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TO PARTIES OF RECORD IN INVESTIGATION 17-06-027 AND
RULEMAKING 17-06-028

This is the proposed decision of Commissioner Alice Reynolds. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's October 20, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:mph

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER ALICE REYNOLDS**
(Mailed 9/16/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into
the Creation of a Shared Database or
Statewide Census of Utility Poles and
Conduit in California.

Investigation 17-06-027

And Related Matter.

Rulemaking 17-06-028

DECISION ADOPTING ONE-TOUCH MAKE-READY REQUIREMENTS

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Attachment A -PROPOSAL

DECISION ADOPTING ONE-TOUCH MAKE-READY REQUIREMENTS

Summary

As part of California's ongoing commitment to provide greater access to broadband service to the unserved and underserved communities, and to promote increased safety and competition in the telecommunications industry, today's decision adopts the One-Touch Make-Ready requirements in the Staff Proposal with slight modifications made because of the party comments received in this proceeding. With these regulations, the Commission implements a transparent and efficient pole attachment process that vests new attachers with greater options that place them in control of the work necessary to attach their equipment to utility poles and provide consumers with greater telecommunications service opportunities. Nondiscriminatory access to the incumbent utilities' poles and rights of way is one of the essential elements for enabling facilities-based competition to succeed consonant with California's goal of providing broadband access to no less than 98% of California households.

1. Background

This decision addresses whether the Commission should adopt One-Touch Make-Ready requirements, which if adopted will establish new requirements to accommodate the placement of additional facilities on utility poles. Today's decision builds on a long history of policy objectives and decision making at both the federal and state level that we briefly summarize to provide the necessary factual and legal context for adopting the One-Touch Make-Ready requirements.

1.1. Factual Background

Congress passed the Pole Attachment Act¹ “as a solution to a perceived danger of anticompetitive practices by utilities in connection with cable television service.”² Because underground installation of the necessary cables was impossible or impracticable, “[u]tility company poles provide, under such circumstances, virtually the only practical physical medium for the installation of television cables.”³ As such, utility companies throughout the country entered into arrangements for the leasing of space on poles to operators of cable television systems. In response to arguments by cable operators that utility companies were exploiting their monopoly position by engaging in widespread overcharging, the Pole Attachments Act authorized the Federal Communications Commission (FCC) to fill the gap left by state systems of public utilities regulation.⁴

Pursuant to the authority vested to it under the Pole Attachment Act, the FCC promulgated the One-Touch Make-Ready Order (OTMR) as a modified version of the FCC’s standard pole attachment rules.⁵ The core elements of the FCC’s standard pole attachment rules conducted by the utility pole owners are: Application Evaluation for Completeness, Application Evaluation on the Merits, Surveys, Estimates, Make-Ready, Self-Help and Contractor lists. While OTMR contains the same core elements, responsibilities for conducting surveys and

¹ 92 Stat. 35, as amended, 47 U.S.C. § 224.

² *F.C.C. v. Florida Power Corp.* (1987) 480 U.S. 245, 247.

³ *Id.*

⁴ *Id.*, citing to S.Rep. No. 95-580, at 12-14 (1977).

⁵ See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, 33 FCC Rcd. 7705, 7705-92 (2018).

simple make-ready work in the communications space are taken on by a new attacher instead of the utility pole owner. Both the standard pole attachment process and OTMR process are a series of notifications made between utilities, new attachers, existing attachers, and contractors at specific times in the process. Parties not conducting the survey and make-ready work are notified and allowed an opportunity to be present during the activities. The FCC's goal of the OTMR requirements is "to improve and speed the process of preparing poles for new attachments or make-ready. Make-ready generally refers to the modification or replacement of a utility pole, or of the lines or equipment on the utility pole, to accommodate additional facilities on the pole."⁶

The FCC implemented its standard pole attachment requirements and core principles in rulings from a series of proceedings instituted between 1998 and 2018.⁷ For example, in the rulemaking entitled *In The Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*,⁸ on April 7, 2011,

⁶ See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket Nos. 96-98, 96-185, Order on Reconsideration, 14 FCC Rcd at 18049, 18056, fn. 50 (1999), quoted from and cited in *Third Report and Order and Declaratory Ruling*, FCC 18-111 (August 2, 2018), at 2, fn. 4.

⁷ See, e.g., *Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Report and Order on Reconsideration, 26 FCC Rcd 5240 (2011) (2011 Pole Attachment Order); *In The Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245, GN Docket No. 09-51, Order on Reconsideration, 30 FCC Rcd 13731 (2015); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Report and Order, Declaratory Ruling, and Further Notice of Proposed Rulemaking, 32 FCC Rcd 11128 (2017) (2017 Wireline Infrastructure Order); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, WT Docket No. 17-79, Third Report and Order and Declaratory Ruling, 33 FCC Rcd 7705 (2018) (2018 Wireline Infrastructure Order); *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Declaratory Ruling, 35 FCC Rcd 7936 (WCB 2020).

⁸ WC Docket No. 07-245 and GN Docket No. 09-51.

the FCC adopted its *Report and Order and Order on Reconsideration*⁹ and revised its pole attachment rules “to improve the efficiency and reduce the potentially excessive costs of deploying telecommunications, cable, and broadband networks, in order to accelerate broadband buildout.”¹⁰ In doing so, the FCC responded to a congressional directive that the FCC encourage the deployment of advanced telecommunications capability to all Americans by removing barriers to infrastructure investment.¹¹ Removal of barriers would be instrumental in aiding the FCC in developing “a National Broadband Plan that would ensure that every American has access to broadband services.”¹²

In a subsequent rulemaking entitled *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*,¹³ on August 2, 2018, the FCC adopted its *Third Report and Order and Declaratory Ruling*,¹⁴ which continued the effort to promote broadband deployment by speeding the process and reducing the costs of attaching new facilities to utility poles.¹⁵ The new rules that the FCC adopted (1) permit new attachers to elect an

⁹ FCC-50.

