. Company shall not interfere with any existing City utility or other City system without the written consent of City. No City utility or other City system shall be moved to accommodate Company without City approval and unless the cost of such work is borne by Company. Company shall support and protect all pipes, conduits, poles, wires, or other underground structures affected by the excavation work, and shall inform the City or other owner of such structures if any damage occurs to such facilities during the conduct of its work. The expense of repairs of any damage to City utility or City system resulting from Company's acts or omissions shall be charged to Company.
- b. The City's costs, as to design review, construction or maintenance of the Project or of any other uses of the Right of Way by Company, to ensure that work by Company in the Right of Way will not affect the Right of Way shall be at the sole expense of Company. Moreover, nothing in this Agreement shall affect the City's existing or future use of the Right of Way, including the installation of any additional utility conduits or any other uses by the City.

8. COMPENSATION. This Agreement does not prohibit City from enacting legislation requiring Company to pay to City a fee to compensate City for the Company's use of the Right of Way, provided such legislation and fees comply with all applicable state and federal laws and regulations.

9. **INSURANCE.** During the term of this Agreement, Company shall maintain in full force and effect at its own cost and expense the following insurance coverage:

- a. **General Liability and Bodily Injury Insurance.** A comprehensive, general liability insurance for at least \$1,000,000 combined limit for bodily injury and property damage and provide that City is a named additional insured under the policy. The policy shall state in writing either on the Certificate of Insurance or attached rider thereof that this insurance will operate as primary insurance for work performed by Company and its subcontractors, and that no other insurance effected by City or other named insured will be called on to cover a loss covered thereunder.
- b. **Automobile Insurance.** Automobile liability insurance in an amount not less than \$1,000,000 per person/per occurrence.
- c. **Workers' Compensation Insurance.** Workers' Compensation Insurance for all of Company's employees, all in strict compliance with State laws, and to protect City from any and all claims thereunder.
- d. **Certificate of Insurance.** Company shall complete and file a Certificate of Insurance with City prior to City's execution of this Agreement, and prior to engaging in any operation or activity set forth in this Agreement. The Certificate of Insurance shall provide in writing that the insurance afforded by this Certificate shall not be suspended, voided, canceled, reduced in coverage or in limits without providing thirty (30) days prior written notice by certified mail, return receipt requested, has been given to City. In addition, the insured shall provide thirty (30) days prior written notice to City of any suspension, cancellation, reduction of coverage or in limits, or voiding of the insurance coverage required by this Agreement.

10. **AGREEMENT RUNS WITH THE LAND.** This Agreement is for the benefit of the parties and their successors. It is the intention of the parties that the obligations set forth in this Agreement shall run with the land and be binding upon future owners of the Company, its successors in interest or assigns, including their lessees and licensees.

11. **TERMINATION.** This Agreement shall terminate if the Project is removed, relocated or abandoned.

12. **TIME OF ESSENCE.** Time is of the essence in the performance of this Agreement. No waiver by either party of the nonperformance or any breach of any term, provision, or condition of this Agreement, or any default under it shall be considered to be or operate as a waiver of any subsequent nonperformance, breach or default.

13. **AMENDMENT.** This Agreement may be amended, modified or changed by the parties provided that said amendment, modification or change is in writing and approved by both parties.

14. **ENTIRE AGREEMENT.** Except as otherwise provided in the Encroachment Permit and Conditions for Encroachment Permit attached to the Encroachment Permit, this Agreement contains the entire agreement between the parties.

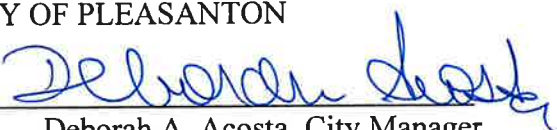
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

IXC COMMUNICATIONS SERVICES, INC.

By: 
MICHAEL JONES, VICE PRESIDENT
FACILITIES ENGINEERING & CONSTRUCTION

By: 
KIM SCHROEDER, VICE PRESIDENT
NETWORK PLANNING & IMPLEMENTATION

CITY OF PLEASANTON

By: 
Deborah A. Acosta, City Manager

ATTEST:


Peggy L. Ezidro, City Clerk

APPROVED AS TO FORM:


Michael H. Roush, City Attorney

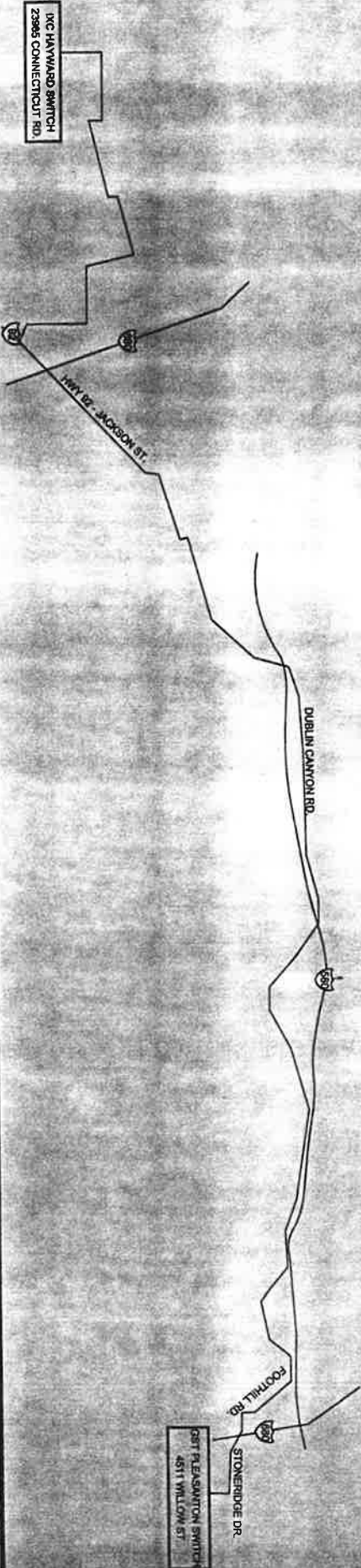


COMMUNICATIONS SERVICES, INC.

FIBER OPTIC CABLE ROUTE

TITLE: SAN FRANCISCO TO PALMDALE
PROJECT # 20094

(HAYWARD TO PLEASANTON)



CONTACT LIST

IXC

MAIN:

1-800-847-5705

OUTSIDE PLANT CONSTRUCTION:

CONSTRUCTION: BILL MUCKLE 512-328-1112
FIELD MANAGER: KEN BEATTY 209-601-7723

RIGHT-OF-WAY:

AGENT: PEDRO ORDENES 415-927-9486
MANAGER: MARTIN ZUEHLKE 415-314-7521

OPERATIONS:

SR. PROJECT ENGINEER: TAUJANA FIELDS 512-427-4159

ENGINEERING CONTRACTOR

NAME OF FIRM: ALL STAR TELECOM 1-800-958-5545
PROJECT MANAGER: MIKE MCKEE 510-782-0900
PROJECT SUPERINTENDENT: JIM STRELO 510-782-0900

CONSTRUCTION CONTRACTOR

NAME OF FIRM: T.B.D.
PROJECT COORDINATOR:
PROJECT SUPERINTENDENT:

RAILROADS

U.P. COMMUNICATIONS DEPT.
1-800-336-9193

UTILITIES

USA LOCATES : 1-800-227-2600
MCI UTILITY LOCATE : 1-800-624-9675
PACIFIC GAS AND ELECTRIC : (510) 784-3226
PACIFIC BELL : 1-800-310-2355

CITY OF HAYWARD

SANITARY SEWER : (510) 881-7967
STORM DRAIN : (510) 881-7747
WATER : (510) 583-7932

CITY GOVERNMENT

CITY OF HAYWARD
777 B. STREET
HAYWARD, CA 94541
(510) 583-4000

CITY OF PLEASANTON
J.G. (JERRY) DIGNAN, JR.
LEAD PUBLIC WORKS INSPECTOR
205A MAIN ST.
PLEASANTON, CA. 94566
(925) 484-8376

COUNTY GOVERNMENT

ALAMEDA COUNTY
CONTACT : JOHN ROGERS (510) 670-5429
PERMITTING : (510) 670-5430

STATE GOVERNMENT

DEPARTMENT OF TRANSPORTATION
DISTRICT 4
111 GRAND AVE.
OAKLAND, CA 94612
(510) 286-4434

OTHER

AllStar
Telecom
3348 JACOB ROAD
HAYWARD, CA 94504
1-800-858-8848

PROJ./WORK NO.
SPIN NAME

FIBER OPTIC CABLE ROUTE

REV DESCRIPTION DATE

MATERIAL LIST QTY
DESCRIPTION QTY

IXC COMMUNICATIONS, INC.
AUSTIN, TEXAS
OUTSIDE PLANT

FIBER OPTIC CABLE ROUTE
IXC HAYWARD SWITCH TO PLEASANTON

10/15/88

DESIGNED BY: JIM STRELO

DRAWN BY: L.C.L.

