access of other carriers to the owners' properties or discriminating against the facilities of other carriers such as CLCs. For example, an agreement which provides for the exclusive marketing of ILEC services to building tenants may be improper if the agreement has the effect of preventing a CLC from accessing, and providing service to, a building because of the building owner's financial incentives under the marketing agreement. Similarly, a situation in which a building owner, either for convenience or by charging disparate rates for access, favors the access of the ILEC to the detriment of a CLC will also be in violation of our rules herein. Such arrangements conflict with our stated policy promoting nondiscriminatory ROW access.

On a prospective basis, we will prohibit all carriers from entering into any kind of arrangement or sign any contract with building owners that result in exclusive or discriminatory access. Although we will not disturb any agreements predating the effective date of this order, we will permit any carrier to file a formal complaint against another carrier that the complainant believes is benefiting from exclusive or discriminatory access to private property. The complainant carrier will have the burden of proving that the defendant carrier, either by its actions or the actions of the building owner, is the exclusive provider of service or the beneficiary of better terms of access in violation of the policies of this order. If after hearing the evidence we find that the agreement or arrangement is unfairly discriminatory with respect to other carriers, we shall direct that the agreement be renegotiated or use Commission authority under PU Code §§ 2107 and 2108 to impose a fine for continuing violations against the carrier for everyday that the agreement or arrangement is in effect. Such fine would be based on the number of lines served in the building multiplied by the number of days of violation, and be levied in the range of $500 to $20,000 per day

per statute. A carrier will have 60 days to renegotiate a contract deemed discriminatory by the Commission or else the fine will begin to accrue.

This solution permits the Commission to employ its jurisdiction over telecommunications carriers to effectuate the desired policy for nondiscriminatory access to buildings without addressing our jurisdiction if any, over private property.

We recognize, however, that the private property rights of building owners must be observed. Building owners must retain authority to supervise and coordinate on-premise activities of service providers within their building. Installation and maintenance of telecommunications facilities within a building may disrupt tenants and residents, and could cause physical damage to the building. Unauthorized entry into a private building by a third party whether an ILEC or a CLC could compromise the integrity of the safety and security of occupants of the building. The building owner or manager is uniquely positioned to coordinate the conflicting needs of multiple tenants and multiple service providers. Telecommunications carriers' access to private buildings shall therefore be subject to the negotiation of terms of access with the building owner or manager.

While building owners are entitled to exercise due discretion in managing and controlling access to their premises for the protection and security of the building occupants, they may not abuse such discretion in a manner that would unfairly or capriciously discriminate against carriers seeking ROW access in order to offer competitive local exchange service. In the event a carrier is unable to reach a mutually satisfactory arrangement with a building owner for access to the building premises to serve customers, then the carrier may seek resolution of its dispute in the appropriate court of civil jurisdiction or file a

complaint as described above if the carrier believes that another carrier is benefiting from exclusive or unfairly discriminatory access.

Lastly, incumbent utilities shall not be required to exercise their powers of eminent domain to expand their existing ROW over private property to accommodate a CLC's request for access. The CLC, as a telephone corporation, has independent authority sufficient to pursue its own eminent domain litigation, and there is no basis to require contracting for such litigation through the incumbent. The eminent domain powers of a CLC are covered under PU Code § 616, which states that "a telephone corporation may condemn any property necessary for the construction and maintenance of its telephone system."

We will not at this time extend the requirements and procedural vehicles described above to electric-utility access to private property for the purpose of providing electric service only. We may do so in a future order in this docket or on a case-by-case basis.

X. Third Party Access to Jointly-Owned Facilities

A. Parties' Positions

Utility distribution poles and anchors have been traditionally owned under joint ownership agreements between two or more entities with a need to have their lines or equipment strung on common poles to reach customers throughout a given geographic area. Joint pole associations have traditionally fostered access to and the joint ownership of pole facilities. Membership is comprised of ILECs, CLCs, wireless providers, municipalities, and electric and water utilities. Pursuant to such joint pole associations, third parties have acquired access to jointly owned poles as tenants of one of the owners. In their comments, parties addressed the issue of whether existing joint pole associations

were an adequate vehicle to protect the interests of third parties seeking access to facilities.

GTEC recommends that the existing process of access through joint pole associations has worked well and should continue and not be supplanted with an untested method. Those third parties who are non-members may apply to become members of the association. GTEC argues that it is not necessary for yet another organization to be established to protect the interest of third parties, as this would be incompatible with the current joint pole association process, and would needlessly complicate a currently effective system.

PG&E believes that provisions addressing the rights and responsibilities of a joint owner are needed when allowing third parties access to the jointly owned poles as tenants. PG&E argues that third party connections also must comply with safety and reliability requirements, and should not take precedence over the use of the pole by any joint owner for its current or future utility service.

PG&E believes that, with the restructuring of the telecommunications and the electric industry, the Commission needs to carefully consider how the obligations and compensation for pole ownership and/or use should be structured to provide a reasonable balance between responsibility for and benefits from the pole system. PG&E believes that ultimately all users will need to pay for their pole use in a manner that is either market based or economically equivalent to sharing fully the ownership costs and responsibilities for facilities subject to shared ownership.

PG&E argues that third party tenants' quality of access cannot exceed the access which their licensor or leasor enjoys under the Joint Pole Agreement, and that the joint owner must be able to provide for its own capacity requirement before accommodating third party requests. PG&E suggests that a

telecommunications entity which does not wish to join the Joint Pole Association, but still desires the same quality of access as an owner, can negotiate a separate joint ownership agreement with the entity or entities holding ownership interests in the pole.

The Coalition states that new distribution facilities constructed by a member of a joint pole organization will ordinarily be subject to the rules governing members of that organization, whereas new distribution facilities constructed by a party that is not a member of a joint pole organization would not be subject to joint pole association rules. Since several of the members of the Coalition are also members of joint pole associations, the Coalition states it is not in a position to comment on whether a different vehicle is needed to protect the interests of third parties.

Since such organizations are controlled by regulated utilities, they are agents of parties subject to the Commission's jurisdiction. Even though joint pole organizations are not themselves public utilities, the Coalition argues they are fully subject to Commission jurisdiction and control, through the operation of the ordinary principles of agency law. Therefore, the Coalition believes the Commission can take whatever steps it deems necessary to protect the interest of third parties. The Coalition further claims that the Commission has authority to provide for reciprocal access by privately-owned utilities to the ROW and support structures owned by local governmental agencies to the extent those agencies are members of joint pole associations and receive benefits from such membership.

The Coalition argues that the utility members of any joint pole organization must not be permitted to degrade access to utility support structures and ROW directly or indirectly, simply because an attaching party has chosen not to become a full member of such an organization.

B. Discussion

Based on parties' comments, we find no need at this time to make any further modifications in the existing arrangements governing joint pole associations to protect third parties that do not belong to a joint pole association. Likewise, no party seeking access to a utility pole should be discriminated against merely because it is not a member of such an association. We may at a later time consider the needs for additional rules to protect against unfair discriminatory treatment for nonmembers of joint pole associations. As we have stated previously, the ALJ shall solicit further comments concerning the implications of joint pole associations as they relate to nondiscriminatory access.

XI. Expedited Dispute Resolution

A. Parties' Positions

Parties present differing views regarding how the Commission should facilitate the resolution of disputes in the event parties cannot reach agreement through negotiations over the terms and conditions of ROW access.

In its proposal, the Coalition distinguishes disputes over requests for initial access versus all other disputes over access. The Coalition recommends that the Commission develop a new type of expedited and informal proceeding for resolving disputes concerning initial access to utility support structures, patterned after the Commission's existing Law and Motion procedure for discovery dispute resolution. This new type of proceeding would be presided over by an ALJ, assisted by Telecommunications Division or the Safety and Enforcement Division staff with relevant experience and knowledge of utility support structures. The hearing would not be reported. The ALJ would hear the initial access dispute and resolve it, either at the hearing or within no more than three working days, employing such fact finding techniques as necessary for expeditious resolution of the initial access dispute.

The Coalition claims that the Commission's existing formal complaint process is much too slow and cumbersome for resolution of such disputes. Absent an expedited dispute resolution procedure, the Coalition argues, the CLC must either comply with the terms of access, which may be difficult, expensive and time-consuming, or file a complaint for relief at this Commission, which may be an equally difficult, expensive, and time-consuming process, while, in the meantime, access is denied.

For all other disputes between ILECs and telecommunications carrier involving access to ILEC utility support structures (*i.e.*, disputes concerning other than initial access), the Coalition agrees that arbitration is a useful alternative to the use of the Commission's existing complaint process. (See, Interconnection Order 1, ¶¶ 1227, 1228; see also, Commission Resolution ALJ-174 (adopting arbitration procedures for resolution of interconnection agreement disputes).)

CCTA believes that the process established by the Act and the FCC provide a good starting point for expedited resolution by this Commission of disputes involving denial of access. The FCC Order requires the requesting party to provide the ROW or facility owner a written request for access. If access is not granted within 45 days of the request, the ROW or facility owner must confirm the denial in writing by the 45th day. Upon the receipt of a denial notice from the ROW or facility owner, the requesting party has 60 days to file its complaint with the FCC, and final decisions relating to access are to be resolved by the FCC expeditiously. (Interconnection Order ¶ 1225.) The requesting party also may seek arbitration pursuant to § 252 of the Act which governs procedures for the negotiation, arbitration, and approval of certain agreements between ILECs and telecommunications carriers. If arbitration is undesirable or proves unsuccessful, then court proceedings are an alternative.