¹⁰ *Report*, at 2. According to the FCC, broadband is the transmission of wide bandwidth data over a high-speed internet connection:

Broadband or high-speed Internet access allows users to access the Internet and Internet-related services at significantly higher speeds than those available through "dial-up" services. Broadband speeds vary significantly depending on the technology and level of service ordered. Broadband services for residential consumers typically provide faster downstream speeds (from the Internet to your computer) than upstream speeds (from your computer to the Internet).

¹¹ *Id.*, quoting from 47 U.S.C. § 1302(b) and Section 706 of the Telecommunications Act of 1996

¹² *Id.*, citing to the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, § 600(k)(2) (2009).

¹³ WC Docket No. 17-84 and WT Docket No. 17-79.

¹⁴ FCC 18-111.

¹⁵ *Id.*, at 2.

OTMR process for simple make-ready for wireline attachments in the communications space on a pole; (2) establish safeguards in the OTMR process to promote coordination among the parties and ensure that new attachers perform work safely and reliably; (3) retain a multi-party process for other new attachments where safety and reliability risks are greater, while making some modifications to speed deployment; and (4) codify the FCC's existing precedent that permits attachers to "overlash"¹⁶ existing wires without first seeking the utility's approval while allowing the utility to request reasonable advance notice of overlashing.¹⁷

But federal law is clear that the FCC does not have exclusive jurisdiction over utility infrastructure. Pursuant to 47 U.S.C. § 224(b)(1), the placement and use of utility infrastructure are also governed by local, state, and federal safety rules. As set forth in 47 U.S.C. § 224(c)(1), the FCC does not have "jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f) for pole attachments in any case where such matters are regulated by a State." This Commission, therefore, has jurisdiction to exercise reverse preemption and in doing so set our own rules governing access to Rights of Way (ROW), without having to make our rules conform to those promulgated by the FCC.

¹⁶ In *City of Portland v. United States* (9th Cir. 2020) 969 F.3d 1020, 1050, the Ninth Circuit defined overlashing as "the process by which attachers affix additional cables or other wires to ones already attached to a pole. The overlashing rule prohibits a utility from requiring overlashers to conduct pre-overlashing engineering studies or to pay the utility's cost of conducting such studies." The overlashing rule "allows overlashers and utilities to negotiate the details of the overlashing arrangement, and is thus consistent with FCC's longstanding policy. (See *Amendment of Commission's Rules & Policies Governing Pole Attachments*, 16 FCC Rcd. 12,103 ¶ 74 (2001)." (969 F.3d, at 1050.)

¹⁷ FCC Public Notice, *Wireline Competition Bureau Announces Effective Date of Order Instituting "One-Touch Make-Ready" Regime for Pole Attachments*, DA-445 (May 20, 2019).

Utilizing its reverse preemption authority, the California Public Utilities Commission's Right-of-Way Rules (ROW Rules) were originally issued in Appendix A of the October 22, 1998, Decision 98-10-058, *Opinion*. While Section III "Request for Information" and Section IV "Request for Access" have remained essentially the same since their issuance, the Commission has extended the application of the ROW Rules in 2016 to commercial mobile radio service carriers,¹⁸ and in 2018 to Competitive Local Exchange Carriers for their wireless pole attachments.¹⁹ In making these extensions, the Commission recognized the importance of ROW Rules as being in the public interest:

The ROW Rules are in the public interest because the amendments will facilitate investment in wireless infrastructure, foster competition among providers of wireless services, expand access to wireless services in unserved and underserved areas, and encourage widespread deployment of broadband wireless services. The adopted amendments do not adversely affect worker safety, public safety, or the reliability of co-located utility facilities (*e.g.* electric power lines).²⁰

The ROW Rules have also been adopted in recognition of other state measures that have been passed to make broadband more widely available in the rural parts of California. On December 20, 2007, the Commission adopted Decision 07-12-054 which authorized the California Advanced Services Fund (CASF) and has provided subsidies to build and expand broadband facilities to the unserved and underserved parts of California. As set forth in Pub. Util. Code

¹⁸ Decision 16-01-046 (*Decision Regarding the Applicability of the Commission's Right-Of-Way Rules to Commercial Mobile Radio Service Carriers*).

¹⁹ Decision 18-04-007 (*Decision Amending the Right-Of-Way Rules to Apply to Wireless Telecommunications Facilities Installed by Competitive Local Exchange Carriers*).

²⁰ *Id.*, at 2.

§ 281, CASF's goal is to approve funding for infrastructure projects to make broadband available to 98% of California households by 2032,²¹ and must provide progress reports to the Legislature pursuant to Pub. Util. Code § 914.7. How adopting OTMR aids CASF goals will be explained when we analyze party comments supportive of the Staff Proposal.²²

1.2. Procedural Background

Whether the Commission should adopt OTMR regulations has been part of this proceeding since its inception and has been scoped into the proceeding through the various scoping memos.²³ On March 9, 2021, the assigned Administrative Law Judge issued his *Ruling Requests Comments on "One-Touch*

²¹ Section 281(b)(1)(A) states: "The goal of the Broadband Infrastructure Grant Account is, no later than December 31, 2032, to approve funding for infrastructure projects that will provide broadband access to no less than 98 percent of California households in each consortia region, as identified by the commission. The commission shall be responsible for achieving the goals of the program." Updates to the CASF program can be found in Decision (D.) 21-03-006, *Decision Modifying Data Submission Requirements Requiring Open Access for California Advanced Services Fund Projects*.

²² Providing for more broadband deployment as a means of bridging the Digital Divide has become an enhanced priority for California in light of the impact the COVID 19 pandemic on distance learning. On August 14, 2020, Governor Newsom signed Executive Order N-73-20, which directed state agencies to bridge the Digital Divide and ordered 15 specific actions of these agencies to increase access to broadband in the areas of Mapping and Data, Funding, Deployment, and Adoption. The Governor's press release stated:

Despite signs of progress, more work needs to be done, especially for rural communities with limited broadband infrastructure. In light of these inequities, Governor Newsom today signed an executive order to bridge the digital divide by mobilizing across state government. The order directs agencies to pursue a goal of 100 Mbps download speed. It also outlines actions across state agencies to accelerate mapping and data collection, funding, deployment and adoption of high-speed Internet.

In accordance with this Executive Order, the Commission opened Rulemaking 20-09-001, Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California.

