Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition to Adopt, Amend, or Repeal a Regulation Pursuant to Pub. Util. Code § 1708.5.	Petition 13-12-009 (Filed December 17, 2013)
Order Instituting Rulemaking Regarding the Applicability of the Commission's Right-of-Way Rules to Commercial Mobile Radio Service Carriers.	R. _____

DECISION REGARDING PETITION FOR RULEMAKING AND ORDER INSTITUTING RULEMAKING REGARDING THE APPLICABILITY OF THE COMMISSION'S RIGHT-OF-WAY RULES TO COMMERCIAL MOBILE RADIO SERVICE CARRIERS

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DECISION REGARDING PETITION FOR RULEMAKING AND ORDER INSTITUTING RULEMAKING REGARDING THE APPLICABILITY OF THE COMMISSION'S RIGHT-OF-WAY RULES TO COMMERCIAL MOBILE RADIO SERVICE CARRIERS

1. Summary

In response to the petition filed by AT&T Mobility pursuant to Public Utilities Code Section 1708.5, this order institutes a rulemaking proceeding to consider if the rules for nondiscriminatory access to utility poles, ducts, conduits, and rights-of-way adopted by Decision 98-10-058 should be amended to encompass Commercial Mobile Radio Service (CMRS) carriers in a manner that provides reasonable fees for CMRS pole attachments, protects public safety, and preserves the reliability of co-located utility facilities.

2. Legal and Regulatory Background

Laws and regulations enacted at the federal level and the state level enable telecommunications carriers to obtain nondiscriminatory access to the poles, ducts, conduits, and rights-of-way that are owned or controlled by other utilities.

2.1. Federal Laws and Regulations

At the federal level, a utility[1] is required by Title 47, Section 224(f), of the United States Code (47 U.S.C. § 224(f)) to provide "any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by" the utility except in situations where an electric utility cannot provide access because of "insufficient capacity and for reasons of safety,

[1] 47 U.S.C. § 224 (a)(1) defines the term "utility" as "any person which is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications."

reliability and generally applicable engineering principles.[2]" Section 224(b)(1) requires the Federal Communications Commission (FCC) to "regulate the rates, terms, and conditions for **pole attachments** to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures… to hear and resolve complaints concerning such rates, terms, and conditions." (Emphasis added.) Section 224(a)(4) defines the term "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility." The FCC's regulations for nondiscriminatory pole attachments are set forth in Title 47, §§ 1.1401 - 1.1424, of the Code of Federal Regulations (47 C.F.R. §§ 1.1401-1.1424).

A state may preempt the FCC's regulation of pole attachments in certain circumstances. Specifically, 47 U.S.C. § 224(c)(1) provides that "[n]othing in this section shall be construed to apply to, or to give the [FCC] jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way… for pole attachments in any case where such matters are regulated by a State." In order for a state to establish its jurisdiction, the state must certify to the FCC that the state has enacted regulations that meet the following conditions set forth in 47 U.S.C. §§ 224(c)(2) and (3):

> (2) Each State which regulates the rates, terms, and conditions for pole attachment shall certify to the [FCC] that - -
>
> (A) it regulates such rates, terms, and conditions; and
>
> (B) in so regulating such rates terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachment, as well as the interests of the consumers of the utility service.

[2] See also 47 U.S.C. § 251(b)(4).

(3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments - -

(A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and

(B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter - -

i. within 180 days after the complaint is filed with the State or

ii. within the application period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

A state's regulation of pole attachments does not have to conform to the FCC's rules. As set forth in 47 U.S.C. § 253(b), a state may adopt "on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers." In addition, § 253 recognizes the authority of state and local governments to manage public rights-of-way (ROW) and to require just and reasonable compensation for the use of such ROW. However, a state's discretion to regulate pole attachments is circumscribed by § 253(a), which bars all state or local regulations that "have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

2.2. Decision 98-10-058 and the Commission's ROW Rules

Public Utilities Code sections (Pub. Util. Code §§) 701, 767, and 1702 authorize the California Public Utilities Commission (Commission) to regulate public utilities and to establish reasonable rates, terms, and conditions for joint use of utility poles, ducts, conduits, and ROW (together, "utility ROW").

In Decision (D.) 98-10-058, the Commission adopted rules to provide facilities-based competitive local carriers (CLCs) and cable TV companies with nondiscriminatory access to utility ROW that is owned or controlled by (1) large and midsized incumbent local exchange carriers consisting of Pacific Bell Telephone Company (Pacific Bell), GTE California Incorporated (GTEC), Roseville Telephone Company (RTC), and Citizens Telecommunications Company of California Inc.[3]; and (2) major investor-owned electric utilities consisting of Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), and San Diego Gas & Electric Company (SDG&E). D.98-10-058 also provided certification to the FCC that the Commission regulates the rates, terms, and conditions for nondiscriminatory access to utility ROW in conformance with 47 U.S.C. §§ 224(c)(2) and (3).[4] As a result of these actions, the Commission has preempted FCC regulation of pole attachments in California.

The Commission's adopted rules for pole attachments (referred to hereafter as the "ROW Rules") address the following matters:

1. Requests for information by facilities-based CLCs and cable TV companies regarding the availability of a utility's ROW.
2. Requests to access a utility's ROW by CLCs and cable TV companies, including the contents of the requests; deadlines for utility responses and the contents of utility responses; timeframe for the completion of make ready work by the utility; and the use of qualified personnel to perform make ready work, rearrangements, attachments, and installations.
3. Protections for proprietary information.
4. Fees and contracts for access to utility ROW.

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[3] Pacific Bell is now commonly known as AT&T California. GTEC is now known as Verizon California Inc. RTC is now known as SureWest Telephone.

[4] D.98-10-058, Section II.

