

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



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Petition of the Wireless Infrastructure  
Association to Adopt, Amend, or Repeal  
General Order 95 Pursuant to Pub. Util. Code  
§ 1708.5

P1608016  
Petition No. \_\_\_\_\_

**PETITION OF THE WIRELESS INFRASTRUCTURE ASSOCIATION FOR A  
RULEMAKING TO EXTEND THE ROW RULES FOR CMRS FACILITIES TO  
WIRELESS FACILITIES INSTALLED BY CLECS**

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**I. INTRODUCTION AND SUMMARY**

Pursuant to Pub. Util. Code § 1708.5, and Rule 6.3 of the Commission’s Rules of Practice and Procedure of the Public Utilities Commission of the State of California (“Commission” or “CPUC”), the Wireless Infrastructure Association (“WIA”) petitions the Commission to extend the Right-of-Way Rules (“ROW Rules”) adopted in Decision (“D”) 16-01-046 for commercial mobile radio service (“CMRS”) facilities (“Revised ROW Rules”) to the wireless facilities installed by competitive local exchange carriers (“CLECs”).

WIA (formerly PCIA) is the principal organization representing the companies that build, design, own and manage telecommunications facilities throughout the world. Its over 230 members include carriers, infrastructure providers, and professional services firms. Some of the most typical wireless pole installations are outdoor distributed antenna systems (“DAS”)<sup>1</sup> Traditionally DAS systems<sup>2</sup> consist of antennas for the transmission and reception of a wireless service provider’s RF signals; (ii) a high capacity signal transport medium (typically fiber optic

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<sup>1</sup> See, e.g., October 21, 2014 Informational Report of AT&T Mobility at 6.

<sup>2</sup> See *Distributed Antenna Systems (DAS) and Small Cell Technologies Distinguished*, HETNET FORUM, 3-4 (Feb. 2013), <http://www.hetnetforum.com/resources/send/2-resources/24-das-and-small-cell-technologies-distinguished> (describing a DAS).

cable) connecting each DAS Node back to a central communications hub site; and (iii) radio transceivers or other head-end equipment located at the hub site. Although sometimes these DAS facilities are installed by CMRS carriers like AT&T Mobility,<sup>3</sup> in other instances these facilities are installed by providers like Crown Castle, ExteNet and other providers that are regulated as CLECs. A DAS facility installed by a CLEC often is a neutral host system, serving more than one provider via single distribution backbone without the need to build additional network infrastructure. Each provider need only provide its head end equipment to connect its network to the DAS system, thereby maximizing the use of existing infrastructure.

Although D.16-01-046 granted nondiscriminatory access to public utility infrastructure to CMRS carriers, the Decision did not extend the ROW Rules to wireless facilities installed by CLECs or cable television (“CATV”) corporations.<sup>4</sup> However, the Commission recognized in that decision that “there is no obvious reason why” the Revised ROW Rules should not extend to CLECs and cable operators.<sup>5</sup> Thus, the Commission urged both CLECs and CATV corporations to file “at their earliest convenience” a petition for rulemaking to extend Revised ROW Rules to wireless facilities installed by CATV corporations and CLECs.<sup>6</sup> The California Cable & Telecommunications Association (“CCTA”) recently filed a petition (Petition No. 16-07-009) requesting nondiscriminatory access to public utility infrastructure for wireless facilities installed by CATV corporations.<sup>7</sup> WIA is filing this Petition for a rulemaking to extend the Revised ROW Rules to wireless facilities installed by CLECs, and intends to file a Motion to Consolidate

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<sup>3</sup> October 21, 2014 Informational Report of AT&T Mobility at 6 in R.14-05-0041.

<sup>4</sup> D.16-01-046, mimeo at 43-44.

<sup>5</sup> *Id.*, mimeo at 43.

<sup>6</sup> *Id.*

<sup>7</sup> See P.16-07-009, Petition of California Cable & Telecommunications Association for a Rulemaking to Extend the ROW Rules for CMRS Facilities to Wireless Facilities Installed by Cable Corporations, (filed July 14, 2016) (“CCTA Petition”). On July 27, 2016, the CCTA Petition was assigned to President Michael Picker and Administrative Law Judge Timothy Kenney.

the proceedings pursuant to Rule 7.4 of the Commission's Rules of Practice and Procedure once this petition has been accepted and docketed.

