

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight & Programs Branch**

**RESOLUTION T-17271
June 23, 2011**

R E S O L U T I O N

Resolution T-17271. Verizon California, Inc. (U-1002-C) Seeks Authority to Deviate from the Undergrounding Requirements of California Public Utilities Code Section 320 (Section 320). Verizon California, Inc. Requests a Waiver for Existing Overhead Distribution Facilities on Utility Poles Along Scenic Highway 74 in Riverside County from State Route 243 to Morris Ranch Road (about 1.5 miles).

By Advice Letter No. 12413 dated June 18, 2009, from Verizon California, Inc.

Summary

This Resolution denies, in part, the request by Verizon California, Inc. (Verizon) for a deviation from Public Utilities (P.U.) Code § 320 concerning three separate placements along Scenic Highway 74 in Riverside County. The Resolution orders Verizon to underground existing overhead distribution facilities along Scenic Highway 74 between mile markers 62.69 to 63.86 as required by § 320 and to implement a plan for future construction of overhead distribution facilities.

Background

Verizon filed Advice Letter (AL) No. 12413 on June 18, 2009, requesting a deviation from the undergrounding requirements of P.U. Code¹ § 320, which applies to existing overhead distribution facilities installed within 1,000 feet of a state-designated scenic highway. Verizon's predecessor companies placed the overhead aerial facilities between 1979 and 1992.² Verizon has requested this exemption after the overhead facilities were installed. Verizon's late filing has harmed the regulatory process, and the Communications Division (CD) recommends that the Commission deny Verizon authority to deviate. In addition, CD recommends that the Commission require

¹ All citations are to the Public Utilities Code unless otherwise indicated.

² In 1979, the predecessor company was General Telephone of California, which became GTE California in 1987. In 2005, GTEC was the subject of a merger proceeding, which resulted in GTEC becoming Verizon.

Verizon to remediate for future compliance by creating a plan with the appropriate governmental agencies for any future aerial facilities construction projects.

Section 320 was enacted in 1971, and reads in part as follows:

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 Section 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 § 320. After hearings were conducted in Case 9364, the Commission issued Decision (D.) 80864, which implemented and set forth the deviation requirement:

In order to facilitate administration, letter requests for deviations will be accepted, reviewed by the Commission staff and, where appropriate, approved by Commission resolution³.

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 either edge of the right-of-way of a designated state scenic highway.

³ (74 CPUC 457, D.80864)

The Decision 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.

Notice/Protests

Verizon's AL 12413, filed June 18, 2009, appeared in the daily calendar on July 10, 2009, and September 23, 2009, respectively. Because Verizon did not use serve a sufficient number of parties, CD instructed Verizon to provide notice to additional parties. Verizon complied with this request by the filing of AL 12413A.

On November 23, 2009, Stephen Kalish of Mono County, filed a protest to Verizon AL 12413-A, requesting that the Commission disallow the deviation request and require Verizon to underground the telecommunications cables.

On December 2, 2009, Verizon responded to Mr. Kalish's, protest noting that all requested information has been provided and the relief requested is consistent with law and Commission precedent.

Discussion

The Commission has evaluated this deviation request considering the following factors: (1) the nature of the project; (2) visibility, aesthetics, and environmental impact; (3) government recommendation; and (4) economic feasibility. CD's recommendation is based on tangible evidence and analysis of these factors.

Nature of Project

This deviation request refers to three separate placements of overhead distribution facilities along Scenic Highway 74 in Riverside County from approximately State Route 243 to Morris Ranch Road:

- Approximately 200 feet of aerial cable was placed on existing poles at mile marker 58.83 at McCall Park at approximately 4,600 feet elevation to provide service to a trailer park.
- About 6,000 feet of aerial cable was placed on existing poles from Thomas Mountain Road to Apple Canyon Road (Lake Hemet Campground) approximately between mile marker 62.69 to 63.86.
- About 1,441 feet of cable was placed on existing poles approximately between mile marker 68.06 to 68.35 at approximately 4,600 feet elevation to provide service to approximately 20 homes.

