

## APPENDIX A

SRT/jva 9/30/2004

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

Application of Pacific Bell Telephone Company  
(U 1001 C) d/b/a SBC California for Expedited  
Dispute Resolution of a Right-of-Way Agreement  
with Roseville Telephone Company Pursuant to  
47 U.S.C. § 224(c) and Decision 98-10-058.

Application 03-10-039  
(Filed October 15, 2003)

### FINAL ARBITRATOR'S REPORT

#### I. Summary

This decision adopts telephone and conduit rates to be paid by Pacific Bell Telephone Company, d/b/a SBC California (SBC) to SureWest Telephone,<sup>1</sup> formerly known as Roseville Telephone (SureWest). It resolves the three disputes that remained between these parties when they filed for dispute resolution, as follows:

1. Whether to include investment in general support facilities (GSF) in the calculation of pole and conduit rates. Resolution: I decline to include GSF costs in pole and conduit rates as SureWest proposes. Instead, I allow SureWest to charge pole and conduit rates according to the methodology developed by the Federal Communications Commission (FCC), which still allows SureWest recovery of administrative costs.
2. How to divide the annual cost of pole ownership among pole attachers when setting pole rates. Resolution: I adopt SBC's proposed means of allocating the percentage of the pole it uses, and count SBC as an attacher for purposes of calculating pole rates.

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<sup>1</sup> SBC is participating in this proceeding in its capacity as a Competitive Local Exchange Carrier (CLEC).

3. Whether SBC's own CLEC should be permitted to use an interoffice fiber facility constructed by the SBC incumbent local exchange carrier (ILEC). Resolution: I allow the SBC CLEC to use the interoffice facility.

## **II. Background and Positions of Parties**

SBC filed this request for dispute resolution pursuant to Decision (D.) 98-10-058, which established an expedited dispute resolution procedure for disputes involving "initial access to utility rights of way and support structures." Both parties agreed that it was appropriate to proceed under the D.98-10-058 dispute resolution rules,<sup>2</sup> but sought extensions of the extremely tight timeframe for such dispute resolution, and also stipulated to extend the Administrative Law Judge's (ALJ or arbitrator) time to issue a decision in this proceeding.

The parties asked the arbitrator to resolve three disputes, set forth below.

### **A. Whether to Include Costs of GSF in Pole and Conduit Rates**

The first dispute concerns which overhead costs SureWest may include in its pole and conduit rates.

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<sup>2</sup> D.98-10-058 (Oct. 22, 1998), Appendix A, § IX.A ("Right of Way Order"). The *Right of Way Order* at § XI.B summarizes the expedited procedure as follows:

<b>Event</b>	<b>Day Number</b>
Request for Arbitration filed	0
Responses filed	15
Revised Arbitration Statement filed	18
Arbitration hearings conducted	27
Draft Arbitrator's Report issued	42
Comments on Report filed	52
Final Arbitrator's Report issued	67
Commission Decision placed on agenda	104

### **1. SureWest's Position**

SureWest proposes to include GSF costs in its rates, resulting in higher rates for SBC. SureWest claims that if its rates do not include these costs, it will be under-compensated for use of its poles and conduits. The GSF costs at issue include items such as motor vehicles, work equipment, buildings, furniture, office equipment, general purpose computers, materials and supplies inventories, and telephone plant under construction. SureWest asserts that the functions generating these costs are necessary for SureWest to install and maintain the poles and conduit.

### **2. SBC's Position**

According to SBC, SureWest's witnesses conceded that many of the GSF costs SureWest proposes be included in rates are not related to SureWest's pole and conduit operations. In addition, SBC contends that both the FCC and this Commission have established methodologies for setting pole and conduit rates that expressly reject the inclusion of the types of costs SureWest includes.

### **B. Percentage of Pole Allocated to Each Attacher, and Number of Attachers**

The second dispute relates to how to allocate pole costs to each attacher. This issue has two subparts: first, what percentage of total pole costs each attacher should bear; and second, how many attachers one should presume for purpose of calculating pole rates.