ECH NUMBER

ECH DESCRIPTION

SCALE

HORIZONTAL: NTS

VERTICAL: NTS

FILE NAME: IXC NOTES

SHEET NO: 01



SEAL OF JAMES STRELOW, REGISTERED PROFESSIONAL ENGINEER, STATE OF CALIFORNIA, LICENSE NO. 10000, EXPIRATION DATE 12/31/90. I, JAMES STRELOW, DO HEREBY CERTIFY THAT I AM THE DESIGNER OF THE ABOVE PROJECT AND THAT I AM A LICENSED PROFESSIONAL ENGINEER IN THE STATE OF CALIFORNIA.

**All-Star
Telécom**

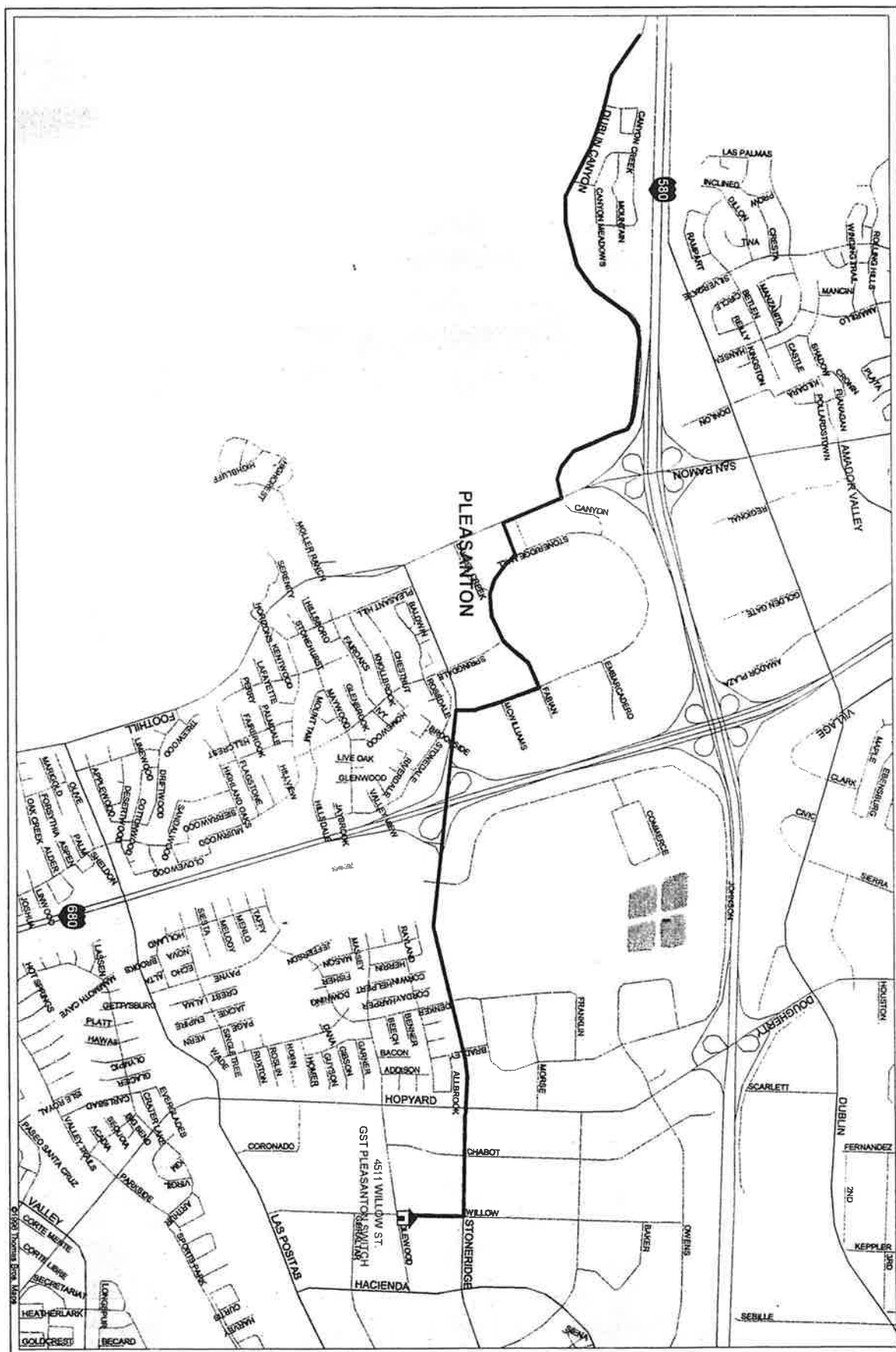
- 20) BOUNDARIES OF PAVEMENT REMOVALS SHALL BE SAW CUT AND STRAIGHT. EDGES SHALL BE TACK COATED PRIOR TO PATCHING.
- 21) TRENCH BACKFILL SHALL BE CLASS 2, PLACED IN 8-INCH LAYERS AND COMPACTED TO 95% RELATIVE DENSITY, AND CONFORM WITH DOT STANDARD SPECIFICATIONS.
- 22) BASE COURSE SHALL BE REPLACED AT THE SAME THICKNESS OR 6 INCHES, WHICHEVER IS GREATER, AND SHALL BE COMPACTED TO 95% RELATIVE COMPACTION.
- 23) LOWER LIFTS OF NEW ASPHALT SHALL BE GRADE "C" OR "CX" PER DOT STANDARD SPECIFICATIONS. DEPTH OF NEW ASPHALT SHALL BE EXISTING DEPTH PLUS 1-INCH.
- 24) PERMANENT PAVEMENT RESURFACING SHALL BE DONE WITHIN TWO WEEKS AFTER BACKFILLING OF TRENCH HAS BEEN COMPLETED.
- 25) ANY STRIPING OR PAVEMENT MARKINGS DISTURBED BY THE OPERATIONS SHALL BE RESTORED TO ORIGINAL CONDITION.
- 26) ALL WORK TO BE DONE WITH EXTREME CAUTION. FIBER OPTIC CABLE CARRYING TRAFFIC AND LOSS OF SERVICE WILL RESULT IN LOSS OF REVENUE.
- 27) ALL WORK TO BE PERFORMED IN STRICT ACCORDANCE WITH THE APPLICABLE CODES OR REQUIREMENTS OF ANY REGULATING GOVERNMENTAL AGENCY, IHC CARRIER GROUP, INC. OR THE RIGHT-OF-WAY GRANTOR.
- 28) LOCATIONS OF SOME OF THE PHYSICAL FEATURES WERE OBTAINED FROM DATED RAILROAD VALUATION MAPS OR OTHER DRAWINGS, AND MAY BE AS SHOWN OR DEPICTED ON THESE DRAWINGS.
- 29) UNDERGROUND UTILITIES HAVE BEEN PLOTTED FROM AVAILABLE RECORDS AND FIELD OBSERVATIONS, BUT ARE NOT NECESSARILY EXACT. THEREFORE, UTILITY LOCATIONS WILL BE VERIFIED AT LEAST 100 FEET IN ADVANCE OF TRENCHING OR PLOWING SO THAT CHANGES IN CABLE PLACEMENT CAN BE MADE IN EVENT OF CONFLICTS.
- 30) ALL KNOWN BURIED OBSTRUCTIONS ARE SHOWN ON THE CONSTRUCTION DRAWINGS. ANY AND ALL OTHERS ENCOUNTERED ARE ALSO THE RESPONSIBILITY OF THE CONTRACTOR TO LOCATE, PROTECT, AND REPAIR, IF DAMAGED.
- 31) ANY AND ALL IMPROVEMENTS, SUCH AS ASPHALT TO CONCRETE PAVEMENT, CURBS, GUTTERS, WALKS, DRAINAGE DITCHES, EMBARKMENTS, SHRUBS, TREES, GRASS SOD, ETC., IF DAMAGED, SHALL BE RESTORED TO ORIGINAL OR BETTER CONDITION.
- 32) EQUIPMENT TYPES SPECIFIED HEREIN (I.E. "BACKHOE," "SWAMP PLOW," ETC.) ARE SUGGESTIONS ONLY AND ARE NOT INTENDED AS REQUIREMENTS. CONTRACTOR WILL BE NOTIFIED AS TO EXCEPTIONS.

