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PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Communications Division
Carrier Oversight & Programs Branch

Resolution T-17397
August 15, 2013

R E S O L U T I O N

Resolution T-17397. This Resolution conditionally approves for a limited term of two years and with conditions, the request of Verizon California Incorporated (U-1002 C) for a deviation from Public Utilities Code Section 320 regarding the placement of overhead distribution facilities absent Commission approval in 2004, on existing electric utility poles along highway 395 in Mono County from Mile Marker 76.8 to Mile Marker 104.8, subject to mitigation measures and payment of a \$5,000 fine.

By Advice Letter 12415 filed June 18, 2009, and Advice Letter (AL) 12415-A filed on September 18, 2009.

Summary

This Resolution grants Verizon California Incorporated (Verizon) a two-year deviation from Public Utilities Code Section 320 (Section 320), and is contingent upon completion of the following mitigation measures: (1) the replacement of aluminum cable dampers within 1,000 feet of four crossings on scenic highway 395; (2) the completion of an inspection of sagging cables by Verizon for compliance with General Order (G.O.) 95 along scenic highway 395; (3) an attestation by Verizon of Section 320 compliance and a plan to notify government agencies prior to placing facilities along designated state scenic highways; and (4) remittance of a fine in the amount of \$5,000. If facilities undergrounding along this segment of scenic highway 395 is not started before July 1, 2015, Verizon is directed to file a Tier 3 AL no later than that date to justify the need to extend the Section 320 deviation.

Background

Section 320 was enacted in 1971, Chapter 1697, reads in relevant part as follows:

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The legislature hereby declares that it is the policy of this state to achieve, whenever feasible and not inconsistent with sound environmental planning, the undergrounding of all future electric and communication distribution facilities which are proposed to be erected in proximity to any highway designated a state scenic highway pursuant to Article 2.5 (commencing with § 260) of Chapter 2 of Division 1 of the Streets and Highways Code and which would be visible from such scenic highways if erected above ground. The Commission shall prepare and adopt by December 31, 1972, a statewide plan and schedule for the undergrounding of all such utility distribution facilities in accordance with the aforesaid policy and the rules of the Commission relating to the undergrounding of facilities. The Commission shall require compliance with the plan upon its adoption.

The Commission is responsible for the administration of Section 320. After hearings conducted in Case 9364, the Commission, through state legislation, implemented Decision (D.)80864, which states:

In order to facilitate administration, letter requests for deviations will be accepted, reviewed by the Commission staff and, where appropriate, approved by Commission resolution. (74CPUC 457, D.80864)

Decision 80864 stipulates that no communications or electric utility shall install overhead distribution facilities "in proximity to" and "visible from" any prescribed corridor on a designated scenic highway in California unless a showing is made before the Commission and the Commission finds that undergrounding would not be feasible or would be inconsistent with sound environmental planning. The Decision also defines "in proximity to" as being within 1,000 feet from each edge of the right-of-way (ROW) of designated state scenic highways.

D.80864 further stipulates that when repairs or replacement of existing overhead facilities in the same location do not significantly alter the visual impact of the scenic highway, they should not be considered as new construction and need not be converted to underground. Therefore, based on D.80864, opportunities to seek exemptions to

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Section 320 are permitted when undergrounding would be economically infeasible and would not significantly alter the visual impact of the scenic highway.

Communications Division (CD) received a letter from a resident of Mono County reporting a possible Section 320 violation along scenic highway 395. CD Staff asked Verizon whether there was any instance of other overhead facilities placed along scenic highways in California. Verizon conducted an analysis and responded by filing ALs 12412, 12413, 12414 and 12415 requesting "waivers" from Section 320.

This Resolution concludes a review of AL 12415, one of the four ALs filed by Verizon on June 18, 2009, requesting a deviation¹ from Section 320, which requires that, all communications facilities or electric utilities within 1,000 feet of a scenic highway are undergrounded.² In 2004, Verizon placed overhead distribution facilities along scenic highway 395 in Mono County from the junction of State Route 108 to north of Bridgeport, California without first obtaining a deviation from the CPUC pursuant to Section 320. Verizon only requested this deviation after the overhead facilities were installed.

During the review of AL 12415, CD Staff found Verizon's service list to be insufficient, since it omitted parties of interest to the deviation request, and requested from Verizon a more comprehensive list to include additional parties.³ Verizon complied with this request by filing AL 12415-A on September 18, 2009, which included the revised service list. On November 3, 2009, CD Staff received a letter from Mr. Stephen Kalish, a resident of Mono County, stating that while his name was on the service list for AL 12415, he never received a copy of the AL, and therefore missed the 20-day window for submitting comments.⁴ Verizon responded by serving Mr. Kalish a copy of AL 12415-A on November 16, 2009.

Notices/Protests

On November 23, 2009, Mr. Kalish filed a protest to Verizon AL 12415-A, requesting that the Commission reject the deviation request and, instead, require Verizon to underground all aerial facilities along scenic highway 395.