#### **1. SureWest's Positions**

With regard to the percentage of pole costs allocated to each attacher, SureWest states that "if there are two attachers to the pole benefiting from such facilities, each should pay equally for use of the pole." It views as arbitrary a

methodology that would assign 92.6% of the pole costs to the pole owner and 7.4% to an attacher, the allocation the Commission has adopted in other contexts.

With regard to the number of attachers, SureWest proposes not to include SBC, but only the parties attached to the pole before SBC attaches. Thus, SureWest simply divides the total number of attachers it currently has on its poles by its total number of poles, which yields an average of 1.8 attachers per pole. SureWest then rounds that figures to two attachers per pole to reflect that, at a minimum, any SureWest pole with an attachment in addition to SureWest's would result in two attachments. It claims that the relevant FCC decision<sup>3</sup> supports its approach, since that decision refers to "attaching entities" as including "any other entity with a physical attachment to the pole." Because SBC does not have existing physical attachments on SureWest's poles – but instead seeks to make attachment in the future – SureWest contends that SBC's attachments should not be included in the analysis.

## **2. SBC's Positions**

On the issue of the percentage of pole costs to allocate to each attacher, SBC claims that the California methodology applicable to cable companies and set forth in Cal. Pub. Util. Code § 767.5(c)(2)(B) should apply here, even though SureWest is not a cable company. That statute provides that pole attachment rates should constitute "a percentage of the annual costs of ownership for the support structure, computed by dividing the volume or capacity rendered unusable by the [leasing carrier's] equipment by the total usable volume or

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<sup>3</sup> *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, CS Docket Nos. 97-98 and 97-151, *Consolidated Partial Order on Reconsideration*, FCC 01-170, rel. May 25, 2001, ¶ 56 (*FCC Recon. Order*).

capacity.” SBC claims that if it attaches to a SureWest pole, the attachment does not render 50% (assuming two attachers) of the pole unusable, but rather some smaller percentage. Indeed, under the statute, SBC claims it should be required to pay only “two dollars and fifty cents (\$2.50) or 7.4 percent of the public utility’s annual cost of ownership for the pole and supporting anchor, whichever is greater.”<sup>4</sup>

Under the FCC methodology, according to SBC, the attacher should pay for one foot plus two-thirds times the unusable space of a pole (24 feet) divided by the total number of attachers on a pole. Assuming that I adopt SBC’s view of the number of attachers on each pole (see below), SBC would bear approximately 14% of the net cost of each pole.

As for the assumed number of attachers, SBC states that its own attachment should be included in determining the average, and that one attacher should be added to the number of attachers SureWest assumes. It interprets the FCC rule as counting the party seeking to establish a pole rate as an attacher. The FCC states that,

We do not believe that Congress intended for a single attacher, protected by the Pole Attachment Act, that uses one foot of space on a pole, to pay a higher (double) portion of the unusable space cost than the pole owner that controls, and use a good portion of, the rest of the usable space. Therefore, we include the utility pole owner in the count, *resulting in a minimum of two attaching entities being counted*.<sup>5</sup>

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<sup>4</sup> Cal. Pub. Util. Code § 767.5(c)(2)(A).

<sup>5</sup> *FCC Recon. Order* ¶ 60 (emphasis added).

If each pole owner has a minimum of two attachers, according to SBC, the FCC must be counting the pole owner and one attacher. The latter entity, therefore, must be the party seeking to attach – in this case, SBC.

### **C. Interoffice Facility**

Finally, the parties disagree whether SBC's CLEC, doing business in SureWest's territory, should be allowed to use an interoffice fiber optic facility that the SBC ILEC installed between SBC's Fair Oaks and Rocklin central offices. SureWest claims it would be anticompetitive to allow SBC's CLEC to use this facility, and SBC claims it would be inefficient to require SBC to construct a duplicate facility.