5. Reservations of ROW capacity for future use.
6. Access to customer premises.
7. Procedures for expedited resolution of disputes.
8. Safety standards for access to utility ROW, including pole attachments.[5]

Of importance to today's decision, D.98-10-058 excluded Commercial Mobile Radio Service (CMRS) carriers[6] from the ROW Rules adopted by the Decision.[7] While the Commission recognized that CMRS carriers should not be subjected to unfair discrimination pursuant to 47 U.S.C. 224(f)(1), the focus of D.98-10-058 was on wireline local exchange service, not CMRS. The Commission also held that the rationale for the pole-attachment rates and access requirements adopted in D.98-10-058 with respect to wireline local exchange service may not apply to CMRS service. For example, the Commission noted that, unlike wireline local exchange carriers, CMRS carriers often seek to install antennas on the top of existing poles, which raises safety issues. The Commission concluded that it needed more information about the safety, reliability, and access needs of

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[5] The ROW Rules are set forth in D.98-10-058, Appendix A. The ROW Rules are administered by the Commission in the form of "preferred outcomes." (D.98-10-058, Section II.B). Parties negotiating ROW agreements may depart from these preferred outcomes, but in resolving any ROW dispute the Commission will consider how closely each party has conformed to the preferred outcomes. (Ibid.)

[6] CMRS carriers are "telephone corporations" and therefore public utilities subject to the Commission's jurisdiction under Pub. Util. Code §§ 216, 233, and 234. In 1993, 47 U.S.C. § 332(c)(3)(A) was amended to restrict state jurisdiction over CMRS carriers to "other terms and conditions" of CMRS service. These "other terms and conditions" include facility siting and public safety.

[7] CMRS includes cellular services, personal communications services, wide-area specialized mobile services, radio telephone services, and many other wireless services. (D.96-12-071, 70 CPUC 2d 61, 65.) In the common vernacular, the term "CMRS" is used interchangeably with the terms "wireless" and "cellular."

CMRS pole attachments[8] in order to make an informed decision about the applicability of the ROW Rules to CMRS carriers. The Commission then deferred this matter to a later phase of the proceeding,[9] but the proceeding was closed before the Commission took up this matter.

3. Procedural Background

AT&T Mobility (hereafter, AT&T Mobility or AT&T)[10] filed Petition (P.) 13-12-009 on December 17, 2013. Notice of the Petition appeared in the Commission's Daily Calendar on December 19, 2013. Responses were filed on January 16, 2014, by CTIA-The Wireless Association (CTIA); Google Inc. (Google); a coalition of investor owned electric utilities consisting of PG&E, SCE, and SDG&E (together, the "Electric IOUs"); and the Commission's Safety and Enforcement Division (SED). Replies were filed on January 27, 2014, by AT&T, CTIA, and the Electric IOUs.

4. Summary of the Petition

AT&T filed P.13-12-009 pursuant to Pub. Util. Code § 1708.5. This statute allows "interested persons to petition the commission to adopt, amend, or repeal a regulation." In its Petition, AT&T requests that the Commission amend the ROW Rules adopted by D.98-10-058 so that the rules apply to CMRS carriers

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[8] Today's decision uses the definition of "pole attachment" in the Row Rules, Part II. This definition of "pole attachment" is generally consistent with the definition of "pole attachment" in 47 U.S.C. § 224(a)(4).

[9] D.98-10-058 was issued in the consolidated dockets of Rulemaking (R.) 95-04-043 and Investigation (I.) 95-04-044.

[10] As used in P.13-12-009 and today's decision, "AT&T Mobility" refers to, collectively, AT&T Mobility Wireless Operations Holdings, Inc. (U-3021-C); New Cingular Wireless PCS, LLC (U-3060-C) d/b/a AT&T Mobility; and Santa Barbara Cellular Systems, Ltd. (U-3015-C).

going forward. Appendix A of the Petition sets forth AT&T's proposed changes to the text of the ROW Rules. Generally, the proposed changes add the term "CMRS provider" to the operative provisions of the ROW Rules.[11] Appendix A of today's decision shows the ROW Rules with AT&T's proposed changes.

AT&T states that D.98-10-058 took three actions that together hinder the ability of CMRS carriers obtain nondiscriminatory access to utility poles in California. First, the decision adopted ROW Rules for nondiscriminatory pole attachments. Second, the decision excluded CMRS carriers from the adopted rules. Finally, the decision certified to the FCC that the Commission has adopted regulations for nondiscriminatory pole attachments and thereby preempted the FCC's regulation of pole attachments in California. As a result of these actions, if CMRS carriers in California are faced with unreasonable demands for pole attachments, they cannot seek relief at the FCC because the Commission has certified that it regulates pole attachments. At the same time, CMRS carriers cannot seek relief at the Commission because the ROW Rules do not encompass CMRS carriers. AT&T requests that the Commission rectify this situation by amending its ROW Rules to include CMRS carriers.

AT&T acknowledges that D.98-10-058 excluded CMRS carriers from the ROW Rules due to an insufficient record at that time regarding the safety, reliability, and special access needs of CMRS pole attachments. These issues were resolved in D.07-02-030 and D.08-10-017, according to AT&T.[12] In D.07-02-030, the Commission adopted a settlement agreement that amended

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[11] Today's decision uses the terms "CMRS carrier" and "CMRS provider" interchangeably.

[12] D.07-02-030 and D.08-10-017 were issued in R.05-02-023 and R.07-12-001, respectively.

General Order (GO) 95 to include a new Rule 94 that addresses the safety, reliability, and access needs of wireless pole attachments other than pole-top antennas. In D.08-10-017, the Commission adopted a settlement agreement that modified GO 95 to incorporate construction standards for pole-top antennas installed on utility poles with power lines operating at zero to 50,000 volts. AT&T calls attention to the Commission's finding in D.08-10-017 that the adopted construction standards for pole-top antennas will:

> [A]dvance the Commission's goal of expanding the State's wireless infrastructure; will protect the safety of workers and the public; and allow pole-top antennas to be installed in a manner that is compatible with facilities attached to joint-use poles by electric utilities, telecommunications providers, and cable service providers. (D.08-10-017 at 14.)