¹ In its filing Verizon refers to its request for a "waiver". The language in § 320 is "deviation".

² California Public Utilities Commission Decision (D) 80864, December 16, 1972.

³ The parties are: Mono County, the City of Bridgeport, Cal Trans, Bureau of Land Management, United States Department of Transportation, United States Forest Service, Sierra Club-Toiyabe Chapter, and Mr. Stephen Kalish.

⁴ General Order 96-B, General Rules, Filing of Protest: Rule 7.4.1

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On December 1, 2009, Verizon responded to Mr. Kalish's protest by apologizing for the omission, and further stating that it would not object to submission of comments after expiration of the twenty-day window. Verizon, however, defended its deviation request:

[Verizon]...provided all information requested by (CD) staff...The relief requested is consistent with law and Commission precedent...the protest be dismissed and the relief requested in the ALs be granted.

CD Evaluation of Section 320 Deviation Request

CD Staff considered the following in evaluating Verizon's Section 320 deviation request: (1) the nature of the project; (2) local government recommendations; (3) the visual impact of the project; and (4) the economic feasibility of the project. CD Staff bases its recommendation on tangible evidence from field visits, data requests and the subsequent analysis of these factors. Through this evaluation, CD staff proposes various mitigation measures and a fine for failure to timely submit a Section 320 deviation request.

1. Nature of Project

A. Project Description

In AL 12415, Verizon identified the placement of overhead distribution facilities along scenic highway 395 in unincorporated Mono County from Mile Marker (MM) 76.8 to 104.8. Verizon acknowledged placing these facilities in 2004, after the designation of scenic highway 395 in 2000. Specifically, Verizon placed approximately 65,000 feet of 48-fiber aerial cable, 0.79 inches in diameter, black in color. The overhead distribution facilities were placed on existing power poles with the existing power line lead, and along existing copper cable leads adjacent to other cables within the scenic highway ROW. The existing poles are overhead electric distribution facilities which Southern California Edison (SCE) placed in 1962 and 1963, and which have been shared under a joint pole agreement with Verizon's predecessor, GTE California, since 1963.⁵ Verizon also placed overhead distribution facilities at three locations across scenic highway 395

⁵ Verizon's immediate predecessor was GTE California or GTEC. GTEC was preceded by General Telephone of California (General Telephone), which changed its name to GTEC in 1987. GTEC became Verizon in 2005.

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at MM 80.6, 85.7 and 93.7. The elevation for this placement ranges from 6,500 to 7,600 feet.

B. Identification of Scenic Highway 395

In response to a resident complaint that Verizon may have failed to comply with Section 320 in Mono County, CD asked Verizon in 2009 if it had deployed overhead distribution facilities subject to Section 320 elsewhere in California without seeking a deviation from the Commission. Verizon undertook an analysis to identify the placements of overhead distribution facilities along any scenic highway after the highway received such designation, and any associated Section 320 deviations the Commission had granted. This analysis identified scenic highway 395 in Mono County along which Verizon (or GTEC or General Telephone) placed overhead distribution facilities without obtaining a deviation pursuant to Section 320.

In AL 12415, Verizon responded as follows:

“ [Verizon] undertook an analysis to identify all scenic highways in Verizon's service territory; any placements of overhead distribution facilities along scenic highways after the highway received such designations, and any associated Section 320 waivers [Verizon's language] granted by the Commission. This analysis identified the portion of scenic highway 395 in Mono County from Bridgeport to South of Walker (MM 76.8-104.8) as one route along which Verizon placed overhead distribution facilities without obtaining a waiver pursuant to Public Utilities Code (P.U. Code) Section 320. Verizon has advised staff of its analysis and is working cooperatively to remedy this oversight...”

CD Staff deems the term "waiver," which Verizon used in AL 12415, inappropriate, and instead, uses the term "deviation", which appears in D.80864.

In AL 12415, Verizon provided five reasons why it utilized overhead distribution facilities instead of undergrounding as mandated in Section 320:

1. The facilities were placed on existing power poles.

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2. Because of the project's elevation, undergrounding could delay restoration of services.
3. The cost of undergrounding would equal twelve times the cost of building overhead distribution facilities.
4. The addition of the fiber cable to existing facilities would not create additional visual adverse effects to the highway.
5. If the fiber cable were placed underground, the existing electric distribution facilities would remain in place.

C. Scenic Highway Area Description

Portions of scenic highway 395 including a segment from the junction of State Route 108 to north of Bridgeport, CA. received designation as scenic highway on June 5, 2000. Scenic highway 395 traverses along the slope of the eastern edge of the Sierra Nevada Mountains, near the Nevada state line. The elevation is approximately 7,000 feet, and the terrain is typical of a high desert plateau. It is an open, pristine expanse of grazing ranges and meadows with the Sierra Nevada range in plain sight to the west. There are a few structures visible from scenic highway 395 consisting of homes, ranches and barns.