## **III. Discussion**

### **A. GSF Costs**

None of the cases the parties cite is directly useful to resolution of the dispute over inclusion of GSF costs. First, D.98-04-062, which SureWest cites, involved a cable company seeking access to Southern California Edison Company's (Edison) electric poles. The decision turned on the interpretation of Edison's tariff and the appropriate rate of depreciation to apply – issues not raised in this proceeding. Moreover, the case involved interpretation of Cal. Pub. Util. Code § 767.5, which on its face applies only to cable television companies.<sup>6</sup>

Second, SureWest concedes that D.98-10-058, the Commission's decision setting forth the comprehensive framework for regulation of pole attachments and access to conduit, does not precisely identify the investment and expense

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<sup>6</sup> Section 767.5(a)(3) defines a pole attachment as "any attachment to surplus space, or use of excess capacity, *by a cable television corporation* for a wire communication system on or in any support structure located on or in any right-of-way or easement owned, controlled, or used by a public utility." (Emphasis added.)

accounts to be included in the rate analysis, referring only to the utility's "annual cost of ownership" as the basis for setting rates. Thus, D.98-10-058 does not resolve the GSF cost issue either.

Third, D.03-05-055 also involved a dispute between a cable company and an electric utility, and again relied on Pub. Util. Code § 767.5. The key disputes also related to issues not raised here – for example, the calculation of the utility’s transmission right of way fee (its fee for securing rights of way on private land), and of the “appurtenance adjustment factor.”<sup>7</sup> The decision does not shed light on what to do in this case.

However, those cases do affirm one of SBC’s assertions in this case: that including GSF costs as SureWest proposes could necessitate a full-scale ratemaking exercise, which I am not prepared to undertake here.<sup>8</sup> In D.03-05-055, for example, the Commission examined in great detail every element of the electric utility’s cost structure.

Here, by contrast, SureWest simply proposes that a flat percentage of every account conceivably related to poles and conduits be assumed as part of its cost structure. While SureWest claims this method of allocation is not unduly burdensome – which may be true – it is also woefully imprecise because it includes many types of costs SureWest agrees bear no relationship to poles or conduits. As SBC established at hearing, SureWest included many costs as part of its GSF allocation that its witness admitted are not attributable to poles or conduits.<sup>9</sup> SureWest did not address how its flat allocation to pole and conduit rates of a portion of all such costs produced a reasonable result.

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<sup>7</sup> That factor is a reduction to pole rates for pole appurtenances and fixtures such as cross arms, guy wires and pole anchors necessary to integrity of the pole but not used by the cable operator.

<sup>8</sup> *See FCC Recon. Order* ¶ 115.

<sup>9</sup> SBC recites these accounts in detail. *See Post-Hearing Brief of [SBC California]*, dated Feb. 25, 2004, at 9-13 (*SBC Opening Brief*).

I agree with SBC that the FCC's methodology, which attributes a set amount of overhead costs to the utility's rates, presents a far easier path. Under that methodology, the utility may only include costs from certain, specifically identified accounts under Part 32<sup>10</sup> in calculating pole and conduit rates.<sup>11</sup> The FCC rejected inclusion of many other accounts, reasoning as follows:

We do not believe Congress intended us to discover and aggregate all *de minimis* expenses which might have some intangible nexus to pole [and conduit] attachments. On the contrary, we believe Congress gave us a clear mandate *not* to engage in full-scale ratemaking exercises every time we had a pole attachment complaint before us. We have chosen to disaggregate the major accounts selected for inclusion in our calculations in order to eliminate expenses not directly attributable to administrative costs with a nexus to pole [and conduit] attachments.<sup>12</sup>

Were there a clear, contrary mandate by this Commission, I would apply it here. However, SureWest concedes that it can locate none, and relies instead on the cable attachment statute, § 767.5, and decisions interpreting it, as well as general ratemaking doctrines the Commission has used in other, very different contexts. For example, SureWest states that the Commission includes "common costs" in the amount of California High Cost Fund-B (CHCF-B) support provided to telephone companies serving high cost areas, and in rates for SBC's non-recurring costs associated with its unbundled network elements (UNEs). This

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<sup>10</sup> Part 32 appears at 47 C.F.R. § 32.1 *et seq.*, and prescribes a uniform system of accounts for telecommunications companies.