CCTA proposes additional dispute resolution procedures for situations in which parties have already entered into contracts for access to ROW. Specifically, CCTA proposes that such disputes be negotiated by field personnel first. If the dispute remained after two days, it could be forwarded to the supervisor of the field representative. After five days, it would go to the Engineering Manager. After five more days, it would go to the Utility Manager-General Agreements. If the dispute remained after five more days, it would go to arbitration.

Pacific supports an expedited dispute resolution process, but argues that parties must be required to attempt to resolve their differences in good faith before bringing them before the Commission. Pacific proposes that if the Commission adopts a similar expedited review process as prescribed by the FCC, the Commission should require the parties to first attempt to resolve any dispute themselves before going to the Commission. Pacific also argues that it may take longer than 45 days to determine availability for more complicated requests for access.

GTEC does not oppose an expedited process to resolve disputes concerning access to ROW that arise out of negotiated or arbitrated agreements, but asks the Commission not to permit such a dispute resolution process to improperly circumvent or replace of the negotiation process required by § 252 of the Act.

Edison believes that the procedures prescribed in § 252 have the potential to distort the negotiating process and to impose a significant additional burden on the Commission and its staff. Rather than negotiating in earnest, Edison argues, parties may be tempted to state their demands and then insist that the Commission arbitrate a solution. Unless all parties to the negotiation request the Commission's assistance as mediator, Edison argues, the Commission should

refrain from any role in the parties' negotiations. If negotiations fail to produce an agreement, Edison believes the Commission's role as arbitrator should be limited to imposing appropriate conditions to prevent discrimination among competing carriers and unreasonable restrictions to access, and the Commission should limit inquiry to the two following issues:

1. Is the utility insisting on a prohibitive pricing arrangement as a means of favoring one carrier over another?
2. Are the non-pricing terms and conditions sought by the utility reasonably related to legitimate concerns about safety, limitations on liability and system reliability and stability, and are they being applied in a non-discriminatory manner to all similarly situated carriers?

Edison argues that the carrier should have the burden of demonstrating that the utility has discriminated against that carrier or sought to impose unreasonable restrictions to access.

PG&E believes that to the extent a dispute involves expert engineering issues such as those relating to GO 95, responsibility and authority for hearing and resolving the dispute should be referred to Commission-designated experts whose education and training qualify them to decide engineering matters. Moreover, PG&E believes their interpretations should have precedential authority for GO 95 purposes generally. PG&E therefore recommends that the Commission designate specific members of its engineering staff experienced in GO 95 to be responsible for GO 95 interpretation and implementation, including resolution of disagreements about the application of GO 95 to any specific ROW access dispute,[19] to achieve technically sound,

[19] In making this suggestion, PG&E recognizes that the parties to the December storm proceeding have recommended an OII into design standards in GO 95. Pending the resolution of the OII proposal, however, PG&E argues that users of poles need a way to

Footnote continued on next page

consistent and timely interpretations. PG&E also recommends that the expedited proceeding allow for an evidentiary record to be transcribed.

B. Discussion

The rules, guidelines, and performance standards adopted herein should reduce the extent of disputes and impasses among the parties in negotiating ROW access agreements. Nonetheless, our adopted rules leave discretion to the parties to negotiate individual agreements, and leave the potential for disputes to arise. We shall therefore adopt an expedited procedure for resolving disputes relating to access to ROW and support structures as set forth below. We expect parties to make a good faith effort to resolve their disputes before bringing them before the Commission. As a condition of the Commission's accepting a dispute for resolution, the moving party must show that it has attempted in good faith to negotiate an arrangement which is consistent with the rules and policies set forth in this decision. This showing must be included in the request for dispute resolution. The burden of proof shall generally be on the party which asserts that a particular constraint exists preventing it from complying with the proposed terms for granting ROW access. Earlier in this order, we have provided specific guidelines regarding who will shoulder the burden of proof regarding certain ROW disputes.

The following prerequisites must be satisfied as evidence of good faith negotiations prior to the Commission's acceptance of a request for resolution of a ROW dispute. The party seeking access must first submit its request to the utility in writing. As discussed previously, we are establishing a

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resolve GO 95 questions which will result in sound engineering results, while also supporting construction of new telecommunication lines, to the extent consistent with GO 95 and other applicable standards.

default deadline of 45 days for a utility to confirm or deny whether it has space available to grant requests for access to its support structures or ROW. If the request is denied, the utility shall state the reasons for the denial or why the requested space is not available, and include all the relevant evidence supporting the denial. In the event of a denial, Step 1 of the dispute resolution process is invoked. We shall expect the parties to escalate the dispute to the executive level within each company to attempt to negotiate an alternative access arrangement to accommodate their mutual needs. If the parties are unable to reach a mutually agreeable solution after five days of good-faith efforts at negotiation, any party to the negotiations may request the Commission to arbitrate the dispute.

For purposes of arbitrating ROW access disputes, we shall generally follow our arbitration rules previously adopted as Rule 3 of Resolution ALJ 174, effective June 25, 1997. These rules were adopted to provide parties with guidance concerning the Commission's process for mediating and arbitrating disputes involving interconnection agreements between ILECs and CLCs pursuant to Section 251 and 252 of the Act. We conclude that those rules are likewise useful as a vehicle for Commission resolution of ROW access disputes. We shall modify the time requirements prescribed under ALJ 174, as appropriate, to accommodate the specific needs for ROW dispute resolution. Subsequent references to subsections of Rule 3 in the discussion below relate to Resolution ALJ 174. In Appendix A of this decision, we have incorporated a separate section addressing detailed dispute resolution procedures for ROW access issues patterned after Resolution ALJ 174.

A request for arbitration may be submitted at the end of the five-day period for negotiations at the executive level within each company, as noted above. The request for arbitration shall be filed in the form of an application, which shall be served on the other party or parties to the dispute not later than

the date the Commission receives the request. The request for arbitration shall contain the information prescribed in Rule 3.3 of the Resolution ALJ 174.

An arbitrator shall be appointed as prescribed in Rule 3.4 and discovery shall proceed under Rule 3.5. Parties shall have an opportunity to respond as set forth in Rule 3.6, except that the response shall be due within 15 days (instead of 25 days) of the request for arbitration. Within three days (instead of seven days) of receiving the response, the applicant and respondent shall file a revised statement of unresolved issues, per Rule 3.7.

Within seven days (instead of 10 days) after the revised statement is filed, the arbitration conference shall begin per Rule 3.9 The arbitration conference and hearings shall be limited to three days. Within 15 days following the hearings, the Draft Arbitrator's Report shall be filed per Rule 3. 17. Each party may file comments on the Draft Report within 10 days of its release. The arbitrator shall file the Final Arbitrator's Report no later than 15 days after the filing date for comments per Rule 3.19. A final Commission decision on the Arbitrator's Report shall be placed on the Commission's agenda 30 days thereafter.

Based on the schedule outlined above, the following sequence of events may be summarized:

Event	Day Number
Request for Arbitration is filed	0
Responses are filed	15
Revised Arbitration Statement is filed	18
Arbitration hearings conducted	25-27
Draft Arbitrator's Report Issued	42
Comments on Report filed	52
Final Arbitrator's Report Issued	67
Agreement Reflecting arbitrator's report	74
Commission Decision Placed on Agenda	104.

A Commission decision resolving ROW access disputes can be issued within approximately 100 days of the filing of a request for arbitration. We believe this procedure will provide for expedited resolution of ROW disputes in the most efficient manner.

Our normal rules of practice and procedures should be followed at all times during the dispute resolution process.

We shall not adopt PG&E's request that only Commission-designated experts with education and training in engineering be assigned to resolve disputes involving engineering issues. We shall continue to rely on the Commission's long established practice to use ALJs to adjudicate and to mediate contested proceedings which come before the Commission. The ALJ is specifically equipped to resolve contested issues dealing with a variety of technical disputes as well as legal matters. The assigned ALJ routinely consults with technical staff employed by the Commission with education and training in the area of expertise called for by the nature of the dispute as necessary to understand and resolve technically complex disputes. It would not be the best use of Commission resources to deviate from this successful practice by assigning a Commission staff expert with training in engineering matters to be responsible for mediating or arbitrating such contested issues. Therefore, all disputes regarding ROW access, including those dealing with engineering or safety issues shall be referred to an ALJ for resolution. The ALJ shall consult with the Commission's technical staff as appropriate to deal with engineering, safety, or other technically complex issues in dispute among the parties.

Findings of Fact

1. Under § 224 of the Telecommunications Act of 1996, both incumbent local exchange carriers and electric utilities have an obligation to provide any

telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

2. Nondiscriminatory access to the incumbent utilities' poles, ducts, conduits, and rights of way is one of the essential requirements for facilities-based competition to succeed.

3. Given the complexities and the diversity of ROW access issues, it is not practical to craft uniform tariff rules which address every situation which may arise.

4. The adoption of general guiding principles, and minimum performance standards concerning ROW access will promote a more level competitive playing field in which individual negotiations may take place.

5. The general provisions of PU Code § 767 relating to reciprocal access of utility support structures and ROW apply to all public utilities subject to the rules in Appendix A.

6. On an interim basis, corporations providing solely cable TV services over their facilities will not be subject to the reciprocal access provisions of § 767 vis-a-vis incumbent telephone and electric utilities.