D. Existing Facilities Along Scenic Highway 395

The overhead distribution facilities as referenced in AL 12415 were placed on joint pole attachments to existing overhead distribution electric facilities on an existing power line lead and along an existing copper cable lead adjacent to other cables within the scenic highway ROW. SCE initially constructed the existing overhead distribution electric facilities along scenic highway 395⁶ in 1962, while copper aerial facilities were placed in 1963. The facilities placement across scenic highway 395 at MM 79.0 is copper and was placed in 1963. The crossings at MMs 80.6, 85.7 and 93.7 consist of fiber and were placed by Verizon in 2004, after the designation of scenic highway 395 in 2000.

On November 9, 2009, CD Staff met with representatives from Verizon and the California Department of Transportation (Caltrans) to conduct a site visit and evaluate the overhead distribution facilities. CD Staff observed the overhead distribution facilities along scenic highway 395 from north of Bridgeport to the junction of Highway 108 from MM 76.8 to 104.8. Both Caltrans and Verizon identified the same aerial crossings at MM 80.6, 85.7 and 93.7.

⁶ U.S. Highway 395 prior to designation as Scenic Highway.

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2. Coordination with Local Government Agencies

Verizon notified Caltrans of their project, and Caltrans issued a Standard Encroachment Permit Application on Jan. 19, 2004 for the placement and construction of overhead distribution facilities along scenic highway 395 in Mono County at MMs 80.6, 85.7 and 93.7.

Verizon asserts it attempted to contact governmental agencies with jurisdiction or interest in scenic highway 395. CD Staff was unable to find any record of an "expression of opinion" from appropriate local government agencies or representatives in support of the project as required by Section 320. CD subsequently received a letter dated Sept. 16, 2011 from Mono County, stating that "... the communication infrastructure Verizon installed is necessary for the public safety and economic viability of the communities it serves. With this recognition, lines should be placed underground if at all possible, but not at the expense of cutting off existing service." In addition, Verizon did not submit an Environmental Impact Statement in AL 12415, prepared by any public agency having permit authority over the project. CD believes that it is Verizon's responsibility to be more diligent in working with local agencies that have interest or jurisdiction over scenic highways. As such, CD recommends that Verizon develop a plan for working with local, state, and federal agencies with jurisdiction over distribution facilities along designated state scenic highways, within 90 days of this resolution. We believe such a plan would allow Verizon to better respond to future projects involving overhead facilities along scenic highways.

3. Visual Impact

During the site visit, CD Staff observed that the joint electric and telephone overhead distribution facilities were clearly visible from scenic highway 395 and have a noticeably cumulative visual impact on the open landscape along the scenic highway corridor. The fiber placed on the overhead distribution facilities is black in color, unlike electric or copper wire, and its thickness makes it more prominent. Splices and terminals, also black in color, are strung from the fiber and create an additional visual impact.

Since the electric overhead distribution facilities along scenic highway 395 were placed prior to 2000, they are exempt from Section 320. The overhead distribution facilities at three of the four crossings sites at MM 80.6, 85.7 and 93.7 constructed after 2000 contribute to the visual impact of the corridor. CD Staff observed that at multiple

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locations along scenic highway 395 and at the four crossings, fiber cable sagged and was not parallel with the electric cables. Although CD Staff requested that Verizon measure the distance from the cable to the roadway at several intervals and document the measurements, Verizon has not provided these measurements to CD Staff. Since the sagging fiber cables adversely affect the visual impact of the scenic highway, CD Staff recommends that Verizon be directed to perform an inspection for compliance with G.O. 95⁷ along scenic highway 395 within 90 days of this Resolution.

During the site visit, CD Staff also noticed glare from the overhead distribution facilities, which not only posed a safety hazard but also added to the cumulative visual impact of the scenic highway corridor. Verizon utilized cable wind dampers (to secure cables together) made from aluminum and the reflection from the sunlight was the source of the glare. Verizon suggested that replacing the aluminum cable wind dampers with ones painted flat black would mitigate the visual impact and the source of the glare. CD Staff concurs and recommends that Verizon should be directed to replace the aluminum cable wind dampers with ones less prone to glare within 1,000 feet in either direction, at each crossing, in order to mitigate the cumulative visual impact to scenic highway 395. CD Staff further recommends that Verizon conduct an inspection of overhead distribution facilities along scenic highway 395 for compliance with G.O. 95 within 90 days of this Resolution, to ensure that the fiber Verizon places will meet the distance and separation requirements for joint utility poles.

4. Economic Feasibility

Verizon estimates that the cost of undergrounding as per Section 320 would be greater than the overhead placement on existing facilities (please see Table 1 below). Verizon estimates the cost of undergrounding at \$2,691,000 or \$41.40 per foot. In contrast, the cost of aerial construction was estimated to be \$224,250 or \$3.45 per foot. The resulting cost ratio between undergrounding and overhead placement is 12:1, demonstrating that the undergrounding option is far more costly. CD Staff then requested that Verizon study the feasibility of joint trenching along scenic highway 395 with a broadband project funded by the California Advanced Services Fund (CASF).

