BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

FILED
12-17-13
04:59 PM

Petition to Adopt, Amend, or Repeal a Regulation
Pursuant to Pub. Util. Code § 1708.5

P1312009
Petition No. _____

PETITION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO PUB. UTIL. CODE § 1708.5

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December 3, 2013

SUBJECT INDEX

Pursuant to California Public Utilities Code section 1708.5, Decision 07-05-011,[1] and Rule 6.3 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California (hereinafter, "Commission" or "California Commission"), AT&T Mobility[2] (hereinafter, "AT&T Mobility" or "AT&T") hereby petitions the Commission for an amendment to the right-of-way rules (hereinafter, "ROW Rules") adopted by Decision ("D.") 98-10-058 on October 22, 1998. AT&T Mobility sets forth below, as required by Rule 6.3(b), the justification for the requested relief and the specific proposed wording of the modifications sought. AT&T also notes, as explained below, that the issue raised by this petition previously has been considered by the Commission.

I. INTRODUCTION

In *Connecting America: The National Broadband Plan*,[3] the Federal Communications Commission ("FCC") calls broadband "the great infrastructure challenge of the early 21st century."[4]

> Like electricity a century ago, broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life. It is enabling entire new industries and unlocking vast new possibilities for existing ones. It is changing how we educate children, deliver health care,

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[1] Decision 07-05-011, which closed the Local Competition Rulemaking, provides in relevant part, "To the extent that parties seek consideration of new issues, or issues previously identified in this docket that they believe require further Commission action, they may petition for a new docket to be opened pursuant to Public Utilities Code Section 1708.5(a)." D.07-05-011, *mimeo*, p. 2. Through this petition, AT&T Mobility seeks further Commission action regarding an issue previously identified in the Local Competition Rulemaking.

[2] As used herein, "AT&T Mobility" refers to, collectively, AT&T Mobility Wireless Operations Holdings, Inc. (U-3021-C); New Cingular Wireless PCS, LLC (U-3060-C) d/b/a AT&T Mobility; and Santa Barbara Cellular Systems, Ltd. (U-3015-C).

[3] Hereinafter, "*National Broadband Plan*," which is available at: http://download.broadband.gov/plan/national-broadband-plan.pdf

[4] National Broadband Plan, p. XI.

> manage energy, ensure public safety, engage government, and access, organize and disseminate knowledge.[5]

To further facilitate broadband deployment, the *National Broadband Plan* calls for, among other things, "low and more uniform rental rates for access to poles…."[6] The FCC moved to implement this aspect of the plan in April of 2011 by revising the FCC's pole attachment rules "to improve the efficiency and reduce the potentially excessive costs of deploying telecommunications, cable, and broadband networks, in order to accelerate broadband buildout."[7] These rule revisions "reaffirm" that the attachments of wireless carriers are entitled to the "benefits and protections" of the FCC's pole attachment rules.[8]

Long before the *National Broadband Plan,* this Commission in 1998 approved Decision D.98-10-058 (hereinafter, the "ROW Decision"), which establishes rules governing nondiscriminatory access to poles, ducts, conduits and rights-of-way (hereinafter, "ROW"). This Commission stated in its ROW Decision that it was, at the time, regulating pole attachments consistent with federal law and thereby exercised "reverse preemption" of the FCC's pole attachment rules.[9] Reverse preemption precludes the FCC from accepting pole attachment complaints from California.[10] However, this

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[5] *Id.*

[6] *Id* at XII.

[7] Report and Order and Order on Reconsideration, *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, 26 FCC Rcd. 5240, 52 Communications Reg. (P&F) 1027, FCC 11-50 (rel. Apr. 7, 2011) ¶ 1 (hereinafter "Report and Order").

[8] *Id.* at ¶ 153.

[9] D.98-10-058, *mimeo*, p. 7.

[10] Report and Order, Appdx. C.

Commission's 1998 ROW Decision did not extend its benefits and protections to the attachments of wireless providers, and it has since become quite clear that federal pole attachment rules do extend to wireless attachments.