Verizon requests a § 320 deviation for an approximate 7,600 feet (1.5 miles) of overhead distribution facilities in three separate locations on Highway 74. The equipment is located on existing poles and is collocated with, in some cases, electrical equipment and cable equipment from the local cable operator.

In 2008, Communications Division (CD) asked Verizon to determine if it had deployed overhead distribution facilities subject to § 320 elsewhere in California without seeking a deviation from the Commission.

AL 12413 states: “Verizon undertook an analysis to identify all scenic highways in Verizon’s service territory; any placements of overhead distribution facilities along any scenic highway after the highway received such designation; and any associated PU Code Section 320 waivers granted by the Commission. This analysis identified Scenic Highway 74 in Riverside County from approximately State Route 243 to Morris Ranch Road along which Verizon (or its predecessor company) placed overhead distribution facilities without obtaining a waiver pursuant to PU Code Section 320.”

Visibility, Aesthetics, and Environmental Impact

The three separate sections (as described above) vary from 200 to 6,000 feet in length for a total of 7,641 feet (nearly 1.5 miles) at an altitude of 4,600 feet. This project involves placing aerial cable in the three sections along Highway 74.

From MM	To MM	Landmark	Color	Diameter
58.83		Mc Call Park	black	1.5”
62.69	63.86	Lake Hemet Campground	black	1”
68.06	68.35		black	1”

Portions of Highway 74 from the western boundary of the San Bernardino National Forest to State Route 111 (which includes the portion indicated above) received designation as a scenic highway on November 18, 1971. On November 3, 2009, CD staff conducted a site visit of the section of Highway 74 relevant to this project. During this visit, photographs were taken and staff were able to document the existing utility facilities already in place along sections of Highway 74. There are telecommunications, and in some places, electric and cable lines throughout the corridor, as well as several overhead crossings of the highway which constitute a substantial compromise of the visual impact of the scenic highway. The overhead facilities are visible from the highway.

Based on CD's site visit and photographs taken at the site, CD disputes some of Verizon's contentions.

- Verizon contends that the overhead facilities were placed on existing electric utility poles along the segments of Highway 74 previously stated. Based on CD's observations, CD found several instances where the aerial telephone facilities were not sharing existing electric facilities.
- Verizon states that undergrounding facilities would require the installation of pedestals along Highway 74 which would be vulnerable to snow removal equipment in the winter. CD observes that Verizon already has several pedestals along the portions of Highway 74 previously indicated. In CD's opinion, the placement of these pedestals does not appear to make them vulnerable to snow removal equipment. It also indicates that Verizon already has underground facilities along Highway 74.
- Verizon is also concerned that landslides and soil erosion could occur. Based on CD's observations, CD contends that such an event would be rather remote along the above-mentioned portions of Highway 74 since the majority of this area is relatively flat.

Government Recommendation

Verizon stated that it sent Riverside County Planning Department a copy of the advice letter. CD staff conducted an analysis to determine what other parties might be affected by the deviation request. These additional parties were included in the AL 12413-A Service List.

CD Staff either left messages or spoke with the San Bernardino National Forest offices, Caltrans District 8 and Riverside County Transportation and Land Management offices. The agencies either did not respond or did not provide an opinion on the overhead distribution facilities in question.

Economic Feasibility

Scenic Highway 74

	Cost of Installing 7,641-feet of Telecommunications Overhead Distribution Facilities	Cost per Foot	Aerial to Underground Construction Ratio
Overhead Deviation	\$80,385	\$10.52	
Underground Requirement	\$235,062	\$30.76	3:1

Verizon estimates a 3:1 ratio in cost between underground facilities and overhead installation as shown in the table above; if the request for deviation is denied, it would cost Verizon approximately \$235,000 to underground the facilities. Verizon asserts but did not provide any substantiation to support its claim that it would be more expensive to underground. Verizon is a subsidiary of Verizon Communications, Inc., a conglomerate with sufficient revenue to cover the relatively small expense of undergrounding the aerial facilities previously mentioned.