In an October 26, 2012 letter to CD's Director, Verizon estimated the costs for joint trenching to be between approximately \$730,000 and \$750,000, and asserted that since the facilities in question were placed on existing SCE poles with electric facilities,

⁷ Rules for Overhead Line Construction, August 20, 2009.

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undergrounding Verizon's facilities would not result in any meaningful reduction to the visual impact along scenic highway 395.

Table 1

Verizon Cost Options	
Estimate for the undergrounding of facilities ⁸	\$2,691,000
Estimate for joint trenching ⁹	\$730,448 - \$747,748
Estimate for Constructing Overhead Facilities	\$224,250

CD Staff does not dispute Verizon's assertion that the visual impact would remain the same, as SCE cables would still be present along scenic highway 395. Additionally, the cost ratio between joint trenching and overhead placement is approximately 3.5:1, considering Verizon's aerial construction estimate of \$224,250. Finally, since trenching for the CASF broadband project is well underway, the prospect for joint trenching is not a feasible option to recommend at this time and would delay broadband deployment in the area.

5. Future Compliance with Public Utilities Code Section 320

To ensure future compliance with Section 320, CD Staff recommends that Verizon should submit a plan for future construction of communication facilities along a stretch of any designated state scenic highway. This plan should contain all the actions necessary for construction of communication facilities including procedures for: (a) determining whether facilities construction is along a designated scenic highway; (b) obtaining permits and/or authorization from government agencies from which permits and/or authorization would be necessary; and (c) providing notification to government agencies with interest, including the Commission, and facilitation for public comment by interested parties should Verizon seek additional exemptions to Public Utilities Code Section 320.

Fine for Violating Public Utilities Code Section 320

Violations of P.U. Code can result in the imposition of fines. In D.98-12-075,¹⁰ the Commission concluded as follows:

⁸ Verizon's response to data request August 4, 2009.

⁹ Verizon's letter to the Director of CD, Oct. 26, 2012.

¹⁰ Rulemaking to Establish Rules for Enforcement of the Standards of Conduct Governing Relationships Between Energy Utilities and Their Affiliates Adopted By the Commission. April 9, 1998

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...disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity.

Further, P.U. Code § 702 is relevant:

Every public utility shall obey and comply with every order, decision, direction, or rule made or prescribed by the Commission in the matters specified in this part, or any other matter in any way relating to or affecting its business as a public utility, and shall do anything necessary or proper to secure compliance therewith by all of its officers, agents and employees.

In AL 12415, Verizon does not contest that the overhead distribution facilities were constructed after designation of scenic highway 395 in violation of Section 320, but it does not propose a remedy other than requesting a deviation after the fact. In considering the request for deviation, CD Staff believes that prudent practice requires that all public utilities take reasonable steps to ensure compliance with Commission directives. This includes becoming familiar with applicable laws and regulations regarding telecommunication carriers.

In assessing an appropriate penalty for failure to comply with Section 320, CD Staff considered the directives in D.98-12-075 such as:

1. Severity of the Offense.
2. Conduct of the Utility.
3. Financial Resources of the Utility.
4. The Role of Precedent.
5. Totality of Circumstances in Furtherance of the Public Interest.

In D.98-12-075,¹¹ the Commission also held that a fine level should be set such that it effectively deters further unlawful conduct, while being specifically tailored to the unique facts of the case. The facts that mitigate the degree or wrongdoing are balanced with those that aggravate the level of wrongdoing.

¹¹ D.2.b. Fines

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For this deviation request, CD Staff finds that Verizon was negligent in failing to comply with all Commission statutes, rules and regulations governing Section 320, prior to seeking this waiver. However, CD Staff takes note that Verizon self-identified this failing by filing AL 12415. As the Commission had previously imposed a \$5,000 penalty for other self-identified Verizon Section 320 violations in Resolutions T-17261 (addressing AL 12412), T-17270 (addressing AL 12414) and T-17271 (addressing AL 12413), CD staff believes that a \$5,000 fine is also appropriate here. An imposed penalty amount of \$5,000 plus ordered mitigation measures will serve as a deterrent for future occurrences, act as restitution for the wrongdoing, confirm Verizon's adherence to all Commission rules and regulations, assume further protection for all California scenic highways and finally, protect against a competitive advantage and illegal construction of overhead distribution facilities. In accordance with P.U. Code Section 2107, the Commission puts Verizon on notice that delays to implement the ordered mitigation measures discussed herein, or future Section 320 violations will be subject to more substantial penalties.¹²

Additionally, the Commission notes that in the case of this late-filed deviation request, opportunities existed and continue to exist to place the aerial facilities in question underground. Existing undergrounding opportunities are addressed in the Comments section of this Resolution.