There are multiple reasons why the extension of the Revised ROW Rules to CLECs' wireless attachments is both sound public policy and required by law. First, the wireless facilities installed on poles by CMRS carriers and wireless facilities proposed to be installed by CLECs are similar. Second, extension of the Revised ROW Rules in a nondiscriminatory manner to wireless facilities installed by CLECs is required by federal law and will promote the competitive playing level field the ROW Rules adopted in D.98-10-058 sought to promote. And third, extension of the Revised ROW Rules will advance state policies intended to enhance competition and promote the deployment of broadband to the public.

The Commission set forth three issues that a petition should address before Revised ROW Rules may be extended to CLEC wireless attachments: (i) how to harmonize the "per foot" pole attachment fee adopted for CMRS attachments with the "per pole" pole attachment fee for CLEC wireless pole attachments adopted in D.98-10-058; (ii) for CLEC pole installations that include both wireline communication system components and wireless communication system components, how to identify and distinguish components that are subject to the "per pole" fee and the components that are subject to the "per foot fee"; and (iii) to address the Commission's authority to enforce its Revised ROW Rules upon wireless facilities installed by cable corporations in light of the Commission's conclusion in D.15-05-002 that the term "cable" does not include "satellites or other forms of wireless transmission."<sup>8</sup> None of these issues is a barrier to the extension of the rules to CLECs. First, the "per foot" pole attachment fee established for CMRS carriers can be readily harmonized with the statutory "per pole"

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<sup>8</sup> D.16-01-046, mimeo at 43-44.

attachment fee for CLEC wireless attachments in D.98-10-058. Second, it is a straightforward matter to identify and distinguish the facilities that should be subject to the wireline “per pole” fee from those subject to the wireless “per foot” fee. Finally, the Commission’s conclusion in D.15-05-002 that the term “cable” in Pub. Util. Code § 216.4 does not include satellite and other forms of wireless transmission is not an issue that pertains to CLECs.

WIA respectfully submits that the Commission should be able to conduct this proceeding on a streamlined, expedited basis, because (i) there are no material facts in dispute and because WIA merely is seeking an extension of the same rules and rates that apply to CMRS wireless attachments in D.16-01-046 with no modification and (ii) no parties expressed opposition to the CCTA Petition, which contains similar issues of law and fact, within 30 days of the date of its filing.

## **II. BACKGROUND**

AT&T Mobility filed a petition in 2013 requesting an amendment to the Right-of-Way Rules adopted in D.98-10-058, which granted non-discriminatory access to public utility infrastructure, but did not extend those access rights to wireless attachments.<sup>9</sup> Citing federal pole attachment law and “federal and state interests in greater wireless coverage and the further deployment of broadband services,” AT&T’s petition requested that the Commission extend the ROW Rules adopted in D.98-10-058 to wireless attachments.<sup>10</sup> The Commission issued Order Instituting Rulemaking 14-05-001 (the “OIR”) to consider whether and how the ROW Rules adopted in D.98-10-058 should be amended to extend to CMRS carriers. Numerous parties actively participated in the OIR, including, electric investor-owned utilities, The Utility Reform Network, the International Brotherhood of Electrical Workers, the Office of Ratepayer

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<sup>9</sup> D.98-10-058, mimeo at 27.

<sup>10</sup> Petition (P.) 13-12-009 at 12.

Advocates, CCTA, and WIA (then PCIA). Parties were given substantial opportunities to provide input on the extension of the ROW Rules to wireless facilities and the appropriate attachment rate through a variety of procedural vehicles, including workshops, prehearing conferences, responses to information requests, and comments on the OIR, Workshop Report, and Proposed Decision. The record developed in the docket was comprehensive and robust.

At the conclusion of the proceeding, the Commission issued D.16-01-046, which amended the ROW Rules to extend non-discriminatory access to public utility infrastructure to CMRS carriers (the “Revised ROW Rules”).<sup>11</sup> Decision 16-01-046 found that CMRS carriers have a right to non-discriminatory access to public utility infrastructure under federal law, and that providing CMRS carriers with such access would help achieve the policy goals of Pub. Util. Code § 709 and could encourage broadband deployment.<sup>12</sup> The Revised ROW Rules provide CMRS carriers with the same access to utility infrastructure as CLECs and CATV corporations, with one exception.<sup>13</sup> To reflect the greater use of pole space by wireless facilities, D.16-01-046 requires public utilities to charge an annual attachment fee of 7.4% of the average annual carrying cost of a pole *for each vertical foot of pole space* occupied by the wireless facilities, subject to certain limitations.<sup>14</sup> This is in contrast to the annual wireline attachment fee of 7.4% *per pole* that applies to the wireline attachments of CLECs and cable operators.<sup>15</sup>

Although WIA requested that the Commission “make the CMRS rates for wireless attachments available as an option” automatically to any CLEC or CATV providers who agreed

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<sup>11</sup> D.16-01-046, mimeo at 2.

