

**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

Petition No. 16-08-016

**THE WIRELESS INFRASTRUCTURE ASSOCIATION MOTION
TO CONSOLIDATE PROCEEDINGS**

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August 30, 2016

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Pursuant to Rules 7.4 and 11.1 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), the Wireless Infrastructure Association (“WIA”) respectfully requests that the Commission consolidate the above-captioned Petition of Wireless Infrastructure Association for a Rulemaking to Extend the ROW Rules for CMRS Facilities to Wireless Facilities Installed by CLECs (“WIA Petition”) filed on August 29, 2016 with the Petition of California Cable & Telecommunications Association for a Rulemaking to Extend the ROW Rules for CMRS Facilities to Wireless Facilities Installed by Cable Corporations (“CCTA Petition”) (Petition No. 16-07-009) filed on July 14, 2016. The two proceedings involve sufficient common issues of law and fact to justify consolidation. Moreover, consolidation will provide administrative efficiency, ensure consistent treatment of common issues, and will obviate the need for the Commission to issue two decisions.

In Decision (D.) 16-01-046, the Commission declined to extend the wireless pole attachment rights extended in that decision to CMRS carriers to cable corporations and competitive local exchange carriers (“CLECs”); however, the Commission encouraged both cable operators and CLECs to file a petition to extend the ROW Rules to both categories of

providers “at their earliest convenience.”¹ Cable operators and CLECs now have done so through their respective industry associations. As detailed below, the WIA Petition and the CCTA Petition involve virtually identical issues of law and fact.

Rule 7.4 provides that “[p]roceedings involving related questions of law or fact may be consolidated.” The factual issues are virtually identical because the wireless facilities proposed to be installed by CLECs and cable operators on distribution poles are similar (and, in fact, are essentially the same as the wireless facilities installed by CMRS carriers on distribution poles).² The same components are used by each of the three classes of providers: 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.³

The legal issues in the two petitions are essentially identical as well. The same legal and policy arguments supporting the extension of wireless attachment rights apply to cable operators and CLECs alike. Moreover, in D.16-01-146, the Commission set forth three issues that a petition should address before the ROW Rules may be extended to cable or 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 cable or CLEC wireless pole attachments;
- (ii) how to identify and distinguish between components that include both wireline and wireless attachments for cable or CLEC pole installations that contain both; and
- (iii) to address the Commission’s authority to enforce its ROW Rules upon wireless facilities installed by cable corporations in light of the

¹ D.16-01-146, mimeo at 43.

² See WIA Petition at 8-9; CCTA Petition at 6-7.

³ *Id.*

Commission's conclusion in D.15-05-002 that the term "cable" does not include "satellites or other forms of wireless transmission."⁴

In their respective petitions, CCTA and WIA have explained in a similar manner how the first two issues can be resolved.⁵ Although the third issue pertains only to cable operators, it is a discrete issue that can be addressed solely by CCTA. Finally, CCTA and WIA have made similar proposals to amend the Commission's ROW Rules.

Administrative efficiency also favors consolidation. WIA represents a number of companies that have been certificated as CLECs by the Commission to provide telecommunications service in California,⁶ while CCTA represents "incumbent cable television corporations whose systems pass approximately 96% of California's homes."⁷ Thus, one consolidated proceeding can address the interests of virtually all California cable operators and CLECs having a desire to attach wireless facilities to distribution poles – as well as the interests of pole owners and interested third parties – while minimizing the burden on the Commission's resources. Moreover, consolidation "will obviate the need to issue two decisions."⁸

⁴ D.16-01-046, mimeo at 43-44.

⁵ See WIA Petition at 12-14; CCTA Petition at 10-14.

⁶ WIA Petition at 1.

⁷ CCTA Petition at 1, note 1.

⁸ *Joint Application of Lodi Gas Storage, LLC, et al.*, Order Granting Motion for Consolidate, D.08-04-033 2008 Cal. PUC LEXIS 126 at *9 (2008).

Because the WIA Petition and the CCTA Petition involve virtually identical issues of law and fact, WIA respectfully requests that the Commission consolidate the two proceedings.

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