Safety Considerations

During the field visit, CD Staff observed sagging cables, fiber and leaning poles along scenic highway 395, and requested Verizon to measure the distance between its facilities and the roadway. Although the cables did not appear to create a fire hazard at that time, CD recommends that Verizon conduct an inspection for G.O. 95 violations¹³ and report the results to the Commission within 90 days of approval of this Resolution. In G.O. 95, Section 1, Rule 11 states:

The purpose of these rules is to formulate for the State of California, requirements for overhead line design, construction and maintenance, the application of which will ensure adequate service and secure safety to persons engaged in the construction of,

¹² P.U. Code § 2107: Any public utility that violates or fails to comply with any provision...or requirement of the commission...is subject to a penalty of not less than five hundred dollars (\$500) nor more than fifty thousand dollars (\$50,000) for each offense.

¹³ Rules for Overhead Line Construction, August 20, 2009.

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maintenance and operation or use of overhead lines
and to the public in general.¹⁴

Since the facilities Verizon placed are on poles owned by SCE, Verizon will report the results of their inspection in a letter to the Directors, respectively, of the Communications and the Safety and Enforcement Divisions, so that they may take appropriate action for G.O. 95 compliance.

Comments

Public Utilities Code § 311(g)(1) requires the Commission to serve copies of draft resolutions on all parties, and make the draft resolution available for public review and comment for a period of 30 days or more, prior to a vote by the Commission on the resolution. On April 9, 2013, the Commission served a copy of this resolution for comments to all persons on the attached service list. However, an error on the electronic service list caused an interested party to not be served. This party then received a copy of the draft resolution and submitted comments, which have been considered in this draft resolution.

CD Staff received comments on the draft resolution from Mr. Stephen Kalish on May 13, 2013. In summary, Mr. Kalish disputes the estimated cost economics of undergrounding these facilities and urges the Commission to deny this Section 320 waiver request. Specifically, he raised the following alternatives that would facilitate underground placement of Verizon's facilities, but did not offer cost estimates associated with such alternatives:

1. Aerial facilities could be placed underground if Verizon leased dark fiber from the Digital 395 project.
2. Verizon could place facilities underground if it leased micro conduit from Digital 395.
3. Verizon could place facilities underground if it engaged in a fiber swap with Digital 395.

Based on these proposed options, CD issued a data request, asking Verizon to address these alternatives by providing cost estimates. Verizon then addressed the alternatives proposed by Mr. Kalish, also illustrated in Table 2 below.¹⁵

¹⁴ D.12-01-032, January 12, 2012.

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1. Verizon estimates that the cost for alternative #1 (leasing dark fiber), including removal of aerial distribution facilities, is between \$156,000 and \$298,000. Verizon stated that due to the associated cost, the time required for negotiations, planning, permitting, and cable removal and construction, a 2013 completion would be unrealistic, and SCE's aerial facilities would remain in place. Therefore, placing Verizon's facilities underground would not significantly alter the visual impact of the scenic highway. However, the cost estimate shown for this alternative indicates that a reasonable option for undergrounding exists, when compared to the cost estimate provided earlier in the estimate for constructing overhead facilities, as shown in Table 1.
2. Under alternative #2 (leasing micro conduit), Digital 395 would require access to underground vaults, and Verizon would have to joint trench an additional 2,000 ft. feet to the project. Verizon estimates these costs to be between \$781,000 and \$924,000, including the cost of removing aerial cable. Verizon maintains that this option is unfeasible due to the cost, and the fact that SCE's aerial facilities would remain in place.
3. In addressing alternative #3 (fiber swap with Digital 395) Verizon states that the only available fiber under this proposal must be reserved to facilitate interoffice (telephone company central office to central office) fiber and is not available for a swap.

Table 2

Updated Verizon Cost Options Resulting from Data Request	
Estimate for leasing dark fiber	\$156,000 to \$298,000
Estimate for joint trenching	\$781,000- \$924,000
Estimate for Fiber swap	Facilities not available

Due to changes made to the draft resolution resulting from initial parties' comments, Resolution T-17397 was sent to the service list for a second comment period. Four parties submitted timely comments: Mr. Stephen Kalish; the Mono County Community Development Department; the California Department of Transportation (Caltrans); and Verizon California Inc.

¹⁵ Verizon response to data request, June 9, 2013

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A resident of Mono County, Mr. Kalish supports a limited-term deviation approval, but asserts that CD Staff did not quote a key sentence in Mono County's "expression of opinion" dated September 16, 2011. The sentence is as follows: "Allowing the lines to remain in place until such time as a more economical and efficient underground placement is feasible via coordination with Digital 395 is a reasonable compromise supported by Mono County"

On July 10, 2013, Mono County submitted comments to Resolution T-17397 stating:

As our attached September 16, 2011 letter indicates, Mono County has previously expressed a position on this matter. We submitted the letter again May 13, 2013, and noted in our cover letter that our position is still applicable.

As we summarized in May, our position supports a reasonable compromise to allow the lines to remain in place until such time as a more economical and efficient underground placement is feasible via coordination with Digital 395.