DO NOT CALL

DECAY AS MAY BE OTHERWISE PREVENTED BY CONTINUING REGULAR BRUSHING AND FLOSSING. THE PROPHYLACTIC AND THERAPEUTIC PROPERTIES OF THE COMBINATION FLUORIDE SERVICE OF THE BETH ISRAEL DENTAL CENTER, INC. BEING STUDIED IN A STRICT CORRELATION AND IT IS NOT RECOMMENDED THAT THE SERVICE BE USED FOR ANY REASON WITHOUT THE DENTIST'S WRITTEN PERMISSION FROM THE COMBINATION SERVICE. NO

DO NOT CALL

[illegible]



PROJECT NO. 06
SHEET NAME: DUBLIN CANYON RD.
REV. FIELD OPTIC CABLE ROUTE

DESCRIPTION DATE

MATERIAL LIST	QTY
DESCRIPTION	QTY
CABLE	2466'

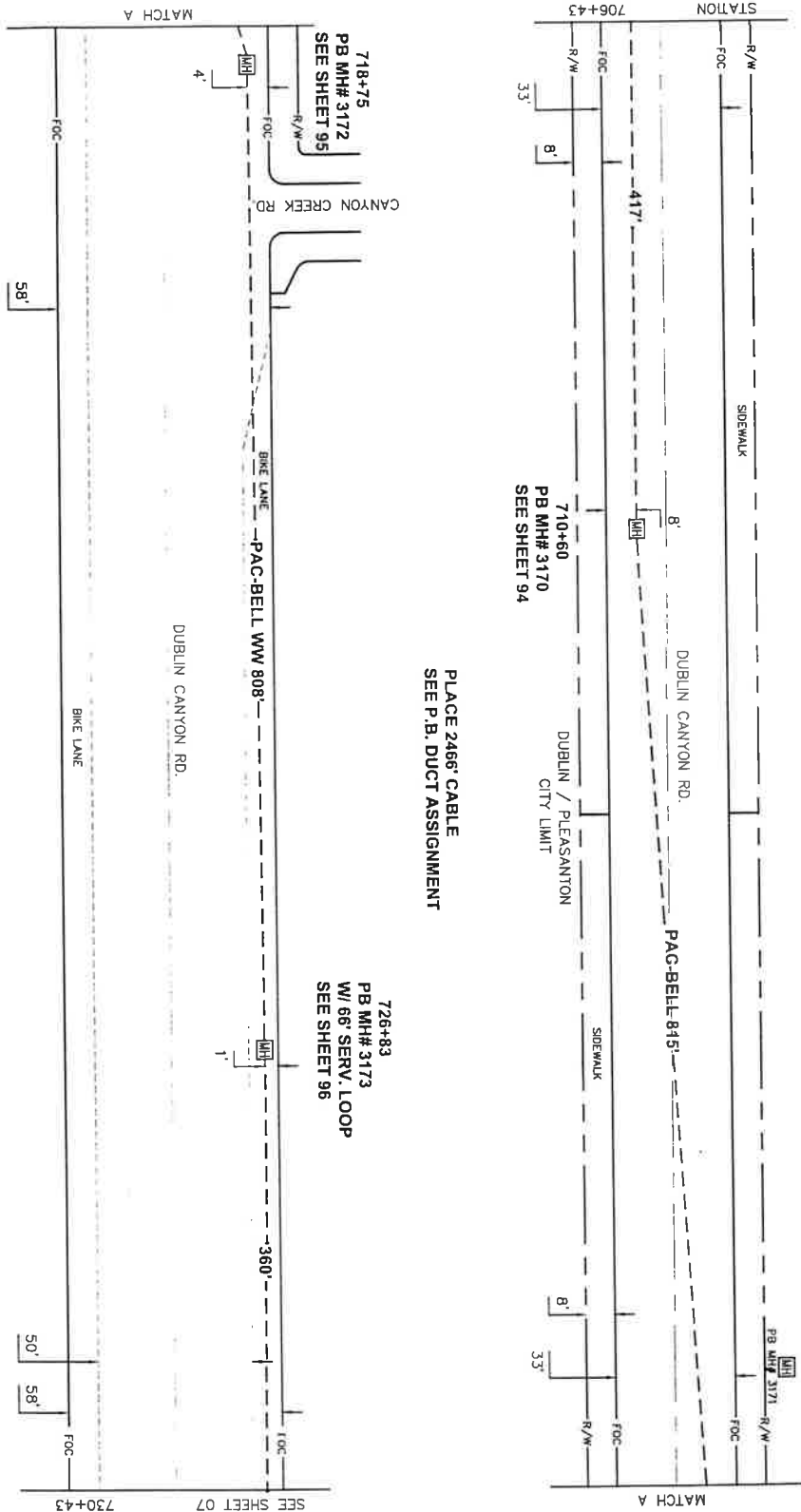
IXC IXC COMMUNICATIONS, INC.
AUSTIN, TEXAS
COMMUNICATIONS SERVICES, INC. OUTSIDE PLANT

IXC HAYWARD SWITCH TO PLEASANTON

DESIGNED BY:	LOC
DRAWN BY:	RA
ECN NUMBER:	
ECN ORIGINATOR:	
SCALE:	
HORIZONTAL: 1" = 100'	
VERTICAL: NTS	
FILE NAME: DUBLIN CANYON 27	
SHEET NO. 06	

DISCLAIMER

CLIENT IS TO HAVE AN OBTAINABLE PROOF
BY CONTRACT. THESE DRAWINGS AND
SPECIFICATIONS SHALL REMAIN THE PROPERTY
OF IXC COMMUNICATIONS, INC. AND SHALL NOT BE
REPRODUCED, COPIED OR USED FOR ANY
OTHER PROJECT WITHOUT THE WRITTEN
PERMISSION FROM IXC COMMUNICATIONS, INC.





All Star
Telecom
3000 Austin Road
Hayward, CA 94541
1-800-488-5888

PROJECT NO. 07
SHEET NAME: 07
FIBER OPTIC CABLE ROUTE

REV DESCRIPTION DATE

REV	DESCRIPTION	DATE

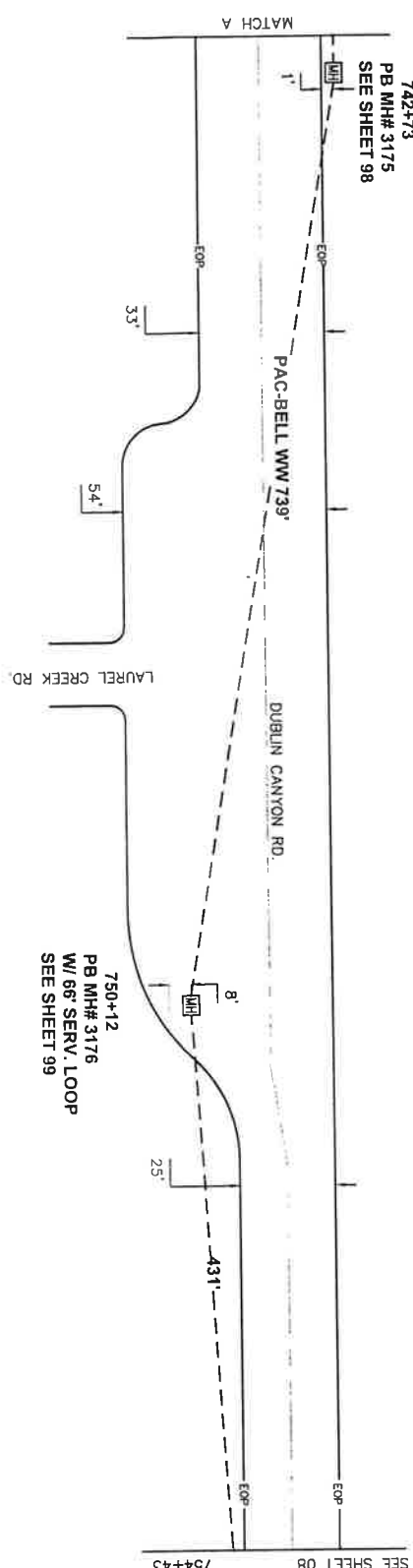
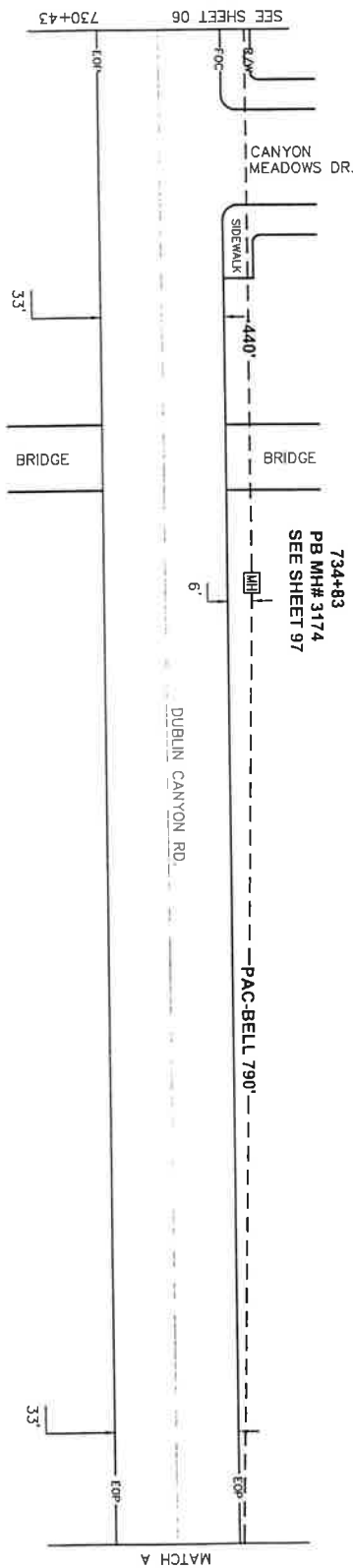
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IXC IXC COMMUNICATIONS, INC.
AUSTIN, TEXAS
COMMUNICATIONS SERVICES, INC. OUTSIDE PLANT