<sup>11</sup> The accounts are Account 2411 ("Poles") for pole rates and Account 2441 ("Conduit Systems") for conduit rates. 47 C.F.R. §§ 32.2411, 32.2441.

<sup>12</sup> *FCC Recon. Order* ¶ 115 (emphasis added).

may be true, but SureWest nowhere explains whether the “common costs” included there are the same as the “GSF costs” it advocates be included here.

Nor does SureWest explain why principles of cost allocation in these other contexts – each of which has its own complex regulatory history and considerable factual disputes – should apply here. Because cost allocation is a process fraught with factual and nomenclature disputes over what costs meet particular criteria (*e.g.*, are direct, incremental, common, fixed, overhead, general support, etc. costs), I am not prepared to import a methodology carefully crafted for another context into this proceeding.

SureWest also claims that it is irrelevant that its witness admitted that some costs in accounts it proposes be allocated have no relationship to poles and conduits. SureWest states this fact “misses the point of an allocation factor methodology, [which] ... is undertaken in lieu of analyzing each individual component of a particular account.”<sup>13</sup> But SureWest also states that its method “averag[es] these mismatches to produce a fair allocation of costs instead of performing a non-economical, labor intensive direct assignment of costs....”<sup>14</sup> Thus, in fact, SureWest is not proposing that I allocate its actual costs, but that I assume that its cost mismatches work themselves out automatically. SureWest’s methodology is, therefore, no more precise than the FCC’s, and has no support in any cited pole/conduit case. I am not satisfied that including subaccounts related to, for example, coin collection, directory assistance, sales commissions, marketing and product management, as SureWest proposes, produces a fair result.

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<sup>13</sup> *SureWest Opening Brief* at 7-8.

<sup>14</sup> *Id.* at 8.

In the absence of a record that reveals all pole/conduit costs, including overheads, and assigns these costs transparently, I opt for the FCC's already approved allocation methodology.

Both parties prepared charts (Exhibits 200-C and 201-C) revealing that if I adopted the FCC methodology, the conduit rate would be \$0.95 per inner duct foot per year. I adopt that rate here. The pole rate under the FCC method is not as clear, given that SBC and SureWest disagree over how the number of pole attachers should be calculated. Since I resolve that issue in SBC's favor below, the pole rate under the FCC methodology, assuming 3.7 attachers as does SBC, is \$6.79 per pole per year.

## **B. Pole Allocation/Attachers**

### **1. Portion of Allocated Pole**

Case law is also not particularly helpful on how to allocate a proportion of the pole to the attacher (SBC). The California statute applicable to cable companies (§ 767.5) would require that an attacher pay "two dollars and fifty cents (\$2.50) or 7.4 percent of the public utility's annual cost of ownership for the pole and supporting anchor, whichever is greater." However, SureWest is not a cable company. Instead, SureWest proposes that each user bear its "pro rata share" of pole costs, while SBC contends that it should bear 14.2% of the costs (as SBC defines them) based on the FCC's methodology.

In the case of two attachers per pole, SureWest's allocation would allocate costs 50-50 between attacher and owner: "the proper approach is that parties should share equally in the cost of the pole to which both parties have access for

providing service to the exact same customers.”<sup>15</sup> SureWest rejects the FCC methodology – which has the attacher pay the net yearly cost of one foot of the usable pole space, plus a proportionate share of two-thirds of the unusable space<sup>16</sup> - as requiring SureWest’s ratepayers to bear an unfair and disproportionate share of pole costs.

I find no support in any CPUC or FCC decision for SureWest’s approach. Both jurisdictions assume that the pole owner has rights that are more valuable than a pole lessee’s, and attribute less than half of pole costs to that attacher. As SBC notes, if it is required to pay 50% of the annual cost of a SureWest pole, then it should be a joint owner of the pole with equal rights to the entire pole that the original owner possesses. This is not the case.