The combination of this Commission's (1) "reverse preemption" of the FCC rules, and (2) exclusion of wireless attachments from its 1998 ROW Decision, effectively denies California wireless providers the benefits and protections of the federal rules, without any analogous state replacement. If California wireless providers are faced with unreasonable demands for pole attachment rates, terms or conditions, they apparently cannot seek relief pursuant to the FCC's process because this Commission has certified that it is regulating pole attachments.[11] However, California wireless carriers also appear to be precluded from seeking relief at this Commission, because this Commission's rules do not currently extend to the attachments of wireless carriers.[12] AT&T Mobility requests that the Commission rectify this situation by amending its ROW Rules to extend to the attachments of wireless carriers.

II. BACKGROUND

The regulation of pole attachments is governed by both federal and state law, which are intended to work together to advance important public policy goals, including the promotion of wireless coverage and further broadband deployment.

[11] Report and Order, Appdx. C (certification preempts FCC from accepting pole attachment complaints). A wireless provider could possibly challenge the Commission's certification to the FCC that it is regulating pole attachments "in conformance with [47 U.S.C.] §§ 224(c)(2) and (3)," but AT&T Mobility believes the better path is to request the Commission update its ROW Rules.

[12] D.98-10-058, *mimeo*, pp. 26-27.

A. Federal Pole Attachment Requirements

Section 224 of Title 47 of the United States Code provides that the FCC "shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to hear and resolve complaints concerning such rates, terms, and conditions."[13] Pursuant to this mandate, the FCC has adopted extensive regulations addressing pole attachment rates, terms and conditions.[14]

The FCC in 2004 "reminded" utility pole owners that "wireless telecommunications providers are entitled to the benefits and protections of [47 U.S.C.] section 224 for the attachment to utility poles of antennas or antenna clusters and associated equipment."[15] These conclusions were "reaffirmed" in the FCC's April 2011 pole attachment order:

> We also reaffirm that wireless carriers are entitled to the benefits and protection of section 224, including the right to the telecom rate under section 224(e). We do so in response to reports by the wireless industry of cases where wireless providers were not afforded the regulated rate. Specifically, in the *1998 Implementation Order*, the Commission explained that it has authority under section 224(e)(1) to prescribe rules governing wireless attachments used by telecommunications carriers to provide telecommunications services. The Commission also stated that Congress did not intend to distinguish between wired and wireless attachments and that there was no basis to limit the definition of telecommunications carriers under the statute only to wireline providers. The Commission noted that, despite the "potential difficulties in applying

[13] 47 U.S.C. § 224(b)(1).

[14] *See, e.g.,* 47 C.F.R. §§ 1.1401-1.1424; Report and Order.

[15] *See* Public Notice, *Wireless Telecommunications Bureau Reminds Utility Pole Owners Of Their Obligations To Provide Wireless Telecommunications Providers With Access To Utility Poles At Reasonable Rates*, DA 04-4046, 19 FCC Rcd. 24930 (rel. Dec. 23, 2004) (hereinafter, "Public Notice").

> the Commission's rules to wireless pole attachments, as opponents of attachment rights have argued," it did not see any need for separate rules.[16]

Separately in the April 2011 order, the FCC expressly confirmed that the "benefits and protections" of section 224 apply to *all* wireless attachments, including *pole-top* antennas.[17] These "benefits and protections" include the right to attach at no more than a regulated "statutory pole rental rate."[18]

B. California ROW Requirements

In 1998, this Commission established its own rules "governing the nondiscriminatory access to the poles, ducts, conduits, and rights-of-way (ROW) … of the large and midsized incumbent local exchange carriers (ILECs)…" and the "major investor-owned electric utilities"—Pacific Gas & Electric (PG&E), Southern California Edison Company (Edison); and San Diego Gas & Electric Company (SDG&E).[19] The

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[16] Report and Order, ¶ 153 (footnotes omitted).

[17] *Id.* at ¶ 77 ("[W]e clarify that a wireless carrier's right to attach to pole tops is the same as it is to attach to any other part of a pole."); *see also* Public Notice.

[18] Pursuant to federal law, which prescribes levels of attachment rates similar to those required by California law, the FCC has noted that,

> section 224 and the [FCC's] rules do not allow pole access fees to be levied against wireless carriers in addition to the statutory pole rental rate, which is based on the space occupied by the attachment and the number of attaching entities on the pole, together with reasonable make-ready fees. Such overcharges or denial of access for wireless pole attachments may have serious anticompetitive effects on telecommunications competition. (Public Notice.)