IXC HAYWARD SWITCH TO PLEASANTON

ENGINEERED BY:	L.D.C.
DRAWN BY:	R.R.
ECN NUMBER:	
ECN ORIGINATOR:	
SCALE	
HORIZONTAL: 1" = 100'	
VERTICAL: NTS	
FILE NAME: RDCANCA07_28	
SHEET NO.: 07	

EXCEPT AS MAY BE OTHERWISE PROVIDED BY CONTRACT, THESE DRAWINGS AND SPECIFICATIONS ARE THE PROPERTY OF IXC COMMUNICATIONS, INC. AND ARE NOT TO BE REPRODUCED OR USED FOR ANY OTHER PROJECT WITHOUT THE SPECIFIC WRITTEN PERMISSION FROM IXC COMMUNICATIONS, INC.





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HORIZONTAL: $1^{\circ} = 100'$

VERTICAL : NTS

2566

DISCLAIMER

BY CONTRACT, THESE DRAWINGS SPECIFICATIONS SHALL REMAIN THE PROPERTY OF CONTRACTOR.

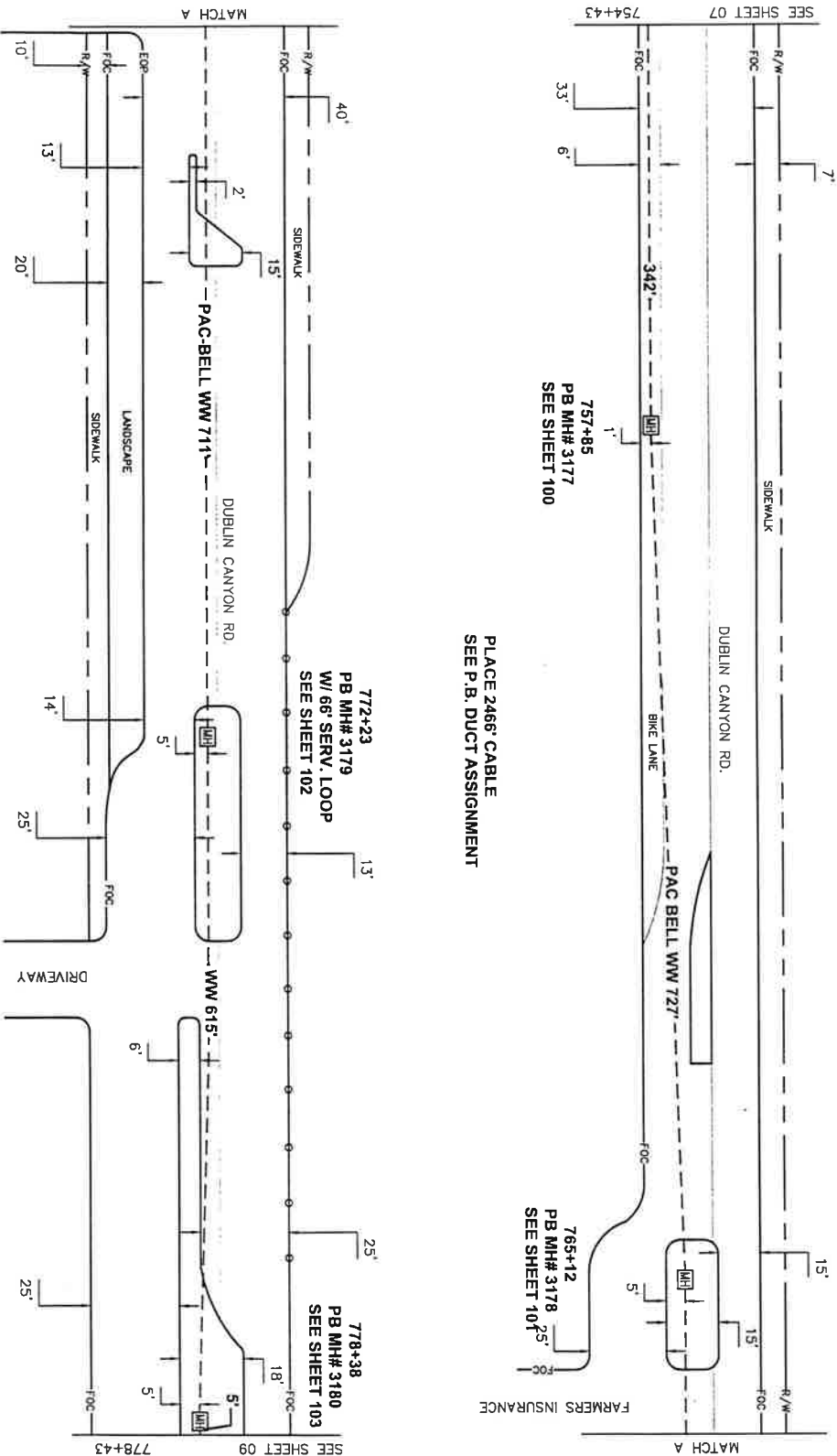
IN SINGLE COPIES AND NOT REPRODUCED, COPIED OR USED FOR

Year	Number of cases	Percentage of cases
1990	10	10.0
1991	15	15.0
1992	20	20.0
1993	25	25.0
1994	30	30.0
1995	35	35.0
1996	40	40.0
1997	45	45.0
1998	50	50.0
1999	55	55.0
2000	60	60.0
2001	65	65.0
2002	70	70.0
2003	75	75.0
2004	80	80.0
2005	85	85.0
2006	90	90.0
2007	95	95.0
2008	100	100.0
2009	105	105.0
2010	110	110.0
2011	115	115.0
2012	120	120.0
2013	125	125.0
2014	130	130.0
2015	135	135.0
2016	140	140.0
2017	145	145.0
2018	150	150.0
2019	155	155.0
2020	160	160.0
2021	165	165.0
2022	170	170.0
2023	175	175.0
2024	180	180.0
2025	185	185.0
2026	190	190.0
2027	195	195.0
2028	200	200.0
2029	205	205.0
2030	210	210.0
2031	215	215.0
2032	220	220.0
2033	225	225.0
2034	230	230.0
2035	235	235.0
2036	240	240.0
2037	245	245.0
2038	250	250.0
2039	255	255.0
2040	260	260.0
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2054	330	330.0
2055	335	335.0
2056	340	340.0
2057	345	345.0
2058	350	350.0
2059	355	355.0
2060	360	360.0
2061	365	365.0
2062	370	370.0
2063	375	375.0
2064	380	380.0
2065	385	385.0
2066	390	390.0
2067	395	395.0
2068	400	400.0
2069	405	405.0
2070	410	410.0
2071	415	415.0
2072	420	420.0
2073	425	425.0
2074	430	430.0
2075	435	435.0
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2090	510	510.0
2091	515	515.0
2092	520	520.0
2093	525	525.0
2094	530	530.0
2095	535	535.0
2096	540	540.0
2097	545	545.0
2098	550	550.0
2099	555	555.0
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IXC COMMUNICATIONS, INC.
AUSTIN, TEXAS
PC OUTSIDE PLANT