<sup>12</sup> D.16-01-046, mimeo at 13-15.

<sup>13</sup> D.16-01-046, mimeo at 2.

<sup>14</sup> D.16-01-046, mimeo at 2 (emphasis added).

<sup>15</sup> D.98-10-058.

to comply with the requisite safety rules,<sup>16</sup> the Commission declined to do so. Instead, the Commission directed interested parties to file a petition for a rulemaking to address issues the Commission believed needed to be resolved before it could extend the Revised ROW Rules to CATV and CLEC wireless attachments.<sup>17</sup> The CCTA Petition asks the Commission to extend Revised ROW Rules to wireless attachments installed by CATV corporations, and now WIA respectfully makes the same request of behalf of CLECs.

### **III. REQUESTED MODIFICATION**

WIA requests that the Commission extend the Revised ROW Rules adopted in D.16-01-046 to wireless facilities installed by CLECs on distribution poles, including the *per foot* rate. WIA is not requesting that the *per pole* rate from D.98-10-058 apply to CLEC wireless attachments. In accordance with Rule 6.3, Appendix A sets forth the WIA's proposed changes to the Revised ROW Rules in two versions. The first version (Appendix A-1) assumes this proceeding will be consolidated with the CCTA Petition and adds WIA's proposed changes to those previously proposed by CCTA. The second version (Appendix A-2) assumes no consolidation of the proceedings and consists primarily of the addition of a section for "CLEC wireless pole attachments" that tracks the section added by D.16-01-046 for "CMRS pole attachments."

### **IV. JUSTIFICATION FOR THE REQUESTED RELIEF**

As discussed above, the Commission recognized in D.16-01-046 that "there is no obvious reason why" the Revised ROW Rules should not apply to CLECs that install wireless facilities

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<sup>16</sup> See Opening Comments of PCIA at 1-2 (Nov. 19, 2015).

<sup>17</sup> D.16-01-046, mimeo at 43 (noting that "[t]he Scoping Memo specifically excluded from the scope of this proceeding 'revised fees and charges for [CLEC] and cable TV pole attachments.'").

on distribution poles.<sup>18</sup> WIA agrees and sets forth in this section the various reasons why the extension of the Revised ROW Rules to CLEC wireless attachments is sound public policy and required by law. First, there are no material differences between wireless facilities installed on poles by CMRS carriers and those wireless facilities proposed to be installed by CLECs. Second, extension of the Revised ROW Rules is required by federal and state law. Third, extension of the Revised ROW Rules will advance state policies to enhance competition and promote the deployment of broadband to the public. Finally, none of the issues raised by the Commission in D.16-01-046 present a barrier to the extension of the Revised ROW Rules to CLECs.

**A. CLECs' Wireless Attachments are Similar to CMRS Carriers' Wireless Attachments**

The wireless facilities installed on distribution poles by CLECs are similar, if not identical, to those installed by CMRS carriers. In D.16-01-046, the Commission found that a wireless attachment for a CMRS carrier consists of an antenna attached to a pole or pole top and the ancillary equipment directly supporting the antenna, including but not limited to a shut-off switch, power meter, battery backup, radio amplifier, power cabinet and risers for communication and power cable to connecting with the antenna.<sup>19</sup> The Commission also found that the CMRS installation is usually connected to a separately attached communications cable for backhaul.<sup>20</sup>

Similarly, those CLECs—which are members of WIA—utilize wireless attachments to enhance broadband coverage via outdoor DAS and other small cell technologies. An outdoor DAS network consists of: (i) antennas for the transmission and reception of a wireless service

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<sup>18</sup> D.16-01-046, mimeo at 43.

<sup>19</sup> D.16-01-046, mimeo at 27-28.