Violations of Public Utilities Code, Fines, and Remediation

Violations of Public Utilities Code can result in the imposition of fines. In D.98-12-075, the Commission concluded that "...disregarding a statutory or Commission directive, regardless of the effects on the public, will be accorded a high level of severity". P.U. Code § 702 states: "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."

While Verizon does not contest that the aerial facilities were constructed in violation of § 320, Verizon also proposes no remedy other than requesting a deviation after the fact. In considering the request for a deviation, CD staff asserts that prudent practice requires all public utilities to take reasonable steps to ensure compliance with Commission directives. This includes keeping current on all applicable laws and regulations pertaining to telecommunication carriers. Based on CD staff's analysis, we find that Verizon failed to meet the requirements of § 320.

CD staff has considered the following factors in evaluating whether a fine is appropriate:

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

In addition to the above criteria, CD staff also factored in the physical harm to the preservation of the natural beauty of a California Scenic Highway. The violation of § 320 did not result in economic harm to private property, the public, or ratepayers. However, the overhead distribution facilities currently in use are presumably generating income for Verizon. CD staff asserts that Verizon has gained a competitive and/or operational benefit by not undergrounding as required by § 320. Pursuant to

P.U. Code § 2107, the Commission has regulatory authority to assess penalties for violations of state law or its rules or regulations.

CD staff recommends that the Commission require Verizon to implement the following remediation measures. In making this recommendation, staff has taken into consideration the efforts Verizon has made to resolve this issue and its cooperation with CD staff. Verizon behaved responsibly once the violation was brought to its attention. CD staff considered recommending the levying of a fine, but concluded that the remediation measures set forth below would be sufficient.

Project Specific Remediation Efforts

CD staff recommends that Verizon underground the placement of distribution facilities identified in this resolution along Scenic Highway 74 between mile markers 62.69 to 63.86 as required by § 320. The geography and the geological makeup of the other two placements makes it nearly impossible and, certainly, cost prohibitive for Verizon to underground those facilities. In addition, the distribution facilities in these two placements are on jointly owned poles with electric facilities which would remain. CD's recommended remediation would cover more than 78% of the total deviation request.

Efforts for Future Compliance

Although the CPUC processes each request for exemption on the facts of that individual request, it should be noted that Verizon has submitted multiple requests for deviation from § 320, and all of them belatedly were sought after the construction at issue had already occurred. Multiple § 320 deviation requests from one utility suggest that such utility would benefit from a having a planned course of action for future proposed construction in Designated State Scenic Highway areas protected by § 320. As the purpose of the statute is to protect California's natural beauty and environment, requiring Verizon to submit a written plan for future compliance with § 320 within Verizon's territory is appropriate.

Therefore, to ensure future compliance with § 320, this Resolution requires that Verizon develop a plan for construction of overhead facilities. This plan should include a list of local, state, or federal government agencies with jurisdiction over the placement of the proposed overhead distribution facilities, a determination as to whether the proposed project will be placed within or near a Scenic Highway Right of Way, an Environmental Impact Report if required, and notification to the public through media placements or public hearings.

Conclusion

The Commission finds that the deviation request from the undergrounding requirements of § 320 should be denied in part. The facilities between mile markers 62.69 and 63.86 were placed after Scenic Highway 74 received its Scenic Highway designation in 1971. The cost ratio of underground /aerial facilities is 3:1 which is rather low. In addition the distance of the three placements is relatively short (less than 1.5 miles). Therefore, undergrounding these facilities would not be an undue burden on Verizon.

It is Verizon's responsibility as a CPUC regulated carrier to comply with all CPUC codes and regulations specific to California Scenic Highways. There is no justification or reason for Verizon's inability to meet the requirements mandated by Section 320 in a timely manner.

The Commission finds that while Verizon did not comply with § 320, it did notify CD of its omission, did conduct an audit of all projects along Scenic Highways in California, did cooperate with CD staff in providing documents, did respond to data requests and did make their staff available for the site visits. Therefore, the Commission partially denies this request for deviation from § 320 and requires Verizon to take the following steps:

1. Underground the placement of distribution facilities along Scenic Highway 74, between mile markers 62.69 to 63.86, as required by § 320.
2. Create a plan to work with local, state, and federal agencies for any future aerial facilities construction projects and to provide the public an opportunity for comment. Verizon will have 1 year to meet these conditions and will file an Advice Letter attesting to their completion.

Comments

In compliance with PU Code § 311(g), a notice letter was emailed on May 24th, 2011, informing the interested parties of the availability of the draft of this Resolution for public comments at the Commission's website <http://www.cpuc.ca.gov>. This letter also informed parties that the final Resolution adopted by the Commission will be posted and will be available at the same website.

Findings

1. Public Utilities (P.U.) Code § 320 was enacted in 1971.
2. Decision 80864 (74 CPUC 457) authorizes the Commission to accept, review and, where appropriate, approve § 320 deviation requests by Commission Resolution.

3. Portions of Highway 74 received designation as a Scenic Highway in 1964.
4. The Commission finds that by Advice Letter No. 12413 and 12413-A, dated June 18, 2009 and September 18, 2009, respectively, Verizon California, Inc. requested authority for deviation from the undergrounding requirements of P.U. Code § 320.
5. The Commission finds that this project involves approximately 7,600 feet of pre-existing overhead distribution facilities, from mile marker 58.83 to 68.35 along Highway 74 in Riverside County.
6. The Commission finds that in most of portions of Highway 74 stated above, the telephone aerial facilities are the only facilities that are affixed to utility poles. In certain locations, the telephone aerial facilities share the utility poles with electric and/or cable TV lines. Overhead facilities are visible from the highway.
7. Verizon does not contest that the aerial facilities were constructed after designation of Scenic Highway 74 in violation of § 320 and propose no remedy other than requesting a deviation after the fact.
8. Verizon has requested multiple deviations from § 320 for noncompliant completed construction, indicating the need for Verizon to develop a written plan for compliance with § 320 prior to beginning any new construction near a scenic highway.
9. The Commission finds that the utility costs to place telephone lines underground at this location are approximately 3:1.
10. The Commission finds that the deviation request from the undergrounding requirements of § 320 should be denied in part.
11. The Commission finds that while Verizon did not comply with § 320, it did notify CD of its omission, did conduct an audit of all projects along Scenic Highways in California, did cooperate with CD staff in providing documents, did respond to data requests and did make their staff available for the site visits.
12. Verizon should be required to underground the aerial facilities between mile markers 62.69 to 63.86, along Highway 74.

13. Verizon should be required to create a plan to work with local, state, and federal agencies for any future aerial facilities construction projects and to provide the public an opportunity for comment.

THEREFORE, IT IS ORDERED that:

1. Verizon California, Inc.'s request to deviate from P.U. Code § 320 for approximately 7,600 feet of existing overhead distribution facilities from mile marker 58.83 to 68.35 along Highway 74 in Riverside County, a scenic highway, is partially denied.
2. Verizon California, Inc. is ordered to underground the existing overhead distribution facilities from mile marker 62.69 to 63.86 along Highway 74 in Riverside County.
3. Verizon California, Inc. is ordered to develop and submit a plan for future construction of communications facilities within California Designated State Scenic Highway areas. This plan should contain all the actions necessary for construction of communications facilities including procedures for:
 - Discerning whether construction of facilities is within a Designated State Scenic Highway area
 - Obtaining permits and/or authorization from government agencies, including a list of government agencies from which permits and/or authorization would be necessary
 - Providing notification to government agencies with interest, including the Commission, and facilitation for public comment by interested parties should Verizon seek additional deviations from § 320.
4. Verizon will have 364 days upon approval of this resolution to meet and complete the above remediations and will attest to the completion of the above conditions by filing a Tier 2 Advice Letter.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission adopted this Resolution at its regular meeting on June 23, 2011. The following Commissioners voting favorably thereon:

PAUL CLANON
Executive Director