Thus, federal law requires that the current pole attachment rate for wireless attachments must be no greater than the maximum reasonable rate for other telecommunications pole attachments.

The FCC has established formulas for determining maximum reasonable pole attachment rates. *See* 47 C.F.R. § 1.1409. The FCC's most recent pole attachment order concludes "the telecom rate should be lowered to more effectively achieve Congress' goals under the 1996 [Telecommunications] Act to promote competition and 'advanced telecommunications capability' by both wired and wireless providers by 'remov[ing] barriers to infrastructure investment….'" Report and Order, ¶ 136.

[19] D.98-10-058, *mimeo.*, p. 2. The Commission has the authority to prescribe by order "reasonable compensation and reasonable terms and conditions for the joint use" of poles pursuant to Public Utilities Code section 767, among other authorities. Sections 701, 767 and 1702, *inter alia*, of the California Public Utilities Code provide the Commission with authority to supervise and regulate public utilities, including the authority to prescribe reasonable compensation and reasonable terms and conditions for the joint use of utility poles.

Commission's ROW Rules establish standards governing requests for information, requests for access, nondisclosure, pricing, reservations of capacity, modifications of existing support structures, expedited dispute resolution, access to customer premises, and safety.[20] In establishing its own ROW Rules, the California Commission acknowledged the FCC's authority to regulate access to ROW pursuant to the Pole Attachments Act[21] and the Telecommunications Act of 1996 (the Act),[22] and noted that the FCC's jurisdiction under the Pole Attachments Act can be displaced by state regulation where certain specified conditions are met.[23] The Commission certified in its initial ROW Decision that it met those conditions by, in part, regulating "the rate[s], terms, and conditions of access to poles, ducts, conduits, and ROW in conformance with §§ 224(c)(2) and (3)."[24] This state certification prevents the FCC from accepting pole attachment complaints from California.[25]

The benefits and protections of the Commission's 1998 ROW Rules, however, do not currently apply to wireless attachments. The Commission explained its decision not to extend its rules to wireless, or "CMRS," attachments as follows:

> While we do not minimize the importance of ROW access rights for CMRS carriers, we believe that a further record needs to be developed

[20] D.98-10-058, Appdx. A. The rules adopted in D.98-10-058 are administered by the Commission "in the form of 'preferred outcomes.'" D.98-10-058, *mimeo*, pp. 13-14. Parties negotiating ROW agreements are free to depart from these "preferred outcomes," but in resolving any ROW disputes the Commission considers "how closely each party has conformed" to the preferred outcomes and "whether proposed terms are unfairly discriminatory or anticompetitive." *Id*. at 14. A party advocating departure from the "preferred outcomes" bears the burden of proof. *Id*.

[21] 47 U.S.C. § 224.

[22] 47 U.S.C. § 251(b)(4).

[23] *See* 47 U.S.C. § 224(c).

[24] D.98-10-058, *mimeo*, p. 9.

[25] *See* Report and Order, Appdx. C; 47 U.S.C. § 224(c); 47 C.F.R. § 1.1414.

> regarding safety, reliability and special access needs before we determine the applicability of our adopted ROW access rules to the CMRS industry. Accordingly, we shall defer consideration of the applicability of our rules to CMRS carriers to a later phase of the proceeding.[26]

Since its 1998 ROW Decision, the Commission has taken extensive actions to address the "safety, reliability and special access needs" of wireless carriers that initially caused the Commission hesitation in extending the applicability of the "benefits and protections" of its ROW Rules to wireless attachments. In 2005, the Commission conducted a proceeding (R.05-02-023) to "establish uniform construction standards for attaching wireless antennas to jointly used poles and towers."[27] Seven days of workshops, involving 20 parties, were held in San Francisco and Los Angeles. Following a joint workshop report, an additional three days of evidentiary hearings were held, during which nine witnesses testified and 22 exhibits were received into evidence. A settlement agreement eventually was reached, followed by an evidentiary hearing to consider it. These exhaustive proceedings[28] ultimately resulted in D.07-02-030, which adopted a proposed settlement agreement addressing the safety, reliability and access needs of wireless attachments.[29] The 2007 decision, however, did not include pole-top antenna installations, which were seen by some as raising unique issues.[30]

Pole-top antennas were addressed in a subsequent proceeding. A petition was filed in 2007 "to initiate a rulemaking proceeding for the purpose of amending GO 95 to

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[26] D.98-10-058, p. 27.