Rule 6.3(b) of the Commission's Rules of Practice and Procedure (Rule 6.3(b)) requires a petition filed pursuant to Pub. Util. Code § 1708.5 to state the justification for the requested relief. AT&T offers four justifications. First, AT&T posits that, by granting the Petition, the Commission can fulfill its promise in D.98-10-058 to consider the applicability of its ROW Rules to CMRS carriers.[13]

Second, the Commission has previously found that wireless services provide significant public benefits.[14] AT&T avers that its proposed modifications of the ROW Rules will facilitate the widespread deployment of broadband wireless services and thereby result in significant public benefits.

Third, AT&T claims that it has faced significant barriers for its pole attachments in California. For example, AT&T represents that the rates

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[13] D.98-10-058, Section III.F.2.

[14] D.08-10-017 at 2 – 3.

demanded for pole-top attachments generally exceed the maximum rate allowed by California and federal law; that AT&T has been unable to reach agreements for pole-top attachments with several utilities; and that one utility forced AT&T to spend more than a year negotiating a pole-attachment agreement.

Finally, AT&T argues that the relief sought in its Petition will bring the Commission's ROW Rules for CMRS carriers into conformance with federal law. AT&T states that since D.98-10-058 was issued, the FCC has held that the benefits and protections of 47 U.S.C. § 224 apply to CMRS carriers and all wireless attachments, including pole-top antennas.[15]

AT&T interprets federal law as preempting state regulations that are not competitively neutral with respect to pole attachments. AT&T believes the Commission's ROW Rules run afoul of this prohibition because they discriminate against CMRS carriers. AT&T warns that the Commission must remedy this defect or risk federal preemption.

AT&T disputes the objections raised by SED and the Electric IOUs. With respect to SED's concern, summarized below, that the Petition does not define "CMRS provider" adequately, AT&T replies that the Petition's definition of "CMRS provider" is similar to the definition in D.98-09-024.[16]

With respect to SED's and the Electric IOUs' concern, summarized below, that CMRS pole attachments pose significant safety issues, AT&T replies that safety issues were resolved in two Commission decisions. As noted previously,

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[15] *Report and Order and Order on Reconsideration*, FCC 11-50 (released April 7, 2011) (hereafter, "FCC 11-50") at ¶¶ 12, 77, 136, and 153.

[16] D.98-09-024 at footnote 1. ("CMRS includes cellular services, personal communications services, wide-area specialized mobile radio services, and two-way radiotelephone services.")

D.07-02-030 addressed safety issues related to wireless pole attachments (with the exception of pole-top antennas) and D.08-10-017 addressed safety issues related to pole-top antennas. AT&T states that the Electric IOUs and SED's predecessor division, the Consumer Protection and Safety Division, were parties to the proceedings that produced these decisions and offer no justification for re-litigating safety issues.

In response to SED's concern, summarized below, that amending the ROW Rules to include CMRS carriers would force pole owners to allow pole-top extensions, AT&T replies that the purpose of its Petition is to obtain pole attachments for CMRS carriers at reasonable rates, terms, and conditions. The Petition would not alter the Commission's safety rules for pole attachments.

In response to the Electric IOUs' objection, summarized below, that there is no need for a rulemaking proceeding because CMRS carriers may file a complaint at the Commission if they cannot obtain pole attachments, AT&T replies that such a complaint would be problematic. AT&T expects that if it did file a complaint against a utility, the utility would argue that the complaint should be dismissed because CMRS carriers have no right to attach at reasonable rates, terms, and conditions under the Commission's ROW Rules. AT&T adds that the ROW Rules were developed to facilitate negotiated agreements.[17] Thus, extending the rules to CMRS carriers would reduce the potential for litigation.

In response to the Electric IOUs' objection, summarized below, that AT&T's Petition does not provide a factual basis for the requested relief, AT&T replies that Rule 6.3(b) does not require "facts." Rather, Rule 6.3(b) requires a

[17] D.98-10-058 at 12 - 14.

petition to "concisely state the justification for the requested relief." AT&T asserts that the justification in its Petition exceeds what is required by Rule 6.3(b):

- AT&T has been unable to reach pole-top attachment agreements with certain utilities. (Petition at 8.)
- In one case, AT&T was forced to engage in negotiations extending over a year. (Petition at 8 - 9.)
- The rates demanded for pole-top access generally exceed the maximum allowable pole-attachment rate as defined by California and federal law. (Petition at 9.)
- The Commission's ROW Rules are inconsistent with federal law, which grants access rights for wireless attachments at reasonable rates, terms and conditions. (Petition at 9.)
- The Commission addressed the safety of wireless attachments in D.08-10-017 and D.07-02-030. (Petition at 9.)
- The Commission should complete the task it deferred in D.98-10-058 of considering the applicability of its ROW Rules to CMRS carriers. (Petition at 10.)
- Extending the ROW Rules to wireless attachments would provide significant public benefits. (Petition at 9 – 10.)

In response to the Electric IOUs' concern, summarized below, that different fees should apply to CMRS pole attachments compared to wireline attachments, AT&T asserts that CMRS pole attachments must be charged the same fees as other attachments pursuant to 47 U.S.C. § 224 and the FCC's regulations. However, AT&T concedes that the current pole rental rate is based on the use of one foot of pole space. AT&T states that if CMRS carriers use more than one foot of pole space, they would pay more. AT&T recommends that proposed rate adjustments can be submitted in written comments.

AT&T opposes Google's request, summarized below, to expand the scope of the proposed rulemaking proceeding to include all broadband providers, regardless of their regulatory status or the technologies they use. AT&T replies

that Google's request should be filed as a separate petition, and should not be allowed to complicate or slow the relief sought by AT&T in its Petition.

5. Responses to the Petition

5.1. CTIA

CTIA agrees with AT&T that the Commission's ROW Rules fail to provide CMRS carriers with nondiscriminatory access to utility poles. CTIA opines that granting the Petition will help the Commission fulfill its obligation under Pub. Util. Code §§ 709 and 5810 to facilitate the deployment of telecommunications services, including broadband. Conversely, denying AT&T's Petition would conflict with the FCC's determination in FCC 11-50, at paragraph 153, that the benefits and protections of 47 U.S.C. § 224 apply to all wireless attachments.