7. On an interim basis, corporations providing solely cable TV services and CLCs will not be obligated to provide each other with reciprocal access to ROW.

8. CMRS providers will be using poles and other utility facilities in ways perhaps not contemplated by traditional land-line providers.

9. Exclusive reliance on the negotiation process will not necessarily produce fair prices for ROW access.

10. Given the advances in technological capabilities of cable television network, it has become increasingly difficult to clearly delineate a cable television provider's offering of "cable" service as opposed to "telecommunications" service on the same wireline communications system.

11. Cable television corporations' provision of different services on their wireline communication system does not normally add any additional physical burden to the use of their facilities attached in the ROW of a public utility company.

12. PU Code § 767.5(a)(3) applies the term "pole attachment" to 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 or ROW of a public utility.

13. Requiring telecommunications carriers and cable operators that provide telecommunications services to pay more for pole and conduit attachments than cable operators that do not provide telecommunications services when their attachments are made in the identical manner and occupy the same amount of space would subject such carriers and cable operators to prejudice and disadvantage, would deter innovation and efficient use of scarce resources, and would harm the development of competition in California's telecommunications markets.

14. Sections 224(d) and (e) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (47 Y.S.C. § 224(d) and (e)), do not require states to provide for different rate provisions for cable operators commencing February 8, 2001, depending on whether they offer cable television service exclusively or whether they also offer telecommunications services. Attempting to distinguish "cable television service" from "telecommunications service" would entangle the Commission in semantic disputes and would not represent the best use of the Commission's resources.

15. Since the enactment of the Telecommunications Act of 1996 on February 8, 1996, the California Legislature has not amended California's pole

attachment, statute, PU Code § 767.5, to add a provision analogous to subsection (e) of the federal pole attachment statute, 47 U.S.C. § 224, which was added to that statute by the Telecommunications Act of 1996. Subsection (e) provides for a higher pole attachment rate for telecommunications carriers and cable operators providing telecommunications services to be phased in between the years 2001 and 2006.

16. The California Legislature has not given this Commission any directive to follow the pole attachment pricing approach in 47 U.S.C. § 224(e).

17. The Coalition's proposed 7.4% allocation of capital costs which may be charged for pole attachments is based on the statutory formula in § 767.5(c), which was based on the FCC's pole attachment formula and fully accounts for the relative use of space on the pole.

18. Under the terms of the interconnection agreement executed between Pacific and AT&T, Pacific agreed to provide information to AT&T regarding the availability of conduit or poles within 10 business days of receiving a written request or within 20 business days if a field-based survey of availability was required.

19. Under the terms of the Pacific/AT&T agreement, if AT&T's written request sought information about the availability of more than five miles of conduit, or more than 500 poles, Pacific agreed to: (1) provide an initial response within 10 business days; (2) use reasonable best efforts to complete its response within 30 business days; and (3) if the parties were unable to agree upon a longer time period for response, Pacific would hire outside contractors at the expense of the requesting party.

20. The terms of the Pacific/AT&T agreement regarding the time frame for responding to requests about access to ROW provide a reasonable basis for formulating generic rules for response times for Pacific and GTEC.

21. It is in the interests of public health and safety for the utility to exercise necessary control over access to its facilities to avoid creating conditions which could risk accident or injury to workers or to the public.

22. When working on an electric utility's facilities or ROW, telecommunications providers' compliance with at least the same safety practices as trained and experienced electric utility workers is necessary to avoid exposing the public to grave danger and potentially fatal injuries.

23. Changing the size or type of any attachment, or increasing the size or amount of cable support by an attachment has safety and reliability implications that the utility must evaluate before work begins.

24. Commission GO 95 and CAL-OSHA Title 8 generally address the safety issues that arise from third-party access to the utility's overhead distribution facilities.

25. In addition to the requirements of GO 128 and CAL-OSHA Title 8, because of the confined space in underground electric facilities (e.g., underground vaults) and the associated increased safety concerns, advance notification and utility supervision is required as conditions of granting telecommunications carriers access to underground electrical facilities.

26. To determine if poles have adequate space and strength to accommodate a new or reconstructed attachment, an engineering analysis may be needed for each pole or anchor location to show the loading on the pole (a) from existing telecommunications equipment, and (b) from all telecommunications equipment

after the attachment, accounting for windloading, bending moment, and vertical loading.

27. Any engineering analysis that is required by incumbent utilities must be reasonably required and actually necessary. If such engineering analysis is performed within reasonable written industry guidelines by qualified CLC engineers, it should be deemed acceptable unless a check for accuracy discloses errors.

28. The ROW access issues in this proceeding interrelate with issues before the Commission in Application (A.) 94-12-005/Investigation (I.) 95-02-015, regarding PG&E's response to the severe storms of December 1995.

29. Parties in A.94-12-005 proposed that the Commission establish an Order Instituting Investigation (OII) to review, among other things, the adequacy of GO 95 design standards on wood pole loading requirements.

30. Incumbent utilities need to be able to exercise reasonable control over access to their facilities in order to meet their obligation to provide reliable service to their customers over time and to plan for capacity needs to accommodate future customer demand.

31. The incumbents' reservation of capacity for their own future needs could conflict with the nondiscrimination provisions in § 224(f)(1) of the Act which prohibit a utility from favoring itself or affiliates over competitors with respect to the provision of telecommunications and video services.

32. Since electric utilities have not traditionally been in direct competition with CLCs, but have been engaged in a separate industry, the potential concerns over a reservation policy permitting discriminatory treatment of a competitor have not been as pronounced as compared with ILECs.

33. On August 19, 1998, SCE filed a petition in this docket as the first California electric utility seeking certification to become a facilities-based CLC offering local exchange service.

34. The development of a new telecommunications infrastructure and deployment of alternative facilities to customer premises by CLCs is important to the development of a competitive market.

35. Unauthorized entry into a private building by a third party whether an ILEC or a CLC could compromise the integrity of the safety and security of occupants of the building.

36. The building owner or manager is uniquely positioned to coordinate the conflicting needs of multiple tenants and multiple service providers

37. Utility distribution poles and anchors have been traditionally owned under joint ownership agreements between two or more entities with a need to have their lines or equipment strung on common poles to reach customers throughout a given geographic area.

38. New distribution facilities constructed by a member of a joint pole organization, will ordinarily be subject to the rules governing members of that organization, whereas new distribution facilities constructed by a party that is not a member of a joint pole organization, would not be subject to joint pole association rules.

39. The Commission has the constitutional mandate to insure the availability of public utility services throughout the State of California including within municipalities.

40. The Commission has previously asserted jurisdiction over the placement of facilities within the rights of way of municipalities in General Order 159.

41. There is a need for an additional expedited resolution process on ROW issues where a limited number of facilities, or at least one customer, are involved.

Conclusions of Law

1. This Commission has jurisdiction under the Act to exercise reverse preemption regarding rules governing nondiscriminatory access to ROW, and is not obligated necessarily to conform to the FCC rules.

2. In order to establish its jurisdiction, the Commission must satisfy the conditions of § 224(c)(2) and (3) which requires the state to certify to the FCC that:

A. The rules herein that govern the rates, terms and conditions of access to incumbent utilities' ROW should apply to cable TV companies regardless of whether they offer telecommunciations services; and

B. in so regulating, that it has the authority to consider and does consider the interests of the subscribers of the services offered via such attachment, as well as the interests of the consumers of the utility service.

3. The rules adopted in the instant order meet the requirements of § 224(c)(2) and (3), and constitutes certification to the FCC of this Commission's assertion of its jurisdiction.

4. Consistent with the intent of Congress in enacting § 224(f), cable operators and telecommunications providers should be permitted to "piggyback" along distribution networks owned or controlled by utilities subject to the telecommunications provider having first obtained the necessary access and/or use rights from the underlying property owner(s) as opposed to having access to every piece of equipment or real property owned or controlled by the utility.

5. No party may attach to the ROW or support structure of a utility without the express written authorization from the utility. The incumbent utility may not

deny access simply to impede the development of a competitive market and to retain its competitive advantage over new entrants.

6. Telecommunications carriers access to private buildings shall therefore be subject to the negotiation of terms of access with the building owner or manager.

7. Under the nondiscrimination principles of the Act, incumbent utilities must provide all telecommunications carriers, the same type of access they would afford themselves.

8. The rules herein that govern the rates, terms, and conditions of access to incumbent utilities' ROW should apply to cable TV companies regardless of whether they offer telecommunications services.

9. CMRS providers should not be covered by the ROW rules adopted in this order, until the record is further developed regarding these providers' specific ROW needs.

10. While it is beyond the jurisdiction of this Commission to compel municipally-owned utilities to provide access to their poles, the municipally-owned utilities must, by law, set just and reasonable terms of access.

11. PU Code Section 7901 grants telephone corporations authority to construct telephone lines and erect poles and other support structures along and upon public highways, but to do so in a manner which does not incommode the public use of highways.

12. In § 7901.1(a), the California Legislature stated that "municipalities shall have the right to exercise reasonable control as to the time, place, and manner in which roads, highways, and waterways are accessed," but under § 7901.1(b), the "control, to be reasonable, shall, at a minimum, be applied to all entities in an equivalent manner."

13. If a municipal corporation fails to discharge its duty to treat "all entities in an equivalent manner" when exercising its powers (§ 7901.1(b)), then a carrier

should be able to invoke any available regulatory, administrative, and civil remedies that govern allegedly unlawful actions by the municipality.