Moreover, even if Pub. Util. Code § 767.5 applies only to cable companies, the principle it follows – that the pole attacher/lessee should only bear a 7.4 percent share of pole costs<sup>17</sup> – acknowledges that an attachment only renders unusable a small percentage of the pole, and that the attacher is not sharing in the full rights of ownership of the entire pole.

Thus, I find that SBC’s proposed percentage allocation – which tracks the FCC methodology – should be adopted here. This allocation results in SBC bearing approximately 14.2% of the pole costs.

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<sup>15</sup> *SureWest Opening Brief* at 13.

<sup>16</sup> *See SBC Opening Brief* at 31; *SureWest Opening Brief* at 13.

<sup>17</sup> The FCC methodology produces a factor of between 24% for two attachers to 9.8% for six attachers.

## 2. Number of Attachers

SureWest assumes that one should not count SBC in calculating the number of attachers over which to spread costs, while SBC proposes including itself. I opt for SBC's method. If SBC is bearing a portion of the costs, it should be included as an attacher in calculating those costs.

Interestingly enough, both sides contend the FCC methodology supports them. Each cites the FCC's statement that,

The term "attaching entities" includes, without limitation, and consistent with the [federal] Pole Attachment Act, any telecommunications carrier, incumbent or other local exchange carrier, cable operator, government agency, any electric or other utility, whether or not the utility provides a telecommunications service to the public, as well as any other entity with a physical attachment to the pole.<sup>18</sup>

According to SureWest, the language "entity with a physical attachment to the pole" means that one only counts as an attacher a party that already has facilities on the pole. Thus, under this interpretation, SBC should not be counted: "SBC CLEC's speculative future attachments should not be included in the rate development."<sup>19</sup>

Using the same quotation, SBC claims that, "if SBC California is not counted as an attacher, then it gains no benefit at all from the FCC's stated goal of requiring two-thirds of the cost of the unusable space of a pole to be apportioned among *all* attachers."<sup>20</sup>

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<sup>18</sup> *FCC Recon. Order* ¶ 59.

<sup>19</sup> *SureWest Reply Brief* at 17.

<sup>20</sup> *SBC Opening Brief* at 33.

I do not find that either interpretation is of much help. Indeed, I find most helpful SBC's statement that "The pole rate that SBC California seeks to establish in this arbitration will be used only for those SureWest poles to which SBC California attaches."<sup>21</sup> If this is the case, then it makes the most sense that SBC be counted as an attacher, since it will have a physical attachment to the pole that it is paying for. This approach is consistent with California and FCC precedent that requires allocation of cost among all attachers. If SBC is paying for a pole, it is by definition attached to that pole, and should be counted as one of the parties sharing the cost of that pole. Thus, I find that SBC is correct that it should be counted as an attacher in calculating pole rates.

In Joint Exhibit 201-C, SureWest and SBC agree that at least 2.7 attachers are on the SureWest's poles (not including SBC). First, SureWest's data shows an average of 1.8 attachers per pole counting SureWest. SBC agrees to this figure. SureWest also agrees that the joint pole owner (*e.g.* an electric utility) of a large majority of SureWest poles should be included as an attacher, which increases SureWest's total number of attachers (not including SBC), to 2.7. SBC also stipulates to this figure (setting aside the issue of whether SBC itself should be included). Thus, once one adds SBC itself, the number of attachers that should be presumed in setting pole rates for SBC should be 3.7. I so find.

### **C. Interoffice Fiber Facility**

The final issue for resolution here relates to whether the SBC CLEC may use a fiber facility the SBC ILEC constructed for its own use. The SBC CLEC participating in this proceeding wishes to use separate strands of fiber from those

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<sup>21</sup> *Id.*

used by its ILEC operation to provide out-of-SBC-territory competitive services to customers in SureWest's ILEC franchise area.

SureWest claims that to allow such use would give the SBC CLEC an unfair competitive advantage over SureWest, and that SBC should have to build a separate facility. SureWest believes that SBC placed its interoffice facility close to several SureWest business customers with the intention of providing local service to the customers through SBC's CLEC operation.