[27] D.07-02-030, *mimeo*, p. 4.

[28] *See id*. at 3-5.

[29] *Id.* at 16.

[30] *Id.* at 10.

include construction standards for pole-top antennas installed on joint-use utility poles with supply lines operating at zero to 50,000 volts."[31] The parties to that proceeding met and reached consensus on all but two issues, which were the topic of four days of technical conference, in San Francisco and San Diego. These conferences resulted in a Technical Conference Report ("TCR") resolving the disputed issues. The Commission reviewed and approved the TCR in D.08-10-017, finding the rules proposed in the TCR,

> are supported by parties representing the affected interests; will advance the Commission's goal of expanding the State's wireless infrastructure; will protect the safety of workers and the public; and allow pole-top antennas to be installed in a manner that is compatible with facilities attached to joint-use poles by electric utilities, telecommunications providers, and cable service providers.[32]

In approving the pole-top antenna construction standards, the Commission noted that the "safe expansion of California's wireless infrastructure provides significant public benefits," including enhanced reliability of service, expanded service, and greater deployment of broadband services.[33]

C. The Current Need for Further Action

The FCC has determined that the "lack of reliable, timely, and affordable access to physical infrastructure—particularly utility poles—is often a significant barrier to deploying wireline and wireless services."[34] AT&T has experienced such barriers in California. For example, AT&T has been unable to reach pole top attachment agreements with certain utilities, and with one utility was forced to engage in negotiations

[31] D.08-10-017, *mimeo*, pp. 3-4.

[32] *Id.* at 14.

[33] *Id.* at 2-3.

[34] Report and Order, ¶ 3.

extending over a year. Moreover, the rates demanded for pole top access generally far exceed the maximum allowable pole attachment rate as defined by California and federal law.

The Commission should act expeditiously to close the loophole for wireless attachments, and thus come into conformance with federal pole attachment law, which clearly extends to wireless attachments and pole top antennas. Through D.07-02-030 and D.08-10-017, the Commission already has done the hard work of addressing the "safety, reliability and special access needs" that initially caused concern regarding wireless pole attachments. All that is left is to expressly expand the provisions of the Commission's ROW Rules—including standards governing requests for access, pricing and expedited dispute resolution—to wireless pole attachments.[35]

III. JUSTIFICATION FOR REQUESTED RELIEF

As explained above, the exception to the Commission's ROW Rules for wireless pole attachments is now clearly inconsistent with the federal approach. This alone justifies modification of the ROW Rules to bring them into conformance with federal law. Moreover, including wireless attachments within the ROW Rules would advance "significant public benefits," as the Commission has previously found:

> Consumers today are increasingly relying on wireless services—sometimes in lieu of wireline telephone service. Installation of pole-top wireless antennas will meet this growing demand; enhance reliability of service; provide services to areas that presently lack wireless (or, in some cases, wireline) services; and promote the deployment of broadband services. Finally, expanding wireless infrastructure will strengthen the public safety network by enhancing the ability of public-safety agencies to

[35] *See* D.98-10-058, Appdx. A.

> receive the public's calls during emergencies and communicate critical safety information among first responders.[36]

Finally, granting the Petition would allow the Commission to complete the task it deferred in 1998—considering the applicability of its ROW Rules to wireless attachments.[37]

IV. REQUESTED MODIFICATIONS

Petitioners request that the Commission modify the ROW Rules adopted in D.98-10-058 to include wireless pole attachments and, in particular, wireless pole top attachments. Generally, that involves removing the exception that currently exists for wireless pole attachments, and including wireless attachments within the operative provisions of D.98-10-058's ROW Rules. In conformance with Rule 6.3, Appendix A to this petition sets forth specific proposed changes to the ROW Rules, in "redline" format, that would achieve this purpose.

[36] D.08-10-017, *mimeo*, pp. 2-3.