<sup>20</sup> D.98-10-058, mimeo at 28.

provider's RF signals; (ii) a high capacity signal transport medium (typically fiber optic cable) connecting each DAS node back to a central communications hub site; and (iii) radio transceivers or other head-end equipment located at the hub site.<sup>21</sup> Given the physical similarity of the wireless facilities installed by CMRS carriers with those proposed to be installed by CLECs, disparate legal treatment under California law is not warranted. In fact, the Commission has relied on the physical similarity of facilities in extending the statutorily mandated 7.4% per pole rate for CATV to CLECs.<sup>22</sup>

**B. Federal Law and CPUC Precedent Mandate Nondiscriminatory Access to Poles for Wireless Facilities Installed by CLECs**

Federal law—specifically 47 U.S.C. § 224(f)(1)—provides that “[a] utility shall provide a cable television system or any telecommunications carrier with non[-]discriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it.” Thus, the non-discriminatory access provisions of federal law apply to telecommunications carriers, which include CLECs.

Pursuant to federal law (namely, 47 U.S.C. § 224(c)), the Commission certified that it met the requirements of 47 U.S.C. § 224 in D.98-10-058 by regulating the “rate[s], terms, and conditions of access to poles, ducts, conduits, and ROW in conformance with [47 U.S.C.] § 224(c)(2) and (3).”<sup>23</sup> In so doing, the Commission committed to affording non-discriminatory access to poles in the ROW Decision.<sup>24</sup> The Commission recognized in D.16-01-046 that in asserting such jurisdiction under federal law to regulate non-discriminatory access, it assumed

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<sup>21</sup> See, e.g., October 21, 2014 Informational Report of AT&T Mobility, R.14-05-001, at 6; December 19, 2014 Comments of PCIA at 3.

<sup>22</sup> See D.16-01-046, mimeo at 28-29 (“Applying the same 7.4% per-pole fee to both CATV and CLEC pole attachments made sense because both types of attachments are similar and typically occupy 1 foot of pole space.”).

<sup>23</sup> See D.16-01-046, mimeo at 28-29; D.98-10-058, mimeo at 9.

<sup>24</sup> See, e.g., D.98-10-058, Appendix A, Section VI.A “General Principle of Nondiscrimination.”

the obligation to promulgate rules that apply to wireless attachments installed by CMRS carriers.<sup>25</sup>

In adopting such rules, the Commission recognized that the Federal Communications Commission (“FCC”) has determined that the benefits and protections of 47 U.S.C. § 224 apply to wireless carriers and wireless pole attachments.<sup>26</sup> WIA is merely seeking an extension of those rules to wireless pole attachments installed by CLECs. Nothing in federal law or FCC regulations or orders limits the rights of non-discriminatory access to wireless attachments installed *by CMRS carriers*. To the contrary, the FCC has extended attachment rights to wireless devices installed by telecommunications carriers, including CLECs.<sup>27</sup> However, federal law requires that management of public rights-of-way by State or local governments be done “on a competitively neutral and nondiscriminatory basis.”<sup>28</sup> Restricting the availability of these rules to wireless facilities installed by CMRS carriers would endanger the competitively level playing field that the initial ROW Rules sought to promote.<sup>29</sup>

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<sup>25</sup> D.16-01-046, mimeo at 13 (“In D.98-10-058, the Commission asserted jurisdiction under federal law to regulate non-discriminatory access. By asserting such jurisdiction, the Commission assumed the obligation to promulgate rules for nondiscriminatory access that apply to CMRS carriers.”).

<sup>26</sup> D.16-01-046, mimeo at 4 (citing *In the Matter of Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 at ¶¶ 12, 77, and 153 (FCC 2011)).

<sup>27</sup> 47 U.S.C. § 224(f)(1) affords non-discriminatory access to poles to “a cable television system or any telecommunications carrier,” while 47 U.S.C. § 224(a)(4) broadly defines the term “pole attachment” to mean “*any* attachment by a cable television system or provider of telecommunications service to a pole ... owned or controlled by a utility.” (Emphasis added.) In 1998, the FCC ruled that the term “pole attachment” encompasses wireless devices. *Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd. 6777 at ¶¶ 39-40 (FCC 1998), *affirmed*, *National Cable & Telecommunications Ass’n v. Gulf Power*, 534 U.S. 339-341 (2002).

<sup>28</sup> 47 U.S.C. § 253(c).

<sup>29</sup> D.98-10-058, mimeo at 113 (Findings of Fact 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.”).