IXC HAYWARD SWITCH TO PLEASANTON



PLACE 2466' CABLE
SEE P.B. DUCT ASSIGNMENT

765+12
PB MH# 3178
SEE SHEET 101

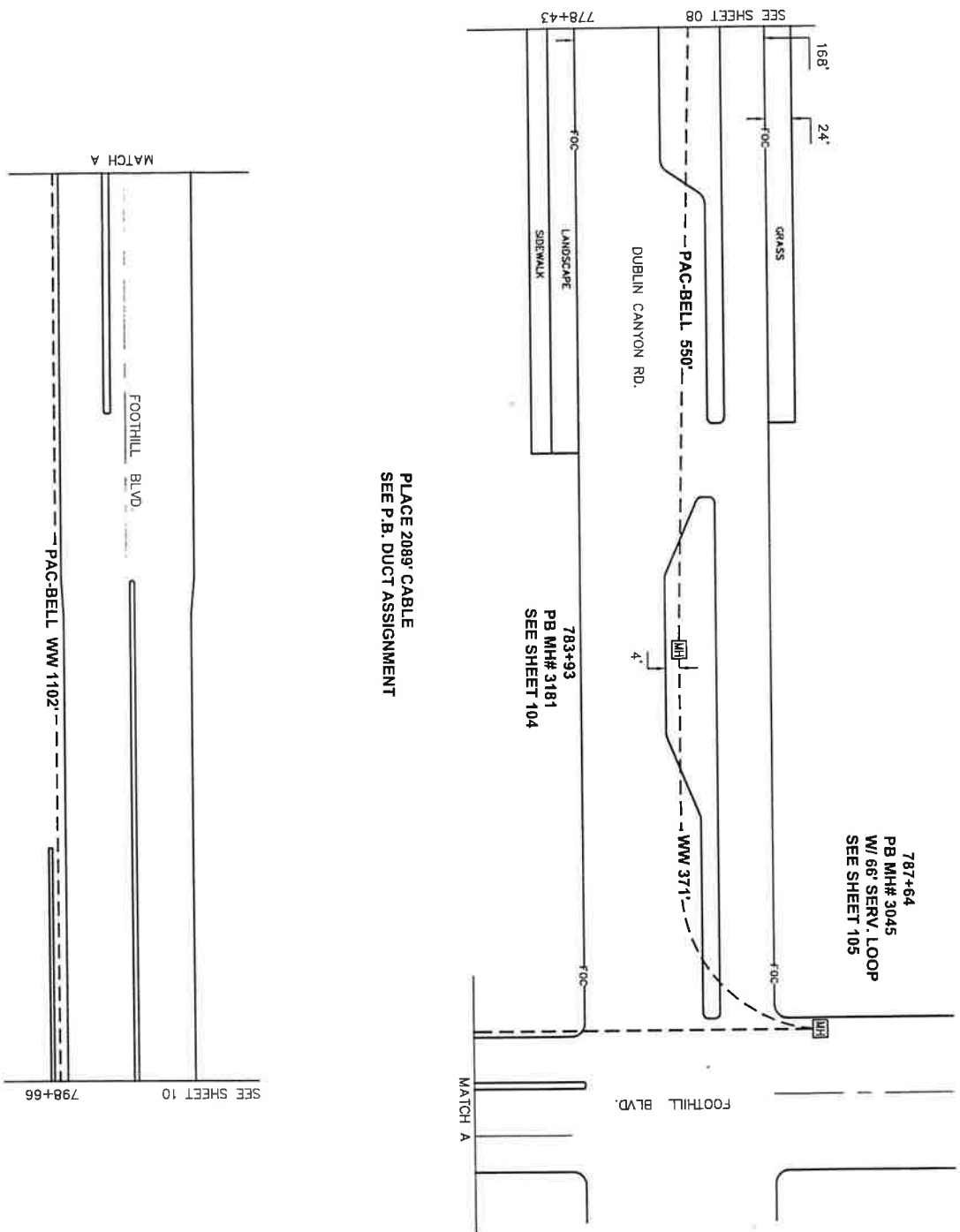
MATERIAL LIST		QTY
DESCRIPTION	QTY	
CABLE	2000'	

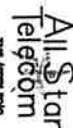
IXC COMMUNICATIONS, INC.
AUSTIN, TEXAS
COMMUNICATIONS SERVICES, INC.

IXC HAYWARD SWITCH TO PLEASANTON

ENGINEERED BY: _____ L.O.C.
DRAWN BY: _____ M.A.B.
ICON NUMBER: _____
ICON ORIENTATION: _____
SCALE: _____
HORIZONTAL: 1" = 100'
VERTICAL: 1" = 100'
FILE NAME: D:\WORKING\HAYWARD_2
SHEET NO.: 09

EXCEPT AS MAY BE OTHERWISE PROVIDED BY CONTRACT, THESE DRAWINGS AND SPECIFICATIONS SHALL BE THE PROPERTY OF IXC COMMUNICATIONS, INC. AND SHALL NOT BE REPRODUCED OR USED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION FROM IXC COMMUNICATIONS, INC.





PHYTO/MICROB. NO.
SPAWN NAME:

REVIEW OF THE CABLE ROUTING

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VERTICAL : NTS

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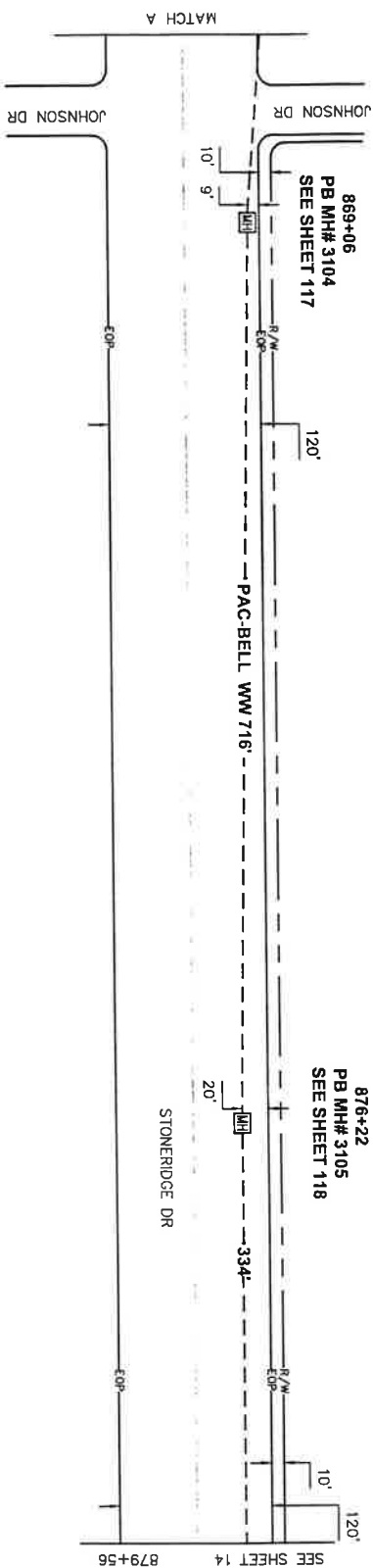
DISCLAIMER

EDUCATION AND TRAINING: MUST BE OBTAINED BY CONTRACT. THESE DRAW SPECIFICATIONS SHALL FOLLOW THE OF THE CAREER. BOTH BEING

IN STRICT CONFIDENCE AND SHALL
BE REPRODUCED, COPIED OR USED
REASON WITHOUT THE SPECIFIC

PERMISSION FROM THE CARS

IXC HAYWARD SWITCH TO PLEASANTON



MATCH A

869+06
PB MH# 3104
SEE SHEET 117

876+22
PB MH# 3105
SEE SHEET 118

PAC-BELL WW 716' - - - - - 334'

STONERIDGE DR

SEE SHEET 14 879+56

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2005 Annual Report
NATURAL GAS
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PROUDLY PRINTED IN
CANADA