On July 2, 2013, Caltrans submitted comments, stating:

The findings suggest Caltrans approved construction of longitudinal distribution facilities along the entire length of US Highway 395 from post mile (PM) 76.0 to PM 93.7. The encroachment permit, number 0904-6US-0051, was issued specifically for the installation of three transverse crossings of the highway at PM 80.6, PM 85.7 and PM 93.7 and for the installation of pull boxes at PM 76.9 and PM 79.03. This should not be construed as approval of the longitudinal installation.

The encroachment permit states, "No project work shall be commenced until all other necessary permits and environmental clearances have been obtained".

General Provision 12 of the encroachment permit also states, "This permit is invalidated if the permittee has not obtained all permits necessary and required by law, from the Public Utilities Commission of the State of California (PUC), California

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Occupation Safety and Health Administration (Cal-OSHA), or any public agency having jurisdiction”.

Finding 8 has been revised to reflect the accurate placement of facilities, per the Caltrans permit.

Verizon California, Inc. asserts in its comments that:

1. A permanent deviation should be granted consistent with known facts and past waivers, and;
2. The Commission should eliminate the discussion of the joint trenching option as that option did not exist when the facilities were placed;
3. The findings of visual impact is inconsistent with recent similar deviation resolutions issued by the Commission;
4. The compliance plan is unnecessary and should be eliminated because a prior compliance plan has already been submitted and has been in place since early 2012.

Verizon cited three instances where the Commission, through Resolutions, approved permanent Section 320 deviations. In addressing all of Verizon’s points, CD Staff reviewed the Resolutions referenced by Verizon, and found that in all three cases, the deviation requests were made prior to facilities construction, and not after the fact as Verizon is requesting in this Resolution. Since Verizon did not propose a remedy for Section 320 mitigation, and pursued the joint trenching option only after a request from CD, a temporary deviation is reasonable and will give Verizon additional time to develop a compliance plan in accordance with Section 320. While CD Staff agrees that the joint trenching option did not exist when Verizon placed the facilities in 2004, Verizon could have been aware of the Digital 395 project through filings and proceedings before the Commission, and could have explored joint trenching on its own as early as 2010.

On July 15, 2013 Mr. Kalish submitted reply comments to Verizon’s July 10, 2013 comments. In his reply comments, Mr. Kalish offered differing views opposed to statements made by Verizon addressing joint trenching opportunities, alternatives to aerial placement and associated availability at the time the deviation request was submitted, and concerns regarding the visual impact of aerial placement.

After a review of the proposals submitted in comments and Verizon’s data request response, CD Staff finds that alternative #1 ((leasing dark fiber) shows a cost estimate that is similar to the previously discussed cost estimate for constructing overhead

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facilities (see Table 1). Still, the Commission is aware of and agrees with Verizon's contention that 1) SCE's aerial facilities would remain in place and underground placement of Verizon's facilities would not significantly alter the visual impact of the scenic highway, and 2) planning for such a project will take time. The Commission finds that the other cost estimates based on alternatives expressed in this resolution for placement of underground facilities are more costly at this time under Section 320.

Therefore, the Commission proposes to grant a conditional two-year approval of this Section 320 deviation request to re-evaluate undergrounding costs and opportunities along this scenic highway corridor. If facilities undergrounding is not in process by July 1, 2015, Verizon must submit a Tier 3 advice letter no later than that date to justify the need to extend the Section 320 deviation. If undergrounding construction is in process prior to July 1, 2015, Verizon must submit a letter to the Commission's CD Director, attesting to that fact.

Additionally, CD Staff finds that a fine of \$5,000, consistent with the fines levied for the other P.U. Code Section 320 violations sends a clear message to Verizon regarding compliance with Public Utilities codes and statutes, and that the mitigation measures recommended in T-17397 will prevent any future violations of P.U. Code section 320.

Regarding Mr. Kalish's concerns about this project, CD Staff is not persuaded to require undergrounding at this time, as 1) the aerial facilities that Verizon shares with SCE along this route would remain in place, and underground placement of Verizon's facilities would not significantly alter the visual impact of the scenic highway, and 2) the planning and completion of such a project will take time.

However, CD Staff is aware that circumstances can change. It is conceivable that another opportunity for Verizon to place these facilities underground may occur, including the possibility that in the future, SCE may replace existing poles in the area. As such, CD Staff proposes to limit the term of this specific Section 320 deviation for a period of two years, and to direct Verizon to submit a subsequent Tier 3 advice letter no later than July 1, 2015, to either 1) have started undergrounding of these aerial facilities by any available alternative including but not limited to the alternatives listed in this resolution, or 2) submit an advice letter requesting approval of a subsequent, one-year conditional P.U. Code Section 320 deviation.

In accordance with Mr. Kalish's concerns about the visual effect of the overhead facilities, CD Staff will recommend expediting the completion of the mitigation measures recommended herein. For instance, rather than allowing one year to install less reflective

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wind dampers, and to inspect for sagging cables, CD Staff recommends that Verizon implement these recommendations within 90 days of this Resolution. CD Staff asserts that Verizon has been aware of these mitigation measures for some time and should be able to address them promptly.

