

**PUBLIC UTILITIES COMMISSION**505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298**FILED**02-14-11  
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February 14, 2011

**Agenda ID #10149**  
**Ratesetting**

## TO PARTIES OF RECORD IN APPLICATION 10-12-013

This is the proposed decision of Administrative Law Judge (ALJ) Burton W. Mattson. It will appear on the Commission's February 24, 2011 agenda. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Pursuant to Rule 14.6(c), the Commission may reduce or waive the period for public review and comment in an uncontested matter where the decision grants the relief requested. That is the case here. Comments on the proposed decision must be filed within three days, and no reply comments will be accepted.

Comments must be filed pursuant to Rule 1.13 either electronically or in hard copy. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Mattson at [bwm@cpuc.ca.gov](mailto:bwm@cpuc.ca.gov) and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ MICHELLE COOKE for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:avs

Attachment

Decision PROPOSED DECISION OF ALJ MATTSON (Mailed 2/14/2011)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application by SureWest Communications and SureWest Telephone (U 1015 C) for authority pursuant to California Public Utilities Code Section 851 to encumber assets to secure indebtedness.

Application 10-12-013  
(Filed December 17, 2010)

**DECISION GRANTING AUTHORITY TO ENCUMBER ASSETS**

We grant the application of SureWest Communications and SureWest Telephone to encumber assets for the purpose of securing debt. The proceeding is closed.

**1. Procedural Background**

On December 17, 2010, SureWest Communications and SureWest Telephone (collectively, SureWest or applicants) applied for authority under California Public Utilities Code Section 851 to encumber assets for the purpose of securing debt.<sup>1</sup> On December 24, 2010, notice was published in the Commission's Daily Calendar. Protests were due by January 24, 2011. No protests were filed.

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<sup>1</sup> All subsequent statutory references are to the Public Utilities Code, unless noted otherwise.

## **2. Application**

Applicants describe SureWest Communications as an integrated communications provider offering bundled residential and commercial services. These services include internet protocol (IP)-based digital and high-definition television, high-speed internet, voice over IP, and local and long distance telephone. SureWest Communications serves customers in the greater regions of Sacramento, California and Kansas City, Missouri, with headquarters in Northern California.

Applicants describe SureWest Telephone as a California public utility telephone company furnishing telecommunications services to portions of Sacramento County and Placer County. The property owned by SureWest Telephone and devoted to telecommunications services consists of wires, cables, lands, easements, central office equipment, buildings, and other pertinent equipment necessary for the provision of telephone service. SureWest Communications is the parent company of SureWest Telephone.

Applicants seek authority under § 851 for SureWest Telephone to encumber all of its assets for the purpose of securing debt. Applicants state that, upon obtaining Commission approval, SureWest Telephone will grant a security interest in all of its assets in connection with credit facilities described in the application, as well as guarantee notes secured by these assets on behalf of SureWest Communications.

Applicants state that the indebtedness secured by applicants' assets consist of a \$34 million revolving credit facility and \$230 million in delayed term loans, both with five-year maturities. The revolving credit facility and delayed term loans, according to applicants, are intended to: (1) refinance existing debt of approximately \$210 million that is coming due over the next three years, and (2) provide for capital expenditures and future construction of facilities by SureWest Telephone and its affiliates. SureWest Telephone's capital expenditures over the next five years are projected by applicants to be:

2011	\$10,493,000
2012	\$ 8,546,000
2013	\$ 8,511,000
2014	\$ 8,454,000
2015	<u>\$ 8,390,000</u>
Total	\$44,394,000

Applicants explain further that, upon Commission approval, SureWest Telephone will enter into a Pledge and Security Agreement with the lender. The Pledge and Security Agreement will encumber all of SureWest Telephone's assets in support of credit facilities to be obtained by SureWest Communications. According to applicants, the credit facilities are anticipated to consist of the following two components:

**Revolver:** A \$34,000,000 senior secured five-year revolving credit facility (the "revolver"). All funds under the revolver (including the issuance of letters of credit) will be made available on a revolving basis commencing on the closing date through the business day immediately preceding the revolver maturity, subject to commitment availability and voluntary and mandatory commitment reductions.

