

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

**Communications Division  
Carrier Oversight & Programs Branch**

**RESOLUTION T- 17472  
March 26, 2015**

**R E S O L U T I O N**

**RESOLUTION T-17472. Cellco Partners, DBA Verizon Wireless (U-3001-C), seeks authority to deviate from the requirements of California Public Utilities Code § 320, to place overhead wireless facilities and equipment structure on an existing electric utility pole on a length of Saratoga-Los Gatos Road, (State Highway 9) that has been designated a scenic highway.**

**By Advice Letter 338, Filed July 3, 2014.**

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**SUMMARY**

Cellco Partners (U-3001-C), dba Verizon Wireless<sup>1</sup>, filed Advice Letter (AL) 338 on July 3, 2014, requesting a deviation from California Public Utilities (P.U.) Code § 320, which mandates the undergrounding of all future electric and communication distribution facilities that are proposed to be erected in proximity to any designated state scenic highway. In its deviation request, Verizon requests authority from the California Public Utilities Commission (Commission) to install three wireless telecommunication antennas on an existing pole on Saratoga-Los Gatos Road (State Highway 9), north of Farwell Avenue, in Santa Clara County.

By this resolution, the Commission finds Verizon's request to be reasonable and grants Verizon authority to proceed with the project, provided it satisfies all conditions set forth by relevant jurisdictional authorities, i.e., the City of Saratoga and the California Department of Transportation (CalTrans).

**BACKGROUND**

P.U. Code § 320 states that:

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 communications 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 Section 260) of

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<sup>1</sup> Referred to as "Verizon" throughout this resolution.

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 rules of the Commission relating to the undergrounding of facilities. The commission shall coordinate its activities regarding the plan with local governments and planning commissions concerned. The commission shall require compliance with the plan upon its adoption. This section shall not apply to facilities necessary to the operation of any railroad.

Commission Decision (D.) 80864, dated December 16, 1972, implemented rules in compliance with P.U. Code § 320. The Decision adopted a plan for undergrounding all future electric and communications industry distribution facilities in the proximity of state scenic highways, defining "in the proximity" to mean within 1,000 feet from each edge of the right-of-way (ROW) of designated state scenic highway. D.80864 also recognized that there could be situations where undergrounding would not be feasible or would conflict with other environmental objectives. Commission staff recommended that those situations be handled as a "deviation" from P.U. Code § 320 requirements, to be reviewed by and subject to the Commission's approval. D.80864, Ordering Paragraph (OP) 3.B further states that "[r]espondents shall review with, and seek an expression of opinion from, the appropriate local governmental agency prior to requesting Commission authorization for deviation from the requirements of paragraph 1 of this order."

On July 3, 2014, Verizon submitted Tier 3 AL 338, pursuant to Rule 3.12 of the Commission's Rules of Practice and Procedure, and General Order 96B, Telecommunications Industry Rule 7.3(1), requesting a deviation of P.U. Code § 320, to place overhead wireless facilities and an equipment structure along parts of Highway 9, designated as scenic, in Santa Clara County within the jurisdiction of the City of Saratoga. The facilities would be placed on an existing electric pole in the CalTrans ROW.

Verizon proposes to place three wireless antennas. Each antenna would consist of a 12" by 48" by 5" panel antenna, mounted on 32" cross arms. These antennas would be served by undergrounded coaxial cable running from the equipment structure to the bottom of each respective antenna. The equipment structure would be placed on land owned by CalTrans, enclosed by a fence structure, and landscaped.

In accordance with D.80864 O.P. 3B, Verizon sought an expression of opinion from the City of Saratoga Planning Commission (City of Saratoga), which included the question of whether the project is categorically exempt from the California environmental Quality Act (CEQA). As the proposed project is also within the right-of-way and under

the jurisdiction of CalTrans, Verizon sought CalTrans' opinion. Finally, Verizon additionally contacted the Saratoga Chamber of Commerce and the office of the Sierra Club Loma Prieta Chapter seeking their respective expressions of opinion regarding this project.

Verizon's reasons for seeking a deviation from P.U. Code § 320 are as follows: a) wireless antennas cannot be placed underground; b) the project area is considered an "urban service area" by the Santa Clara County Land Use Planning Guide, and the project is not adjacent to any open space reserve, park or other public lands; c) this portion of the scenic highway already includes existing poles and power lines; and d) efforts to "blend in" the facilities would minimize the project's visibility and would not significantly alter the visual impact of the scenic highway.