REVIEW OF FIBER OPTIC CABLE ROUTING

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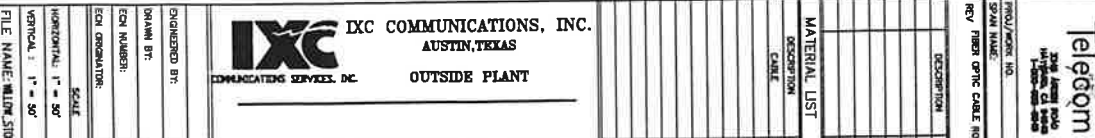
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In the Matter of the Application of Independent Telecommunications Systems, Inc. dba
ITS Communications and IXC Direct, a Michigan Corporation, for a Certificate of Public
Convenience and Necessity to Provide InterLATA and IntraLATA Telecommunications
Service in California as a Switchless Reseller

Decision 03-10-065; Application 03-07-023

California Public Utilities Commission

2003 Cal. PUC LEXIS 527

July 17, 2003, Filed; October 22, 2003, Dated

PANEL: [*1] WILLIAM AHERN, Executive Director

OPINIONBY: AHERN

OPINION: OPINION

Independent Telecommunications Systems, Inc., dba ITS Communications and IXC Direct, a Michigan corporation, filed an application on July 17, 2003, for a certificate of public convenience and necessity to provide inter - and intra- local access and transport area services in California as a non-dominant interexchange carrier. This application was filed pursuant to the registration process adopted in Decision (D.) 97-06-107 and related decisions.

The applicant was qualified to use the registration process, complied with the filing requirements for a registration application, and there were no protests to the application. The applicant was qualified to and requested an exemption from tariffing requirements. Applicant also agreed to abide by the consumer protection rules adopted in D. 98-08-031, as modified from time to time. Therefore, pursuant to the authority granted to the Executive Director by Decision 97-08-050, the applicant should be granted a certificate of public convenience and necessity to provide this service.

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

Findings of Fact

1. The application was filed on July 17, 2003, and appeared in the Commission's Daily Calendar on July 21, 2003.
2. There were no timely protests to the application.
3. The applicant was qualified to and requested an exemption from tariffing requirements. Applicant also agreed to abide by the consumer protection rules adopted in D. 98-08-031, as modified from time to time.

Conclusions of Law

1. Applicant should be granted the requested certificate of public convenience and necessity subject to the conditions in the attached appendices.
2. Applicant should be granted an exemption from the requirement to file tariffs.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to Independent Telecommunications Systems, Inc., dba ITS Communications and IXC Direct, to operate as a switchless reseller of inter-Local Access and Transport Area (LATA) and, to the extent authorized by Decision 94-09-065, intra-LATA telecommunications services offered by communication common carriers in California subject to the [*3] conditions set forth in the attached appendices. Applicant is assigned corporate identification number U-6815-C which shall be included in the caption of all filings made with this Commission.

2. Applicant is exempt from the requirement to file tariffs subject to the conditions set forth in the attached appendices.

3. Application No. 03-07-023 is closed.

This order is effective today.

Dated 10/22/03, at San Francisco, California.

WILLIAM AHERN

Executive Director

Appendix A

A.03-07-023

Telecom Division

NON-DOMINANT INTEREXCHANGE CARRIER REGISTRATION

1. If you requested confidential treatment of the financial portions of your application, it was granted and those materials will remain under seal for one year from the date of the decision. If you wish to continue the seal on those materials beyond the one-year period, you must make a formal request no later than thirty days prior to the expiration of the year explaining the reasons why you believe such extension is necessary.

2. You are subject to the following fees, and you must remit them regularly. Per the instructions in Decision (D.) 00-10-028, the Combined California PUC Telephone Surcharge Transmittal Form must be submitted, [*4] even if the amount due is \$ 0.

a. The current 1.200% surcharge applicable to all intrastate services except for those excluded by Decision (D.) 94-09-065, as modified by D.95-02-050, to fund the Universal Lifeline Telephone Service (Public Utilities (PU) Code § 879; Resolution T-16689, April 17, 2003);

b. The current 0.047% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California Relay Service and Communications Devices Fund (PU Code § 2881; Resolution T-16747, dated June 5, 2003);

c. The user fee provided in PU Code § § 431-435, which is 0.11% of gross intrastate revenue for the 2000-2001 fiscal year (Resolution M-4800);

d. The current 0.210% surcharge applicable to all intrastate services except for those excluded by D.94-09-065, as modified by D.95-02-050, to fund the California High Cost Fund-A (PU Code § 739.30; D.96-10-066, pp. 3-4, App. B, Rule 1.C; set by Resolution T-16702, effective April 17, 2003);

e. The current 2.700% 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 [*5] (D.96-10-066, p. 191, App. B, Rule 6.F.; Resolution T-16690 effective April 17, 2003); and

f. The current 0.00% 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 (set by Resolution T-16686, effective December 5, 2002).

These fees change periodically. You should access the Commission web site (WWW.CPUC.CA.GOV) at least semiannually for current values, use these as of the effective date in your customer bills, and update your tariff when you submit an advice letter for other changes.

3. You are exempt from Rule 18(b) of the Commission's Rules of Practice and Procedure.
 4. You are exempt from PU Code § § 816-830.
 5. You are exempt from PU Code § 851 when the transfer or encumbrance serves to secure debt.
 6. You shall file a written acceptance of the certificate granted in this proceeding with the Director of the Telecommunications Division.
 7. Prior to initiating service, you shall provide the Manager of the Commission's Consumer Affairs Branch with your designated contact person(s) for purposes of resolving consumer complaints and the corresponding telephone number(s). [*6] This information shall be updated if the name or telephone number changes, or at least annually.
 8. You shall notify the Director of the Telecommunications Division in writing of the date interLATA service is first rendered to the public within five days after service begins and again within five days of when intraLATA service begins.
 9. You shall keep your books and records in accordance with the Uniform System of Accounts specified in Title 47, Code of Federal Regulations, Part 32.
 10. In the event your books and records are required for inspection by the Commission or its staff, you 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 your office.
 11. You shall file an annual report with the Director of the Telecommunications Division, in compliance with GO 104-A, on a calendar-year basis, using the information request form developed by Commission staff and contained in Appendix B. You shall file an annual 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 [*7] the Commission staff and contained in Appendix C.
 12. You shall ensure that your employees comply with the provisions of Public Utilities (PU) Code § 2889.5 regarding solicitation of customers.
 13. The certificate granted and the authority to render service under the [ILLEGIBLE WORD] charges, and rules authorized will expire if not [ILLEGIBLE WORDS] effective date of this order.
 14. PU Code 708 requires public utilities [ILLEGIBLE WORDS] a format specified in that Section, and [ILLEGIBLE WORDS] request entry to customer or subscriber [ILLEGIBLE WORDS] of the Telecommunications Division within 60 [ILLEGIBLE WORDS] declaring that you have issued the required [ILLEGIBLE WORDS]
 15. If you are 90 days or more late in filing [ILLEGIBLE WORDS] listed above, Telecommunications Division shall [ILLEGIBLE WORDS] a resolution that revokes your CPCN, unless you [ILLEGIBLE WORDS] of Telecommunications Division to file or remit [ILLEGIBLE WORDS]
 16. You have requested an exemption from the requirement to file tariffs and have represented to the Commission that you are qualified for such an exemption and further that you will abide by the Commission's consumer protection rules adopted in D.98-08-031 [*8] as modified from time to time.
 17. You must abide by the Commission's consumer protection rules adopted in D.98-08-031 as modified from time to time. A copy of the currently effective rules is Appendix D to this decision.
- 16 & 17 do say different things. 16 says what applicant agrees to do. 17 says what applicant must do. [ILLEGIBLE WORD] We should say both

18. If your company is planning to discontinue service or to file for bankruptcy, you are required to contact the Bankruptcy Coordinator in the Telecommunications Division immediately. Please ask us for instructions in your particular circumstances; our rules are designed to ensure that your telecommunications customers receive adequate notice and are minimally inconvenienced. Your compliance is necessary so that you are not penalized for failure to follow Commission rules.

Appendix B

A.03-07-023

Telecom Division

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

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

A specific annual [*9] report form has not yet been prescribed for the California interexchange telephone utilities. However, you are hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

Director, Telecommunications Division

California Public Utilities Commission

505 Van Ness Avenue

San Francisco, CA 94102-3298

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

If you have any question concerning this matter, please call (415) 703-2883.