Conclusion

CD staff recommends approval of a conditional, two- year deviation from Section 320 dependent upon the documented completion of the following mitigation measures:

1. Verizon should replace all aluminum cable wind dampers with ones that are less reflective on scenic highway 395, within 1,000 feet on either side at MM 79.0, 80.6, 85.7 and 93.7, and will notify CD in an AL filing within 90 days of approval of this resolution.
2. Verizon should conduct an inspection of all overhead distribution facilities along scenic highway 395 from MM 76.8 to 104.8 for compliance with G.O. 95 and is directed to report the results in an AL filing to the Communications Division and the Safety and Enforcement Division within 90 days of approval of this Resolution.
3. Verizon should submit a letter to the Director of the Communications Division within 90 days of this Resolution to attest to whether its facilities are in compliance with Section 320. Verizon is further directed, within 90 days of this Resolution, to submit an Advice Letter for the purpose of proposing a plan addressing how to work with local, state and federal agencies with jurisdiction over distribution facilities along designated state scenic highways for any future construction of overhead distribution facilities; and to provide the public an opportunity for comment.
4. Verizon will pay a fine in the amount of \$5,000 for the Section 320 violation. The fine shall be paid in full, within 30 days of this Resolution. Payment shall be made payable to the California Public Utilities Commission and be remitted to the CPUC's Fiscal Office, 3rd Floor, Room 3000, 505 Van Ness Avenue, CA. 94102-3298. The Resolution number and fine amount should be noted in the memo section of the check, and a copy of the transmittal shall be provided to the Director of the Communications Division.

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If facilities undergrounding is not in process by July 1, 2015, Verizon must submit a Tier 3 advice letter no later than that date to justify the need to extend the Section 320 deviation. If undergrounding construction is in process prior to July 1, 2015, Verizon must submit a letter to the Commission's CD Director, attesting to that fact.

Findings

1. Public Utilities Code Section 320 was enacted in 1971.
2. Decision (D.) 80864 (74 CPUC 457) authorizes the California Public Utilities Commission to accept, review and, where appropriate, approve Section 320 deviation permission by Commission Resolution.
3. In AL 12415 filed on June 18, 2009, Verizon acknowledges oversight for failure to obtain authorization from the undergrounding requirements of Section 320. Verizon seeks to resolve the matter by requesting a waiver from Section 320 from the Commission for overhead distribution facilities placed along scenic highway 395 in Mono County. The facilities were constructed along existing electric facilities originally placed in 1962 and 1963 by Southern California Edison.
4. During review of Advice Letter 12415, Communications Division staff received comments from a local resident regarding the absence of service of AL 12415 as an interested party, after the comment period ended. The comments protested the placement of overhead distribution facilities by Verizon along scenic highway 395, and a possible violation of Section 320. CD staff found the service list for AL 12415 insufficient, accepted these comments submitted after the comment period ended, and requested from Verizon expanded notification to government agencies and parties with interest.
5. Verizon filed supplemental AL 12415-A, superseding AL 12415, on September 18, 2009, to serve notice on government agencies and parties of interest in Mono County.
6. Verizon responded to the protest on December 1, 2009 by acknowledgement of the protest as "timely" and requested that the protest be dismissed and the waiver granted.

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7. Portions of Highway 395 from Mile Marker 76.8 to Mile Marker 104.8 received designation as a scenic highway in 2000.
8. The California Department of Transportation (Encroachment Permit, January 19, 2004) shows that Verizon was approved by the Department to construct overhead distribution facilities along scenic highway 395 between MM 76.9 and MM 93.7. The encroachment permit, number 0904-6US-0051 was issued specifically for the installation of three transverse crossings of the highway at Post Marker 80.6, 85.7 and 93.7 and for the installation of pull boxes at Post Marker 76.9 and 79.03.
9. The Mono County Community Development Department submitted an "expression of opinion" on September 16, 2011, supporting the undergrounding of the overhead distribution facilities.
10. There is no Environmental Impact Analysis discussing the ramifications of the overhead distribution facilities project as required by Section 320.
11. CD staff conducted a site visit to the overhead distribution facilities and found that these facilities are visible from scenic highway 395.
12. During the site visit, CD staff observed that sagging fiber cable added to the cumulative visual impact, and glare from the cable wind dampers could pose a safety hazard.
13. Verizon originally provided an estimate of the cost ratio at \$41.40 per foot underground to \$3.45 per foot overhead, a ratio of 12:1, representing a total estimated undergrounding cost of \$2,691,000.
14. As a result of comments to CD's Director, Verizon evaluated the possibility of joint trenching with another project along scenic highway 395. In its response, Verizon estimate the cost to be between \$730,488 and \$747,748.
15. D.98-12-075 provides guidelines for fines and mitigation of violations of Public Utility Codes, General Orders, and Statutes.
16. Public Utility Code violations may result in fines and/or mitigation. Since Verizon self-identified this violation, provided documents and made staff available for site

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visits and data requests, CD staff recommends mitigation measures and a fine of \$5,000.