**C. Extending Revised ROW Rules to Wireless CLEC Attachments will Facilitate Broadband Deployment in California**

Pub. Util. Code § 709 states: “[t]he Legislature hereby finds and declares that the policies for telecommunications in California are as follows ... (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice.” The Commission recognized in D.98-10-058 that “[n]ondiscriminatory access to the incumbent utilities’ poles, ducts, conduits, and rights-of-way is one of the essential requirements for facilities-based competition to succeed.”<sup>30</sup> The extension of the Revised ROW Rules to CLECs’ wireless facilities will enhance competition among broadband providers in furtherance of state policy.<sup>31</sup> Enhanced competition will promote the growth of broadband deployment. More specifically, extending non-discriminatory pole access rights and rates to CLECs’ wireless attachments will enable CLECs to offer competitive options for small cell and other solutions to CMRS carriers who often must rely upon the ILECs for access to infrastructure.<sup>32</sup>

The extension of Revised ROW Rules also would be consistent with the policy set forth in Pub. Util. Code § 9510(a) in which the Legislature recognized that CLECs would install wireless facilities as part of broadband deployment: “in order to promote wireline *and wireless* broadband access and adoption, it is in the interest of the state to ensure that local publicly

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<sup>30</sup> D.98-10-058, mimeo at 113 (Findings of Fact 2).

<sup>31</sup> See Pub. Util. Code § 709 (“The Legislature hereby finds and declares that the policies for telecommunications in California are as follows . . . [t]o encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services”); Interim Opinion Implementing California Advanced Services Fund, D.07-12-054, mimeo at 2-4 (noting that “[b]roadband deployment will be a key measure of success in our information economy and is crucial to future productivity growth of the State”).

<sup>32</sup> See Opening Comments of CCTA in R.14-15-001 at 7.

owned electric utilities . . . make available appropriate space . . . to telephone corporations . . . under reasonable rates, terms, and conditions.”<sup>33</sup>

**D. The Issues Identified in D.16-01-046 are Not Barriers to the Commission Granting Access to Public Utility Infrastructure to CLECs’ Wireless Attachments**

None of the issues identified by the Commission is a barrier to the Commission extending Revised ROW Rules to CLECs’ wireless attachments as set forth below.

**1. Harmonizing the “per foot” pole attachment fee established for CMRS carriers with the statutory “per pole” attachment fee for CLECs and D.98-10-058**

D.16-01-046 extended the ROW Rules to CMRS wireless installations with one exception: instead of providing a “per pole” rate, the decision adopted a “per foot” rate for the installation of the wireless facilities.<sup>34</sup> Decision 16-01-046 thus directed CLECs seeking to extend the D.16-01-046 to CLEC wireless attachments to address how the “per foot” rate can be harmonized with the “per pole” rate set forth in D.98-10-059 for CLECs. WIA respectfully suggests that there is no need for such harmonization. Because CLECs seek access for their wireless attachments on the same rates and terms afforded to CMRS carriers in the Revised ROW Rules, there is no need to “harmonize” the two rates. WIA suggests that the “per foot” rate for CLEC wireless pole attachments should be subject to the rate approach set forth in D.16-01-046, while the “per pole” rate for CLEC wireline attachments should remain subject to the rate approach set forth in Pub. Util. Code § 767.5.

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<sup>33</sup> Pub. Util. Code § 9510(a) (emphasis added).

<sup>34</sup> D.16-01-046, mimeo at 2-3.

## 2. Identifying and distinguishing components subject to the “per pole” fee and the components subject to the “per foot” fee

D.16-01-046 also asked petitioners to identify and distinguish the components that would be subject to “per foot” fees as opposed to the “per pole” fee.<sup>35</sup> This issue, however, is not unique to CLECs. Distinguishing between wireless and wireline attachments is also an issue faced by CMRS carriers who also install both wireless and wireline facilities on a single pole. The Commission acknowledged in D.16.01-046 that a “CMRS installation is usually connected to a separately installed communication cable for backhaul,”<sup>36</sup> while outdoor DAS networks, which can be installed by either CMRS carriers or CLECs, typically also include both fiber-optic cable attachments and antennas.<sup>37</sup> The Commission, therefore, should use the same techniques to distinguish between wireline and wireless facilities installed by CLECs used to distinguish those facilities installed by traditional telephone companies.

Specifically, the antennas and equipment attached to the pole that directly support the antenna would be subject to the per-foot CMRS rate, while the other equipment necessary to support wireline CLEC plant (*e.g.*, the fiber optic cable) would be subject to the per-pole rate. Moreover, consistent with D.16-01-046,<sup>38</sup> the 7.4% per foot rate should not apply to (i) conduits

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<sup>35</sup> D.16-01-046, mimeo at 43.