SBC claims it installed its facilities in SureWest's conduit, and if it passes near several SureWest customers, it is because SureWest placed the conduit there, not SBC. SBC claims SureWest did not object to the placement at the time; SureWest counters that it did not have the right to object. SBC claims it would cost over \$1 million to construct a duplicate facility.

I find in favor of SBC on this claim. The Commission acknowledged in D.98-01-024 that SBC might use its existing facilities for its CLEC operation, and that this fact was not inherently anti-competitive:

To the extent Pacific's physical proximity to the [California mid-sized LEC] MSLEC service boundaries permits it to cost effectively build out its facilities, Pacific's ability to compete will likely be enhanced . . . . While Pacific is positioned to realize certain economies of scale and scope resulting from the proximity of its existing local exchange facilities to the MSLECs' service territories, its position as a new [CLEC] entrant is not that of a dominant carrier. *We see nothing inherently anticompetitive about a particular [CLEC], through economies of scale, being able to offer service more efficiently than certain competitors.*<sup>22</sup>

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<sup>22</sup> D.98-01-024, 78 CPUC 2d 272, 1998 Cal PUC LEXIS 99, at \*14-15 (emphasis added).

Nor does SureWest claim any technical infeasibility in SBC using the interoffice facility. At the hearing, I asked SureWest's witness, "if Pacific were to attach to the existing interoffice facility... whether there would be a technical problem with their attachment; whether it would affect telephone service offered by Roseville or anyone else in that area." The witness stated, "we probably would agree that there would be no technical problem...."<sup>23</sup>

SureWest's claim that SBC installed the facility to later cream skim SureWest's large business customers is not supported in the record. SureWest claims that SBC's witness, Ms. Smith, stated that SBC ILEC consulted with the SBC CLEC when planning the construction of the interoffice facility. However, Ms. Smith's testimony was clear that even though she was responsible for SBC's out-of-franchise operations, she "had no say in where th[e interoffice] cable would go....I knew that I had customers out there that I would like to get to, but the route on the cable was not determined by my input." SureWest cites the testimony of its own witness in support of the proposition that SBC installed the interoffice facility to serve future SBC CLEC customers in SureWest's territory, but the witness is simply surmising that this was SBC's motivation.

Finally, I do not believe it makes sense for SBC to have to construct duplicate facilities for its CLEC when existing facilities are already in place and have the capacity to accommodate additional telephone traffic. Laying facilities is expensive, and can have environmental impact on the community where it is built. I see no reason for SBC to build duplicative facilities, and I authorize SBC's CLEC to use the existing facilities for its services.

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<sup>23</sup> Reporter's Transcript (RT), 168:2-25 (Feb. 5, 2004).

#### **IV. Comments on Draft Arbitrator's Report**

The Draft Arbitrator's Report (DAR) was mailed to the parties for comment on July 1, 2004. SureWest and SBC filed comments on the DAR on July 12, 2004, and, at the Arbitrator's request, SBC filed reply comments on August 27, 2004.

##### **A. SureWest Comments**

SureWest raises three issues in its comments. First, SureWest contends that the GSF costs it identifies are legitimate costs to consider in ratemaking exercises. SureWest cites the Commission's statement in D.98-04-062 that "computation of the pole attachment fee should be consistent with the methodology utilized in determining the cost of these facilities for other ratemaking purposes."<sup>24</sup> Thus, according to SureWest, the Commission should act no differently than in any other ratemaking context when setting pole and conduit rates.

The DAR already addresses this point:

Nor does SureWest explain why principles of cost allocation in these other contexts – each of which has its own complex regulatory history and considerable factual disputes – should apply here. Because cost allocation is a process fraught with factual and nomenclature disputes over what costs meet particular criteria (*e.g.*, are direct, incremental, common, fixed, overhead, general support, etc. costs), I am not prepared to import a methodology carefully crafted for another context into this proceeding.

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<sup>24</sup> SureWest Comments on DAR at 2.