14. PU Code Section 762 authorizes this Commission to order the erection and to fix the site of facilities of a public utility where necessary to secure adequate service or facilities.

15. If a telecommunications carrier cannot resolve a dispute with a local governmental body over access to a public ROW, the carrier should file an application with this Commission for a certificate of public convenience and necessity for specific siting authority to gain access to the public ROW. Consideration of such applications will be limited to an inquiry of whether the actions of the local governmental body impede a statewide interest in the development of a competitive market.

16. In the event an application is filed by a telecommunications carrier seeking specific siting authority within the jurisdiction of a given municipality or local government, the carrier should be required to show that it engaged in good-faith efforts to obtain all necessary permits from said municipality or local government.

17. In resolving such applications, the Commission's order shall be directed toward the telecommunications carrier, since the Commission does not regulate local governments.

18. In the event that such an application is granted, and the local governmental body refuses to grant access in accordance with the Commission order, the telecommunications carrier's recourse shall be to file a lawsuit in the appropriate court of civil jurisdiction for resolution. The Commission's order authorizing access may be used in support of its case in civil court.

19. Parties to pre-existing arrangements for access to utility ROW and support structures shall be bound by the terms of such arrangements even though they may differ from the provisions of this decision, unless the ROW contract expressly provides for amendment or renegotiation to conform to subsequent Commission orders.

20. Consistent with the requirements of PU Code § 767, a CLC may not arbitrarily deny an ILEC's request for access to the CLC's facilities or engage in discrimination among carriers.

21. The incumbent utilities have a right to be fairly compensated for providing third-party access to their poles and support structures.

22. By virtue of their incumbent status and control over essential ROW and bottleneck facilities, the local exchange carriers (LECs) and electric utilities have a significant bargaining advantage in comparison to the CLC with respect to negotiating the terms of ROW access.

23. The pricing formula prescribed in PU Code § 767.5(c) is applicable under the statute only to cable television providers, but the statute does not prescribe any rate for the provision of telecommunications services by cable operators.

24. Apart from any statutory requirements, the pricing formula prescribed in PU Code § 765.5 for pole attachments and for use of conduits should be made available to cable operators providing telecommunications services, and to other telecommunications carriers as a matter of public policy.

25. Requiring telecommunications carriers and cable operators that provide telecommunications services to pay more than cable operators that do not provide telecommunications services when their pole attachments are identical in all relevant respects would subject such carriers and operators to prejudice and

disadvantage, would be unfair and discriminatory, and would violate the letter and spirit of PU Code § 453.

26. Having certified to the Federal Communications Commission that it regulates pole attachments in compliance with 47 U.S.C. § 224(c), this Commission is not required to follow the provisions of the federal pole attachment statute, 47 U.S.C. § 224(e), that would require the application of a higher pole attachment rate to telecommunications carriers and cable operators that provide telecommunications services than to cable operators that do not offer telecommunications services.

27. Utilities should be allowed to recover their actual expenses for make-ready rearrangements performed at the request of a telecommunications carrier, and their actual costs for preparation of maps, drawings, and plans for attachment to or use of support structures.

28. The Coalition's proposed measures to prevent CLCs' paying for unnecessary up-front expenses, including the incumbent utilities publishing of the criteria for evaluating engineering studies, should be adopted.

29. Pricing principles applicable to pole and support structure attachment rates should be determined in a manner which guards against an unbalanced bargaining position between incumbent utilities and telecommunications providers.

30. Distinction in the rate treatment of cable versus telecommunications attachments based on the nature of the service that a cable operator or telecommunications carriers provides could be unfairly discriminatory to the extent there is no difference in the manner that a cable operator and a telecommunications carrier attach their strand and cables (either copper, fiber, or coaxial) to a utility pole.

31. Utility pole attachments for telecommunications services priced on the basis of historic or embedded costs of the utility less accumulated depreciation will help ensure nondiscriminatory treatment among all telecommunications carriers.

32. Parties may negotiate pole attachment rates which deviate from the cost standards prescribed under this order, but, if having been unable to reach agreement, they submit the dispute to the Commission for resolution, the Commission's rules should apply as the default rate based upon the use historical embedded costs.

33. Prices based on the recovery of operating expenses and embedded capital costs reasonably compensate the utility for the provision of access to its poles and support structures.

34. Embedded cost data used to derive attachment rates shall be gathered from publicly filed documents, and pole attachment rates shall be calculated pursuant to the Commission's Decision in 97-03-019.

35. Given the varying degrees of complexity and of geographic coverage involved in requests for information concerning facility availability and requests for access, there is no single standard length of time for utility responses which will fit all situations.

36. The CLC could suffer unreasonable delays in receiving information concerning ROW access inquiries if the utility's response time obligation was open-ended, with no performance standards against which to hold the utility, thereby impeding the ability of the CLC to enter the market or to expand its operations to compete efficiently.

37. The major ILECs' guideline for response time for initial requests concerning availability of space should not exceed 10 business days if no field survey is

required, and should not exceed 20 business days if a field-based survey of support structures is required. The corresponding response times for electric utilities and midsized ILECs should be subject to parties' negotiations.

38. In the event that an initial inquiry to an ILEC involves more than 500 poles or 5 miles of conduit, the response time shall be subject to the negotiations of the parties involved.

39. If an incumbent utility is required to perform make-ready work on its poles, ducts or conduit solely to accommodate a carrier's request for access, the utility shall perform such work at the carrier's sole expense within 60 business days of receipt of an advance payment for such work, except that this period will be subject to negotiation for extraordinary conditions such as storm-related service restoration. If the work involves more than 300 poles or conduit, the parties will negotiate a mutually satisfactory time frame to complete such make-ready work.

40. In the event that a telecommunications carrier decides after the initial response concerning availability that it wishes to use the incumbent utility's space, the telecommunications carrier must so notify the incumbent in writing, providing the necessary identifying and loading information and copies of pertinent documents showing the attacher's right to occupy the right of way.

41. The work of a CLC to execute make ready work and the subsequent attachment and installation of the CLC's wire communication facilities on a utility's poles, conduits or rights-of-way in connection with a request for access that has been granted, shall be deemed sufficient for purposes of the granting utility if such personnel or third-party contractors meet an incumbent utility's published guidelines for qualified personnel.

42. The major ILECs shall then respond to the telecommunications carrier within 45 days, thereafter, with a list of the rearrangements or changes required to accommodate the carrier's facilities, and an estimate of the utility's portion of the rearrangements or changes, except as noted in the following COL. The response times for electric utilities and midsized ILECs shall be subject to negotiation.

43. In the event that a request for space involves more than 500 poles or 5 miles of conduit, requires the calculation of pole loads by a joint owner, or the scope and complexity of the request warrant longer deadlines, the response time shall be subject to the negotiations of the parties involved.

44. The standard for protection of confidential data should not be one-sided, but should be equally applied to CLCs, incumbent utilities, and any other party to a ROW access agreement.

45. The dissemination of information which has been identified as commercially sensitive should be limited only to those persons who need the information in order to respond to or to process an inquiry concerning access.

46. The incumbent utility should be permitted to impose conditions on the granting of access which are necessary to ensure the safety and engineering reliability of its facilities.

47. Telecommunications carriers seeking to attach to utility poles and support structures should comply with applicable Commission GOs 95 and 128, and other applicable local, state, and federal safety regulations including those prescribed by Cal/OSHA.

48. The rules governing attachments to wood poles should be evaluated relative to any restrictions on access subsequently adopted in A.94-12-005/I.95-02-015 regarding design standards for utility wood pole loading

requirements subject to the affected parties having an opportunity to comment on the applicability such restrictions or standards.

49. Until the evaluation of design standards for utility wood pole loading requirements are completed in A. 94-12-005/I.95-02-015 or other proceedings, incumbent utilities are authorized to use an interim designated safety factor of 2.67 for Grade A poles in accordance with GO 95.

50. A fine of $500 per each unauthorized pole attachment should be imposed on carriers that attach to such poles without a fully signed contract with the incumbent utility.

51. In resolving disputes over ROW access, the burden of proof shall be on the incumbent utility to justify any proposed restrictions or denials of access which it claims are necessary to address valid safety or reliability concerns and to show they are not unduly discriminatory or anticompetitive.

52. All other factors being equal, competing carriers' access to utility facilities should be granted on a first-come, first-served basis.

53. The ILECs should not be permitted to deny access to other telecommunications carrier based on claims that the capacity must be reserved for their own future needs, provided than ILEC may reserve space for immediate need within nine months of the denial of an access request. Likewise, CLCs must utilize space within nine months the denial of an access by an ILEC.

54. In the case of a grant of access by an electric utility, any telecommunications carrier, whether an ILEC or CLC must exercise its access rights within 90 days of a grant of access.

55. The Commission's preferred approach for meeting new capacity needs is through new construction rather than the reclamation of existing space occupied by CLCs.

56. In order to justify a capacity reservation claim, the electric utility should show that it had a bona fide development plan for the use of the capacity prior to the request for access, and that the reservation of capacity is needed for the provision of its core utility services within one year of the date of the request for access.

57. Because rearrangements for electric facilities can be substantially more expensive than for telecommunications facilities, it may be more cost effective for an electric utility to reserve capacity for some defined period rather than to provide interim access to a CLC with subsequent eviction or to incur related costs for rearrangements.

58. The restrictions regarding reservations of capacity adopted in this order in no way constitute an unlawful taking in violation of the incumbent utilities' constitutional rights, but merely constitute regulation of the terms under which parties may negotiate for access.