Verizon estimates that total project cost of placing these antennas overhead is \$235,000. Verizon did not provide any cost estimate for undergrounding because, due to engineering limitations, undergrounding of wireless antennas is not a viable alternative.

## **NOTICE/PROTESTS**

The Commission published a Notice of AL No. 338 in its Daily Calendar of July 7, 2014. The Commission did not receive any protests to this AL.

## **DISCUSSION**

The Communications Division (CD) reviewed the process undertaken by Verizon in accordance with P.U. Code § 320 deviation requirements, and found the following:

### Conditional Approvals

In accordance with D.80864, OP 3 (B), Verizon requested an expression of opinion from the City of Saratoga and CalTrans and received conditional approvals from both agencies as detailed below:

- The City of Saratoga's Conditional Approval  
Prior to approving the project, the City of Saratoga Planning Commission passed Resolution No. 11-020, approving design review of Verizon's application PDR-10-0018 on November 9, 2011. Saratoga's City Council then passed Resolution No. 12-003 with conditions, affirming the Planning Commission's approval of the design plan on January 23, 2012. Resolution No. 12-003 determined that the proposed project is categorically exempt from the California Environmental quality Act (CEQA) pursuant to Section 15303 *New Construction or conversion of Small Structures*. This exemption allows for construction and location of limited numbers of new,

small facilities or structures, and installation of small new equipment and facilities in small structures. However, among the resolution conditions, the City of Saratoga determined the project must be harmonious with existing structures. The resolution required that antennas and equipment must be painted a color similar to the existing utility pole. The unenclosed structure must be surrounded by drought tolerant shrubs and painted to blend in with the existing foliage, and trees located around the poles must not be disturbed.

- CalTrans' Conditional Approval

On December 8, 2014, CalTrans' Office of Landscape Architecture recommended a conditional approval of the project, provided that equipment placed on the pole is painted to match the overall pole color (flat, non-glossy paint) and shrubs are placed at a 30-foot minimum setback from traveled way to center of shrub.

The Saratoga Chamber of Commerce and the Sierra Club have not expressed an opinion, although Verizon made a good faith effort to contact these institutions.

#### Staff's Analysis of the Proposed Project

The Commission recognized in D.80864 that undergrounding of facilities would not be feasible in some situations. CD staff has reviewed Verizon's request for a deviation from P.U. Code § 320 and finds that wireless antennas cannot be placed underground due to engineering limitations. The only feasible alternative is to have antennas placed overhead. Verizon also proposes to use existing utility facilities to place the cellular antennas within a CalTrans ROW; therefore, no new, additional poles will be installed. Verizon has also requested and obtained conditional approvals from the City of Saratoga and CalTrans for the project in compliance with D.80864.

CD staff also agrees that – as defined by the Santa Clara County Land Use Planning Guide – the project area is considered an “urban service area” and the project is not adjacent to any open space reserve, park or other public lands; this portion of the scenic highway already includes existing poles and power lines in the location of the proposed project; and efforts to “blend in” the facilities minimize the project's visibility and do not significantly alter the visual impact of the scenic highway.

#### Conclusion

CD staff has reviewed Verizon's proposal and justification for requesting a P.U. Code § 320 deviation for this project. CD agrees that cellular antennas must be placed overhead – and not underground – to facilitate adequate service; that the project area is considered an “urban service area” by the Santa Clara County Land Use Planning Guide; that the project is not adjacent to any open space reserve, park or other public

lands; and that there are existing poles and power lines in the location of the proposed project. The City of Saratoga and CalTrans have also conditionally approved the project. In light of these findings, CD recommends approval of Verizon's request to deviate from provisions of P.U. Code § 320. CD recommends that the approval be subject to the following conditions specified by the City of Saratoga and CalTrans:

- The project must be harmonious with existing structures.
- Antennas and equipment must be painted a color similar to the existing utility pole, with flat, non-glossy paint.
- The unenclosed structure must be surrounded by drought tolerant shrubs and painted to blend in with the existing foliage, and trees located around the poles must not be disturbed.
- Shrubs must be placed at a 30-foot minimum setback from traveled way to center of shrub.

## **SAFETY CONSIDERATIONS**

The Commission expects placement of overhead wireless facilities and equipment structure along Saratoga-Los Gatos Road (State Highway 9), north of Farwell Avenue should enhance and improve wireless connectivity, and therefore should improve public safety and welfare in Santa Clara County.