CTIA disagrees with SED's concern, summarized below, that the Petition lacks details regarding the identity of the CMRS carriers that would be covered by the amended ROW Rules. CTIA replies that all CMRS carriers must identify themselves to the Commission using the Wireless Identification Registration form that was first adopted by D.94-10-031.

CTIA disagrees with the Electric IOUs' assertion, summarized below, that it is unnecessary to amend the ROW Rules to apply to CMRS carriers because they may file complaints at the Commission if they have difficulty obtaining pole attachments. CTIA replies that without a set of rules applicable to CMRS carriers, there will be nothing for the Commission to enforce in a complaint proceeding. CTIA adds that even if such complaints were an option, case-by-case adjudication would hinder the ability of CMRS carriers to meet growing demand for wireless services, including broadband.

5.2. Google

Google supports AT&T's Petition to amend the ROW Rules to include CMRS carriers. But Google urges the Commission to go even further. Like AT&T, Google represents that it has difficulty building broadband infrastructure without access to utility ROW. Google effuses that amending the ROW Rules to embrace all providers of broadband service, regardless of the technologies they use, would speed the deployment of broadband services throughout California; promote competition and consumer choice among broadband providers; and further California's policy of creating a level playing field that does not disadvantage one service provider or technology over another.[18]

5.3. The Electric IOUs

The Electric IOUs oppose AT&T's Petition. They see no need to amend the ROW Rules to include CMRS carriers because CMRS carriers have reached agreements with electric utilities that provide access to utility poles statewide. The Electric IOUs suggest that if CMRS carriers have difficulty reaching pole-attachment agreements, they may file complaints at the Commission.

The Electric IOUs allege that AT&T's Petition has two additional defects. First, they argue that AT&T has failed to provide specific facts justifying the need to amend the ROW Rules as required by Rule 6.3(b). Although AT&T claims there are significant barriers to deploying wireless services in California, AT&T did not provide any evidence to support its claim.

Second, AT&T's proposed amendments to the ROW Rules consist mainly of inserting the words "CMRS providers" into the rules. The Electric IOUs argue that the proposed amendments would treat CMRS attachments the same as

[18] Pub. Util. Code § 5810(a)(2)(A).

wireline attachments, even though there are significant differences between the two types of attachments. For example, D.98-10-058 adopted an annual pole rental fee for wireline attachments equal to 7.4% of the annual cost of pole ownership, based on the Decision's finding that the 7.4% factor represents one foot of pole space that is typically used for a wireline attachment.[19] The Electric IOUs assert that AT&T's Petition lacks evidence that the 7.4% factor is reasonable for CMRS attachments that typically use more than one foot of pole space or when CMRS attachments require pole replacements, pole reconfiguration (e.g., pole-top extensions), and/or ancillary equipment to account for the load added by CMRS attachments.

The Electric IOUs contend that because of the significant differences between CMRS and wireline attachments, any amendments to the ROW Rules should involve more than simply inserting the words "CMRS providers." The Electric IOUs advise that the ROW Rules should be amended to provide ROW pricing based on the space needs of each CMRS installation, similar to the pricing formulas adopted by the FCC[20] and by D.98-10-058 for attachments to support structures other than poles.[21]

The Electric IOUs share SED's concern, summarized below, that AT&T's Petition does not address safety issues adequately. The Electric IOUs state that compared to wireline attachments, CMRS attachments are more

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[19] D.98-10-058 at 56.

[20] 47 C.F.R. §1.1409.

[21] ROW Rules, Section VI.B.1.b.(2). (Pricing based on "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 or cable TV company's equipment by the total usable volume or capacity.")

complex and require more equipment and spacing, which creates safety and reliability issues. CMRS pole-top attachments involve unique safety and reliability issues because their location above power lines. For example, pole-top antennas may require de-energization of the power lines attached to the pole when maintenance work is performed on the antennas; and some types of electric facilities preclude installation of wireless equipment above. The Electric IOUs state that due to safety and reliability impacts, electric utilities must have final approval for any CMRS installations above power lines.

The Electric IOUs agree with SED's position, summarized below, that redefining the term "Useable Space" to include pole tops has safety implications. The Electric IOUs explain that in many situations there is a no "Useable Space" at the top of a pole, thus necessitating pole extensions that exacerbate pole-loading issues. The Electric IOUs suggest that the Commission should be cautious about granting CMRS carriers expanded access to pole tops given the safety issues involved, especially in light of the many alternatives available to CMRS carriers for locating their wireless facilities, including buildings, cell towers, and the customary communications zone on utility poles located below power lines.

5.4. Safety and Enforcement Division

SED opposes AT&T's Petition. SED states that the Petition would make it easier for CMRS carriers to attach wireless antennas and equipment to utility poles. This raises safety issues because the proliferation of CMRS attachments increases the risk that utility poles will become overloaded and fail, which could damage adjacent property, kill or injure people nearby, and ignite dangerous wildfires. SED asserts that the safety implications of allowing a potentially large number of CMRS carriers to attach wireless facilities to utility poles must be examined before the Commission grants AT&T's Petition.

To prevent overloaded utility poles, SED states that the Commission's regulations require pole attachments to be properly engineered and documented. This will be problematic if the Petition is granted, in SED's opinion, because the Petition would not require CMRS carriers to disclose their identity or specify how they would interact with pole owners and Commission staff.

SED is also concerned about the proposal in AT&T's Petition to expand the definition of "Usable Space" in the ROW Rules to include "any attachment at the top of the pole or on a pole top extension.[22]" SED believes the revised definition of "Usable Space" could force pole owners to allow CMRS carriers to install pole top extensions, even if doing so is not the safest option in terms of pole loading.

If the Commission decides to open a rulemaking proceeding in response to AT&T's Petition, SED opines that the proceeding should not be used by CMRS carriers to expand their pole-attachment rights beyond existing federal and state laws or to narrow the Commission's safety jurisdiction.