59. All costs of capacity expansion and other modifications, including joint trenching, should be shared among the particular parties benefiting from the modifications on a proportionate basis corresponding to the share of usable space taken up by each benefiting party.

60. In the event an energy utility incurs additional costs for trenching and installation of conduit due to safety or reliability requirements which are more elaborate than a telecommunications-only trench, the telecommunications carriers should not pay more than they would have incurred for their own independent trench.

61. An advance notice should be given at least 60 days prior to the commencement of a physical modification to a ROW to apprise affected parties, except in the case of emergencies where shorter notice may be necessary.

62. In order to justify a reclamation of space being occupied by a CLC, the incumbent utility should be required first to permit the CLC the option of paying for necessary rearrangements or expansions to maintain the attachment. The utility must also show that the space is reasonably and specifically needed to serve its customers, and that there is no other cost effective solutions to meet its needs.

63. In the event of disputes over reclamation of space and displacement of a CLC, the incumbent shall not displace the CLC without first notifying the Commission's Telecommunications Division and obtaining Commission authorization to do so.

64. Parties may use our dispute resolution procedure to resolve disputes over CLC displacements due to reclamation of space.

65. The burden of proof in disputes over reclamation of space shall be on the incumbent utility to show that it has met all the applicable requirements.

66. Any order of this Commission granting an incumbent utility the right to reclaim space in its ROW should contain a plan for continued telecommunications service to affected end-users of those services.

67. Incumbent utilities with vacant space in existing entrance facilities (e.g., conduit) into commercial buildings should make such space available to competitors, subject to consent of the building owner or manager, up to the minimum point of entry to the extent the incumbent utility owns or controls such facilities.

68. The minimum point of entry, as defined in D.90-10-064, is the demarcation point in or about a customer's premise where the utility's inside wire stops and the customer's inside wire begins.

69. As prescribed by D.92-01-023, for multi-unit properties built or extensively remodeled after August 8, 1993, Pacific was to establish a single MPOE as close as practical to the property line of the multi-unit building, and to transfer ownership and responsibility for certain telephone cable and inside wire to property owners.

70. For multi-unit properties built after prior to August 8, 1993, the only network plant that was to be unbundled and conveyed to property owners consisted of Intrabuilding Network Cable within the building that was already in place. However, other utility-owned network plant including network cable stretching from a utility's central office to each MPOE at individual buildings - was not affected by the tariff or the Commission's order.

71. All carriers should be prohibited on a prospective basis from entering into any type of arrangement with private property owners which has the effect of restricting the access of other carriers to the owners' properties or discriminating against the facilities of other carriers such as CLCs.

72. Any carrier may file a formal complaint against any other carrier with an access agreement with a private building owner, including any executed prior to the date of this decision, that allegedly has the effect of restricting access of other carriers or discriminating against the facilities of other carriers, such as CLCs.

73. In the case of such complaints, the complainant will have the burden of proving that the defendant carrier is the exclusive provider of service or the beneficiary of better terms of access in violation of the policies of this order.

74. If, after a hearing, we find that a carrier's agreement or arrangement with a private building owner is unfairly discriminatory with respect to other carriers, we shall direct that within 60 days, the agreement be renegotiated. Failing that, at the end of 60 days, a fine shall be imposed ranging from $500 to $20,000 per day based on the number of lines served in the building until the agreement is renegotiated to remove the discrimination.

75. Incumbent utilities are not required to exercise their powers of eminent domain to expand the incumbent existing ROW over private property to accommodate a telecommunications carrier's request for access.

76. For purposes of resolving disputes between telecommunications carriers and pure cable companies and incumbent electric utilities or ILECs regarding ROW accesses, the rules adopted in Appendix A of this order patterned after Resolution ALJ 174, should generally apply.

77. The arbitration rules previously adopted in Resolution ALJ 174, effective June 25, 1997, for mediating and arbitrating disputes involving interconnection agreements pursuant to Section 251 and 252 of the Act, are likewise useful as a vehicle for Commission resolution of ROW access disputes.

78. The time requirements prescribed under ALJ 174 should be modified as appropriate, to accommodate the specific needs for ROW dispute resolution.

79. Before the Commission will process a dispute resolution, the parties must show they were unable to reach a mutually agreeable solution consistent with the rules and policies set forth in this decision after good faith efforts at negotiation.

80. The burden of proof should generally be on the party which asserts that a particular constraint exists which is preventing it from complying with the proposed terms for granting ROW access.

81. Any party to a negotiation for ROW access covered under these rules may request this Commission to arbitrate the dispute pursuant to the process set forth in the Appendix A Rules.

O R D E R

IT IS ORDERED that:

1. The rules set forth in Appendix A concerning the rights and obligations of the major electric utilities and incumbent local exchange carriers to provide access to telecommunications carriers to their poles, ducts, conduits, and rights of way are hereby adopted.

2. The assigned Administrative Law Judge shall solicit further comments concerning the outstanding issues raised in this decision.

3. The Motion of the Real Estate Coalition and of the Building Owners and Managers Association of California, each requesting to become a party, is granted.

4. The motion of the League of California Cities, the Cities of Los Angeles, Sacramento, San Carlos, San Jose, Santa Monica, the City and County of San Francisco, and the San Mateo County Telecommunications Authority ("the Cities"), requesting to become parties is granted.

5. Pacific, GTEC, Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric shall each publish objective guidelines within 180 days of its order, so that CLC personnel or third-party contractors used by CLCs can quickly and efficiently establish their engineering qualifications.

Dated October 22, 1998, at San Francisco, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

I concur in part and dissent in part.

/s/ HENRY M. DUQUE
Commissioner

Certified as a True Copy of the Original

APPENDIX A

COMMISSION-ADOPTED RULES GOVERNING ACCESS TO RIGHTS-OF-WAY AND SUPPORT STRUCTURES OF INCUMBENT TELEPHONE AND ELECTRIC UTILITIES

IX. EXPEDITED DISPUTE RESOLUTION PROCEDURES

X. ACCESS TO CUSTOMER PREMISES

XI. SAFETY

I. PURPOSE AND SCOPE OF RULES

A. These rules govern access to public utility rights-of-way and support structures by telecommunications carriers and cable TV companies in California, and are issued pursuant to the Commission's jurisdiction over access to utility rights of way and support structures under the Federal Communications Act, 47 U.S.C. § 224(c)(1) and subject to California Public Utilities Code §§ 767, 767.5, 767.7, 768, 768.5 and 8001 through 8057. These rules are to be applied as guidelines by parties in negotiating rights of way access agreements. Parties may mutually agree on terms which deviate from these rules, but in the event of negotiating disputes submitted for Commission resolution, the adopted rules will be deemed presumptively reasonable. The burden of proof shall be on the party advocating a deviation from the rules to show the deviation is reasonable, and is not unduly discriminatory or anticompetitive.

II. DEFINITIONS

A. "Public utility" or "utility" includes any person, firm or corporation, privately owned, that is an electric, or telephone utility which owns or controls, or in combination jointly owns or controls, support structures or rights-of-way used or useful, in whole or in part, for telecommunications purposes.

B. "Support structure" includes, but is not limited to, a utility distribution pole, anchor, duct, conduit, manhole, or handhole.

C. "Pole attachment" means any attachment to surplus space, or use of excess capacity, by a telecommunications carrier for a communications system on or in any support structure owned, controlled, or used by a public utility.

D. "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Commission, to allow its use by a telecommunications carrier for a pole attachment.

E. "Excess capacity" means volume or capacity in a duct, conduit, or support structure other than a utility pole or anchor which can be used, pursuant to the orders and regulations of the Commission, for a pole attachment.

F. "Usable space" means the total distance between the top of the utility pole and the lowest possible attachment point that provides the minimum allowable vertical clearance.

G. "Minimum allowable vertical clearance" means the minimum clearance for communication conductors along rights-of-way or other areas as specified in the orders and regulations of the Commission.

H. "Rearrangements" means work performed, at the request of a telecommunications carrier, to, on, or in an existing support structure to create such surplus space or excess capacity as is necessary to make it usable for a pole attachment. When an existing support structure does not contain adequate surplus space or excess capacity and cannot be so rearranged as to create the required surplus space or excess capacity for a pole attachment, "rearrangements" shall include replacement, at the request of a telecommunications carrier, of the support structure in order to provide adequate surplus space or excess capacity. This definition is not intended to limit the circumstances where a telecommunications carrier may request replacement of an existing structure with a different or larger support structure.

I. "Annual cost of ownership" means the sum of the annual capital costs and annual operation costs of the support structure which shall be the average costs of all similar support structures owned by the public utility. The basis for computation of annual capital costs shall be historical capital cost less depreciation. The accounts upon which the historical capital costs are determined shall include a credit for all reimbursed capital costs of the public utility. Depreciation shall be based upon the average service life of the support structure. As used in this definition, "annual cost of ownership" shall not include costs for any property not necessary for a pole attachment.

J. "Telecommunications carrier" generally means any provider of telecommunications services that has been granted a certificate of public convenience and necessity by the California Public Utilities Commission. These rules, however, exclude Commercial Mobile Radio Service (CMRS) providers and interexchange carriers from the definition of "telecommunications carrier."

K. "Cable TV company" as used in these rules refers to a privately owned company, that provides cable service as defined in the PU Code and is not certified to provide telecommunications service.

L. "Right of way" means the right of competing providers to obtain access to the distribution poles, ducts, conduits, and other support structures of a utility which are necessary to reach customers for telecommunications purposes.