²³ See *Investigation/Rulemaking*, at 52; *Scoping Ruling* (August 8, 2018), at 13; *Amended Scoping Ruling* (February 6, 2020), at 4; *Commissioner's Second Amended Scoping Ruling* (December 15, 2020), at 4; and *Commissioner's Third Amended Scoping Ruling* (June 15, 2022), at 3-4.

Make-Ready Requirements in California.” The *Ruling* attached a Staff Proposal that provided an initial mockup of the necessary modifications to integrate the FCC’s OTMR procedures into the Commission’s ROW Rules. The Staff Proposal incorporated text from 47 CFR § 1.1402, § 1.1402, § 1.1403, § 1.1411, and § 1.1412 into the ROW Rules from Appendix B of the April 26, 2018, Decision 18-04-007, *Decision Amending The Right-Of-Way Rules To Apply To Wireless Telecommunications Facilities Installed By Competitive Local Exchange Carriers*. Parties to this proceeding were invited to file opening and reply comments to the following questions:

1. Should the Commission adopt OTMR requirements? If so, why? If not, why not?
2. Would the proposed OTMR requirements further the Commission’s utility safety objectives? Why or why not?
3. Would the proposed OTMR requirements enhance competition among communications service providers and expedite high speed broadband deployment? Why or why not?
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.

On April 12, 2021, the following parties filed opening comments:

- Joint comments from Frontier California Inc, Citizens Telecommunications Company of California Inc. dba Frontier Communications of California, and Frontier Communications of the Southwest (collectively referred to as Frontier); and Consolidated Communications of California Company, Pacific Bell Telephone Company dba AT&T California (collectively referred to as Joint Incumbent Local Exchange Carriers [ILEC] Parties);
- Race Telecommunications, Inc. (Race);

- Joint comments from Communications Workers of America, District 9 (CWA) and the Coalition of California Utility Employees (CUE);
- Google Fiber, Inc. (Google);
- San Diego Gas & Electric Company (SDG&E);
- Safety and Enforcement Division (SED);
- California Cable and Telecommunications Association (CCTA);
- ExteNet Systems, Inc. and ExteNet Systems California LLC (collectively referred to as ExteNet);
- Southern California Edison Company (SCE);
- Cellco Partnership, MCIMetro Access Transmission Services Corp, and XO Communications Services. LLC (collectively referred to as Verizon);
- Crown Castle Fiber LLC (Crown Castle);
- Sonic Telcom, LLC (Sonic);²⁴
- Pacific Gas and Electric Company (PG&E); and
- CTIA.

On April 28, 2021, the following parties filed reply comments: Sonic, SED, The Utility Reform Network (TURN), SCE, Race, CTIA, PG&E, Wireless Infrastructure Association, Verizon, ExteNet, SDG&E, CCTA, Joint ILECs, CWA, CUE, and Public Advocates Office (Cal Advocates).

As required, along with their comments, parties provided modifications to the Staff Proposal in track-change mode.

2. Jurisdiction

As we have explained above, the Commission has jurisdiction over the promulgation of OTMR rules as part of its duty to oversee access to public utility rights-of-way and support structures by telecommunications carriers, Commercial Mobile Radio Service carriers, and cable TV companies in California

²⁴ Sonic's Comments were filed late on April 29, 2021.

(Federal Communications Act, 47 U.S.C. Section 224(c)(1) and Public Utilities Code §§ 767,²⁵ 767.5, 767.7, 768,²⁶ 768.5,²⁷ and 8001 through 8057).²⁸

3. Issues Before the Commission

The single issue in this track is whether the Commission should adopt OTMR requirements.

²⁵ Section 767 says, in part: “Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, finds that public convenience and necessity require the use by one public utility of all or any part of the conduits, subways, tracks, wires, poles, pipes, or other equipment, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such property or equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation therefor, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use.”

²⁶ Section 768 says, in part: “The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public.”

²⁷ Section 768.5 says, in part: “The commission may, after a hearing, by general or special orders, rules, or otherwise, require every cable television corporation to construct, maintain, and operate its plant, system, equipment, apparatus, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, customers, or the public may demand.”

²⁸ Collectively, these statutes cover the construction of electrical lines, and set forth parameters for surface transmission distances (§§ 8026-8038) and underground transmission (§§ 8051-8057).

4. Should the Commission adopt OTMR Requirements with or Without Any Modifications?

4.1. Party Comments

Party comments fall into one of three categories: (1) adopt the Staff Proposal as is;²⁹ (2) adopt the Staff Proposal with minor additions;³⁰ or (3) reject the Staff Proposal.³¹ We discuss the rationales behind these positions in order.

As for the parties seeking to adopt the Staff Proposal without edits, proponents assert that the incorporation of the OTMR Requirements into California's ROW Rules would bring consistency and efficiency to the process for all pole owners and attachers who operate in jurisdictions where the FCC rules currently apply.³² As there has been a successful implementation of the OTMR Requirements in other states, proponents of the Staff Proposal assert that the Commission's adoption of same will lead to the realization of the following benefits: first, allow for self-help remedies to avoid the potential for delay that could occur under the non-OTMR process; second, allow new attachers to rearrange any, or all, wireline attachments in the communications space *via* an elective OTMR-based pole attachment process that places them in control of the work necessary to attach their equipment; third, provide the framework for attachers to propose contractors, for inclusion on the pole owner's publicly-available, authorized contractor list, to complete either the engineering evaluation or different forms of make-ready work; and fourth, provide a framework that includes minimum standards which the new attacher must

²⁹ See Comments from Joint ILEC Parties, Google, and CTIA.

³⁰ See Comments from Non-ILEC communications attachers and party advocates.

³¹ See Comments from IOUs, CWA/CUE, and SED.