**Term Loan:** A \$230,000,000 senior secured five-year amortizing delayed draw term loan (the "term loan"). Under the term loan, \$210,000,000 will be drawn on the closing date and \$20,000,000 may be drawn in multiple draws ("delayed

draws”) in connection with capital expenditures. The delayed draws are subject to provisions that: (i) they occur no later than 18 months after the closing date, at which date, if not drawn, such remaining commitment under the term loan shall terminate, and (ii) amounts drawn will be in minimum increments of \$5,000,000.

Applicants clarify that they seek authorization under § 851 of the Code, and they do not seek approval for those aspects of the transaction which are governed by §§ 816-830.<sup>2</sup> Those aspects, according to applicants, include the issuance of evidences of indebtedness and the guarantee of the evidences of indebtedness of SureWest Communications by SureWest Telephone. In support, applicants state that telephone utilities not subject to regulated rate-of-return regulation are exempted by § 829(b)(1) from the provisions of §§ 816-830 (except § 828 regarding obligations of the State of California, which applicants say are not relevant here). SureWest Telephone is not under rate-of-return regulation.

In support of pledging all of SureWest Telephone’s assets to the parent company, applicants explain that all subsidiaries of SureWest Communications are pledging their assets and guaranteeing the notes of the holding company. These include all subsidiaries of SureWest Communications in California, Kansas and Missouri. According to applicants, some of the California subsidiaries are public utilities regulated by the Commission, such as SureWest Long Distance (U 5817 C), a non-dominant interexchange carrier (NDIEC), and SureWest TeleVideo (U 6324 C), a competitive local exchange carrier (CLEC). Applicants assert that these subsidiaries are exempt from the requirement to obtain

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<sup>2</sup> The application references §§ 818-830. We understand the applicable parts to be §§ 816-830.

Commission approval to encumber assets to secure debt, issue evidences of indebtedness, and to guarantee the notes of SureWest Communications.<sup>3</sup>

Finally, applicants assert that the application is categorically exempt from the California Environmental Quality Act (CEQA). Applicants also explain that time is of the essence because the availability of favorable credit terms currently accessible may be jeopardized if the loan documents are not executed as soon as possible.

### **3. Discussion**

This matter is uncontested. There are no known items in controversy.

Applicants are correct that, pursuant to § 829(b)(1), they need not seek authorization for those aspects of the transaction governed by §§ 816-830 (except § 828 regarding obligations of the State of California, which are not relevant here). Those aspects of the transaction include authorization for issuance of evidences of indebtedness and the guarantee of the evidences of indebtedness.

Applicants are also correct that, pursuant to § 851, they must obtain authorization to encumber the assets of SureWest Telephone. It is common for a company to encumber assets to refinance existing debt, provide for capital expenditures, and fund future construction. We understand the refinancing, capital expenditures and future construction to be for the benefit of the customers of SureWest Telephone. With this understanding, it is reasonable for

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<sup>3</sup> In support, applicants cite Decision (D.) 85-01-008, D.86-10-007, D.88-12-076 (exempting NDIECs from §§ 816-830), D.95-12-057 as modified by D.97-01-015 (exempting CLECs from §§ 816-830), D.85-11-044 (exempting NDIECs from § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt), and D.97-01-015 (exempting CLECs from § 851 for the transfer or encumbrance of property whenever such transfer or encumbrance serves to secure debt).

SureWest Telephone to encumber its assets, and for us to authorize SureWest to do so.