M. "Make ready work" means the process of completing rearrangements on or in a support structure to create such surplus space or excess capacity as is necessary to make it usable for a pole attachment.

N. "Modifications" means the process of changing or modifying, in whole or in part, support structures or rights of way to accommodate more or different pole attachments.

O. "Incumbent local exchange carrier" refers to Pacific Bell and GTE California, Inc., Roseville Telephone Company, and Citizens Telecommunications Company of California, for purposes of these rules, unless explicitly indicated otherwise.

III. REQUESTS FOR INFORMATION

A. A utility shall promptly respond in writing to a written request for information ("request for information") from a telecommunications carrier or cable TV company regarding the availability of surplus space or excess capacity on or in the utility's support structures and rights of way. The utility shall respond to requests for information as quickly as possible consistent with applicable legal, safety, and reliability requirements, which, in the case of Pacific or GTEC, shall not

exceed 10 business days if no field survey is required and shall not exceed 20 business days if a field-based survey of support structures is required. In the event the request involves more than 500 poles or 5 miles of conduit, the parties shall negotiate a mutually satisfactory longer response time.

B. Within the applicable time limit set forth in paragraph III.A and subject to execution of pertinent nondisclosure agreements, the utility shall provide access to maps, and currently available records such as drawings, plans and any other information which it uses in its daily transaction of business necessary for evaluating the availability of surplus space or excess capacity on support structures and for evaluating access to a specified area of the utility's rights of way identified by the carrier.

C. The utility may charge for the actual costs incurred for copies and any preparation of maps, drawings or plans necessary for evaluating the availability of surplus space or excess capacity on support structures and for evaluating access to a utility's rights of way.

D. Within 20 business days of a request, anyone who attaches to a utility-owned pole shall allow the pole owner access to maps, and any currently available records such as drawings, plans, and any other information which is used in the daily transaction of business necessary for the owner to review attachments to its poles.

E. The utility may request up-front payments of its estimated costs for any of the work contemplated by Rule III.C., Rule IV.A. and Rule IV.B. The utility's estimate will be adjusted to reflect actual cost upon completion of the requested tasks.

IV. REQUESTS FOR ACCESS TO RIGHTS OF WAY AND SUPPORT STRUCTURES

A. INFORMATION REQUIREMENTS OF REQUESTS FOR ACCESS

The request for access shall contain the following:

1. Information for contacting the carrier or cable TV company, including project engineer, and name and address of person to be billed.

2. Loading information, which includes grade and size of attachment, size of cable, average span length, wind loading of their equipment, vertical loading, and bending movement.

3. Copy of property lease or right-of-way document.

B. RESPONSES TO REQUESTS FOR ACCESS

1. A utility shall respond in writing to the written request of a telecommunications carrier or cable TV company for access ("request for access") to its rights of way and support structures as quickly as possible, which, in the case of Pacific or GTEC, shall not exceed 45 days. The response shall affirmatively state whether the utility will grant access or, if it intends to deny access, shall state all of the reasons why it is denying such access. Failure of Pacific or GTEC to respond within 45 days shall be deemed an acceptance of the request for access.

2. If, pursuant to a request for access, the utility has notified the telecommunication carrier or cable TV company that both adequate space and strength are available for the attachment, and the entity seeking access advises the utility in writing that it wants to make the attachment, the utility shall provide this entity with a list of the rearrangements or changes required to accommodate the entity's facilities and an estimate of the time required and the cost to perform the utility's portion of such rearrangements or changes.

3. If the utility does not own the property on which its support structures are located, the telecommunication carrier or cable TV company must obtain written permission from the owner of that property before attaching or installing its facilities. The telecommunication carrier or cable TV company by using such facilities shall defend and indemnify the owner of the utility facilities, if its franchise or other rights to use the real property are challenged as a result of the telecommunication carrier's or the cable TV company's use or attachment.

B. TIME FOR COMPLETION OF MAKE READY WORK

1. If a utility is required to perform make ready work on its poles, ducts or conduit to accommodate a carrier's or a cable TV company's request for access, the utility shall perform such work at the requesting entity's sole expense. Such work shall be completed as quickly as possible consistent with applicable legal, safety, and reliability requirements, which, in the case of Pacific or GTEC shall occur within 30 business days of receipt of an advance payment for such work. If the work involves more than 500 poles or 5 miles of conduit, the parties will negotiate a mutually satisfactory longer time frame to complete such make ready work.

C. USE OF THIRD PARTY CONTRACTORS

1. The ILEC shall maintain a list of contractors that are qualified to respond to requests for information and requests for access, as well as to perform make ready work and attachment and installation of wire communications or cable TV facilities on the utility's support structures. This requirement shall not apply to electric utilities. This requirement shall not affect the discretion of a utility to use its own employees.

2. A telecommunications carrier or cable TV company may use its own personnel to attach or install the carrier's communications facilities in or on a utility's facilities, provided that in the utility's reasonable judgment, the carrier's or cable TV company's personnel or agents demonstrate that they are trained and qualified to work on or in the utility's facilities. To use its own personnel or contractors on electric utility poles, the

telecommunications carrier or cable TV company must give 48 hours advance notice to the electric utility, unless an electrical shutdown is required. If an electrical shutdown is required, the telecommunications carrier or cable TV company must arrange a specific schedule with the electric utility. The telecommunications carrier or cable TV company is responsible for all costs associated with an electrical shutdown. The inspection will be paid for by the attaching entity. The telecommunications carrier or cable TV company must allow the electric utility, in the utility's discretion to inspect the telecommunication's attachment to the support structure. This provision shall not apply to electric underground facilities containing energized electric supply cables. Work involving electric underground facilities containing energized electric supply cables or the rearranging of overhead electric facilities will be conducted as required by the electric utility at its sole discretion. In no event shall the telecommunications or cable TV company or their respective contractor, interfere with the electric utility's equipment or service.

3. Incumbent utilities should adopt written guidelines to ensure that telecommunication carriers' and cable TV companies' personnel and third-party contractors are qualified. These guidelines must be reasonable and objective, and must apply equally to the incumbent utility's own personnel or the incumbent utility's own third-party contractors. Incumbent utilities must seek industry input when drafting such guidelines.

V. NONDISCLOSURE

A. DUTY NOT TO DISCLOSE PROPRIETARY INFORMATION

1. The utility and entities seeking access to poles or other support structures may provide reciprocal standard nondisclosure agreements that permit either party to designate as proprietary information any portion of a request for information or a response thereto, regarding the availability of surplus space or excess capacity on or in its support structures, or of a request for access to such surplus space or excess capacity, as well as any maps, plans, drawings or other information, including those that disclose the telecommunications carrier's or cable TV company's

plans for where it intends to compete against an incumbent telephone utility. Each party shall have a duty not to disclose any information which the other contracting party has designated as proprietary except to personnel within the utility that have an actual, verifiable "need to know" in order to respond to requests for information or requests for access.

B. SANCTIONS FOR VIOLATIONS OF NONDISCLOSURE AGREEMENTS

1. Each party shall take every precaution necessary to prevent employees in its field offices or other offices responsible for making or responding to requests for information or requests for access from disclosing any proprietary information of the other party. Under no circumstances may a party disclose such information to marketing, sales or customer representative personnel. Proprietary information shall be disclosed only to personnel in the utility's field offices or other offices responsible for making or responding to such requests who have an actual, verifiable "need to know" for purposes of responding to such requests. Such personnel shall be advised of their duty not to disclose such information to any other person who does not have a "need to know" such information. Violation of the duty not to disclose proprietary information shall be cause for imposition of such sanctions as, in the Commission's judgement, are necessary to deter the party from breaching its duty not to disclose proprietary information in the future. Any violation of the duty not to disclose proprietary information will be accompanied by findings of fact that permit a party whose proprietary information has improperly been disclosed to seek further remedies in a civil action.

VI. PRICING AND TARIFFS GOVERNING ACCESS

A. GENERAL PRINCIPLE OF NONDISCRIMINATION

1. A utility shall grant access to its rights-of-way and support structures to telecommunications carriers or cable TV company and cable TV companies on a nondiscriminatory basis. Nondiscriminatory access is access on a first-come, first-served basis; access that can be restricted only on consistently applied nondiscriminatory principles relating to capacity constraints, and safety, engineering, and reliability requirements. Electric utilities' use of its own facilities for internal communications in support of its utility function shall not be considered to establish a comparison for nondiscriminatory access. A utility shall have the ability to negotiate with a telecommunications carrier or cable TV company the price for access to its rights of way and support structures.

2. A utility shall grant access to its rights-of-way and support structures to telecommunications carriers and cable TV companies on a nondiscriminatory basis, access to or use of the right-of-way, where such right-of-way is located on private property and safety, engineering, and reliability requirements. Electric utilities' use of their own facilities for internal communications in support of their utility function shall not be considered to establish a comparison for nondiscriminatory access. A utility shall have the ability to negotiate with a telecommunications carrier or cable TV company the price for access to its rights-of-way and support structures.