Information Requested of California Interexchange Telephone Utilities.

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

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
[*10]
4. Name and title of the officer having custody of the general books of account and the address of the office where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).
If incorporated, specify:
 - a. Date of filing articles of incorporation with the Secretary of State.
 - b. State in which incorporated.

6. Commission decision number granting operating authority and the date of that decision.
7. Date operations were begun.
8. Description of other business activities in which the utility is engaged.
9. A list of all affiliated companies and their relationship to the utility. State if affiliate is a:
 - a. Regulated public utility.
 - b. Publicly held corporation.
10. Balance sheet as of December 31st of the year for which information is submitted.

Income statement for California operations for the calendar year for which information is submitted.

Appendix C

A.03-07-023

Telecom Division

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 [*11] 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);
- . Corporate officers.

2. The 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 listed 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 or 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 # 2 above any affiliated [*12] 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.

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 1-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 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.

Appendix D

[*13]

A.03-07-023

Telecom Division

Consumer Protection Rules**Detariffed Services (Contract Option)***Rule 1:*

a. Rate information and information regarding the terms and conditions of service shall be provided in writing upon request by a current or potential customer. All of the rates, terms and conditions of service must be stated in a contract that must be signed by the customer and otherwise be enforceable. Although no terms may be incorporated by reference, formulae may be used to calculate rates or charges, where the components of the formulae can be readily ascertained from a public source. All ambiguities will be construed against the carrier. A carrier shall make available to any customer, who requests in writing, information about other service plans pertaining to the product(s) or service(s) the customer is ordering and for which the customer is eligible.

b. The contract must provide for written notice to the customer at least 7 calendar days prior to termination of service by the carrier, and refund of any customer deposits within 30 days after service has been terminated.

Rule 2:

No change in the rates, terms, and conditions of any service [*14] specified in such a contract shall be enforceable unless such change is set forth in a writing signed by the customer who signed the original contract, or that customer's duly authorized agent. As currently provided in D.97-06-096 (as may be amended or superceded), customers must be notified of any change of ownership of the _company_ providing service to the customer as follows:

- a. The notice must be in writing;
- b. The carrier must provide it to customers no later than 30 days before the proposed transfer;
- c. The notice must contain a straightforward description of the upcoming transfer, any fees the customer will be expected to pay, a statement of the customer's right to switch to another carrier, and a toll-free telephone number for questions; and
- d. The notice and the carrier's description of service to customers must be included in the advice letter seeking approval of the change in ownership.

Rule 3:

a. Pursuant to Public Utilities Code § 2889.5, no carrier or any person, firm, or corporation representing a carrier, shall change a customer's presubscribed telephone service provider without the customer's authorization. All carriers shall comply with the [*15] provisions of § 2889.5 as well as other applicable state and federal law as they may be amended or superceded from time to time. Carriers shall be held liable for any violation of § 2889.5 including, but not limited to, the unauthorized termination of a customer's service with an existing carrier and the subsequent unauthorized transfer of the customer to the carrier's own service. Violations may incur a penalty or fine pursuant to Public Utilities Code § 2107 as well as those allowed pursuant to other law and Commission policy.

b. No carrier whose service has been terminated by a customer shall re-establish service for that customer without the express consent of the customer, which consent may not be founded upon any purported term

in an agreement for service that binds the customer to take service from the carrier for a specified term, or continually.

c. All solicitations by carriers or their agents provided to customers must be legible and printed in 10 point type at a minimum.

d. All promotional and marketing materials used in the offering of detariffed telecommunications services shall be wholly separate from the written contract the customer signs. All terms must be plainly [*16] stated in understandable language, and must be in the same language employed when the carrier negotiated the contract with the customer.

Rule 4:

a. Each bill must prominently display a toll-free number for service or billing inquiries, along with an address where the customer may write to the carrier.

b. In case of a billing dispute between a customer and the carrier, the carrier will comply with any customer request for the carrier to undertake an investigation and review of the disputed amount.

c. If a customer fails to pay the undisputed portion of the bill by the Due By Date (no sooner than fifteen days of the date of presentation) shown on the bill, the carrier may notify the customer in writing of such delinquency and indicate that service may be terminated

d. A carrier may not disconnect service to a customer who has submitted a claim to CSD for investigation and decision, has either paid the disputed amount or has deposited the amount in dispute with the Commission within seven calendar days after the date the carrier notifies the customer that the carrier's investigation and review are completed. However, in no event shall the carrier disconnect service [*17] prior to the Due By Date shown on the bill.

e. In no event shall a carrier disconnect service to a customer who has deposited the full amount in dispute with the Commission so long as the undisputed amount is paid.

Rule 5:

Carriers are restricted from releasing nonpublic customer information in accordance with PU Code § § 2891, 2891.1, and 2893, and any other applicable state or federal statutes or regulations, as they may be amended from time to time, that pertain to customer privacy. Carriers shall also comply, so long as those rules remain generally applicable to other carriers, with the Commission's rules set forth in Appendix B of Decision Nos. 92860 and 93361, as modified, which generally prohibit, with certain exceptions, the release of calling records and credit information of all subscribers -- both residential and business -- absent the receipt of a search warrant under federal or state or in response to a subpoena or subpoena duces tecum authorized by a federal or state judge.

Rule 6:

Consistent with our authority over all other carriers, IECs offering detariffed service are directed to cooperate fully by responding in a timely fashion to any request [*18] by the Commission or its staff for documents including but not limited to the customer-carrier contract, billing records, customer calling records, solicitations and correspondence from the carrier to the customer, applicable third party verifications, and any other information or documentation regarding a customer complaint. The carrier shall fully comply with a request for such documents or information by the Commission or its staff no later than ten business days from the date of request. Failure by an IEC to comply with this rule may result in penalties as set forth in PU Code § § 2107, 2110, and 2111. 7.

Any limitation of liability provision contained in a contract for detariffed services shall in no way limit the ability of a complainant to recover reparations before the Commission.

In the Matter of the Application of IXC Long Distance, Inc. for a Certificate of Public Convenience and Necessity to Provide Resale Telecommunications Services within California

Decision No. 95-10-007, Application No. 95-03-055 (Filed March 24, 1995)

California Public Utilities Commission

1995 Cal. PUC LEXIS 795; 61 CPUC2d 643

October 5, 1995

PANEL: [*1]

Daniel Wm. Fessler, President; P. Gregory Conlon, Jessie J. Knight, Jr., Henry M. Duque, Commissioners

OPINION: OPINION

IXC Long Distance, Incorporated (IXC or applicant), a Delaware corporation, qualified to do business in California, seeks a certificate of public convenience and necessity (CPCN) under Public Utilities (PU) Code § 1001 to permit it to resell interLATA telephone services in California and to resell intraLATA telephone service under the terms for intraLATA competition permitted by this Commission. n1 Applicant wishes to resell interLATA, intraLATA toll, intrastate WATS and MTS type long distance services. IXC will not offer debit cards, nor will it offer alternative operator services.

n1 California is divided into ten Local Access and Transport Areas (LATAs) of various sizes, each containing numerous local telephone exchanges. "InterLATA" describes services, revenues, and functions that relate to telecommunications originating in one LATA and terminating in another. "IntraLATA" describes services, revenues, and functions that relate to telecommunications originating and terminating within a single LATA.

By Decision (D.) 84-01-037 (*14 CPUC2d 317 (1984)*) and later [*2] decisions, we authorized interLATA entry generally. However, we limited the authority conferred to interLATA service; and we subjected the applicants to the condition that they not hold D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

The Commission has established two major criteria for determining whether a CPCN should be granted. An applicant who is a switchless reseller n2 must demonstrate that it has a minimum of \$ 25,000 of cash or cash equivalent (as described in D.91-10-041, Appendix A, Paragraph 5.1; *41 CPUC2d 505 at 519*), reasonably liquid and readily available to meet the firm's start-up expenses. Such applicants shall also document any deposits required by local exchange companies or interexchange carriers (IECs) and demonstrate that they have additional resources to cover all such deposits. (D.93-05-010.) In addition, an applicant is required to make a reasonable showing of technical expertise in telecommunications or a related business.

n2 D.93-05-010 defines a switchless reseller as a nondominant interexchange carrier (NDIEC) with the following characteristics: it uses the switch of another carrier; it usually, but not always, uses access circuits that the underlying carrier purchases from an LEC; it provides service in its own name, and its customers view it as their telephone company for interLATA and interstate calls. D.92-06-069 noted that it is possible to control,

operate, or manage telephone lines without owning them. The decision also notes that resellers which do not own or directly operate their own telephone wires may still have plant which is owned, controlled, operated, and/or managed in order to facilitate communication by telephone. [*3]

As part of its application, applicant provided its unaudited balance sheet as of February 28, 1995 and December 31, 1994, and its consolidating statement of cash flows for the nine months ended September 30, 1994. A review of this financial information indicates that applicant has available to it unencumbered cash of at least \$ 25,000. It satisfies our criteria for being reasonably liquid and readily available to meet the applicant's needs. In its supplement, applicant stated that it has not been required by any local exchange company or interexchange carrier to secure an agreement for services with deposits or letters of credit.