<sup>36</sup> D.16-01-046, mimeo at 28.

<sup>37</sup> In fact, AT&T itself installs DAS attachments. *See, e.g.*, October 21, 2014 Informational Report of AT&T Mobility, R.14-05-001, mimeo at 6.

<sup>38</sup> D.16-01-046, mimeo at 42 (“We agree with the parties that the 7.4% per-foot attachment fee should not apply to conduits, risers, and electric utility meters that are attached to a pole as part of a CMRS installation. In our opinion, it is neither necessary nor feasible to devise a rule that specifies the amount of pole space that a CMRS conduit or riser renders unusable for non-CMRS attachments. The electric utility meter for a CMRS installation is owned by the electric utility. Because the electric utility decides where to place the meter (*e.g.*, on the pole, on a surface-mound enclosure, or in an underground vault), the CMRS carrier should not be charged a pole-attachment fee if the electric utility elects to place the meter on the pole.”).

and risers connecting the antennas and (ii) any electric meters associated with the antenna to the extent the meters are required by the pole owner(s).

**3. Clarifying the Commission’s authority to apply and enforce its Revised ROW Rules and safety regulations with respect to cable corporations’ wireless facilities in light of the Commission’s conclusion in D.15-05-002 that the term “cable” in Pub. Util. Code § 216.4 does not include satellite and other forms of wireless transmission**

D.16-01-046 asked cable petitioners to address the Commission’s authority to enforce its Revised ROW Rules and safety regulations with respect to cable corporations’ wireless facilities in light of the Commission’s conclusion in D.15-05-002 that the term “cable” in Pub. Util. Code § 216.4 does not include satellites and other forms of wireless transmission.<sup>39</sup> Because CLECs are not cable corporations, this issue is not relevant to the instant petition.

**V. REQUEST FOR EXPEDITED TREATMENT**

WIA respectfully requests the issuance of a decision on this Petition on an expedited schedule. Because WIA merely is seeking an extension of the same rules and rates that apply to CMRS attachments in D.16-01-046 with no modification and because there are no material facts in dispute, WIA respectfully submits that the Commission should be able to conduct this proceeding on a streamlined, expedited basis. An expedited schedule also is warranted because the extension of the Revised ROW Rules to CLEC wireless attachments will promote broadband deployment in California consistent with Commission’s policy goals set forth in Section 709 and will foster a level competitive playing field. Moreover, because no party expressed opposition to the CCTA Petition, which contains similar issues of law and fact, within 30 days of the date of its filing, this proceeding should be addressed on an expedited schedule.

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<sup>39</sup> D.16-01-046, mimeo at 44.



## Verification

David Van Fleet Bloys, under penalty of perjury, states as follows:

I am Senior Government Affairs Counsel for the Wireless Infrastructure Association and make this verification for and on behalf of the Association. I have read the foregoing Petition, and the contents thereof, and the facts stated therein are true to the best of my knowledge, information and belief.

Dated at Alexandria, Virginia, this 29<sup>th</sup> day of August, 2016.

  
\_\_\_\_\_  
David Van Fleet Bloys

**APPENDIX A-1 (Assuming Consolidation of the WIA and CCTA Petitions)  
WIA's Proposed Changes to  
Commission-Adopted Rules Governing Access to Rights-of-Way and Support Structures of  
Incumbent Telephone and Electric Utilities, Section VI(B)**

**Note:** CCTA's proposed rule changes are indicated in **bold, black underlined text**. WIA's proposed rules changes are in addition to CCTA's proposed rule changes and are indicated in bold, **bold, maroon, double underlined text**.

VI. PRICING AND TARIFFS GOVERNING ACCESS

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B. MANNER OF PRICING ACCESS

1. Whenever a public utility and a telecommunications carrier, CMRS 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 or CMRS carrier.
  - b. An annual recurring fee computed as follows:
    - (1) **Except as provided in section (3) below, f**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 each pole and supporting anchor actually used by a CMRS carrier, the annual fee for each foot of vertical pole space occupied by the CMRS installation 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. The per-foot fee for CMRS installations is subject to the following conditions and limitations:

- (i) The vertical pole space occupied by each CMRS attachment shall be rounded to the nearest whole foot, with a 1-foot minimum.
- (ii) The 7.4% per-foot fee applies to the pole space that a CMRS attachment renders unusable for non-CMRS attachments, including (A) the pole space that is physically occupied by the CMRS attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the CMRS attachment.
- (iii) The 7.4% per-foot fee applies to CMRS attachments anywhere on the pole.
- (iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple CMRS pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each CMRS attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.
- (v) The total pole-attachment fees for all CMRS attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.
- (vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with CMRS installations.