B. MANNER OF PRICING ACCESS

1. Whenever a public utility and a telecommunications carrier, or cable TV company, or associations, therefore, are unable to agree upon the terms, conditions, or annual compensation for pole attachments or the terms, conditions, or costs of rearrangements, the Commission shall establish and enforce the rates, terms and conditions for pole attachments and rearrangements so as to assure a public utility the recovery of both of the following:

a. A one-time reimbursement for actual costs incurred by the public utility for rearrangements performed at the request of the telecommunications carrier.

b. An annual recurring fee computed as follows:

(1) For each pole and supporting anchor actually used by the telecommunications carrier or cable TV company, the annual fee shall be 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, except that if a public utility applies for establishment of a fee in excess of two dollars and fifty cents ($2.50) under this rule, the annual fee shall be 7.4 percent of the public utility's annual cost of ownership for the pole and supporting anchor.

(2) For support structures used by the telecommunications carrier or cable TV company, other than poles or anchors, a percentage of the annual cost of ownership for the support structure, computed by dividing the volume or capacity rendered unusable by the telecommunications carrier's or cable TV company's equipment by the total usable volume or capacity. As used in this paragraph, "total usable volume or capacity" means all volume or capacity in which the public utility's line, plant, or system could legally be located, including the volume or capacity rendered unusable by the telecommunications carrier's or cable TV company's equipment.

c. A utility may not charge a telecommunications carrier or cable TV company a higher rate for access to its rights of way and support structures than it would charge a similarly situated cable television corporation for access to the same rights of way and support structures.

C. CONTRACTS

1. A utility that provides or has negotiated an agreement with a telecommunications carrier or cable TV company to provide access to its support structures shall file with the Commission the executed contract showing:

   a. The annual fee for attaching to a pole and supporting anchor.

   b. The annual fee per linear foot for use of conduit.

   c. Unit costs for all make ready and rearrangements work.

   d. All terms and conditions governing access to its rights of way and support structures.

   e. The fee for copies or preparation of maps, drawings and plans for attachment to or use of support structures.

2. A utility entering into contracts with telecommunications carriers or cable TV companies or cable TV company for access to its support structures, shall file such contracts with the Commission pursuant to General Order 96, available for full public inspection, and extended on a nondiscriminatory basis to all other similarly situated telecommunications carriers or cable TV companies. If the contracts are mutually negotiated and submitted as being pursuant to the terms of 251 and 252 of TA 96, they shall be reviewed consistent with the provisions of Resolution ALJ-174.

D. Unauthorized Attachments

1. No party may attach to the right of way or support structure of another utility without the express written authorization from the utility.

2. For every violation of the duty to obtain approval before attaching, the owner or operator of the unauthorized attachment shall pay to the utility a penalty of $500 for each violation. This fee is in addition to all other costs which are part of the attacher's responsibility. Each unauthorized pole attachment shall count as a separate violation for assessing the penalty.

3. Any violation of the duty to obtain permission before attaching shall be cause for imposition of sanctions as, in the Commissioner's judgment, are necessary to deter the party from in the future breaching its duty to obtain permission before attaching will be accompanied by findings of fact that permit the pole owner to seek further remedies in a civil action.

4. This Section D applies to existing attachments as of the effective date of these rules.

VII. RESERVATIONS OF CAPACITY FOR FUTURE USE

A. No utility shall adopt, enforce or purport to enforce against a telecommunications carrier or cable TV company any "hold off," moratorium, reservation of rights or other policy by which it refuses to make currently unused space or capacity on or in its support structures available to telecommunications carriers or cable TV companies requesting access to such support structures, except as provided for in Part C below.

B. All access to a utility's support structures and rights of way shall be subject to the requirements of Public Utilities Code § 851 and General Order 69C. Instead of capacity reclamation, our preferred outcome is for the expansion of existing support structures to accommodate the need for additional attachments.

C. Notwithstanding the provisions of Paragraphs VII.A and VII.B, an electric utility may reserve space for up to 12 months on its support structures required to serve core utility customers where it demonstrates that: (i) prior to a request for access having been made, it had a bona fide development plan in place prior to the request and that the specific reservation of attachment capacity is reasonably and specifically needed for the immediate provision (within one year of the request) of its core utility service, (ii) there is no other feasible solution to meeting its immediately foreseeable needs, (iii) there is no available technological means of increasing the capacity of the support structure for additional attachments, and (iv) it has attempted to negotiate a cooperative solution to the capacity problem in good faith with the party

seeking the attachment. An ILEC may earmark space for imminent use where construction is planned to begin within nine months of a request for access. A CLC or cable TV company must likewise use space within nine months of the date when a request for access is granted, or else will become subject to reversion of its access.

VIII. MODIFICATIONS OF EXISTING SUPPORT STRUCTURES

A. NOTIFICATION TO PARTIES ON OR IN SUPPORT STRUCTURES

1. Absent a private agreement establishing notification procedures, written notification of a modification should be provided to parties with attachments on or in the support structure to be modified at least 60 days prior to the commencement of the modification. Notification shall not be required for emergency modifications or routine maintenance activities.

B. NOTIFICATION GENERALLY

1. Utilities and telecommunications carriers shall cooperate to develop a means by which notice of planned modifications to utility support structures may be published in a centralized, uniformly accessible location (e.g., a "web page" on the Internet).

C. SHARING THE COST OF MODIFICATIONS

1. The costs of support structure capacity expansions and other modifications shall be shared only by all the parties attaching to utility support structures which are specifically benefiting from the modifications on a proportionate basis corresponding to the share of usable space occupied by each benefiting carrier. In the event an energy utility incurs additional costs for trenching and installation of conduit due of safety or reliability requirements which are more elaborate than a telecommunications-only trench, the telecommunications carriers should not pay more than they would have incurred for their own independent trench. Disputes regarding the sharing of the cost of capacity expansions and modifications shall be subject to the dispute resolution procedures contained in these rules.

IX. EXPEDITED DISPUTE RESOLUTION PROCEDURES

A. Parties to a dispute involving access to utility rights of way and support structures may invoke the Commission's dispute resolution procedures, but must first attempt in good faith to resolve the dispute. Disputes involving initial access to utility rights of way and support structures shall be heard and resolved through the following expedited dispute resolution procedure.

1. Following denial of a request for access, parties shall escalate the dispute to the executive level within each company. After 5 business days, any party to the dispute may file a formal application requesting Commission arbitration. The arbitration shall be deemed to begin on the date of the filing before the Commission of the request for arbitration. Parties to the arbitration may continue to negotiate an agreement prior to and during the arbitration hearings. The party requesting arbitration shall provide a copy of the request to the other party or parties not later than the day the Commission receives the request.

2. **Content**
   A request for arbitration must contain:
   a. A statement of all unresolved issues.

   b. A description of each party's position on the unresolved issues.

   c. A proposed agreement addressing all issues, including those upon which the parties have reached an agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously arbitrated and approved by this Commission.

   d. Direct testimony supporting the requester's position on factual predicates underlying disputed issues.

   e. Documentation that the request complies with the time requirements in the preceding rule.

3. **Appointment of Arbitrator**
Upon receipt of a request for arbitration, the Commission's President or a designee in consultation with the Chief Administrative Law Judge, shall appoint and immediately notify the parties of the identity of an Arbitrator to facilitate resolution of the issues raised by the request. The Assigned Commissioner may act as Arbitrator if he/she chooses. The Arbitrator must attend all arbitration meetings, conferences, and hearings.

4. **Discovery**
Discovery should begin as soon as possible prior to or after filing of the request for negotiation and should be completed before a request for arbitration is filed. For good cause, the Arbitrator or Administrative Law Judge assigned to Law and Motion may compel response to a data request; in such cases, the response normally will be required in three working days or less.

5. **Opportunity to Respond**
Pursuant to Subsection 252(b)(3), any party to a negotiation which did not make the request for arbitration ("respondent") may file a response with the Commission within 15 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on these issues, and identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the Commission's review. Building upon the contract language proposed by the applicant and using the form of agreement selected by the applicant, the respondent shall include, in the response, a single-text "mark-up" document containing the language upon which the parties agree and, where they disagree, both the applicant's proposed language (bolded) and the respondent's proposed language (underscored). Finally, the response should contain any direct testimony supporting the respondent's position on underlying factual predicates. On the same day that it files its response before the Commission, the respondent must serve a

copy of the Response and all supporting documentation on any other party to the negotiation.

6. **Revised Statement of Unresolved Issues**
Within 3 days of receiving the response, the applicant and respondent shall jointly file a revised statement of unresolved issues that removes from the list presented in the initial petition those issues which are no longer in dispute based on the contract language offered by the respondent in the mark-up document and adds to the list only those other issues which now appear to be in dispute based on the mark-up document and other portions of the response.

7. **Initial Arbitration Meeting**
An Arbitrator may call an initial meeting for purposes such as setting a schedule, simplifying issues, or resolving the scope and timing of discovery.

8. **Arbitration Conference and Hearing**
Within 7 days after the filing of a response to the request for arbitration, the arbitration conference and hearing shall begin. The conduct of the conference and hearing shall be noticed on the Commission calendar and notice shall be provided to all parties on the service list.

9. **Limitation of Issues**
The Arbitrator shall limit the arbitration to the resolution of issues raised in the application, the response, and the revised statement of unresolved issues (where applicable). In resolving the issues raised, the Arbitrator may take into account any issues already resolved between the parties.

10. **Arbitrator's Reliance on Experts**
The Arbitrator may rely on experts retained by, or on the Staff of the Commission. Such expert(s) may assist the Arbitrator throughout the arbitration process.

11. **Close of Arbitraton**
The arbitration shall consist of mark-up conferences and limited evidentiary hearings. At the mark-up conferences, the arbitrator will hear the concerns of the parties, determine

whether the parties can further resolve their differences, and identify factual issues that may require limited evidentiary hearings. The arbitrator will also announce his or her rulings at the conferences as the issues are resolved. The conference and hearing process shall conclude within 3 days of the hearing's commencement, unless the Arbitrator determines otherwise.