³² Joint ILEC Comments, at 1; Google Comments, at 2; and CTIA Comments, at 2-4.

certify the proposed contractor meets or exceeds, and requires that pole owner denials be based on objective criteria along with a maximum timeline for pole owner consideration.³³

As for Staff Proposal modifications, nine parties proposed modifications.³⁴ For example, CCTA asks that the Commission tailor the Staff Proposal to ensure that any attaching entity that avails itself of either the OTMR procedures or of self-help during the non-OTMR traditional make-ready process has appropriate incentives to internalize and mitigate risks arising out of such work. They reason that pole attachment agreements between pole owners and communications attachers include comprehensive indemnification, insurance, and bond provisions as standard components to protect the pole owner from liability arising out of an attacher's performance under the agreement. But existing attachers have no contractual relations with third-party attachers and as a result have no contractual protection against damages caused when third parties perform work. To accommodate what they term California's unique conditions, CCTA says the Staff Proposal should require that new attachers indemnify not

³³ *Id.*, at 2.

³⁴ *See, e.g.* Comments from CCTA (modify Staff Proposal to better suit overlashing, add more transparency, and push more risk and add requirements onto new attachers); Crown Castle (Modify the Staff Proposal to add more other rules from the FCC, clarify certain definitions, stray from the FCC on Make-Ready definition, and allow pole replacement/reinforcement as part of OTMR); ExteNet (shorten the back and forth between attachers and pole owners so that they can do work if the other attachers aren't available to schedule being there at the time; clarify some definitions); PG&E (OTMR should only apply to Tier One High Threat Fire Districts [HTFD], extend the timeframes, and make fines more onerous); Race (shorten survey periods, remove good faith language as being vague, and permit the final invoice to only reflect fixed costs per pole); SCE (extend things to business days and change a number of definitions); SDG&E (wants the number of complex order to be reduced down to 500 at a time rather than 3,000, OTMR should only apply in Tier One HTFDs, and IOUs should be given more time); Sonic (modify what pole owners can and cannot do in response to applications, and edit definitional shifts); and Verizon (add the FCC's overlashing rules and reasons for denials).

only the utility, but also existing attachers against damages and third-party claims resulting from any OTMR and/or self-help work performed by the new attacher or its contactors.³⁵

Oddly, opposition to the Staff Proposal has come from parties whose interests are not always aligned in proceedings before the Commission. SCE argues that the Commission should not adopt the Staff Proposal because it is unaware of any statutory, legal, or regulatory mandate for California or other reverse preemption states to adopt OTMR rules that are identical to those adopted by the FCC. SCE further argues that no evidence has been presented in this proceeding that OTMR is needed or that OTMR will speed up the construction and deployment of broadband infrastructure in California. SCE is also concerned about the impact the Staff Proposal might have on unionized labor. SCE states its understanding that some communication companies use non-union labor for much of their work, and that a Commission directive to implement new OTMR requirements could move work from represented labor to non-represented labor, the effects of which should be carefully considered by the Commission.³⁶

At the other end of the interest spectrum, is SED who is also opposed to the Commission's adoption of the Staff Proposal relative to the Federal Self-Help Make-Ready (SHMR) and OTMR requirements. SED asserts that there is insufficient evidence to indicate that attachments can be installed safely and in full compliance with Commission requirements. As the Staff Proposal only requires five days of advanced notification to utilities and existing attachers

³⁵ CCTA Comments, at 7-8.

³⁶ SCE Comments, at 5.

about a schedule SHMR, and the work may be performed by unlicensed contractors and potentially without utility supervision, SED believes the Staff Proposal could increase the risk of public exposure to safety hazards.³⁷

SED is also concerned that the Staff Proposal has not given adequate consideration to California-specific concerns. It reasons that SHMR and OTMR processes have not been previously applicable to California utilities, pole attachers, or communications infrastructure providers so the Staff Proposal does not include provisions that relate to specific attachment scenarios unique to California. One important issue that SED claims the Staff proposal has not considered is whether the SHMR and OTMR processes would also apply to the removal of facilities from poles.³⁸

4.2. Discussion

The Commission will adopt the Staff Proposal's OTMR requirements, with modifications, because doing so will help the Commission fulfill its obligation to promote greater telecommunications access and competition. As we stated in D.98-10-058 when the Commission exercised its right to reverse preemption to develop and enforce ROW rules:

[W]e take a further significant step in our program to open the local exchange market within California to competition. We adopt rules herein governing the nondiscriminatory access to the poles, ducts, conduits, and rights-of-way (ROW) applicable to all competitive local carriers (CLCs) competing in the local exchange market within the service territories of the large and midsized incumbent local exchange carriers (ILECs)[.]³⁹

³⁷ SED Comments, at 2.

³⁸ *Id.*, at 2-3.

³⁹ D.98-10-058, at 2.

Today's decision furthers that policy of promoting robust competition for telecommunications service in California by streamlining the access to utility poles. In so doing, we fulfill the policy set forth in § 224 of the Telecommunications Act of 1996 that incumbent local exchange carriers and electric utilities have an obligation to provide any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or ROW owned or controlled by it.

We also note that California is not alone in adopting OTMR rules consistent with those adopted by the FCC. In its comments, Verizon points out that OTMR is in effect in 30 states that are subject to the FCC's pole attachment rules. As for the states that have invoked reverse-preemption (Maine, New Hampshire, Pennsylvania, Vermont, and West Virginia), in those states where Verizon's affiliates operate as an incumbent local exchange carrier/pole owner, Verizon notes that its incumbent affiliates in other states received over a hundred OTMR requests in 2019-2022 and more than a 100 OTMR applications in 2021 as of the date of its comments. Verizon states it has no records of issues or concerns related to OTMR in these states.⁴⁰ Thus, there appears to be an apparent track record of state success in adopting OTMR requirements that the Commission intends to emulate with the adoption of the Staff Proposal.

We also see efficiency advantages in adopting the Staff Proposal. Allowing for self-help remedies avoids the potential for delays that might occur under a non-OTMR process. A new attacher may decide to perform all work to prepare a pole for a new attachment, thus accelerating the broadband deployment, a point that Frontier makes in its comments: "[the Staff Proposal]

⁴⁰ Verizon Comments, at 7.

will [a]llow new attachers to rearrange any, or all, wireline attachments in the communications space via an elective OTMR-based pole attachment process that places them in control of the work necessary to attach their equipment.”⁴¹

Attachers will have the opportunity to propose contractors for inclusion on the pole owner’s publicly available authorized contractor list to complete either the engineering evaluation or different forms of make-ready work.