**(3) The per-foot fee for Cable or CLEC wireless attachments is subject to the following conditions and limitations:**

- (i) The vertical pole space occupied by each Cable or CLEC wireless pole attachment shall be rounded to the nearest whole foot, with a 1-foot minimum.
- (ii) The 7.4% per-foot fee applies to the pole space that a Cable or CLEC wireless pole attachment renders unusable for non-Cable or non-CLEC wireless pole attachments, including (A) the pole space that is physically occupied by the Cable or CLEC wireless pole attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the Cable or CLEC wireless pole attachment.
- (iii) The 7.4% per-foot fee applies to Cable or CLEC wireless pole attachments anywhere on the pole.
- (iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple wireless pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each Cable or CLEC wireless pole attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.
- (v) The total pole-attachment fees for all multiple wireless pole attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.
- (vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with Cable or CLEC wireless pole installations.

⊕ (4) For support structures used by the telecommunications carrier, CMRS 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, CMRS 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, CMRS carrier’s, or cable TV company’s equipment.

- c. Except as allowed by Section VI.B.1.b(2) **and (3)**, above, a utility may not charge a telecommunications carrier, CMRS 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.
- d. A utility may not charge a CMRS carrier a higher rate for access to its rights of way and support structures than it would charge a similarly situated **non-CMRS** carrier for access to the same rights of way and support structures.

**APPENDIX A-2 (Assuming No Consolidation of the WIA and CCTA Petitions)  
WIA's Proposed Changes to  
Commission-Adopted Rules Governing Access to Rights-of-Way and Support Structures of  
Incumbent Telephone and Electric Utilities, Section VI(B)**

VII. PRICING AND TARIFFS GOVERNING ACCESS

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B. MANNER OF PRICING ACCESS

1. Whenever a public utility and a telecommunications carrier, CMRS 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 or CMRS carrier.
  - b. An annual recurring fee computed as follows:
    - (1) **Except as provided in section (3) below, f**or 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 each pole and supporting anchor actually used by a CMRS carrier, the annual fee for each foot of vertical pole space occupied by the CMRS installation 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. The per-foot

fee for CMRS installations is subject to the following conditions and limitations:

- (i) The vertical pole space occupied by each CMRS attachment shall be rounded to the nearest whole foot, with a 1-foot minimum.
- (ii) The 7.4% per-foot fee applies to the pole space that a CMRS attachment renders unusable for non-CMRS attachments, including (A) the pole space that is physically occupied by the CMRS attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the CMRS attachment.
- (iii) The 7.4% per-foot fee applies to CMRS attachments anywhere on the pole.
- (iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple CMRS pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each CMRS attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.
- (v) The total pole-attachment fees for all CMRS attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.
- (vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with CMRS installations.

**(3) The per-foot fee for CLEC wireless attachments is subject to the following conditions and limitations:**

- (i) **The vertical pole space occupied by each CLEC wireless pole attachment shall be rounded to the nearest whole foot, with a 1-foot minimum.**

- (ii) The 7.4% per-foot fee applies to the pole space that a CLEC wireless pole attachment renders unusable for non-CLEC wireless pole attachments, including (A) the pole space that is physically occupied by the CLEC wireless pole attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the CLEC wireless pole attachment.
- (iii) The 7.4% per-foot fee applies to CLEC wireless pole attachments anywhere on the pole.
- (iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple wireless pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each CLEC wireless pole attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.
- (v) The total pole-attachment fees for all multiple wireless pole attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.
- (vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with CLEC wireless pole installations.

~~(4)~~ **(4)** For support structures used by the telecommunications carrier, CMRS 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, CMRS 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, CMRS carrier's, or cable TV company's equipment.

- c. Except as allowed by Section VI.B.1.b(2) **and (3)**, above, a utility may not charge a telecommunications carrier, CMRS 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.
  
- d. A utility may not charge a CMRS carrier a higher rate for access to its rights of way and support structures than it would charge a similarly situated **non-**CMRS carrier for access to the same rights of way and support structures.