12. **Expedited Stenographic Record**
An expedited stenographic record of each evidentiary hearing shall be made. The cost of preparation of the expedited transcript shall be borne in equal shares by the parties.

13. **Authority of the Arbitrator**
In addition to authority granted elsewhere in these rules, the Arbitrator shall have the same authority to conduct the arbitration process as an Administrative Law Judge has in conducting hearings under the Rules of Practice and Procedure. The Arbitrator shall have the authority to change the arbitration schedule contained in these rules.

14. **Participation Open to the Public**
Participation in the arbitration conferences and hearings is strictly limited to the parties negotiating a ROW agreement pursuant to the terms of these adopted rules.

15. **Arbitration Open to the Public**
Though participation at arbitration conferences and hearings is strictly limited to the parties that were negotiating the agreements being arbitrated, the general public is permitted to attend arbitration hearings unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session. Any party to an arbitration seeking a closed session must make a written request to the Arbitrator describing the circumstances compelling a closed session. The Arbitrator shall consult with the assigned Commissioner and rule on such request before hearings begin.

16. **Filing of Draft Arbitrator's Report**
Within 15 days following the hearings, the Arbitrator, after consultation with the Assigned Commissioner, shall file a Draft Arbitrator's Report. The Draft Arbitrator's Report will include (a) a concise summary of the issues resolved by the Arbitrator, and (b) a reasoned articulation of the basis for the decision.

17. **Filing of Post-Hearing Briefs and Comments on the Draft Arbitrator's Report**
Each party to the arbitration may file a post-hearing brief within 7 days of the end of the mark-up conferences and hearings unless the Arbitrator rules otherwise. Post-hearing briefs shall present a party's argument in support of adopting its recommended position with all supporting evidence and legal authorities cited therein. The length of post-hearing briefs may be limited by the Arbitrator and shall otherwise comply with the Commission's Rules of Practice and Procedure. Each party and any member of the public may file comments on the Draft arbitrator's Report within 10 days of its release. Such comments shall not exceed 20 pages.

18. **Filing of the Final Arbitrator's Report**
The arbitrator shall file the Final Arbitrator's Report no later than 15 days after the filing date for comments. Prior to the report's release, the Telecommunications Division will review the report and prepare a matrix comparing the outcomes in the report to those adopted in prior Commission arbitration decisions, highlighting variances from prior Commission policy. Whenever the Assigned Commissioner is not acting as the arbitrator, the Assigned Commissioner will participate in the release of the Final Arbitrator's Report consistent with the Commission's filing of Proposed Decisions as set forth in Rule 77.1 of the Commission's Rules of Practice and Procedure.

19. **Filing of Arbitrated Agreement**
Within 7 days of the filing of the Final Arbitrator's Report, the parties shall file the entire agreement for approval.

20. **Commission Review of Arbitrated Agreement**
Within 30 days following filing of the arbitrated agreement, the Commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to Subsection 252(e) and all its subparts.

21. **Standards for Review**
The Commission may reject arbitrated agreements or portions thereof that do not meet the requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

22. **Written Findings**
The Commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the Commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable to the Commission.

23. **Application for Rehearing**
A party wishing to appeal a Commission decision approving an arbitration must first seek administrative review pursuant to the Commission's Rules of Practice and Procedure.

24. The party identified by the arbitrator as the "losing party" shall reimburse the party identified by the arbitrator as the "prevailing party" for all costs of the arbitration, including the reasonable attorney and expert witness fees incurred by the prevailing party.

X. ACCESS TO CUSTOMER PREMISES

A. No carrier may use its ownership or control of any right of way or support structure to impede the access of a telecommunications carrier or cable TV company to a customer's premises.

B. A carrier shall provide access, when technically feasible, to building entrance facilities it owns or controls, up to the applicable minimum point of entry (MPOE) for that property, on a nondiscriminatory, first-come, first-served basis, provided that the requesting

telecommunications carrier or cable TV provider has first obtained all necessary access and/or use rights from the underlying property owners(s).

C. A carrier will have 60 days to renegotiate a contract deemed discriminatory by the Commission in response to a formal complaint. Failing to do so, this carrier will become subject to a fine ranging from $500 to $20,000 per day beyond the 60-day limit for renegotiation until the discriminatory provisions of the arrangement have been eliminated.

XI. SAFETY

A. Access to utility rights of way and support structures shall be governed at all times by the provisions of Commission General Order Nos. 95 and 128 and by Cal/OSHA Title 8. Where necessary and appropriate, said General Orders shall be supplemented by the National Electric Safety Code, and any reasonable and justifiable safety and construction standards which are required by the utility.

B. The incumbent utility shall not be liable for work that is performed by a third party without notice and supervision, work that does not pass inspection, or equipment that contains some dangerous defect that the incumbent utility cannot reasonably be expected to detect through a visual inspection. The incumbent utility and its customers shall be immunized from financial damages in these instances.

(END OF APPENDIX A)

Henry M. Duque, Commissioner, concurring in part and dissenting in part:

The policies set in Decision 98-10-058 to facilitate access by carriers to public rights of way and to permit the fair use of existing utility infrastructure constitute an important achievement. D.98-10-058 will further open local telecommunications markets to competition. This decision has my concurrence except for the policies developed in two areas, where I must note my dissent.

The first policies that I cannot support arise from Conclusions of Law 72-74. These conclusions of law change the rules of competition midway through the game. They invite formal complaints against carriers already having marketing arrangements with businesses or residences whenever a competitor believes that the agreement restricts access to the facilities or is discriminatory. The ex post facto regulation exemplified by Conclusion of Law 72 is wrong, and a court will clearly conclude that it constitutes legal error.

Further, Conclusions of Law 72 through 74 cast a shadow over many agreements that constitute standard marketing arrangements. Will the marketing arrangements that have produced Pacific-Bell Ball Park and the AT&T Pebble Beach Open be the first two contracts that we order renegotiated? Conclusions of Law 72 through 74 are worded too broadly, and only litigation will permit the market to understand the scope of practices that the Commission deems suspect. This approach to the making of regulatory policy is unwise.

Conclusion of Law 74 is particularly unwise. It imposes the risk of a high fine on a carrier whenever a carrier with a contract fails to negotiate changes within 60 days of a ruling by the Commission. Under this regulatory scheme, fines can mount up for the carrier when the building owner refuses to renegotiate. This outcome is not fair. It fines a carrier for actions that are beyond the carrier's control.

Moreover, Conclusions of Law 72 through 74 may well lead to docket-busting work. The Commission has no idea how many existing marketing or access agreements are affected by these new rules. Thus, these regulations make an open-ended promise of regulatory review of actions taken long before the Commission issued any rules. Such a limitless commitment of regulatory resources is unwise, especially when made by a

government agency that has found its budgets and personnel decreasing. It will either prove a hollow promise or delay other regulatory actions mandated by statute.

The second policies that I cannot support are those that arise from the failure of D.98-10-058 to assert jurisdiction to protect consumers from those building owners who use their control over access for unfair advantage. This Commission has seen abuses by mobile home owners who control access to gas, water, and electricity through submetering. In these areas, laws and Commission decisions have made the rules clear and have charted a well-worn path.

Because of laws passed to prevent abuses such as these, the Commission already has the authority under PU Code Sections 233 and 234 to assert its regulatory jurisdiction over owners or managers of multiple dwelling units who in exchange for compensation, own, manage, lease, operate or control any part of a "telephone line." A "telephone line" would include a system's entrance facilities, tie down blocks, frames, wires, fibers, closets, conduits, risers, and all other fixtures for the purpose of facilitating communication. Our failure to exercise our authority today means that our next opportunity to act will likely come when abused consumers appear before us. Moreover, those causing the harm will claim that they have done nothing illegal or prohibited – they have merely profited from their ability to provide access to customers. Our inaction today gives merit to these claims.

In summary, although I vote in support of Decision 98-10-057, my analysis leads me to two conclusions:

1. Conclusions of Law 72 through 74 constitute legal error and unwise policy;
2. The failure of this Commission to exercise its legal jurisdiction to prevent abuses of consumers by building owners or managers is a mistake.

These conclusions compel me to file this partial dissent.

/s/ HENRY M. DUQUE
Henry M. Duque
Commissioner

October 22, 1998

San Francisco

PROOF OF SERVICE BY MAIL

I, Sandra Jackson, declare:

I am over the age of 18 years, not a party to this proceeding, and am employed by the California Public Utilities Commission at 505 Van Ness Avenue, San Francisco, California.

On 10-28-98, I deposited in the mail at San Francisco, California, a copy of:

98-[illegible]-058

(DECISION NUMBER OR TYPE OF HEARING)

10-22-98

(DATE OF HEARING)

R.95-04-043 I.95-04-044

(APPLICATION/CASE/OII/OIR NUMBER)

in a sealed envelope, with postage prepaid, addressed to the last know address of each of the addressees in the attached list.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 10-28-98, at San Francisco, California.

Sandra Jackson*

*Signature
9/92

R 95-04-043
I 95-04-044

DECISION: _98-10-058

MAIL DATE:_10-28-98

Copy of " OPINION AND ORDER" mailed to the following.

SEE ATTACHED LIST FOR APPEARANCES, STATE SERVICE

Count_____

10-28-98
SMJ

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