6. Discussion

A threshold issue is whether AT&T's Petition complies with Rules 6.3(a) and 6.3(b) of the Commission's Rules of Practice and Procedure (Rules). Rule 6.3(a) states, in relevant part, as follows:

> The proposed regulation must apply to an entire class of entities or activities over which the Commission has jurisdiction and must apply to future conduct.

AT&T's Petition seeks to open a rulemaking proceeding for the purpose of amending the ROW Rules adopted by D.98-10-058 so that the Rules (an entire class of activities) apply to CMRS carriers (an entire class of entities) going

[22] Petition at Appendix A, page 2.

forward. The Commission has relevant jurisdiction pursuant to the federal and state laws cited in D.98-10-058 and previously in today's decision.[23] Therefore, we find that AT&T's Petition complies with Rule 6.3(a).

Rule 6.3(b) states, in relevant part, as follows:

> A petition must concisely state the justification for the requested relief, and if adoption or amendment of a regulation is sought, the petition must include specific proposed wording for that regulation. In addition, a petition must state whether the issues raised in the petition have, to the petitioner's knowledge, ever been litigated before the Commission, and if so, when and how the Commission resolved the issues, including the name and case number of the proceeding (if known). A petition that contains factual assertions must be verified. Unverified factual assertions will be given only the weight of argument.

We find that AT&T's Petition complies with Rule 6.3(b). The Petition states that the requested relief is justified because it will align the Commission's ROW Rules with federal requirements with respect to wireless pole attachments; provide significant public benefits; and allow the Commission to complete the task it deferred in D.98-10-098 of considering the applicability of the ROW Rules to CMRS carriers.[24] As required by Rule 6.3(b), the Petition (1) includes specific proposed wording for the amended ROW Rules; and (2) states that the issues raised in the Petition were resolved in D.08-10-017 and D.07-02-030.[25]

We next consider the merits of AT&T's Petition to open a rulemaking proceeding to amend the ROW Rules adopted by D.98-10-058 to encompass

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[23] See D.98-10-058, Section II, and today's decision, Section 2.

[24] P.13-12-009, Section III.

[25] P.13-12-009 at 1, 7, 8, 12, and Appendix A.

CMRS carriers. We agree with AT&T that CMRS carriers have a right under federal law and FCC regulations to nondiscriminatory pole attachments except in situations where there is insufficient capacity, adverse effects on safety or reliability, and/or engineering constraints.[26] In D.98-10-058, the Commission asserted jurisdiction under federal law to regulate nondiscriminatory pole attachments.[27] By asserting such jurisdiction, the Commission assumed the obligation to promulgate rules for nondiscriminatory pole attachments that apply to CMRS carriers.

In addition to legal considerations, there are public interest reasons to provide CMRS carriers with access to nondiscriminatory pole attachments. The Commission has recognized that investment in wireless infrastructure has significant public benefits, including increased service reliability, greater geographic coverage, faster broadband, and enhanced public safety.[28] Moreover, it is the policy of the State of California pursuant to Pub. Util. Code § 709 to:

- Provide affordable, high quality telecommunications services to all Californians. (§ 709(a))
- Encourage the deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer needs and encourages the ubiquitous availability of a wide choice of state-of-the art services. (§ 709(c))
- Bridge the digital divide by encouraging expanded access to state-of-the art technologies for rural, inner-city, low-income, and disabled Californians. ((§ 709(d))

[26] 47 U.S.C. § 224(f); 47 C.F.R. §§ 1.1401-1.1424; and FCC 11-50 at ¶¶ 12, 74-77, and 153.

[27] D.98-10-058, Conclusions of Law 1 - 3.

[28] D.08-10-017 at 2 - 3.

- Promote economic growth, job creation, and the substantial social benefits that result from the rapid implementation of information and communications technologies by adequate investment in the necessary infrastructure. (§ 709(e))
- Remove barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice. (§ 709(g))

A related and equally important goal of the State of California is the widespread deployment and use of broadband services.[29] Like electricity a century ago, broadband is a foundation for improved education, new industries, economic growth, job creation, global competitiveness, and a better way of life. The Commission has recognized the critical role of broadband communications in the lives of people and society at large.[30]

Adopting rules that enable CMRS carriers to obtain nondiscriminatory pole attachments may facilitate competitive entry, spur investment in wireless infrastructure, and ultimately help to achieve the State of California's ambitious goals for telecommunications services, particularly broadband. Conversely, the inability to obtain nondiscriminatory pole attachments may discourage investments by CMRS carriers to the detriment of California.

For the preceding reasons, we will grant AT&T's Petition to the extent the Petition seeks to open a rulemaking proceeding to consider whether and how the

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[29] There are several California programs to help close the digital divide. The California Advanced Services Fund increases geographic access to broadband. The California Emerging Technology Fund promotes access to broadband. And the California Lifeline program provides free or reduced cost cell phones to low-income households to enable access to wireless voice, text, and internet.

[30] D.07-03-014 at 5. ("Advanced video and broadband systems are critical to social and economic development in our state.")

ROW Rules adopted by D.98-10-058 should be amended to include CMRS carriers. The scope of the rulemaking proceeding is described in more detail below. Today's decision does not decide whether the ROW Rules should be amended or any other issues within the scope of the rulemaking proceeding.

We are not persuaded by the Electric IOUs' argument that there is no need for a rulemaking proceeding because CMRS carriers have successfully negotiated pole-attachment agreements with electric utilities. Setting aside AT&T's claim that it has experienced inordinate difficulty in negotiating pole-attachment agreements, federal law requires either the FCC or the states to regulate the rates, terms, and conditions for nondiscriminatory pole attachments.[31] As a general principle, we believe that such regulation is best accomplished at the state level in California so that we may tailor the regulatory framework to advance the public interest goals identified previously.

We are not persuaded by the Electric IOUs that AT&T's Petition should be denied because AT&T allegedly failed to provide specific facts justifying the need to amend the ROW Rules as required by Rule 6.3(b). We agree with AT&T that Rule 6.3(b) does not require a petition to provide "facts" to justify the relief requested by the petition. Rather, Rule 6.3(b) requires a petition to "concisely state the justification for the relief requested." We find that AT&T has met this requirement for the reasons stated previously.