The ability of OTMR requirements to compliment the Commission’s CASF program goals can be gleaned from the comments of Race, a fiber-based Competitive Local Exchange Carrier (CLEC) provider of next-generation Voice over Internet Protocol (VOIP), Internet Protocol television, and traditional television in California. As part of its mission to bring state-of-the-art fiber Internet service to rural California communities and close the Digital Divide, Race has applied for and received thirteen CASF last mile grants and two hybrid grants. The OTMR requirements will aid CASF grant applicants in bringing broadband infrastructure services to unserved and underserved regions of California. Race recounts that “[a] recurring and serious problem that Race faces when building new broadband infrastructure is delays in obtaining access to poles. There are many delays in responses from pole owners.”⁴² Other utilities, according to Race, have been slow in responding to applications or limit the number of pole applications that can be submitted monthly, which Race sees as a major barrier to the normal pace of its construction process which delays bringing new broadband service to unserved and underserved consumers and increases per project costs.⁴³ The Commission finds that concerns that Race has

⁴¹ Frontier Comments, at 2.

⁴² Race Comments, at 3.

⁴³ *Id.*

raised can be addressed through the Commission's adoption of the Staff Proposal which will impose a uniform application and evaluation process with increased efficiency.

Increased efficiency can also lead to cost savings for attachers as some economic assumptions surrounding attachment deployment can be lessened.

Google points out in its Comments that:

OTMR will allow new attachers to pay for one trip to the pole instead of several, facilitate streamlined engagement of contractors, reduce duplication of effort, and eliminate the need to pay pass-through administrative costs of existing attachers – all factors that make deployment of new networks expensive and slow.⁴⁴

With the elimination of some upfront costs expenditures that are tied to economic assumptions necessitated by the current patchwork of attachment protocols, the Commission anticipates that an attacher's realized cost savings from increased efficiency will make the OTMR process an attractive business proposition for attachers that ultimately will benefit California consumers and business.

4.3. Modifications to the Staff Proposal

The parties' proposed modifications to the Staff Proposal fall into five categories, clarify language, and make the OTMR requirements more efficient to implement.

⁴⁴ Google Comments, at 3. At Footnote 5, Google also refers to similar costs-savings comments Verizon filed with the FCC. (Letter from Katharine F. Saunders, Verizon, to Marlene H. Dortch, FCC, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, at 2 (filed Nov. 21, 2017) citing an economic study of OTMR, saying “[a]nticipating these delays, the report concludes that the new attacher routinely budgets a worst-case scenario, which effectively shrinks the new attacher’s contemplated deployment radius. Some providers even choose the more expensive option of deploying underground because those deployments can be more predictable.”)

4.3.1. Internal Design, Construction, and Maintenance Standards

As suggested, the adopted changes incorporate “Internal design, construction and maintenance standards” into Section II Definitions and Section III Request for Information and, as appropriate, in other sections of the ROW Rules to explicitly require pole owners release General Order 95, Rule 31.1 internal design, construction, and maintenance standards for attachers to use in preparing pole attachment applications.⁴⁵ As such, internal design is defined as follows:

“Internal design, construction and maintenance standards” means a utility’s design, construction, and maintenance standards done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of communication or supply lines and equipment, for all particulars not specified in General Order 95, and in compliance with General Order 95 Rule 31.1.

⁴⁵ General Order 95, Rule 31.1 states:

Electrical supply and communication systems shall be designed, constructed, and maintained for their intended use, regard being given to the conditions under which they are to be operated, to enable the furnishing of safe, proper, and adequate service.

For all particulars not specified in these rules, design, construction, and maintenance should be done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of communication or supply lines and equipment.

A supply or communications company is in compliance with this rule if it designs, constructs, and maintains a facility in accordance with the particulars specified in General Order 95, except that if an intended use or known local conditions require a higher standard than the particulars specified in General Order 95 to enable the furnishing of safe, proper, and adequate service, the company shall follow the higher standard.

For all particulars not specified in General Order 95, a supply or communications company is in compliance with this rule if it designs, constructs and maintains a facility in accordance with accepted good practice for the intended use and known local conditions.

In addition, we revise the Staff Proposal, at Section III. (REQUESTS FOR INFORMATION) B. as follows. The new language is underlined:

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, General Order 95, Rule 31.1 allowed internal design, construction and maintenance standards, 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.

In making this requirement, we are influenced by the proposal from Sonic that all necessary information, including internal Investor-Owned Utility (IOU) pole and attachment requirements, be made available to pole attachers.⁴⁶ By tying this requirement to General Order 95, Rule 31.1, we will obtain consistency in the type of information the IOUs are required to prepare and what is shared with potential attachers.

Several reasons support our decision: first, incorporation of such standards will improve the transparency of the pole attachment application process by making available the IOUs' internal design, construction, and maintenance standards that are required by General Order 95, Rule 31.1. Second, making the information available to communications providers with a Certificate of Public Convenience and Necessity (CPCN) or cable franchise makes the application

⁴⁶ Sonic requested that the following be added to Section III Request for Information:

Utilities must make available, in publicly released documentation, all rules, requirements, engineering standards, or other criteria on which applications will be reviewed. Specific sections from these documents must be cited if a request for access is denied.

Sonic Comments, at 33.

process more efficient by avoiding multiple rejections based on previously unknown criteria. Third, the information may facilitate an attacher's planning and deployment of broadband networks in under-served areas.

SDG&E's reply comments support our conclusion to make these internal standards available to potential attachers. As SDG&E notes:

Many of these internal standards are the result of the "particulars not specified in these rules" and the "local conditions known," along with utilities' "accepted good practice[s]" ([General Order] G.O. 95, Rule 31.1) that have been learned over the years. These internal standards and requirements promote a high level of safety and are crucial to electrical reliability. Furthermore, these internal design, construction and maintenance standards may apply to areas outside of the utilities' and G.O. 95 High Fire-Threat Districts, depending on the local known conditions. Therefore, in order for OTMR to be successful, the CPUC must make it clear that if OTMR is adopted, communication companies (Community Internet Providers and Wireless Carrier) must be in compliance with not only G.O. 95 but also the IOUs' internal design, construction and maintenance standards.⁴⁷

We agree with SDG&E that providing potential attachers with access to the internal design, construction, and maintenance standards will allow potential attachers to perform their work in conformity with both G.O. 95, Rule 31.1 plus any applicable internal standards that the IOU pole owner has promulgated.