[37] *See,* D.98-10-058, *mimeo*, p. 27 ("While we do not minimize the importance of ROW access rights for CMRS carriers, we believe that a further record needs to be developed regarding safety, reliability and special access needs before we determine the applicability of our adopted ROW access rules to the CMRS industry. Accordingly, we shall defer consideration of the applicability of our rules to CMRS carriers to a later phase of the proceeding.").

V. REQUESTED SCHEDULE

As explained above, the relief sought by this petition would help facilitate greater and faster wireless and broadband deployment. Moreover, it is necessary to make California's ROW Rules consistent with the FCC approach. Accordingly, AT&T Mobility requests an expeditious schedule:

Responses to Petition to Amend ROW Rules	January 6, 2014
Reply to Responses to the Petition	January 16, 2014
Scoping Memo Setting Prehearing Conference	January 30, 2014
Prehearing Conference	February 6, 2014
Opening Comments on Proposed Amendments	February 20, 2014
Reply Comments on Proposed Amendments	March 6, 2014

VI. CONCLUSION

Through D.07-02-030 and D.08-10-017, the Commission has already performed the "heavy lifting" necessary to address the "safety, reliability and special access needs" of wireless pole attachments. With those concerns now addressed, AT&T Mobility respectfully requests that the Commission modify the ROW Rules adopted in D.98-10-058 to include wireless pole attachments, thus coming into conformance with federal law, and advancing federal and state interests in greater wireless coverage and the further deployment of broadband services.

DATED: December 3, 2013

Respectfully submitted,

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APPENDIX A

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

I. PURPOSE AND SCOPE OF RULES

These rules govern access to public utility rights-of-way and support structures by telecommunications carriers, Commercial Mobile Radio Service (CMRS) providers, 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

"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.

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

"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.

"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.

"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.

"Usable space" means the total distance between the top of the utility pole (including any attachment at the top of the pole or on a pole top extension) and the lowest possible attachment point that provides the minimum allowable vertical clearance.

"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.

"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.

"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.

"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."

"Commercial Mobile Radio Service (CMRS) provider" generally refers to a provider of cellular services, personal communications services, wide-area specialized mobile radio services, and two-way radiotelephone services.

"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.

"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.

"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.

"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.

"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 utility shall promptly respond in writing to a written request for information ("request for information") from a telecommunications carrier, CMRS provider, 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.

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.

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.

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.

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, CMRS provider, 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, CMRS provider, 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, CMRS provider, 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, CMRS provider, or cable TV company must obtain written permission from the owner of that property before attaching or installing its facilities. The telecommunication carrier, CMRS provider, 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, CMRS provider's, or the cable TV company's use or attachment.

C. 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, CMRS provider'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.

D. 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, CMRS facilities, 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, CMRS provider, 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, CMRS provider'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, CMRS provider, 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, CMRS provider, or cable TV company must arrange a specific schedule with the electric utility. The telecommunications carrier, CMRS provider, 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, CMRS provider, 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, CMRS provider, 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', CMRS provider's, 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, CMRS provider'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, CMRS providers, ~~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, CMRS provider, 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, CMRS providers, 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, CMRS provider, 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, CMRS provider, 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, CMRS provider, 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, CMRS provider, 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, CMRS provider, 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, CMRS providers, 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, CMRS providers, 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, CMRS provider, 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, CMRS providers, 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, CMRS provider, 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)

VERIFICATION

Joanne F. Todaro, under penalty of perjury, certifies as follows:

I am an officer, to wit, Assistant Secretary for AT&T Mobility Wireless Operations Holdings Inc., and make this verification for and on behalf of said corporation. I have read the foregoing **PETITION TO ADOPT, AMEND, OR REPEAL A REGULATION PURSUANT TO PUB. UTIL. CODE § 1708.5**, and the contents thereof, and the facts therein stated, are true to the best of my knowledge, information and belief.

Dated at Atlanta, Georgia, this 3rd day of December 2013.

Joanne F. Todaro

Sworn to and Subscribed before me this 3rd day of December, 2013.

Notary Public
My Commission Expires:
July 29, 2014

BRENDA S. SLAUGHTER NOTARY PUBLIC ROCKDALE COUNTY GEORGIA EXPIRES JULY 29, 2014