One need only examine the extensive record in the UNE proceeding, A.01-02-024 *et al.*, to realize that ratemaking can be a very complex process. To assert that the Commission should conduct ratemaking for the purpose of setting pole and conduit rates as the Commission is conducting the UNE proceeding really gets us nowhere.

Moreover, I am granting SureWest recovery of *appropriate* costs associated with its operation of poles and conduit. I simply reject SureWest's GSF methodology, which includes recovery of costs SureWest concedes bear no relationship, or only a partial relationship, to its actual pole and conduit operations.

Furthermore, as SBC points out in its reply comments, SureWest takes the D.98-04-062 quotation out of context, because it deals only with depreciation. The full quotation states: "[T]he Commission here is establishing a fee for a utility service and thus the computation of the pole attachment fee should be consistent with the methodology utilized in determining the cost of these facilities for other ratemaking purposes. *We shall adopt the straight-line depreciation accounting methodology as proposed by [the California Cable Television Association.]*"<sup>25</sup> There is no dispute about depreciation in this case, and nothing else in D.98-04-062 helps SureWest's case. Thus, I make no changes to the DAR based on this SureWest comment.

Second, SureWest takes issue with the DAR's finding that "There is an insufficient record to engage in a full-scale ratemaking exercise with regard to GSF costs."<sup>26</sup> In response, SureWest asks rhetorically, "if the Commission is

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<sup>25</sup> SBC Reply Comments on DAR at 4, quoting D.98-04-062 (emphasis added).

<sup>26</sup> DAR, Finding of Fact 3.

unprepared to undertake the necessary analysis to set appropriate rates in this proceeding, when will SureWest ever have the opportunity to address rates for pole attachments and conduit?”<sup>27</sup>

However, this is a problem of SureWest’s own creation, because it asked to include costs in its rate computation that SBC proved had no relationship to poles and conduits. In light of SBC’s showing at hearing, SureWest did not recalculate its costs to only include those that the evidence showed related to poles and conduits. Nor, as SBC points out in its comments on the DAR, did SureWest provide any description of what procedure it used to determine which Part 32 accounts to include in its proposed GSF allocation.<sup>28</sup>

Thus, SureWest failed to establish that its costs were appropriate or that this Commission has established another method of cost allocation for poles and conduits. I adopted the FCC methodology, which compensates SureWest for appropriate costs. Thus, in my view, SureWest has had the opportunity to address rates for pole attachments and conduit. While the result is a methodology SureWest does not support, it is a fair result nonetheless.

Third, SureWest claims that the DAR artificially overstates the number of attachers for calculating pole attachment rates. SureWest claims that the DAR mixes apples and oranges by starting with 2.7 attachers – the figure both sides agree upon to represent the average number of attachers on each of SureWest’s 11,915 poles – and adding one attacher (for a total of 3.7 attachers) to the poles on which SBC proposes to attach. To combine the *average* of 2.7 with the *actual* of one attacher reflects confusion in the DAR, SureWest claims.

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<sup>27</sup> SureWest Comments on DAR at 3.

<sup>28</sup> SBC Reply Comments on DAR at 7.

I disagree. The parties agree that the 2.7 average figure does not include SBC as an attacher. The only way that SBC can get the benefit of the fact that its presence on a pole increases the number of attachers among which the costs should be spread is to count SBC as an additional attacher on that pole.

It is true that another possible outcome would be to calculate a new average based on the number of SureWest poles to which SBC attaches. If, for example, SBC attaches to 1191 (or 10 percent) of SureWest's 11,915 poles, the average number of attachers – spread over SureWest's entire stock of poles – will increase 10 percent (0.1), rather than by one. However, for some reason, SureWest does not support this method, but rather advocates that only the 2.7 rate be used – a rate that all concede does not include SBC as an attacher.

In the absence of a proposal by SureWest to add this percentage to the 2.7 figure, and in recognition of the fact that including SBC as one attacher results in a fair rate for SBC on the poles to which SBC attaches, I adopt SBC's methodology.