4.3.2. Consistency between Contractor, OTMR, and Non-OTMR Application Denial Requirements

The Commission agrees with party comments that the same specific attachment application denial requirements detailed for OTMR denials in the Staff Proposal, Section IV should also be incorporated into Section IV.B.2. for

⁴⁷ SDG&E's Reply Comments, at 10.

non-OTMR application denials and Section IV.H.7. for contractor denials. That language is as follows:

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, internal design, construction and maintenance standards, 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.

This ensures that denial of an attachment application will not leave the applicant unsure of why their application was denied, what they can do to fix the infirmities in their application, what aspects of the denial to appeal, or the reasonableness of the denial.

4.3.3. Elimination of ROW Rules Legacy Language

The Commission agrees with Crown Castle's suggestion to delete the Section IV.B.2.a. ROW Rules legacy language requiring pole owners to provide time and cost estimates as this language is redundant and less specific than the language in Section IV.B.4. The time and cost estimates in Section IV.B.2. will be tied into the cost estimates language in Section IV.B.4. as the revision makes clear. The new language is underlined:

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 according to the requirements of Section IV.b.4 (Estimates).

4.3.4. Consistency in “Make-Ready” Language Usage

Crown Castle and SCE both suggest that the following definition from the Staff Proposal should be deleted:

“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.

As Crown Castle points out, this definition of “make-ready” is from the FCC, and this definition potentially conflicts with the Commission’s definition of “make-ready work” which means “the process of completing rearrangements on or in a support structure to create such surplus space or excess capacity as is necessary.”⁴⁸ Taken as a whole, the Commission’s own proposed definitions in the Staff Proposal fully describe the various aspects of the actions associated with make-ready for the attachment of new lines or equipment to poles, without the FCC’s added definition of “make-ready.” Crown Castle is concerned that the FCC’s definition of “make-ready,” while “also encompassing such actions, uses terms slightly differently, in a way that could create unnecessary confusion with the Commission’s other rules.”⁴⁹ The Commission acknowledges that concern and will delete the above quoted definition of “make-ready” from the Staff Proposal.

In addition, edits to the Right-of-Way rules have been made to correct formatting, grammatical errors, and to place the definitions in Section II. in alphabetical order.

⁴⁸ Crown Castle Comments, at 4, citing to Staff Proposal, at 5; and SCE Comments, at 7.

⁴⁹ *Id.*, at 4.

4.3.5. Publishing a List of Approved Contactors

Currently, under the Staff Proposal, only the ILECs are required under the ROW Rules to maintain a list of qualified contractors for performing make-ready work, and only suggest that utility pole owners maintain such a list. But in view of the comments received from SCE, SDG&E, PG&E, CWA, CUE, and SED describing unauthorized attachments and work resulting in safety violations that were discerned by utility pole inspections under the current ROW Rules, we conclude that utility pole owners must maintain a list of approved contractors for performing simple make-ready work. Thus, Section H.5. of the Staff Proposal is revised as follows. The deleted text is stricken, and the new text is underlined:

Contractors for simple work. A utility ~~may, but is not required to,~~ shall 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.

If the utility does not maintain a list of approved contractors for performing simple make-ready work, “then the new attacher may choose its own qualified contractor that meets the requirements in paragraph (H)(6) of” the Staff Proposal.

5. Will the OTMR Requirements Further the Commission’s Utility Safety Objectives?

5.1. Party Comments

A number of parties have provided unique perspectives on the positive safety outcomes from the adoption of the OTMR requirements. For example,

Frontier suggests that safety concerns can be addressed and resolved since pole owners and attachers will be notified before any attachment work is performed.⁵⁰

Race points to other safety benefits in emergency situations. Race points out that increased broadband and communications access in high fire risk areas will provide residents with needed access to reliable communications services that will inform them of fire disasters, Public Safety Power Shutoffs, evaluation instructions, and access to 9-1-1 emergency assistance.⁵¹ Notifications will also be provided when the work is completed, thus giving those parties a right to inspect the work.⁵²

Google focuses on the enhanced safety benefits to the attachment process, claiming that the OTMR rules provide greater incentives for new attachers to move quickly to complete make-ready work in an attentive manner. Google reasons that OTMR protects existing facilities from damages and prevents service outages in three ways: first, OTMR requires make-ready in the pole's communications space to be performed by contractors approved by pole owners who naturally have an interest in protecting the integrity of their poles and the attachments on those poles.⁵³ Second, by making new attachers liable for any damages, OTMR will motivate new attachers to carefully oversee make-ready and ensure that contractors do not damage existing communications facilities.⁵⁴

⁵⁰ Frontier Comments, at 3.

⁵¹ Race Comments, at 4.

⁵² *Id.*

⁵³ Google Comments, at 4.

⁵⁴ *Id.*

Third, OTMR will require only one trip to a pole to complete make-ready work, resulting in fewer disruptions to existing attachments, streets, and sidewalks.⁵⁵

Comments focusing on the OTMR's potential negative safety impacts were also plentiful. SDG&E argues that if OTMR is not implemented in the right manner, safety could be decreased. Work in close proximity to energized electrical conductors is complex and dangerous, and OTMR has the potential to interrupt existing design, construction, and operations procedures designed to enhance safety.⁵⁶

SCE raises a safety concern similar to SDG&E's and focuses on the time need to analyze pole calculations. It reasons that analyzing pole load calculations is a critical but time-consuming process and only part of the process for reviewing an attacher's application on the merits.⁵⁷ Yet the Staff Proposal states that if the review is not completed in 45 days (or 60 days for applications of more than 3,000 poles) the applicant can assume approval. Despite this requirement being an existing requirement, SCE believes this provision is inconsistent with the Commission's safety objective because the time is unrealistic and if missed will result in pole overloading within and outside of the Commission's High Fire Threat District.⁵⁸

SED also questions if any safety benefits from the OTMR will be realized. SED claims that the SHMR and OTMR requirements and modifications to the Commission's ROW Rules do not enhance the Commission's general safety provisions or those in G.O. 95, Rule 44, which requires that all installations must

⁵⁵ *Id.*

⁵⁶ SDG&E Comments, at 5-6.