17. The Commission notes that in the case of this late-filed deviation request, opportunities existed and continue to exist to place the aerial facilities in question underground.
18. On April 9, 2013, copies of this draft resolution were sent to all parties on the service list and made available for public review and comment for a period of no more than 30 days prior to a May 9, 2013, vote by the Commission.
19. Subsequent to an interested party's submitted comments to this version of the draft resolution, which included proposed underground placement alternatives, CD issued a data request to Verizon addressing cost estimates based on the proposed alternatives, the response to which CD has also considered in this draft resolution.
20. This draft resolution has been revised and is being recirculated for comments addressing changes to the May 9, 2013 draft resolution.
21. For the second comment period, four interested parties submitted timely comments.
22. CD staff recognizes that if Verizon placed these communications facilities underground, the overhead electric facilities would remain in place, and therefore authorizes Verizon's deviation request from undergrounding requirements of Section 320, for a period of two years, contingent upon the documented completion of the following mitigation measures:
 - a. Verizon should replace all aluminum cable dampers with ones that are less reflective on scenic highway 395 within 1,000 ft. on either side at Mile Markers 79.0, 80.6, 85.7 and 93.7 and should notify the Communications Division in an Advice Letter addressing these plans within 90 days of this Resolution.
 - b. Verizon should conduct an inspection of all overhead distribution facilities along scenic highway 395 from Mile Markers 76.8 to 104.8 for compliance with General Order 95, and is directed to report the results in an Advice Letter, sent respectively to the Directors of the Communications and the Safety and Enforcement Divisions within 90 days of this Resolution.
 - c. Verizon should submit a letter to the Director of the Communications Division within 90 days of this Resolution to attest to whether its facilities are in compliance with Section 320. Verizon is further directed, within 90 days of this Resolution, to submit an Advice Letter for the purpose of proposing a plan

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addressing how to work with local, state and federal agencies with jurisdiction over overhead distribution facilities along designated state scenic highways, for any future construction of distribution facilities, and to provide the public an opportunity for comment.

- d. Verizon should pay a fine in the amount of \$5,000 for the Section 320 violation. The fine should be paid in full within 30 days of this Resolution. Payment shall be made to the California Public Utilities Commission and be remitted to the Commissions Fiscal Office.

23. By July 1, 2015, Verizon should either 1) have started facilitating underground placement of these aerial facilities by any available alternative, or 2) have submitted a subsequent Tier 3 advice letter no later than that date to justify the need to extend the Section 320 deviation. If undergrounding construction is in process prior to July 1, 2015, Verizon must submit a letter to the Commission's CD Director, attesting to that fact.

THEREFORE, IT IS ORDERED that:

1. The Verizon California Incorporated request for a waiver of Public Utilities Code Section 320 along scenic highway 395 in Mono County is granted conditionally upon documented completion of the following mitigation measures, and limited on a temporary basis for a period of two years:
 - a. Verizon California Incorporated shall replace all aluminum cable dampers with ones that are less reflective on scenic highway 395 within 1,000 ft. on either side at Mile Markers 79.0, 80.6, 85.7 and 93.7, and shall notify the Communications Division in an Advice Letter within 90 days of this Resolution.
 - b. Verizon California Incorporated shall conduct an inspection of all overhead distribution facilities along Scenic Highway 395 from Mile Markers 76.8 to 104.8 for compliance with General Order 95, and is directed to report the results in an Advice Letter, sent respectively to the Directors of the Communications and the Safety and Enforcement Divisions within 90 days of this Resolution.
 - c. Verizon California Incorporated shall submit a letter to the Director of the Communications Division within 90 days of this Resolution to attest to

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- whether its facilities are in compliance with Section 320. Verizon is further directed, within 90 days of this Resolution, to submit an Advice Letter for the purpose of proposing a plan addressing how to work with local, state and federal agencies with jurisdiction over distribution facilities along designated state scenic highways, for any future construction of overhead distribution facilities, and to provide the public an opportunity for comment.
- d. Verizon California Incorporated shall pay a fine in the amount of \$5,000 for the Section 320 violation. The fine shall be paid in full, within 30 days of this Resolution. Payment shall be made to the California Public Utilities Commission and be remitted to the Commissions Fiscal Office, Room 3000, Van Ness Avenue, San Francisco, CA. 94102-3298. This Resolution number and fine amount should be noted in the memo section of the check, and a copy of the transmittal shall be provided to the Director of the Communications Division.
 2. Verizon California Incorporated is granted this temporary Section 320 deviation request for a period of two years. By July 1, 2015, Verizon shall either 1) have started underground placement of these aerial facilities by any available alternative, or 2) have submitted a subsequent Tier 3 advice letter no later than that date to justify the need to extend the Section 320 deviation. If undergrounding construction is not started prior to July 1, 2015, Verizon shall submit a Tier 3 Advice Letter to the Commission's Communications Division Director, attesting to that fact.

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This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on August 15, 2013. The following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director