## **B. SBC Comments**

SBC asks that the DAR be clarified in small ways; SureWest does not oppose SBC's request. I make several small changes to reflect SBC's request. Where I make no change, it is because I have considered SBC's request and either find it superfluous, reject the request for reasons already contained in the DAR, or find the change to be contrary to the record or the law.

## **Findings of Fact**

1. The parties waived the deadlines set forth in the *Right of Way Order*.
2. Including GSF costs as SureWest proposes would necessitate a full-scale ratemaking exercise.
3. There is an insufficient record to engage in a full-scale ratemaking exercise with regard to GSF costs.

4. SureWest proposes that a flat percentage of every account conceivably related to poles and conduits be assumed as part of its pole/conduit cost structure.

5. SureWest's allocation of costs from the foregoing accounts is very imprecise, and includes costs SureWest agrees bear no relationship to poles or conduits.

6. Under the FCC methodology for allocating overhead costs, the utility may only include costs from certain, specifically identified Part 32 accounts in calculating pole and conduit rates.

7. Section 767.5 applies only to cable companies seeking to attach to utility poles and place facilities in utility conduits.

8. There is no evidence in this case that the general ratemaking doctrines we have used in other, very different contexts (*e.g.*, regarding the CHCF-B and UNEs) apply here.

9. SureWest is not proposing allocation of actual identifiable overhead costs to pole and conduit rates, but assumes that its cost mismatches work themselves out automatically.

10. SureWest's GSF methodology has no support in any cited pole/conduit case.

11. The parties agreed in Exhibits 200-C and 201-C to pole and conduit rates assuming various outcomes.

12. The record supports a conduit rate of \$0.95 per inner duct foot per year.

13. The record supports a pole rate of \$6.79 per pole per year.

14. Case law and the California cable television statute do not assist me to determine the portion of each pole that should be allocated to the pole owner and attachers in calculating the pole rate.

15. SureWest's proposed 50-50 cost allocation percentage for poles finds no support in any CPUC or FCC decision.

16. The pole owner has rights of ownership that are more valuable than those of a pole lessee.

17. The pole rate for SBC will be used only for those SureWest poles to which SBC attaches.

18. It is technically feasible for the SBC CLEC to use the interoffice fiber facility at issue in this proceeding.

19. SureWest did not object to SBC's placement of the interoffice fiber facility when it was installed.

20. Installing a new interoffice fiber facility would be expensive.

### **Conclusions of Law**

1. D.98-04-062, D.98-10-058 and D.03-05-055 are not applicable in reaching a conclusion regarding the inclusion of GSF costs.

2. The FCC methodology provides a reasonable basis for allocating overhead costs to pole and conduit rates.

3. A pole lessee should not bear 50% of pole costs, but rather some lesser percentage.

4. Under § 767.5, pole attacher/lessee bears only 7.4% of the net costs of the pole.

5. If SBC is bearing a portion of pole costs, SBC should be included as an attacher in calculating those costs.

6. It is not inherently anticompetitive for a CLEC to realize certain economies of scale and scope resulting from the proximity of its existing local exchange facilities to MSLECs' service territories.

7. SureWest did not establish that SBC placed the interoffice facility to later cream skim SureWest's customers with its SBC CLEC operation.

**O R D E R**

1. SureWest Telephone's (SureWest) conduit rate for Pacific Bell Telephone Company, d/b/a/ SBC California (SBC) shall be \$0.95 per inner duct foot per year.

2. SureWest's pole rate for SBC shall be \$6.79 per pole per year.

3. SBC's competitive local exchange carrier may use the interoffice fiber cable facility that runs between the SBC Fair Oaks and Rocklin, California central offices at issue in this proceeding.

Dated September 30, 2004, at San Francisco, California.

/s/ SARAH R. THOMAS

Sarah R. Thomas, Arbitrator  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, this day served a true copy of the original attached Final Arbitrator's Report on all parties of record in this proceeding or their attorneys of record.

Dated September 30, 2004, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

**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.

**(END OF APPENDIX A)**