We disagree with the Electric IOUs and SED that AT&T's Petition should be denied because it allegedly does not provide enough detail to ensure that CMRS pole attachments do not adversely affect public safety or the reliability of other utility facilities. The ROW Rules adopted by D.98-10-058 require

[31] 47 U.S.C. § 224(b) and (c).

pole attachments to comply with GO 95, GO 128, and other applicable local, state, and federal standards.[32] A primary purpose of these standards is to ensure that utility facilities are safe and do not interfere with each other. The ROW Rules also authorize the utilities that own poles, ducts, conduits, and other support structures to impose restrictions on pole attachments that are necessary to ensure the safety and reliability of the utility's facilities:

> We generally agree that the incumbent utility, particularly electric utilities, should be permitted to impose restrictions and conditions which are necessary to ensure the safety and engineering reliability of its facilities. In the interest of public health and safety, the utility must be able to exercise necessary control over access to its facilities to avoid creating conditions which could risk accident or injury to workers or the public. The utility must also be permitted to impose necessary restrictions to protect the engineering reliability and integrity of its facilities.
>
> Telecommunications carriers must obtain express written authorization from the incumbent utility and must comply with applicable notification and safety rules before attempting to make a new attachment or modifying existing attachments. Any unauthorized new attachments or modifications of existing attachments are strictly prohibited. Before an attachment to a utility pole or support structure is made, we shall require successful completion of a fully executed contract. (D.98-10-058, Section VII.A.2.)

As noted by AT&T, since the ROW Rules were adopted in 1998, the Commission has twice amended GO 95 to incorporate standards for the safe attachment of wireless facilities to utility poles, including pole-top installations.[33]

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[32] D.98-10-058, Section VII.A.2. and Appendix A, Section XI.

[33] D.08-10-017 and D.07-02-030.

Neither the Electric IOUs nor SED have identified any deficiencies in the Commission's safety regulations for CMRS pole attachments.[34]

We emphasize that we do not reach any final conclusions in today's decision regarding the safety of CMRS pole attachments. We intend to consider the safety ramifications of CMRS pole attachments in the rulemaking proceeding that is instituted by today's decision. We encourage the Electric IOUs, SED, and other parties to raise their safety concerns in the rulemaking proceeding. We will not amend the ROW Rules to include CMRS carriers unless we are confident that the amended Rules (1) protect worker and public safety, and (2) preserve the reliability of co-located utility facilities.

Finally, we decline to adopt Google's recommendation to expand the scope of the rulemaking proceeding to include all providers of broadband service, regardless of their regulatory status or the technologies they use. Google did not present all of the information contemplated by Rule 6.3(b), including the specific proposed wording to amend the ROW Rules to achieve Google's objectives or whether the issues raised by Google have been litigated previously before the Commission. As a result, we do not have a sufficient record to render an informed decision on Google's proposal to expand the scope of the

[34] The Electric IOUs and SED do not mention the public safety benefits of wireless infrastructure. (See, for example, D.08-10-017 at 3: "[E]xpanding wireless infrastructure will strengthen the public safety network by enhancing the ability of public-safety agencies to receive the public's calls during emergencies and communicate critical safety information among first responders.")

rulemaking proceeding. Google may remedy these deficiencies by filing a complete petition pursuant to Pub. Util. Code § 1708.5 and Rule 6.3.[35]

7. Order Instituting Rulemaking Proceeding

For the preceding reasons, we hereby institute a rulemaking proceeding pursuant to Pub. Util. Code § 1708.5. This Order Instituting Rulemaking (OIR) contains a preliminary scoping memo pursuant to Rule 7.1(d) that sets forth the scope and schedule of this rulemaking proceeding, preliminarily determines the category of the proceeding and the need for hearings, and addresses other matters that are customarily the subject of scoping memos.

7.1. Preliminary Scoping Memo

7.1.1. Scope

The scope of this rulemaking proceeding is to consider whether and how the ROW Rules adopted by D.98-10-058 should be amended to encompass CMRS carriers. The adopted amendments, if any, should (1) provide just and reasonable fees for CMRS pole attachments[36]; (2) protect worker and public safety; and (3) preserve the reliability of co-located utility facilities. The following issues are within the scope of this proceeding:

- The specific amendments to the text of the ROW Rules adopted by D.98-10-058 that provide a regulatory framework for nondiscriminatory CMRS pole attachments.

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[35] If Google elects to file a petition, we encourage Google to address in its petition the Commission's authority to enforce the Commission's regulations with respect to Google's pole attachments, including the ROW Rules, GO 95, and GO 128.

[36] This OIR uses the definition of "pole attachment" set forth in the ROW Rules adopted by D.98-10-058, Appendix A, Section II.

- The specific amount(s), formula(s), or guideline(s) for CMRS pole-attachment fees that reflect the space requirements and other characteristics of CMRS installations.
- Additional rules and standards that are necessary, if any, to ensure that CMRS pole attachments are designed, constructed, and maintained to (i) protect worker and public safety, and (ii) preserve the reliability of co-located utility facilities (e.g., power lines, telephone lines, etc.)
- The definition of "CMRS provider" included in the ROW Rules.
- Certification of the adopted amendments to the ROW Rules, if any, in accordance with 47 U.S.C. 224(c).

Consistent with Rule 6.3(a), any amendments to the ROW Rules adopted in this rulemaking proceeding will apply prospectively. The scope of this proceeding excludes the contractual rates, terms, and conditions for existing CMRS installations. The assigned Commissioner may refine the scope of this proceeding, as appropriate, in the Scoping Memo issued pursuant to Rule 7.3(a).

7.1.2. Proceeding Schedule and Written Comments

The preliminary schedule is summarized below. The schedule may be revised by the assigned Commissioner or the assigned Administrative Law Judge (ALJ) to develop an adequate record, provide due process, and conduct this rulemaking proceeding in an orderly and efficient manner.