Applicant has provided information on its key managers indicating their education, technical training, and experience. It can be summarized as follows:

Ralph J. Swett, chairman, president and chief executive officer, has served in similar capacities at IXC's predecessor companies since 1979. From 1969 through 1986, he served in increasingly senior positions at Times-Mirror Cable Television and has managed telecommunications businesses for the past 24 years. He earned his B.S. degree at the University of Illinois.

John R. Fleming, executive vice president, [*4] chief operating officer and assistant secretary, has been at IXC since 1986. Before being promoted to his current position, he was in charge of Business Development and Carrier Sales for four years. He was branch manager of Satellite Business Systems, a unit of IBM from 1983 to 1986. He has over 13 years of selling and marketing experience in the industry, and earned his B.S. degree at the University of Texas at Austin.

John J. Willingham, senior vice president and chief financial officer has eight years' experience in this industry. He earned his B.B.B. degree at the University of Texas at Austin and is a Certified Public Accountant. Michael W. Vent, vice president and general manager has 18 years' experience in telecommunications and data processing. He has a B.S. in Engineering and a MBA in Systems Management.

In the supplement, applicant also represented that no one associated with or employed by it was previously associated with a nondominant interexchange carrier that filed for bankruptcy or went out of business.

We will authorize the interLATA and intraLATA services that applicant seeks to provide.

Findings of Fact

1. Applicant served a copy of the application [*5] upon 231 telephone corporations with which it is likely to compete.

2. A notice of the filing of the application appeared in the Daily Calendar on April 13, 1995.

3. No protests have been filed.

4. A hearing is not required.

5. By prior Commission decisions, we authorized competition in providing interLATA telecommunications service but generally barred those offering such service from holding out to the public the provision of intraLATA service.

6. By D.94-09-065, we authorized competitive intraLATA services effective January 1, 1995, for carriers meeting specified criteria.

7. Applicant has demonstrated that it has a minimum of \$ 25,000 of cash, reasonably liquid and readily available to meet its start-up expenses.

8. Applicant's technical experience consists of 4 employees with a combined experience of over 20 years in telecommunications, operation and management.

9. Applicant has submitted with its application a complete draft of applicant's initial tariff which complies with the requirements established by the Commission including prohibitions on unreasonable deposit requirements.

10. Applicant has represented that no one associated with or employed by applicant was [*6] previously associated with a NDIEC that filed for bankruptcy or went out of business.

11. Since no facilities are to be constructed, it can be seen with certainty that the proposed operation will not have a significant effect upon the environment.

12. The Commission has routinely granted NDIECs, such as applicant, an exemption from Rule 18(b) to the extent that the rule requires applicant to serve a copy of its application on cities and counties in the proposed service area and to the extent that it requires applicant to provide a conformed copy of all exhibits attached to applicant's filed application to potential competitors.

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

Conclusions of Law

1. Applicant has the financial ability to provide the proposed service.
2. Applicant has made a reasonable showing of technical expertise in telecommunications.
3. Public convenience and necessity require the interLATA and intraLATA services to be offered by applicant.
4. Applicant is subject to:
 - a. The current 3.0% surcharge applicable to service rates of intraLATA toll and intrastate [*7] interLATA toll to fund the Universal Lifeline Telephone Service (PU Code § 879; D.94-09-065);
 - b. The current 0.3% surcharge on gross intrastate interLATA revenues to fund the California Relay Service and communications devices fund (PU Code § 2881; Resolution T-15254);
 - c. The user fee provided in PU Code § § 431-435, which is 0.1% of gross intrastate revenue for the 1995-96 fiscal year (Resolution M-4777); and,
 - d. The California High Cost Fund fee of 0.5% (D.94-09-065).
5. Applicant should be exempted from Rule 18(b)'s requirement of service of the application on cities and counties in the proposed service area and service of all exhibits attached to this application on potential competitors.
6. The application should be granted to the extent set forth below.
7. Because of the public interest in competitive interLATA and intraLATA services, the following order should be effective immediately.

ORDER

IT IS ORDERED that:

1. A certificate of public convenience and necessity is granted to IXC Long Distance, Inc. (applicant) to operate as a reseller of the interLocal Access and Transport Area (LATA) and, to the extent authorized by Decision (D.) 94-09-065, intraLATA [*8] telecommunication services offered by communication common carriers in California.
2. Applicant shall file a written acceptance of the certificate granted in this proceeding.
3. a. Applicant is authorized to file with this Commission tariff schedules for the provision of interLATA and intraLATA service. Applicant may not offer interLATA and/or intraLATA service 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, and shall be effective not less than 1 day after filing.

b. Applicant is a nondominant interexchange-carrier (NDIEC). The effectiveness of its future tariffs is subject to the schedules set forth in Ordering Paragraph 5 of D.90-08-032, as modified by D.91-12-013 and D.92-06-034:

"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) [*9] 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 5 working days' notice. Customer notifications 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."

4. 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 [*10] of sheets should be used for each rule." Tariff filings incorporating these deviations shall be subject to the approval of the Commission Advisory and Compliance Division's (CACD) Telecommunications Branch. Tariff filings shall reflect all fees and surcharges to which applicant is subject, as reflected in Conclusion of Law 4.

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

6. Applicant shall notify this Commission in writing of the date interLATA service is first rendered to the public within 5 days after service begins and again within 5 days of when intraLATA service begins.

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

8. In the event the books and records of the applicant are required for inspection by the Commission or its staff, applicant 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 applicant's office.

9. Applicant shall file an annual report, [*11] in compliance with GO 104-A, on a calendar-year basis using the information request form developed by the CACD Auditing and Compliance Branch and contained in Attachment A.

10. Applicant shall ensure that its employees comply with the provisions of PU Code § 2889.5 regarding solicitation of customers.

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

12. The corporate identification number assigned to applicant is U-5525-C which shall be included in the caption of all original filings with this Commission, and in the titles of other pleadings filed in existing cases.

13. Within 60 days of the effective date of this order, applicant shall comply with PU Code § 708, Employee Identification Cards, and notify the Chief of CACD's Telecommunications Branch in writing of its compliance.

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

15. In response to the applicant's request for waiver, applicant is exempted from Rule 18(b) of the Commission's rules of Practice and Procedure to the extent that the rule requires applicant [*12] to serve a copy of its application on

the cities and counties it proposes to operate in and to the extent that the rule requires applicant to serve a copy of all exhibits attached to its application on potential competitors.

16. If applicant is 90 days or more late in filing an annual report or in remitting the fees listed in Conclusion of Law 4, CACD shall prepare for Commission consideration a resolution that revokes the applicant's certificate of public convenience and necessity, unless the applicants have received the written permission of CACD to file or remit late.

17. The application is granted, as set forth above.

This order is effective today.

Dated October 5, 1995, at San Francisco, California.

I abstain.

/s/ JOSIAH L. NEEPER, Commissioner

TO: ALL INTEREXCHANGE TELEPHONE UTILITIES

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

A specific annual report form has not yet been prescribed for the California interexchange telephone utilities. However, you are [*13] hereby directed to submit an original and two copies of the information requested in Attachment A no later than March 31st of the year following the calendar year for which the annual report is submitted.

Address your report to:

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

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

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

ATTACHMENT A

Information Requested of California Interexchange Telephone Utilities.

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

1. Exact legal name and U # of reporting utility.
2. Address.
3. Name, title, address, and telephone number of the person to be contacted concerning the reported information.
4. Name and title of the officer having custody of the general books of account and the address of the office [*14] where such books are kept.
5. Type of organization (e.g., corporation, partnership, sole proprietorship, etc.).

If incorporated, specify:

- a. Date of filing articles of incorporation with the Secretary of State.

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