⁵⁷ SCE Comments, at 7-8

⁵⁸ *Id.*

meet minimum safety factors for installation, reconstruction, construction, and replacement.⁵⁹ In addition to questioning the safety efficacy of the OTMR, SED raises further safety concerns over what it claims is not addressed in the Staff Proposal: what rules should apply during pole transfer when a utility/communications infrastructure provider transfers its facilities to the new pole; should a timeline be established to expedite and ensure the transfer; and can a utility communications infrastructure provide transfer of the facilities of a different pole attacher.⁶⁰

5.2. Discussion

After weighing the various comments, the Commission finds that the Staff Proposal will further the Commission's utility safety objectives. The FCC has previously considered the safety implications of OTMR requirements that, like here, are limited to "simple make-ready" work. As the following side-by-side comparison demonstrates, the Staff Proposal incorporates the FCC's OTMR safety and reliability requirements in three important areas: (1) requiring the use of utility approved or qualified contractors; (2) providing advance notice and the opportunity for attachers and pole owners to be present during surveys; (3) and providing for requiring corrective measures after the OTMR work is completed.

⁵⁹ SED Comments, at 3.

⁶⁰ *Id.*

FCC OTMR Safety Requirements	Where Staff Proposal Incorporates the FCC OTMR Safety Requirements
Requiring new attachers to use utility-approved contractors to perform simple make-ready work. When the utility does not provide a list of approved contractors, the new attachers must use qualified contractors. (FCC OTMR Order, ¶ 27.)	Staff Proposal at Section H.5 ⁶¹ and H.5.a. ⁶²
Requiring new attachers to provide advance notice to existing attachers and utility pole owners and give them a reasonable opportunity to be present during surveys. (FCC OTMR Order, ¶ 27.)	Staff Proposal at Section IV.F.(4)(b) ⁶³
Allowing existing attachers and the utility to inspect and request any corrective measures soon after the new attacher performs OTMR work. (FCC OTMR Order, ¶ 27.)	Staff Proposal at Section IV.F.(4)(b)(i) and (ii) ⁶⁴

With these and other safeguards in place,⁶⁵ the Commission has taken the necessary precautions to ensure that the new attacher's work will be of like

⁶¹ **Contractors for simple work.** A utility shall 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.

⁶² 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.

⁶³ 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.

⁶⁴ 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.

⁶⁵ The Staff Proposal also contains Section XI SAFETY:

quality and rigor as the work performed by utility pole owners or other attachers.

The Commission finds that the Staff Proposal poses minimal risk of service outages or disruptions. The OTMR applies to simple attachments that are movable without a reasonable expectation of service outages. Given the level of notice and oversight required, the new attachers will have an incentive to perform their OTMR work in a manner that best minimizes service outages and maximizes the overall safety of the attacher's work.

6. Will the OTMR Requirements Enhance Competition Among Service Providers and Expedite High-Speed Broadband Deployment?

6.1. Party Comments

Race sees the OTMR requirements having a positive impact on competition and high-speed broadband deployment. Race contends that the OTMR requirements will enhance competition since the requirements will reduce barriers to entry for new broadband competitors to areas of the state with no or few incumbent providers of advanced communications service.⁶⁶

Google makes a similar argument, reasoning that when existing attachers delay make-ready, the result is to forestall competition with their services and potentially discourage future entrants from pursuing a market. Google points out that when the FCC considered whether to adopt shorter timeframes or provide a one-touch option, the FCC concluded that without the one-touch

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.

⁶⁶ Race Comments, at 4.

option, make-ready must be completed sequentially.⁶⁷ Thus, by reducing inefficiency and increased costs from having to make multiple trips to complete an attachment, the OTMR requirements will provide a more streamlined, cost-effective pathway that will encourage, rather than hinder, new attachers to enter into new service territories and provide additional service options to consumers.

CCTA also sees competitive benefits from the OTMR requirements. It states that the Staff Proposal would enhance competition and expedited broadband deployment by helping broadband providers better plan and execute on plans to deploy new broadband facilities, with known and predictable timelines.⁶⁸ In CCTA's view, reasonable, cost-effective, and predictable rules regarding pole access are critical components to the expansion of affordable and reliable telecommunications, video, and broadband service.⁶⁹

In contrast, SCE questions if adopting the Staff Proposal will enhance competition. SCE claims not to be aware of any communications service providers with plans for expansion or who are constructing new broadband infrastructure in California.⁷⁰ SCE also claims it is not aware of any evidence presented in this proceeding demonstrating that the proposed OTMR requirements would enhance competition.

6.2. Discussion

The Commission finds that the OTMR requirements will enhance competition among communications service providers and expedite high-speed broadband deployment. The Commission's existing ROW rules were adopted

⁶⁷ Google Comments, at 4-5, citing to FCC OTMR Order, ¶ 32.

⁶⁸ CCTA Comments, at 9.

⁶⁹ *Id.*, at 1.

⁷⁰ SCE Comments, at 6.

over 20 years ago, and while they were extended to wireless attachments in 2016 and 2018, the rules have not been substantially updated since. By adopting the Staff Proposal, the Commission will allow new attachers who want to provide more advanced technologies to California consumers to do so quickly and safely.

Our conclusion is supported by the findings previously made by the FCC in its OTMR Order. In discussing the need for OTMR, the FCC recognized that:

Now, more than ever, access to this vital infrastructure must be swift, predictable, safe, and affordable, so that broadband providers can continue to enter new markets and deploy facilities that support high-speed broadband. Pole access also is essential to the race for 5G because mobile and fixed wireless providers are increasingly deploying innovative small cells on poles and because these wireless services depend on wireline backhaul. Indeed, an estimated 100,000 to 150,000 small cells will be constructed by the end of 2018, and these numbers are projected to reach 455,000 by 2020 and 800,000 by 2026.⁷¹

Since providing new attachers with access to the pole infrastructure so that they may attach and offer new technologies can only serve to enhance competition, the Commission finds it important to create pathways to permit new attachers to meet the growing demands for newer, faster, and more expansive broadband services.