Preliminary Schedule for the Proceeding	
Event	**Date (Measured from the Date this OIR Is Issued)**
All-Party Meeting(s) Arranged by AT&T Mobility	Completed Within 50 Days
Combined Opening Comments and Prehearing Conference Statements Filed and Served	60 Days
Reply Comments Filed and Served	70 Days

Preliminary Schedule for the Proceeding	
Event	**Date (Measured from the Date this OIR Is Issued)**
Prehearing Conference (PHC)	To Be Determined
Evidentiary Hearings and Briefs, if Necessary	To Be Determined
Projected Submission Date	To Be Determined

AT&T shall organize and chair at least one all-party meeting where the parties shall work collaboratively to (1) identify areas of consensus regarding matters within the scope of this proceeding, (2) identify disputed issues, and (3) reach an agreement, if possible, on the schedule for this proceeding and appropriate procedures for resolving disputed issues. AT&T may select co-chairs to help with these tasks.[37] The parties are strongly encouraged to hold additional meetings to settle disputed issues, if appropriate.

The combined opening comments and PHC statements due on Day 60 should address the following matters:

- The matters set forth in Rule 6.2.
- The party's positions and recommendations, if any, regarding matters within the scope of this proceeding, including:
  - Specific amount(s), formula(s), and/or guidelines for just and reasonable CMRS pole-attachment fees.
  - Specific new safety, reliability, and/or engineering standards for CMRS pole attachments, in addition to the existing standards set forth in GO 95, GO 128, and D.98-10-058 at Section VII.B and Appendix A, Section XI.

[37] A potential template for conducting the all-party meeting(s) is provided in Appendix D of the *Phase 3, Track 3 Technical Panel Report For Workshops Held June - September 2013* that was filed in R.08-11-005 on September 23, 2013.

- Specific proposed amendments to the text of the ROW Rules that implement the party's recommendations.
- The process, procedures, and schedule for addressing issues within the scope of this proceeding, including all major events contemplated by the party, such as additional comments, workshops, workshop reports, mediation, discovery cutoff, evidentiary hearings and/or briefs, and other events.
- Whether Commission-assisted alternative dispute resolution, such as mediation, would be useful in resolving disputed issues.
- Whether an evidentiary hearing is needed. Any party who believes an evidentiary hearing is needed must (i) identify and describe the material factual issues that will be litigated; and (ii) provide a schedule for all hearing-related events.
- Any other matters that are relevant to the scope, schedule, or conduct of this rulemaking proceeding.

The assigned Commissioner and/or assigned ALJ will schedule a PHC as soon as practicable. Consistent with Rule 6.2 and the statutory deadline for quasi-legislative proceedings set forth in Pub. Util. Code § 1701.5(b), we expect this proceeding to conclude no later than 18 months from the date the Scoping Memo is issued pursuant to Rule 7.3(a). The final schedule for this proceeding will be established by the assigned Commissioner in a Scoping Memo issued pursuant to Rule 7.3(a).

7.1.3. Proceeding Category and Need for Hearings

Pursuant to Rule 7.1(d), we preliminarily determine that (1) the category for this rulemaking proceeding is quasi-legislative as that term is defined in Rule 1.3(d), and (2) there is no need for evidentiary hearings in this proceeding. As permitted by Rule 6.2, parties may address these preliminary determinations (and all other determinations in this preliminary scoping memo) in their written comments that are filed and served in accordance with the previously identified schedule for this proceeding. The assigned Commissioner will make a final

determination regarding the category of this proceeding and the need for hearings in a Scoping Memo issued pursuant to Rules 7.1(d) and 7.3(a).

7.1.4. Service of this OIR

The Executive Director shall serve a notice of availability of this OIR on the following:

- The e-mail and postal addresses provided by each CMRS carrier that has a utility identification number issued by the Commission.
- The e-mail and postal addresses provided by each person and entity listed on the official service lists for P.13-12-009, R.08-11-005, and the consolidated dockets of R.95-04-043 and I.95-04-044.

Such service does not confer party status in this rulemaking proceeding or result in any person or entity being placed on the service list for this proceeding.

7.1.5. Participation and Service List

Petitioner AT&T Mobility and everyone who filed a response to the Petition are automatically parties to this newly instituted rulemaking proceeding pursuant to Rule 1.4(a)(1) and (2). Any person or entity that files comments in this rulemaking proceeding pursuant to Rule 1.4(a)(2)[38] will automatically become a party. Other persons and entities may request party status in this proceeding by motion pursuant to Rule 1.4(a)(3) or (4).

Any person or entity that wants to monitor this proceeding may be added to the official service list for this proceeding as "Information Only" by sending a request to the Commission's Process Office by e-mail (Process_Office@cpuc.ca.gov) or by letter (Process Office, California Public

[38] The due date for filing and serving comments in this rulemaking proceeding is set forth previously in this preliminary scoping memo.

Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102). The request must include the following information:

- Docket Number of this rulemaking proceeding.
- Name of the person (and the entity represented, if applicable).
- E-mail address (if available).
- Postal address.
- Telephone number.
- Desired status (State Service or Information Only).[39]

The Commission's practice is to list only one representative per party in the "Parties" category of the official service list. Other representatives for the same party may be placed on the service list in the "State Service" category or the "Information Only" category.

To ensure receipt of all documents, requests to be added to the service list should be sent to the Process Office as soon as practical. The Commission's Process Office will publish the official service list on the Commission's website (www.cpuc.ca.gov) and will update the list as necessary.

7.1.6. Updating the Service List

Each person on the official service list is responsible for ensuring that the information they have provided is correct and up-to-date. This information can be changed, corrected, and updated by sending an e-mail or letter to the Process Office, with a copy to everyone on the official service list.

[39] Non-parties, other than those eligible for addition to the service list as "State Service," must provide an e-mail address in order to receive service of documents that are not required to be served by hard copy. (See Rule 1.10(b).)