The balance sheet of SureWest Telephone shows total assets of nearly \$1.4 billion as of November 30, 2010. (Exhibit C attached to the application.) Even though all assets are encumbered, we understand that, should a default occur, the lender's claim would be limited to the amount of the loan (in this case \$264 million). We also understand that it is not uncommon for lenders to require the encumbering of all assets, without subdividing assets for the purpose of collateral. Moreover, all subsidiaries of SureWest Communications are pledging their assets and guaranteeing the notes of the holding company. Consequently, any risk incurred by SureWest Telephone due to this transaction is apportioned among all other subsidiaries of the parent company. With that understanding, it is reasonable for SureWest Telephone to permit the encumbering of all of its assets for this transaction, and for us to authorize SureWest Telephone to do so.

Applicants assert that this application is categorically exempt from review under the California Environmental Quality Act (CEQA). The CEQA requires the Commission act as the designated lead agency to assess the potential environmental impact of a project in order that adverse effects are avoided, alternatives are investigated, and environmental quality is restored or enhanced to the fullest extent possible. The proposed transaction is entirely a financial (paper) transaction. No authority for new construction is sought or granted. It can therefore be seen with certainty that there is no possibility that the transaction for which applicants' seek approval may have a significant effect on the environment. (14 California Code of Regulation § 15061(b)(3).)

Further, however, we state that the approval awarded in this order does not constitute an implied or express waiver of any applicable environmental

laws or regulations. Applicants may not use the authority provided herein to make a capital expenditure or begin construction of a capital project without first obtaining required approvals, if any, from the Commission or any other appropriate governmental body, including any required environmental review under CEQA.

#### **4. Categorization and Need for Hearing**

The Commission preliminarily categorized this application as ratesetting, and preliminarily determined that evidentiary hearing would be necessary. (Resolution ALJ-176-3267, dated January 13, 2011.) The matter was not protested. No prehearing conference was held, and no Scoping Memo was filed, thereby conserving limited Commission and party resources while expeditiously processing this matter.

Given these developments, we make a final determination here that the category is ratesetting, and a public hearing is not necessary.

#### **6. Comments on Proposed Decision**

This is an uncontested matter in which the decision grants the relief requested. In such case, the comment period may be shortened or waived. (§ 311(g)(2).) We shorten the comment period to three days, and waive reply comments. On February 14, 2011, the proposed decision of Administrative Law Judge (ALJ) Burton W. Mattson was filed and served. On \_\_\_\_, 2011, comments were filed by \_\_\_\_.

#### **7. Assignment of Proceeding**

Michael R. Peevey is the assigned Commissioner and Burton W. Mattson is the assigned ALJ in this proceeding.

#### **Findings of Fact**

1. There are no protests, and there are no items in controversy.

2. It is reasonable for SureWest Telephone to encumber all of its assets to secure a loan, the proceeds of which will be used for debt refinancing, capital expenditures and future construction for the benefit of SureWest Telephone customers.

3. The proposed transaction is a financial (paper) transaction, and no authority for new construction is sought or granted.

4. It can be seen with certainty that there is no possibility that the transaction for which applicants' seek approval may have a significant effect on the environment.

5. Time is of the essence due to the time-limited availability of favorable credit terms. This matter is finally categorized as ratesetting, and no hearing is necessary.

### **Conclusions of Law**

1. This matter is finally categorized as ratesetting, and no hearing is necessary.

2. The transaction described in the application is categorically exempt from CEQA.

3. The approval awarded in this order does not constitute an implied or express waiver of any applicable environmental laws or regulations.

4. The application should be granted.

5. The order should be effective today given applicants' need to secure the credit facility without delay.

**O R D E R**

**IT IS ORDERED** that:

1. The application of SureWest Communications and SureWest Telephone for authority pursuant to Section 851 of the California Public Utilities Code to encumber assets to secure debt is granted.

2. Hearings are no longer necessary.

3. Application 10-12-013 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a hard copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the hard copy of the filed document is current as of today's date.

Dated February 14, 2011, at San Francisco, California.

/s/ ANTONINA V. SWANSEN  
Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

A.10-12-013 ALJ/BWM/avs

\*\*\*\*\* PARTIES \*\*\*\*\*

\*\*\*\*\* SERVICE LIST \*\*\*\*\*

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A1012013 LIST**

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