## **COMMENTS**

P.U. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. In compliance with P.U. Code § 311(g)(1), the Commission emailed a notice letter on February 20, 2015, informing Verizon Wireless, of the availability of this draft resolution for comments, as well as the availability of the conformed resolution, if adopted by the Commission, on the Commission's website <http://www.cpuc.ca.gov>. The Commission received no comments addressing this resolution.

## **FINDINGS**

1. On July 3, 2014, Verizon Wireless (Verizon) submitted Tier 3 Advice Letter (AL) 338 to request a deviation from provisions of the Public Utilities (P.U.) Code § 320, which mandates the undergrounding of all future electric and communication distribution facilities that are proposed to be erected in proximity to a designated state scenic highway.

2. In AL 338, Verizon seeks authority to install three wireless telecommunications antennas and equipment to existing overhead facilities on a pole located along Saratoga-Los Gatos Road (State Highway 9, a designated state scenic highway) which is within the jurisdiction of the City of Saratoga, Santa Clara County.
3. Commission Decision (D.)80864 implemented rules in compliance with P.U. Code § 320, adopting a plan for undergrounding all future electric and communications industry distribution facilities in the proximity of state scenic highways, defining “in the proximity” to mean within 1,000 feet from each edge of the right-of-way of a designated state scenic highway.
4. Verizon’s proposes to install three 12” by 48” by 5” panel wireless antennas that are mounted on 32” cross arms. These antennas would be served by undergrounded coaxial cable running from the equipment structure to the bottom of each respective antenna. The equipment structure would be placed on land owned by the California Department of Transportation (CalTrans), enclosed by fence structure, and landscaped.
5. Verizon estimates that the cost of the project is \$235,000. Verizon did not provide an estimate comparing cost of undergrounding facilities versus the cost of installing overhead facilities.
6. Due to engineering limitations, undergrounding of wireless antennas is not a viable alternative.
7. Verizon worked with the City of Saratoga Planning Commission to address visibility and aesthetics issues so that efforts to “harmonize” the facilities would minimize the project’s visibility and would not significantly alter the visual impact of the scenic highway.
8. Verizon requested opinion from CalTrans’ Office of Landscape Architecture.
9. Verizon received conditional approvals of its proposed project from the City of Saratoga and CalTrans.
10. It is reasonable to approve Verizon’s request to deviate from provisions of P.U. Code § 320, subject to the following conditions:
  - a. The project must be harmonious with existing structures.
  - b. Antennas and equipment must be painted a color similar to the existing utility pole, with flat, non-glossy paint.
  - c. The unenclosed structure must be surrounded by drought tolerant shrubs and painted to blend in with existing foliage, and trees located around poles must not be disturbed.
  - d. Shrubs must be placed at a 30-foot minimum setback from traveled way to center of shrub.

11. Placement of overhead wireless facilities and equipment structure along Saratoga-Los Gatos Road should enhance and improve wireless connectivity, and therefore should improve public safety and welfare in Santa Clara County.
12. P.U. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. In compliance with P.U. Code § 311(g)(1), the Commission emailed a notice letter on February 20, 2015, informing Verizon Wireless, of the availability of this draft resolution for comments, as well as the availability of the conformed resolution, if adopted by the Commission, on the Commission's website <http://www.cpuc.ca.gov>. The Commission received no comments addressing this resolution.

**THEREFORE, IT IS ORDERED that:**

1. The Commission conditionally approves The Cellco Partners, DBA Verizon Wireless' (U-3001-C) request to deviate from the requirements of Public Utilities Code Section 320 to install three wireless telecommunications antennas on an existing pole on Saratoga-Los Gatos Road (State Scenic Highway 9), north of Farwell Avenue, located in Santa Clara County.
2. Verizon Wireless' deviation approval is subject to the following conditions:
  - a. The project must be harmonious with existing structures.
  - b. Antennas and equipment must be painted a color similar to the existing utility pole, with flat, non-glossy paint.
  - c. The unenclosed structure must be surrounded by drought tolerant shrubs and painted to blend in with existing foliage, and trees located around poles must not be disturbed.
  - d. Shrubs must be placed at a 30-foot minimum setback from traveled way to center of shrub.

Resolution T- 17472  
CD/KEF

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on March 26, 2015. The following Commissioners approved it:

/s/ Timothy J. Sullivan

TIMOTHY J. SULLIVAN

Executive Director

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners