BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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Order Instituting Investigation into the Creation of a Shared Database or Statewide Census of Utility Poles and Conduit.	I. 17-06-027
And Related Matters	R. 17-06-028

COMMENTS OF EXTENET SYSTEMS, INC. (U7367 C) AND EXTENET SYSTEMS (CALIFORNIA), LLC (U 6959 C) ON ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING PARTY COMMENTS ON RIGHT OF WAY RULES

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April 12, 2021

Pursuant to Administrative Law Judge Robert Mason's March 9, 2021 Ruling, ExteNet Systems, Inc. (U 7367 C) and ExteNet Systems (California), LLC (collectively "ExteNet") (U 6959 C) hereby provide comments on the *Administrative Law Judge's Ruling Requesting Party Comments On One-Touch-Make-Ready Requirements in California* in the above-captioned proceeding.

I. EXTENET'S INTEREST IN ONE TOUCH MAKE READY

ExteNet is a facilities-based carrier and as such, it is authorized to attach communications equipment to utility poles or other aerial support structures in the public rights-of-way ("ROW"). ExteNet primarily builds, owns, and operates wholesale, neutral-host distributed network facilities that improve the coverage and capacity of existing and new wireless networks. ExteNet's distributed network facilities consist of: (a) fiber optic cable; and (b) small antennas and supporting equipment that are either attached to utility poles and other structures in the public rights-of-way or suspended on cables strung between utility poles or wireless support structures.

ExteNet accomplishes such attachments both through membership in the Northern and Southern Joint Pole Associations, and through bi-lateral pole attachment agreements with investor owned electric utilities ("IOUs"). In addition, ExteNet occasionally places its own poles in the public rights-of-way when there are no existing utility poles, or existing poles are fully loaded and cannot be replaced or modified to accommodate additional equipment.

ExteNet's long history of attaching equipment to utility poles throughout California, is one of repeated delays. Therefore, ExteNet strongly supports the Commission's effort to improve competitors' access to poles by implementing One Touch Make Ready ('OMTR") rules in California, as a means to further competition by removing barriers to market entry.

II. RESPONSE TO ALJ REQUEST FOR COMMENTS

1. **Should the Commission adopt OTMR requirements? If so, why? If not, why not?**

   Response: Yes. Although ExteNet has authority to place its own poles for its equipment, it is neither feasible nor economic for it to construct a new pole or other structure every time ExteNet needs to deploy a new facility. ExteNet and other competitive carriers encounter substantial when attempting deploy facilities to support voice, broadband, 5G and 911 emergency services. Often these delays are caused by the need to move third-party facilities and perform other make-ready on existing utility poles – delays that can be greatly reduced through adoption of OTMR. Gaining timely access to utility poles in California is essential for future wireless and wireless broadband deployment in the state.

2. **Would the proposed OTMR requirements further the Commission's utility safety objectives? Why or why not?**

   Response: Yes. The OTMR rules ensure that all attachers operate pursuant to a common set of rules and that all work is performed by qualified contractors.

3. **Would the proposed OTMR requirements enhance competition among communications service providers and expedite high speed broadband deployment? Why or why not?**

   Response: Yes. On average, it takes almost 60 days for AT&T to approve attachment applications from ExteNet, but it has taken 195 days in one instance for AT&T to approve an ExteNet design. After ExteNet's design is approved, AT&T takes at least another month on average to issue a permit that allows ExteNet to proceed with its installation. Only after the AT&T approval can ExteNet actually proceed with its installation.

   PG&E often takes even longer, averaging 100 days to approve or deny a pole attachment application. If the permit is denied, ExteNet must restart the process again and it takes another

100 days for a determination from PG&E.

ExteNet has been told, in California and elsewhere, that a significant portion of the time from application to deployment is due to the need to perform make-ready on the pole, including moving third-party facilities, bringing facilities into GO 95 and NESC compliance, and associated inspections.

4. **Should the staff Proposal be modified? If so, how should the proposal be modified and for what reasons? Your response must include a mockup of your suggested modifications as an attachment to your comments.**

Response: Yes. The Staff Proposal currently does not account for pre-application negotiations, which can take weeks or months, thereby allowing utilities to stretch the process out without violating the pole attachment timeline. This loophole has caused unnecessary delays in deployment and raises transaction costs for ExteNet. Accordingly, the Commission should add rules imposing a 60-day time limit on pre-application pole attachment negotiations. The 60-day period should be triggered by written notice from the attaching party to the utility pole owner that it wishes to commence discussions. If such discussions fail to produce an agreement on what to submit as a permit application, the attacher should be allowed to submit its application immediately and the timelines in the Staff Proposal (modified as described below) should begin on day 61.

Once the application is submitted, the Commission should shorten the application review/survey period to 30 days, and shorten the estimate and acceptance periods to seven days. The Commission should shorten the "deemed granted" remedy under which an application for pole access is automatically deemed approved where the utility fails to act to 30 days for a small number of requests (or 45 days, in the case of medium sized requests).

ExteNet supports the Staff proposal regarding self-help and use of authorized third parties or its own employees to perform make-ready activities. However, ExteNet submits that the use of third party contractors should apply to both electric utility pole owners and telecommunications pole owners. Further, ExteNet is concerned that mandating that the affected utility and existing attachers have a right to be present during the third party contractor's work may not be workable. Smaller carriers may not have personnel available to attend contractors' installations, and/or scheduling difficulties could cause delays. Further, on-site observers could attempt to impose unreasonable requirements on the contractor. If the Commission is inclined to allow the utility and existing attachers to be observers, however, ExteNet submits that any deficiencies they identify must be reasonable and supported by industry standards or Commission regulations. Further, if the affected utility or existing attacher chooses to be present during the third party contractor's installation, they should not be permitted to have an additional review period set forth in Section E.2.c. of the Staff proposal. Instead, the affected utility and existing attachers should be required to elect between these two protections.

In addition to the proposed changes to the Staff Proposal, ExteNet requests that the definition of "pole attachment" be modified to make clear that all of an attacher's equipment is included in the attachment rights. Under the Commission's existing rules, the term pole attachment means "any attachment to surplus space, or use of excess capacity, by a telecommunications carrier or CMRS carrier for a communications system on or in any support structure owned, controlled, or used by a public utility."[1] Notwithstanding the fact that the rule encompasses "any" attachment, utilities have sometimes refused to permit ExteNet to attach anything to their poles other than antennas despite lacking any capacity, safety, reliability or engineering rationale for doing so. The

[1] D.98-10-058, at p.140 (mimeo).

definition should be modified to make clear that the term "pole attachment" includes not only the antenna but also the fiber, ground furniture and other equipment that is part of the same installation. The clarified definition of "pole attachment" would be consistent with the Commission's intent to facilitate rapid deployment of telecommunications facilities and the FCC's acknowledgement that wireless attachments include associated equipment.[2]

As directed in the Ruling, ExteNet is providing a mark-up of these proposed changes to Staff's proposal as Attachment 1.

III. CONCLUSION

ExteNet strongly supports the Commission's efforts to improve competitive providers' access to utility poles in California and appreciates the opportunity to respond to this request for information about OTMR.

Signed and dated this 12th day of April, 2021 at Walnut Creek, CA.

Respectfully submitted,

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[2] *2011 Pole Attachment R&O*, 26 FCC Rcd at 5261 ¶ 41.

ATTACHMENT 1

Proposal

ExteNet Proposed Modifications to
Staff Proposal

(Comments of ExteNet in yellow)

COMMISSION-ADOPTED RULES GOVERNING ACCESS TO RIGHTS-OF-WAY AND SUPPORT STRUCTURES OF INCUMBENT TELEPHONE AND ELECTRIC UTILITIES

X. ACCESS TO CUSTOMER PREMISES
XI. SAFETY

I. PURPOSE AND SCOPE OF RULES

These rules govern access to public utility rights-of-way and support structures by telecommunications carriers, Commercial Mobile Radio Service (CMRS) carriers, and cable TV companies in California, and are issued pursuant to the Commission's jurisdiction over access to utility rights-of-way and support structures under the Federal Communications Act, 47 U.S.C. § 224(c)(1) and subject to California Public Utilities Code §§ 767, 767.5, 767.7, 768, 768.5 and 8001 through 8057. These rules are to be applied as guidelines by parties in negotiating rights-of-way access agreements. Parties may mutually agree on terms which deviate from these rules, but in the event of negotiating disputes submitted for Commission resolution, the adopted rules will be deemed presumptively reasonable. The burden of proof shall be on the party advocating a deviation from the rules to show the deviation is reasonable, and is not unduly discriminatory or anticompetitive.

II. DEFINITIONS

"Public utility" or "utility" includes any person, firm or corporation, privately owned, that is an electric, or telephone utility which owns or controls, or in combination jointly owns or controls, support structures or rights-of-way used or useful, in whole or in part, for telecommunications purposes.

"Support structure" includes, but is not limited to, a utility distribution pole, anchor, duct, conduit, manhole, or handhole.

"Pole attachment" means any attachment to surplus space, or use of excess capacity, by a telecommunications carrier or CMRS carrier for a communications system on or in any support structure owned, controlled, or used by a public utility. In the case of a non-CMRS telecommunications carrier installing wireless facilities, term "pole attachment" includes the antenna, fiber, ground furniture and other equipment that is part of the same installation.

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"Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Commission, to allow its use by a telecommunications carrier or CMRS carrier for a pole attachment.

"Excess capacity" means volume or capacity in a duct, conduit, or support structure other than a utility pole or anchor which can be used, pursuant to the orders and regulations of the Commission, for a pole attachment.

"Usable space" means the total distance between the top of the utility pole and the lowest possible attachment point that provides the minimum allowable

vertical clearance.

"Minimum allowable vertical clearance" means the minimum clearance for communication conductors along rights-of-way or other areas as specified in the orders and regulations of the Commission.

"Rearrangements" means work performed, at the request of a telecommunications carrier or CMRS carrier, to, on, or in an existing support structure to create such surplus space or excess capacity as is necessary to make it usable for a pole attachment. When an existing support structure does not contain adequate surplus space or excess capacity and cannot be so rearranged as to create the required surplus space or excess capacity for a pole attachment, "rearrangements" shall include replacement, at the request of a telecommunications carrier or CMRS carrier, of the support structure in order to provide adequate surplus space or excess capacity. This definition is not intended to limit the circumstances where a telecommunications carrier or CMRS carrier may request replacement of an existing structure with a different or larger support structure.

"Annual cost-of-ownership" means the sum of the annual capital costs and annual operation costs of the support structure which shall be the average costs of all similar support structures owned by the public utility. The basis for computation of annual capital costs shall be historical capital cost less depreciation. The accounts upon which the historical capital costs are determined shall include a credit for all reimbursed capital costs of the public utility. Depreciation shall be based upon the average service life of the support structure. As used in this definition, "annual cost-of-ownership" shall not include costs for any property not necessary for a pole attachment.

"Telecommunications carrier" generally means any provider of telecommunications services that has been granted a certificate of public convenience and necessity (CPCN) by the California Public Utilities Commission (Commission). The definition of "telecommunications carrier" includes Competitive Local Exchange Carriers (CLEC) that have been granted a CPCN by the Commission to provide facilities-based competitive local exchange service. These rules, however, exclude interexchange carriers from the definition of "telecommunications carrier."

"Commercial Mobile Radio Service (CMRS) carrier" is an entity that holds (1) a current Wireless Identification Registration with the California Public Utilities Commission, or (2) a current Certificate of Public Convenience and Necessity issued by the California Public Utilities Commission that authorizes the holder to provide Commercial Mobile Radio Service.

"Cable TV company" as used in these rules refers to a privately owned company, that provides cable service as defined in the PU Code and is not certified to provide telecommunications service.

"Right-of-way" means the right of competing providers to obtain access to the distribution poles, ducts, conduits, and other support structures of a utility which are necessary to reach customers for telecommunications purposes.

"Make ready work" means the process of completing rearrangements on or in a support structure to create such surplus space or excess capacity as is necessary to make it usable for a pole attachment.

"Modifications" means the process of changing or modifying, in whole or in part, support structures or rights-of-way to accommodate more or different pole attachments.

"Incumbent local exchange carrier" refers to Pacific Bell and GTE California, Inc., Roseville Telephone Company, and Citizens Telecommunications Company of California, for purposes of these rules, unless explicitly indicated otherwise.

"Make-ready" means the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the utility pole.

"Complex make-ready" means transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or facility damage, including work such as splicing of any communication attachment or relocation of existing wireless attachments. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

"Simple make-ready" means make-ready where existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.

"Communications space" means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.

"Attachment" means any attachment by a cable television system or provider of telecommunications service to a pole owned or controlled by a utility.

"New attacher" means a cable television system or telecommunications carrier requesting to attach new or upgraded facilities to a pole owned or controlled by a utility.

"Existing attacher" means any entity with equipment on a utility pole.

III. REQUESTS FOR INFORMATION

A utility shall promptly respond in writing to a written request for information ("request for information") from a telecommunications carrier, CMRS carrier, or cable TV company regarding the availability of surplus space or excess capacity on or in the utility's support structures and rights-of-way. The utility shall respond to requests for information as quickly as possible consistent with applicable legal, safety, and reliability requirements, which, ~~in the case of Pacific or GTEC,~~ shall not exceed 10 business days if no field survey is required and shall not exceed 20 business days if a field-based survey of support structures is required. In the event the request involves more than 500 poles or 5 miles of conduit, the parties shall negotiate a mutually satisfactory longer response time.

Within the applicable time limit set forth in paragraph III.A and subject to execution of pertinent nondisclosure agreements, the utility shall provide access to maps, and currently available records such as drawings, plans and any other information which it uses in its daily transaction of business necessary for evaluating the availability of surplus space or excess capacity on support structures and for evaluating access to a specified area of the utility's rights-of-way identified by the carrier.

The utility may charge for the actual costs incurred for copies and any preparation of maps, drawings or plans necessary for evaluating the availability of surplus space or excess capacity on support structures and for evaluating access to a utility's rights-of-way.

Within 20 business days of a request, anyone who attaches to a utility-owned pole shall allow the pole owner access to maps, and any currently available records such as drawings, plans, and any other information which is used in the daily transaction of business necessary for the owner to review attachments to its poles.

The utility may request up-front payments of its estimated costs for any of the work contemplated by Rule III.C., Rule IV.A. and Rule IV.B. The utility's estimate will be adjusted to reflect actual cost upon completion of the requested tasks.

IV. REQUESTS FOR ACCESS TO RIGHTS-OF-WAY AND SUPPORT STRUCTURES

A. INFORMATION REQUIREMENTS OF REQUESTS FOR ACCESS

The request for access shall contain the following:

1. Information for contacting the telecommunications carrier, CMRS carrier, or cable TV company, including project engineer, and name and address of person to be billed.
2. Loading information, which includes grade and size of attachment, size of cable, average span length, wind loading of their equipment, vertical loading, and bending movement.
3. Copy of property lease or right-of-way document.
4. Clearly specify in the attachment application if the applicant is electing the one-touch make-ready process, identify the simple make-ready that will be performed, and certify that the make-ready is simple.

B. RESPONSES TO REQUESTS FOR ACCESS

1. Pre-application Process. A utility shall take no longer than 60 days from the time it receives written notice from the attaching party to reach an agreement on how to proceed with the pole attachment application. If such discussions fail to produce an agreement within 30 days, the attaching party should be permitted to enter into a model "safe harbor" pole attachment agreement to be issued by the Commission.

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2. **Application Completeness.** A utility shall review a new attacher's attachment application for completeness before reviewing the application on its merits.

a. **Completeness Requirements.** A new attacher's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.

b. **Completeness Evaluation.** A utility shall determine within 10

business days after receipt of a new attacher's attachment application whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as

incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the utility timely notifies the new attacher that its attachment application is not complete, then it must specify all reasons for finding it incomplete.

c. **Resubmission for Completeness.** Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The new attacher may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

32. **Application Review on the Merits.** A utility shall respond in writing to the written request of a telecommunications carrier, CMRS carrier, or cable TV company for access ("request for access") to its rights-of-way and support structures as quickly as possible, by granting access or denying access within ~~45~~ 30 days of receipt of a complete application to attach facilities to its utility poles (or within ~~45~~ ~~60~~ days in the case of larger orders) ~~which, in the case of Pacific or GTEC, shall not exceed 45 days~~. The response shall affirmatively state whether the utility will grant access or, if it intends to deny access, shall state all of the reasons why it is denying such access. Failure ~~of Pacific or GTEC~~ to respond within 30 days in the case of a small number of requests, or 45 days in the case of medium sized requests, shall be deemed an acceptance of the request for access. The utility shall proceed immediately after expiration of these time periods to perform, or allow the requesting attacher to perform make-ready work. A utility may not deny the new attacher pole access based on a preexisting violation not caused by any prior attachments of the new attacher.

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a~~2~~. If, pursuant to a request for access, the utility has notified the telecommunication carrier, CMRS carrier, or cable TV company that both adequate space and strength are available for the attachment, and the entity seeking access advises the utility in writing that it wants to make the attachment, the utility shall provide this entity with a list of the rearrangements or changes required to accommodate the entity's facilities and an estimate of the time required and the cost to perform the utility's portion of such rearrangements or changes.

b~~3~~. If the utility does not own the property on which its support

structures are located, the telecommunication carrier, CMRS carrier, or

cable TV company must obtain written permission from the owner of that property before attaching or installing its facilities. The telecommunication carrier, CMRS carrier, or cable TV company by using such facilities shall defend and indemnify the owner of the utility facilities, if its franchise or other rights to use the real property are challenged as a result of the telecommunication carrier's, CMRS carrier's, or the cable TV company's use or attachment.

~~4~~3. **Survey.**

a. A utility shall complete a survey of poles for which access has been requested within 30 ~~45~~ days of receipt of a complete application to attach facilities to its utility poles (or within 45 ~~60~~ days in the case of larger orders as described in paragraph (D) of this section).

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b. A utility shall permit the new attacher and any existing attachers on the affected poles to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected attachers with advance notice of not less than 3 business days of any field inspection as part of the survey and shall provide the date, time, and location of the survey, and name of the contractor performing the survey.

c. Where a new attacher has conducted a survey pursuant to paragraph (F)(3) of this section, a utility can elect to satisfy its survey obligations in this paragraph by notifying affected attachers of its intent to use the survey conducted by the new attacher pursuant to paragraph (F)(3) of this section and by providing a copy of the survey to the affected attachers within the time period set forth in paragraph (B)(3)(a) of this section. A utility relying on a survey conducted pursuant to paragraph (F)(3) of this section to satisfy all of its obligations under paragraph (B)(3)(a) of this section shall have 15 days to make such a notification to affected attachers rather than a 45 day survey period.

~~5~~4. **Estimate.** Where a new attacher's request for access is not denied, a utility shall present to a new attacher a detailed, itemized estimate, on a pole-by-pole basis where requested, of charges to perform all necessary make-ready within 14 days of providing the response required by paragraph (B)(1) of this section, or in the case where a new attacher has performed a survey, within 14 days of receipt by the utility of such survey. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis,

the utility present charges on a per-job basis rather than present a pole-by-pole estimate for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

a. A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented.

b. A new attacher may accept a valid estimate and make payment any time after receipt of an estimate, except it may not accept after the estimate is withdrawn.

c. Final invoice: After the utility completes make-ready, if the final cost of the work differs from the estimate, it shall provide the new attacher with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new attacher's attachment. Where a pole-by-pole estimate is requested and the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present charges on a per-job basis rather than present a pole-by-pole invoice for those fixed cost charges. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of its estimate.

d. A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.

C. MAKE-READY

Upon receipt of payment specified in paragraph (B)(4)(b) of this section, a utility shall notify immediately and in writing all known entities with existing attachments that may be affected by the make-ready.

1. For attachments in the communications space, the notice shall:

a. Specify where and what make-ready will be performed.

b. Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up to 75 days in the case of larger orders as described in paragraph (D) of this section).

c. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

d. State that if make-ready is not completed by the completion date set by the utility in paragraph (C)(1)(b) in this section, the new attacher may complete the make-ready specified pursuant to paragraph (C)(1)(a) in this section.

e. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

2. For attachments above the communications space, the notice shall:

a. Specify where and what make-ready will be performed.

b. Set a date for completion of make-ready that is no later than 90 days after notification is sent (or 135 days in the case of larger orders, as described in paragraph (D) of this section).

c. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.

d. State that the utility may assert its right to 15 additional days to complete make-ready.

e. State that if make-ready is not completed by the completion date set by the utility in paragraph (C)(2)(b) in this section (or, if the utility has asserted its 15-day right of control, 15 days later), the new attacher may complete the make-ready specified pursuant to paragraph (C)(1)(a) of this section.

f. State the name, telephone number, and email address of a person to contact for more information about the make-ready procedure.

3. Once a utility provides the notices described in this section, it then must provide the new attacher with a copy of the notices and the existing attachers' contact information and address where the utility sent the notices. The new attacher shall be responsible for coordinating with existing attachers to encourage their completion of make-ready by the

dates set forth by the utility in paragraph (C)(1)(b) of this section for communications space attachments or paragraph (C)(2)(b) of this section for attachments above the communications space.

4. A utility shall complete its make-ready in the communications space by the same dates set for existing attachers in paragraph (C)(1)(b) of this section or its make-ready above the communications space by the same dates for existing attachers in paragraph (C)(2)(b) of this section (or if the utility has asserted its 15-day right of control, 15 days later).

D.~~C.~~ TIME FOR COMPLETION OF MAKE READY WORK

1. If a utility is required to perform make ready work on its poles, ducts or conduit to accommodate a telecommunications carrier's, CMRS carrier's, or a cable TV company's request for access, the utility shall perform such work at the requesting entity's sole expense. Such work shall be completed as quickly as possible consistent with applicable legal, safety, and reliability requirements, which~~, in the case of Pacific or GTEC shall occur within 30 business days of receipt of an advance payment for such work. If the work involves more than 500 poles or 5 miles of conduit, the parties will negotiate a mutually satisfactory longer time frame to complete such make ready work.~~ shall occur for the purposes of compliance with the time periods in this section:

2. A utility shall apply the timeline described in paragraphs (B) through (C) of this section to all requests for attachment up to the lesser of 300 poles or 0.5 percent of the utility's poles in a state.

3. A utility may add 15 days to the survey period described in paragraph (B) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

4. A utility may add 45 days to the make-ready periods described in paragraph (C) of this section to larger orders up to the lesser of 3000 poles or 5 percent of the utility's poles in a state.

5. A utility shall negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state.

6. A utility may treat multiple requests from a single new attacher as one request when the requests are filed within 30 days of one another.

E. SELF-HELP REMEDY

1. **Surveys.** If a utility fails to complete a survey as specified in paragraph (B)(3)(a) of this section, then a new attacher may conduct the survey in place of the utility and, as specified in paragraph (H), hire a contractor to complete a survey.

   a. A new attacher shall permit the affected utility and existing attachers to be present for any field inspection conducted as part of the new attacher's survey.

   b. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey it conducts. The notice shall include the date and time of the survey, a description of the work involved, and the name of the contractor being used by the new attacher.

2. **Make-ready.** If make-ready is not complete by the date specified in paragraph (C) of this section, then a new attacher may conduct the make-ready in place of the utility and existing attachers, and, as specified in paragraph (H), hire a contractor to complete the make-ready.

   a. A new attacher shall notify ~~permit~~ the affected utility and existing attachers so that they may to be present for any make-ready, but the new attacher is not required to alter its scheduled installation date to accommodate such observers. A new attacher shall use commercially reasonable efforts to provide the affected utility and existing attachers with advance notice of not less than 5 days of the impending make-ready. The notice shall include the date and time of the make-ready, a description of the work involved, and the name of the contractor being used by the new attacher. If the affected utility or existing attachers elect to be present for the make-ready to determine whether the contractor's work is satisfactory, any identified deficiency shall not be unreasonable and shall be based on generally accepted industry standards and/or Commission regulations.

   b. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving

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notice from the new attacher, the utility or existing attacher may either:

i. Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

ii. Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

c. A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

If the affected utility and existing attachers opt, pursuant to E.2.a, to be present while the contractor's work is performed, they shall not be permitted to invoke this provision E.2.c.

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3. **Pole replacements.** Self-help shall not be available for pole replacements.

F. ONE-TOUCH MAKE-READY OPTION.

For attachments involving simple make-ready, new attachers may elect to proceed with the process described in this paragraph in lieu of the attachment process described in paragraphs (B) through (C)(4) and (E) of this section.

1. **Attachment application.**

a. A new attacher electing the one-touch make-ready process must elect the one-touch make-ready process in writing in its attachment application and must identify the simple make-ready that it will perform. It is the responsibility of the new attacher to ensure that its contractor determines whether the make-ready requested in an attachment application is simple.

b. The utility shall review the new attacher's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the utility with the information necessary under its procedures, as

specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.

i. A utility has 10 business days after receipt of a new attacher's attachment application in which to determine whether the application is complete and notify the attacher of that decision. If the utility does not respond within 10 business days after receipt of the application, or if the utility rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.

ii. If the utility timely notifies the new attacher that its attachment application is not complete, then the utility must specify all reasons for finding it incomplete. Any resubmitted application need only address the utility's reasons for finding the application incomplete and shall be deemed complete within 5 business days after its resubmission, unless the utility specifies to the new attacher which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The applicant may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the utility, and in each case the deadline set forth in this paragraph shall apply to the utility's review.

2. **Application review on the merits.** The utility shall review on the merits a complete application requesting one-touch make-ready and respond to the new attacher either granting or denying an application within 15 days of the utility's receipt of a complete application (or within 30 days in the case of larger orders as described in paragraph (D) of this section).

a. If the utility denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.

b. Within the 15-day application review period (or within 30 days in the case of larger orders as described in paragraph (D) of this

section), a utility may object to the designation by the new attacher's contractor that certain make-ready is simple. If the utility objects to the contractor's determination that make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

3. **Surveys.** The new attacher is responsible for all surveys required as part of the one-touch make-ready process and shall use a contractor as specified in paragraph (H)(5).

   a. The new attacher shall permit the utility and any existing attachers on the affected poles to be present for any field inspection conducted as part of the new attacher's surveys. The new attacher shall use commercially reasonable efforts to provide the utility and affected existing attachers with advance notice of not less than 3 business days of a field inspection as part of any survey and shall provide the date, time, and location of the surveys, and name of the contractor performing the surveys.

4. **Make-ready.** If the new attacher's attachment application is approved and if it has provided 15 days prior written notice of the make-ready to the affected utility and existing attachers, the new attacher may proceed with make-ready using a contractor in the manner specified for simple make-ready in paragraph (H)(5).

   a. The prior written notice shall include the date and time of the make-ready, a description of the work involved, the name of the contractor being used by the new attacher, and provide the affected utility and existing attachers a reasonable opportunity to be present for any make-ready.

   b. The new attacher shall notify an affected utility or existing attacher immediately if make-ready damages the equipment of a utility or an existing attacher or causes an outage that is reasonably likely to interrupt the service of a utility or existing attacher. Upon receiving notice from the new attacher, the utility or existing attacher may either:

      i. Complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage; or

ii. Require the new attacher to fix the damage at its expense immediately following notice from the utility or existing attacher.

c. In performing make-ready, if the new attacher or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted and the determining party must provide immediate notice to the other party of its determination and the impacted poles. The affected make-ready shall then be governed by paragraphs (B)(4) through (E) of this section and the utility shall provide the notice required by paragraph (C) of this section as soon as reasonably practicable.

5. **Post-make-ready timeline.** A new attacher shall notify the affected utility and existing attachers within 15 days after completion of make-ready on a particular pole. The notice shall provide the affected utility and existing attachers at least 90 days from receipt in which to inspect the make-ready. The affected utility and existing attachers have 14 days after completion of their inspection to notify the new attacher of any damage or code violations caused by make-ready conducted by the new attacher on their equipment. If the utility or an existing attacher notifies the new attacher of such damage or code violations, then the utility or existing attacher shall provide adequate documentation of the damage or the code violations. The utility or existing attacher may either complete any necessary remedial work and bill the new attacher for the reasonable costs related to fixing the damage or code violations or require the new attacher to fix the damage or code violations at its expense within 14 days following notice from the utility or existing attacher.

G. DEVIATION FROM THE TIME LIMITS SPECIFIED IN THIS SECTION.

1. A utility may deviate from the time limits specified in this section before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment.

2. A utility may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the utility to complete make-ready within the time limits specified in this section. A utility that so deviates shall immediately notify, in writing, the new attacher and affected existing attachers and shall identify the affected poles and include a detailed

explanation of the reason for the deviation and a new completion date. The utility shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations. A utility cannot delay completion of make-ready because of a preexisting violation on an affected pole not caused by the new attacher.

3. An existing attacher may deviate from the time limits specified in this section during performance of complex make-ready for reasons of safety or service interruption that renders it infeasible for the existing attacher to complete complex make-ready within the time limits specified in this section. An existing attacher that so deviates shall immediately notify, in writing, the new attacher and other affected existing attachers and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in paragraph (C)(1) of this section is sent by the utility (or up to 105 days in the case of larger orders described in paragraph (D) of this section). The existing attacher shall deviate from the time limits specified in this section for a period no longer than necessary to complete make-ready on the affected poles.

H.~~D.~~ USE OF THIRD PARTY CONTRACTORS

1. The pole owner ~~ILEC~~ shall maintain a list of contractors that are qualified to respond to requests for information and requests for access, as well as to perform make ready work and attachment and installation of telecommunications carrier facilities, CMRS facilities, or cable TV facilities on the utility's support structures. ~~This requirement shall not apply to electric utilities.~~ This requirement shall not affect the discretion of a utility to use its own employees.

2. A telecommunications carrier, CMRS carrier, or cable TV company may use its own personnel to attach or install the carrier's communications facilities in or on a utility's facilities, provided that in the utility's reasonable judgment, the telecommunications carrier's, CMRS carrier's, or cable TV company's personnel or agents demonstrate that they are trained and qualified to work on or in the utility's facilities. To use its own personnel or contractors on electric utility poles, the

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telecommunications carrier, CMRS carrier, or cable TV company must give 48 hours advance notice to the electric utility, unless an electrical shutdown is required. If an electrical shutdown is required, the telecommunications carrier, CMRS carrier, or cable TV company must arrange a specific schedule with the electric utility. The telecommunications carrier, CMRS carrier, or cable TV company is responsible for all costs associated with an electrical shutdown. The inspection will be paid for by the attaching entity. The telecommunications carrier, CMRS carrier, or cable TV company must allow the electric utility, in the utility's discretion to inspect the attachment to the support structure. This provision shall not apply to electric underground facilities containing energized electric supply cables. Work involving electric underground facilities containing energized electric supply cables or the rearranging of overhead electric facilities will be conducted as required by the electric utility at its sole discretion. In no event shall the telecommunications carrier, CMRS carrier, or cable TV company or their respective contractor, interfere with the electric utility's equipment or service.

3. Incumbent utilities should adopt written guidelines to ensure that telecommunication carriers', CMRS carrier's, and cable TV companies' personnel and third-party contractors are qualified. These guidelines must be reasonable and objective, and must apply equally to the incumbent utility's own personnel or the incumbent utility's own third-party contractors. Incumbent utilities must seek industry input when drafting such guidelines.

4. **Contractors for self-help complex and above the communications space make-ready.** A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform self-help surveys and make-ready that is complex and self-help surveys and make-ready that is above the communications space on its poles. The new attacher must use a contractor from this list to perform self-help work that is complex or above the communications space. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (H)(6)(a) through (H(6)(e) of this section and the utility may not unreasonably withhold its consent.

5. **Contractors for simple work.** A utility may, but is not required to, keep up-to-date a reasonably sufficient list of contractors it authorizes to

perform surveys and simple make-ready. If a utility provides such a list, then the new attacher must choose a contractor from the list to perform the work. New and existing attachers may request the addition to the list of any contractor that meets the minimum qualifications in paragraphs (H)(6)(a) through (H(6)(e) of this section and the utility may not unreasonably withhold its consent.

a. If the utility does not provide a list of approved contractors for surveys or simple make-ready or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (H)(6) of this section. When choosing a contractor that is not on a utility-provided list, the new attacher must certify to the utility that its contractor meets the minimum qualifications described in paragraph (H)(6) of this section when providing notices required by paragraphs (E)(1)(b), (E)(2)(a), (F)(3)(a), and (F)(4).

b. The utility may disqualify any contractor chosen by the new attacher that is not on a utility-provided list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in paragraph (H)(6) of this section or to meet the utility's publicly available and commercially reasonable safety or reliability standards. The utility must provide notice of its contractor objection within the notice periods provided by the new attacher in paragraphs (E)(1)(b), (E)(2)(a), (F)(3)(a), and (F)(4) and in its objection must identify at least one available qualified contractor.

6. **Contractor minimum qualification requirements.** Utilities must ensure that contractors on a utility-provided list, and new attachers must ensure that contractors they select pursuant to paragraph (H)(5)(a) of this section, meet the following minimum requirements:

a. The contractor has agreed to follow published safety and operational guidelines of the utility, if available, but if unavailable, the contractor shall agree to follow Public Utilities Commissions General Order 95 guidelines;

b. The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the utility;

c. The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration (OSHA) rules;

d. The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available; and

e. The contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on facilities owned by existing attachers.

7. The consulting representative of an electric utility may make final determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

V. NONDISCLOSURE

A. DUTY NOT TO DISCLOSE PROPRIETARY INFORMATION

1. The utility and entities seeking access to poles or other support structures may provide reciprocal standard nondisclosure agreements that permit either party to designate as proprietary information any portion of a request for information or a response thereto, regarding the availability of surplus space or excess capacity on or in its support structures, or of a request for access to such surplus space or excess capacity, as well as any maps, plans, drawings or other information, including those that disclose the telecommunications carrier's, CMRS carrier's, or cable TV company's plans for where it intends to compete against an incumbent telephone utility. Each party shall have a duty not to disclose any information which the other contracting party has designated as proprietary except to personnel within the utility that have an actual, verifiable "need to know" in order to respond to requests for information or requests for access.

B. SANCTIONS FOR VIOLATIONS OF NONDISCLOSURE AGREEMENTS

1. Each party shall take every precaution necessary to prevent employees in its field offices or other offices responsible for making or responding to requests for information or requests for access from disclosing any

proprietary information of the other party. Under no circumstances may a party disclose such information to marketing, sales or customer representative personnel. Proprietary information shall be disclosed only to personnel in the utility's field offices or other offices responsible for making or responding to such requests who have an actual, verifiable "need to know" for purposes of responding to such requests. Such personnel shall be advised of their duty not to disclose such information to any other person who does not have a "need to know" such information. Violation of the duty not to disclose proprietary information shall be cause for imposition of such sanctions as, in the Commission's judgment, are necessary to deter the party from breaching its duty not to disclose proprietary information in the future. Any violation of the duty not to disclose proprietary information will be accompanied by findings of fact that permit a party whose proprietary information has improperly been disclosed to seek further remedies in a civil action.

VI. PRICING AND TARIFFS GOVERNING ACCESS

A. GENERAL PRINCIPLE OF NONDISCRIMINATION

1. A utility shall grant access to its rights-of-way and support structures to telecommunications carriers, CMRS carriers, and cable TV companies on a nondiscriminatory basis. Nondiscriminatory access is access on a first-come, first-served basis; access that can be restricted only on consistently applied nondiscriminatory principles relating to capacity constraints, and safety, engineering, and reliability requirements. Electric utilities' use of its own facilities for internal communications in support of its utility function shall not be considered to establish a comparison for nondiscriminatory access. A utility shall have the ability to negotiate with a telecommunications carrier, CMRS carrier, or cable TV company the price for access to its rights-of-way and support structures.
2. A utility shall grant access to its rights-of-way and support structures to telecommunications carriers, CMRS carriers, and cable TV companies on a nondiscriminatory basis, access to or use of the right-of-way, where such right-of-way is located on private property and safety, engineering, and reliability requirements. Electric utilities' use of their own facilities for internal communications in support of their utility

function shall not be considered to establish a comparison for nondiscriminatory access. A utility shall have the ability to negotiate with a telecommunications carrier, CMRS carrier, or cable TV company the price for access to its rights-of-way and support structures.

B. MANNER OF PRICING ACCESS

1. Whenever a public utility cannot reach an agreement with a telecommunications carrier, CMRS carrier, or cable TV company, or associations thereof, regarding the terms, conditions, or annual compensation for pole attachments or the terms, conditions, or costs of rearrangements, the Commission shall establish and enforce the rates, terms and conditions for pole attachments and rearrangements so as to assure a public utility the recovery of both of the following:
   a. A one-time reimbursement for actual costs incurred by the public utility for rearrangements performed at the request of the telecommunications carrier, cable TV company, or CMRS carrier.
   b. An annual recurring fee computed as follows:
      (1) Except as provided in Section 3 below, for each pole and supporting anchor actually used by the telecommunications carrier or cable TV company, the annual fee shall be two dollars and fifty cents ($2.50) or 7.4 percent of the public utility's annual cost-of-ownership for the pole and supporting anchor, whichever is greater, except that if a public utility applies for establishment of a fee in excess of two dollars and fifty cents ($2.50) under this rule, the annual fee shall be 7.4 percent of the public utility's annual cost-of-ownership for the pole and supporting anchor.
      (2) For each pole and supporting anchor actually used by a CMRS carrier, the annual fee for each foot of vertical pole space occupied by the CMRS installation shall be two dollars and fifty cents ($2.50) or 7.4 percent of the public utility's annual cost-of-ownership for the pole and supporting anchor, whichever is greater. The per-foot fee for CMRS installations is subject to the following conditions and limitations:

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

(ii) The 7.4% per-foot fee applies to the pole space that a CMRS attachment renders unusable for non-CMRS attachments, including (A) the pole space that is physically occupied by the CMRS attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the CMRS attachment.

(iii) The 7.4% per-foot fee applies to CMRS attachments anywhere on the pole.

(iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple CMRS pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each CMRS attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.

(v) The total pole-attachment fees for all CMRS attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.

(vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with CMRS installations.

(3) For each pole and supporting anchor actually used by a telecommunications carrier for wireless attachments, the annual fee for each foot of vertical pole space occupied by the telecommunications carrier's wireless and wireline attachments shall be two dollars and fifty cents ($2.50) or 7.4 percent of the public utility's annual cost-of-ownership for the pole and supporting anchor, whichever is greater. The per-foot fee for the telecommunications carrier's wireless and wireline attachments is subject to the following conditions and limitations:

(i) The vertical pole space occupied by each of the telecommunications carrier's wireless and wireline attachments shall be rounded to the nearest whole foot, with a 1-foot minimum.

(ii) The 7.4% per-foot fee applies to the pole space that the telecommunications carrier's attachment renders unusable for other pole attachments, including (A) the pole space that is physically occupied by the telecommunications carrier's attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the telecommunications carrier's pole attachment.

(iii) The 7.4% per-foot fee applies to the telecommunications carrier's wireless and wireline attachments anywhere on the pole.

(iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each telecommunications carrier pole attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.

(v) The total pole-attachment fees for all telecommunications carrier attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.

(vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with telecommunications carrier wireless pole installations.

(vii) The annual fee in Section VI.B.1.b.1, above, shall apply to a telecommunications carrier that has only wireline facilities attached to a pole, even if another telecommunications carrier has wireless facilities attached to the same pole.

(4) For support structures used by the telecommunications carrier, CMRS carrier, or cable TV company, other than poles or anchors, a percentage of the annual cost-of-ownership for the support structure, computed by dividing the volume or capacity rendered unusable by the telecommunications carrier's, CMRS carrier's, or cable TV company's equipment by the total usable volume or capacity. As used in this paragraph, "total usable volume or capacity" means all volume or capacity in which the public utility's line, plant, or system could legally be located, including the volume or capacity rendered unusable by the telecommunications carrier's, CMRS carrier's, or cable TV company's equipment.

c. Except as allowed by Sections VI.B.1.b.2 and 3, above, a utility may not charge a telecommunications carrier, CMRS carrier, or cable TV company a higher rate for access to its rights-of-way and support structures than it would charge a similarly situated cable television corporation for access to the same rights-of-way and support structures.

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

C. CONTRACTS

1. A utility that provides or has negotiated an agreement with a telecommunications carrier, CMRS carrier, or cable TV company to provide access to its support structures shall file with the Commission the executed contract showing:

   a. The annual fee for attaching to a pole and supporting anchor.

   b. The annual fee per linear foot for use of conduit.

   c. Unit costs for all make ready and rearrangements work.

   d. All terms and conditions governing access to its rights-of-way and support structures.

e. The fee for copies or preparation of maps, drawings and plans for attachment to or use of support structures.

2. A utility entering into contracts with telecommunications carriers, CMRS carriers, or cable TV companies or cable TV company for access to its support structures, shall file such contracts with the Commission pursuant to General Order 96, available for full public inspection, and extended on a nondiscriminatory basis to all other similarly situated telecommunications carriers, CMRS carriers, or cable TV companies. If the contracts are mutually negotiated and submitted as being pursuant to the terms of 251 and 252 of TA 96, they shall be reviewed consistent with the provisions of Resolution ALJ-174.

D. UNAUTHORIZED ATTACHMENTS

1. No party may attach to the right-of-way or support structure of another utility without the express written authorization from the utility.

2. For every violation of the duty to obtain approval before attaching, the owner or operator of the unauthorized attachment shall pay to the utility a penalty of $500 for each violation. This fee is in addition to all other costs which are part of the attacher's responsibility. Each unauthorized pole attachment shall count as a separate violation for assessing the penalty.

3. Any violation of the duty to obtain permission before attaching shall be cause for imposition of sanctions as, in the Commissioner's judgment, are necessary to deter the party from in the future breaching its duty to obtain permission before attaching will be accompanied by findings of fact that permit the pole owner to seek further remedies in a civil action.

4. This Section D applies to existing attachments as of the effective date of these rules.

VII. RESERVATIONS OF CAPACITY FOR FUTURE USE

A. No utility shall adopt, enforce or purport to enforce against a telecommunications carrier, CMRS carrier, or cable TV company any "hold off," moratorium, reservation of rights or other policy by which it refuses to make currently unused space or capacity on or in its support structures available to telecommunications carriers, CMRS carriers, or cable TV

companies requesting access to such support structures, except as provided for in Part C below.

B. All access to a utility's support structures and rights-of-way shall be subject to the requirements of Public Utilities Code § 851 and General Order 69C. Instead of capacity reclamation, our preferred outcome is for the expansion of existing support structures to accommodate the need for additional attachments.

C. Notwithstanding the provisions of Paragraphs VII.A and VII.B, an electric utility may reserve space for up to 12 months on its support structures required to serve core utility customers where it demonstrates that: (i) prior to a request for access having been made, it had a bona fide development plan in place prior to the request and that the specific reservation of attachment capacity is reasonably and specifically needed for the immediate provision (within one year of the request) of its core utility service, (ii) there is no other feasible solution to meeting its immediately foreseeable needs, (iii) there is no available technological means of increasing the capacity of the support structure for additional attachments, and (iv) it has attempted to negotiate a cooperative solution to the capacity problem in good faith with the party seeking the attachment. An ILEC may earmark space for imminent use where construction is planned to begin within nine months of a request for access. A CLEC, CMRS carrier, or cable TV company must likewise use space within nine months of the date when a request for access is granted, or else will become subject to reversion of its access.

VIII. MODIFICATIONS OF EXISTING SUPPORT STRUCTURES

A. NOTIFICATION TO PARTIES ON OR IN SUPPORT STRUCTURES

1. Absent a private agreement establishing notification procedures, written notification of a modification should be provided to parties with attachments on or in the support structure to be modified at least 60 days prior to the commencement of the modification. Notification shall not be required for emergency modifications or routine maintenance activities.

B. NOTIFICATION GENERALLY

1. Utilities and telecommunications carriers shall cooperate to develop a means by which notice of planned modifications to utility support

structures may be published in a centralized, uniformly accessible location (e.g., a "web page" on the Internet).

A. SHARING THE COST OF MODIFICATIONS

1. The costs of support structure capacity expansions and other modifications shall be shared only by all the parties attaching to utility support structures which are specifically benefiting from the modifications on a proportionate basis corresponding to the share of usable space occupied by each benefiting carrier. In the event an energy utility incurs additional costs for trenching and installation of conduit due of safety or reliability requirements which are more elaborate than a telecommunications-only trench, the telecommunications carriers should not pay more than they would have incurred for their own independent trench. Disputes regarding the sharing of the cost of capacity expansions and modifications shall be subject to the dispute resolution procedures contained in these rules.

IX. EXPEDITED DISPUTE RESOLUTION PROCEDURES

A. Parties to a dispute involving access to utility rights-of-way and support structures may invoke the Commission's dispute resolution procedures, but must first attempt in good faith to resolve the dispute. Disputes involving initial access to utility rights-of-way and support structures shall be heard and resolved through the following expedited dispute resolution procedure.

1. Following denial of a request for access, parties shall escalate the dispute to the executive level within each company. After 5 business days, any party to the dispute may file a formal application requesting Commission arbitration. The arbitration shall be deemed to begin on the date of the filing before the Commission of the request for arbitration. Parties to the arbitration may continue to negotiate an agreement prior to and during the arbitration hearings. The party requesting arbitration shall provide a copy of the request to the other party or parties not later than the day the Commission receives the request.
2. **Content**. A request for arbitration must contain:
   a. A statement of all unresolved issues.
   b. A description of each party's position on the unresolved issues.

c. A proposed agreement addressing all issues, including those upon which the parties have reached an agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously arbitrated and approved by this Commission.

d. Direct testimony supporting the requester's position on factual predicates underlying disputed issues.

e. Documentation that the request complies with the time requirements in the preceding rule.

3. **Appointment of Arbitrator.** Upon receipt of a request for arbitration, the Commission's President or a designee in consultation with the Chief Administrative Law Judge, shall appoint and immediately notify the parties of the identity of an Arbitrator to facilitate resolution of the issues raised by the request. The Assigned Commissioner may act as Arbitrator if he/she chooses. The Arbitrator must attend all arbitration meetings, conferences, and hearings.
4. **Discovery.** Discovery should begin as soon as possible prior to or after filing of the request for negotiation and should be completed before a request for arbitration is filed. For good cause, the Arbitrator or Administrative Law Judge assigned to Law and Motion may compel response to a data request; in such cases, the response normally will be required in three working days or less.
5. **Opportunity to Respond.** Pursuant to Subsection 252(b)(3), any party to a negotiation which did not make the request for arbitration ("respondent") may file a response with the Commission within 15 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on these issues, and identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the Commission's review. Building upon the contract language proposed by the applicant and using the form of agreement selected by the applicant, the respondent shall include, in the response, a single-text "mark-up" document containing the language upon which the parties agree and, where they disagree, both the applicant's proposed language (bolded) and the respondent's proposed language (underscored). Finally, the response should contain any direct testimony supporting the respondent's

position on underlying factual predicates. On the same day that it files its response before the Commission, the respondent must serve a copy of the Response and all supporting documentation on any other party to the negotiation.

6. **Revised Statement of Unresolved Issues.** Within 3 days of receiving the response, the applicant and respondent shall jointly file a revised statement of unresolved issues that removes from the list presented in the initial petition those issues which are no longer in dispute based on the contract language offered by the respondent in the mark-up document and adds to the list only those other issues which now appear to be in dispute based on the mark-up document and other portions of the response.
7. **Initial Arbitration Meeting.** An Arbitrator may call an initial meeting for purposes such as setting a schedule, simplifying issues, or resolving the scope and timing of discovery.
8. **Arbitration Conference and Hearing.** Within 7 days after the filing of a response to the request for arbitration, the arbitration conference and hearing shall begin. The conduct of the conference and hearing shall be noticed on the Commission calendar and notice shall be provided to all parties on the service list.
9. **Limitation of Issues.** The Arbitrator shall limit the arbitration to the resolution of issues raised in the application, the response, and the revised statement of unresolved issues (where applicable). In resolving the issues raised, the Arbitrator may take into account any issues already resolved between the parties.
10. **Arbitrator's Reliance on Experts.** The Arbitrator may rely on experts retained by, or on the Staff of the Commission. Such expert(s) may assist the Arbitrator throughout the arbitration process.
11. **Close of Arbitration.** The arbitration shall consist of mark-up conferences and limited evidentiary hearings. At the mark-up conferences, the arbitrator will hear the concerns of the parties, determine whether the parties can further resolve their differences, and identify factual issues that may require limited evidentiary hearings. The arbitrator will also announce his or her rulings at the conferences as the issues are resolved. The conference and hearing process shall conclude within 3 days of the hearing's commencement, unless the Arbitrator determines otherwise.

12. **Expedited Stenographic Record.** An expedited stenographic record of each evidentiary hearing shall be made. The cost of preparation of the expedited transcript shall be borne in equal shares by the parties.
13. **Authority of the Arbitrator.** In addition to authority granted elsewhere in these rules, the Arbitrator shall have the same authority to conduct the arbitration process as an Administrative Law Judge has in conducting hearings under the Rules of Practice and Procedure. The Arbitrator shall have the authority to change the arbitration schedule contained in these rules.

    Participation Open to the Public Participation in the arbitration conferences and hearings is strictly limited to the parties negotiating a ROW agreement pursuant to the terms of these adopted rules.
14. **Arbitration Open to the Public.** Though participation at arbitration conferences and hearings is strictly limited to the parties that were negotiating the agreements being arbitrated, the general public is permitted to attend arbitration hearings unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session. Any party to an arbitration seeking a closed session must make a written request to the Arbitrator describing the circumstances compelling a closed session. The Arbitrator shall consult with the assigned Commissioner and rule on such request before hearings begin.
15. **Filing of Draft Arbitrator's Report.** Within 15 days following the hearings, the Arbitrator, after consultation with the Assigned Commissioner, shall file a Draft Arbitrator's Report. The Draft Arbitrator's Report will include (a) a concise summary of the issues resolved by the Arbitrator, and (b) a reasoned articulation of the basis for the decision.
16. **Filing of Post-Hearing Briefs and Comments on the Draft Arbitrator's Report.** Each party to the arbitration may file a post-hearing brief within 7 days of the end of the mark-up conferences and hearings unless the Arbitrator rules otherwise. Post-hearing briefs shall present a party's argument in support of adopting its recommended position with all supporting evidence and legal authorities cited therein. The length of post-hearing briefs may be limited by the Arbitrator and shall otherwise comply with the Commission's Rules of Practice and Procedure. Each party and any

member of the public may file comments on the Draft arbitrator's Report within 10 days of its release. Such comments shall not exceed 20 pages.

17. **Filing of the Final Arbitrator's Report.** The arbitrator shall file the Final Arbitrator's Report no later than 15 days after the filing date for comments. Prior to the report's release, the Telecommunications Division will review the report and prepare a matrix comparing the outcomes in the report to those adopted in prior Commission arbitration decisions, highlighting variances from prior Commission policy. Whenever the Assigned Commissioner is not acting as the arbitrator, the Assigned Commissioner will participate in the release of the Final Arbitrator's Report consistent with the Commission's filing of Proposed Decisions as set forth in Rule 77.1 of the Commission's Rules of Practice and Procedure.
18. **Filing of Arbitrated Agreement.** Within 7 days of the filing of the Final Arbitrator's Report, the parties shall file the entire agreement for approval.
19. **Commission Review of Arbitrated Agreement.** Within 30 days following filing of the arbitrated agreement, the Commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to Subsection 252(e) and all its subparts.
20. **Standards for Review.** The Commission may reject arbitrated agreements or portions thereof that do not meet the requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.
21. **Written Findings.** The Commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the Commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable to the Commission.
22. **Application for Rehearing.** A party wishing to appeal a Commission decision approving an arbitration must first seek administrative review pursuant to the Commission's Rules of Practice and Procedure.

23. The party identified by the arbitrator as the "losing party" shall reimburse the party identified by the arbitrator as the "prevailing party" for all costs of the arbitration, including the reasonable attorney and expert witness fees incurred by the prevailing party.

X. ACCESS TO CUSTOMER PREMISES

A. No carrier may use its ownership or control of any right-of-way or support structure to impede the access of a telecommunications carrier, CMRS carrier, or cable TV company to a customer's premises.

B. A carrier shall provide access, when technically feasible, to building entrance facilities it owns or controls, up to the applicable minimum point of entry (MPOE) for that property, on a nondiscriminatory, first-come, first-served basis, provided that the requesting telecommunications carrier, CMRS carrier, or cable TV provider has first obtained all necessary access and/or use rights from the underlying property owners(s).

C. A carrier will have 60 days to renegotiate a contract deemed discriminatory by the Commission in response to a formal complaint. Failing to do so, this carrier will become subject to a fine ranging from $500 to $20,000 per day beyond the 60-day limit for renegotiation until the discriminatory provisions of the arrangement have been eliminated.

XI. SAFETY

Access to utility rights-of-way and support structures shall be governed at all times by the provisions of Commission General Order Nos. 95 and 128 and by Cal/OSHA Title 8. Where necessary and appropriate, said General Orders shall be supplemented by the National Electric Safety Code, and any reasonable and justifiable safety and construction standards which are required by the utility.

A. The incumbent utility shall not be liable for work that is performed by a third party without notice and supervision, work that does not pass inspection, or equipment that contains some dangerous defect that the incumbent utility cannot reasonably be expected to detect through a visual inspection. The incumbent utility and its customers shall be immunized from financial damages in these instances.

(END OF ATTACHMENT A)