7. Comments on Proposed Decision

The proposed decision of Commission President Alice Reynolds in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, and reply comments were filed on _____ by _____.

⁷¹ FCC 18-111, OTMR Order, at ¶ 1.

8. Assignment of Proceeding

Commission President Alice Reynolds is the assigned commissioner and Robert M. Mason III is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Uniform rules for One-Touch Make-Ready requirements provide for access to public utility right-of-way and support structures by telecommunications carriers, Commercial Mobile Radio Service carriers, and cable TV companies in California.
2. The Staff Proposal for One-Touch Make-Ready requirements should be modified in light of party comments.
3. The Staff Proposal for One-Touch Make-Ready requirements, with modifications, is in the public interest because it will facilitate investment in wireless infrastructure.
4. The Staff Proposal for One-Touch Make-Ready requirements, with modifications, is in the public interest because it will foster competition among providers of wireless services.
5. The Staff Proposal for One-Touch Make-Ready requirements, with modifications, is in the public interest because it will expand access to wireless services in unserved and underserved areas.
6. The Staff Proposal for One-Touch Make-Ready requirements, with modifications, is in the public interest because it will encourage widespread deployment of broadband wireless services.

Conclusions of Law

1. It is reasonable to conclude that adoption of the Staff Proposal’s OTMR requirements, with modifications, will help the Commission fulfill its obligation to promote greater telecommunications access.

2. It is reasonable to conclude that adoption of the Staff Proposal’s OTMR requirements, with modifications, will further the Commission’s utility safety objectives.

3. It is reasonable to conclude that adoption of the Staff Proposal’s OTMR requirements, with modifications, will enhance competition among communications service providers.

4. It is reasonable to conclude that adoption of the Staff Proposal’s OTMR requirements, with modifications, will expedite high-speed broadband deployment.

O R D E R

IT IS ORDERED that:

1. The One-Touch Make-Ready Staff Proposal’s amendments to the Right-of-Way Rules, as modified, which is attached hereto as Attachment A, are adopted.

2. Pole owners and all attachers shall comply with these revised Right-of-Way Rules, which is attached hereto as Attachment A.

3. Investigation I.17-06-027 and Rulemaking 17-06-028 remain open.

This order is effective today.

Dated _____, at San Francisco, California.

ATTACHMENT A

Adopted Amendments to the Right- of-Way Rules (redline)

[Note: yellow highlights indicate changes to the Staff Proposal made in response to party comments.]

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

- I. PURPOSE AND SCOPE OF RULES
- II. DEFINITIONS
- III. REQUESTS FOR INFORMATION
- IV. REQUESTS FOR ACCESS TO RIGHTS-OF-WAY AND SUPPORT STRUCTURES
 - A. INFORMATION REQUIREMENTS OF REQUESTS FOR ACCESS
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 - ~~C.~~ D. TIME FOR COMPLETION OF MAKE-READY WORK
 - E. SELF-HELP REMEDY
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 - G. DEVIATION FROM THE TIME LIMITS SPECIFIED IN THIS SECTION
 - ~~D.~~ H. USE OF THIRD PARTY CONTRACTORS
- V. NONDISCLOSURE
 - A. DUTY NOT A DISCLOSE PROPRIETARY INFORMATION
 - B. SANCTIONS FOR VIOLATIONS OF NONDISCLOSURE AGREEMENTS
- VI. PRICING AND TARIFFS GOVERNING ACCESS
 - A. GENERAL PRINCIPLE OF NONDISCRIMINATION
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- VII. RESERVATIONS OF CAPACITY FOR FUTURE USE
- VIII. MODIFICATIONS OF EXISTING SUPPORT STRUCTURES
 - A. NOTIFICATION TO PARTIES ON OR IN SUPPORT STRUCTURES
 - B. NOTIFICATION GENERALLY
 - C. SHARING THE COST OF MODIFICATIONS
- IX. EXPEDITED DISPUTE RESOLUTION PROCEDURES

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

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

- D. "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.
- E. "Communications space" means the lower usable space on a utility pole, which typically is reserved for low-voltage communications equipment.
- F. "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.
- G. "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.
- H. "Existing attacher" means any entity with equipment on a utility pole.
- I. "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.
- J. "Internal design, construction and maintenance standards" means a utility's design, construction, and maintenance standards done in accordance with accepted good practice for the given local conditions known at the time by those responsible for the design, construction, or maintenance of communication or supply lines and equipment, for all particulars not specified in General Order 95, and in compliance with General Order 95 Rule 31.1.
- ~~"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.~~
- K. "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.

- L. "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.
- M. "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.
- N. "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.
- O. "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.
- P. "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.
- Q. "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.
- R. "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.
- S. "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.

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

III. REQUESTS FOR INFORMATION

- A. 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.
- B. 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, General Order 95, Rule 31.1 allowed internal design,

construction and maintenance standards, 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.

- C. 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.
- D. 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.
- E. 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. **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, **internal design, construction and maintenance standards**, 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.

2. **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 days of receipt of a complete application to attach facilities to its utility poles (or within 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.~~

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, internal design, construction and maintenance standards, 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.

Failure ~~of Pacific or GTEC~~ to respond within 45 days shall be deemed an acceptance of the request for access.

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.

a2. 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 according to the requirements of Section IV.b.4 (Estimates).

b3. 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.

3. Survey.

a. A utility shall complete a survey of poles for which access has been requested within 45 days of receipt of a complete application to attach

- facilities to its utility poles (or within 60 days in the case of larger orders as described in paragraph (D) of this section).
- 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.
- 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. 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 permit the affected utility and existing attachers to be present for any make-ready. 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.
- 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. 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.

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, **internal design, construction and maintenance standards**, 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, internal design, construction and maintenance standards, 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

- 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 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

- 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,~~ shall 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.
- a. If the consultant denies the pole attachment, then the 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.

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).

C. 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 to 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)