7.1.7. Filing and Serving Documents

All pleadings in this proceeding shall be filed and served in conformance with Article 1 of the Commission's Rules of Practice and Procedure. The assigned Commissioner and the assigned ALJ may establish additional requirements for filing and/or serving documents in this proceeding.

The Commission encourages electronic filing and service. (Rules 1.10 and 1.13.) Rule 1.10 provides for concurrent e-mail service of documents, in a searchable format, to all persons on the service list who provided an e-mail address. If no e-mail address was provided, service must be made by U.S. mail or similar means, except that paper service is not required on those in the Information Only category without an e-mail address.

E-mail communications in this proceeding should include on the subject line the docket number for this proceeding and a brief description of the contents of the e-mail (e.g., motion for party status, opening comments, etc.).

Questions about the Commission's filing and service procedures may be directed to the Commission's Docket Office by telephone at (415) 703-2121, by e-mail at efile-help@cpuc.ca.gov, or by letter to Docket Office, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102.

7.1.8. Public Advisor

Anyone interested in participating in this proceeding who is unfamiliar with the Commission's procedures may obtain assistance by calling or e-mailing the Commission's Public Advisor in San Francisco or Los Angles as follows:

Contact Information for the Public Advisor		
	San Francisco	**Los Angeles**
Toll Free Number	(866) 849-8390	(866) 849-8391
Regular Number	(415) 703-2074	(213) 576-7055
TTY-Toll Free Number	(866) 836-7825	(866) 836-7825
E-mail Address	public.advisor@cpuc.ca.gov	public.advisor.la@cpuc.ca.gov

7.1.9. Intervenor Compensation

In accordance with Rule 17.1, notices of intent to claim intervenor compensation in this rulemaking proceeding shall be filed and served no later than 30 days after the date of the PHC or as otherwise directed by the assigned Commissioner or the assigned ALJ.

7.1.10. Ex Parte Communications

Communications with decision makers and advisors in this rulemaking proceeding are governed by Article 8 of the Rules of Practice and Procedure.

8. Assignment of the Proceeding

For AT&T's Petition 13-12-009, Michael R. Peevey is the assigned Commissioner and Timothy Kenney is the assigned Administrative Law Judge.

Findings of Fact

1. The ROW Rules adopted by D.98-10-058 (ROW Rules) are designed primarily for wireline pole attachments and exclude CMRS carriers.
2. In P.13-12-009, AT&T asks the Commission to open a rulemaking proceeding to amend the ROW Rules to encompass CMRS carriers.

3. CMRS pole attachments may differ from wireline pole attachments in terms of pole-top location, space requirements, position relative to power lines, and other characteristics. As a result, CMRS pole attachments may have different safety, reliability, and pricing issues compared to wireline pole attachments.

4. Investment in CMRS infrastructure provides significant public benefits, including more reliable service, expanded geographic coverage, greater deployment of broadband service, and enhanced public safety.

5. Adopting rules that enable CMRS carriers to obtain nondiscriminatory pole attachments may facilitate competitive entry, spur investment in wireless infrastructure, and ultimately help to achieve the State of California's ambitious goals for telecommunications services, particularly broadband. Conversely, the inability to obtain nondiscriminatory pole attachments may discourage investments by CMRS carriers to the detriment of California.

6. Google's response to P.13-12-009 seeks to expand the scope of the rulemaking proceeding sought by AT&T to include every provider of broadband service, regardless of their regulatory status or the technology they use. However, Google did not provide all the information contemplated by Rule 6.3(b), including (i) specific proposed wording to amend the ROW Rules to achieve Google's objective, and (ii) a statement regarding whether the issues raised by Google have ever been litigated before the Commission.

Conclusions of Law

1. The contents of P.13-12-009 comply with Rules 6.3(a) and 6.3(b).

2. A utility is required by 47 U.S.C. § 224(f) to provide telecommunications carriers with nondiscriminatory access to any pole, duct, conduit, or right-of-way (together, "pole attachments") owned or controlled by the utility except in situations where an electric utility cannot provide access because of insufficient capacity or for reasons of safety, reliability, or engineering principles.

3. In FCC 11-50, the FCC held that the benefits and protections of 47 U.S.C. § 224 apply to CMRS carriers and wireless pole attachments.

4. States are authorized by 47 U.S.C. § 224(c) to preempt FCC regulation of nondiscriminatory pole attachments if specified conditions are satisfied.

5. In D.98-10-058, the Commission (i) adopted rules for nondiscriminatory pole attachments; (ii) asserted state preemption of FCC regulation of nondiscriminatory pole attachments in California; and (iii) certified that the Commission had satisfied the conditions in 47 U.S.C. § 224(c) for preemption of FCC regulation of nondiscriminatory pole attachments.

6. The rules adopted by D.98-10-058 for nondiscriminatory pole attachments (the "ROW Rules") do not apply to CMRS carriers.

7. It is in the public interest to institute a rulemaking proceeding to consider whether and how the ROW Rules adopted by D.98-10-058 should be amended to apply to CMRS carriers in a manner that provides reasonable fees for CMRS pole attachments, protects worker and public safety, and preserves the reliability of co-located utility facilities.

8. Google's request to expand the scope of the rulemaking proceeding instituted by today's decision lacks the information contemplated by Rule 6.3 and, therefore, should be denied.

9. The following order should be effective immediately so that the rulemaking instituted by the order may commence forthwith.

O R D E R

IT IS ORDERED that:

1. A rulemaking proceeding is instituted to consider whether and how the rules adopted by Decision 98-10-058 should be amended to apply to Commercial Mobile Radio Service (CMRS) carriers in a manner that provides reasonable fees for CMRS pole attachments, protects worker and public safety, and preserves the reliability of co-located utility facilities. The assigned Commissioner may determine the specific issues that are within the scope of this proceeding.

2. The preliminary schedule for this rulemaking proceeding is set forth in the body of this Order. The assigned Commissioner and/or the assigned Administrative Law Judge may modify the proceeding schedule for the reasonable, efficient, and orderly conduct of this proceeding.

3. The preliminary category for this rulemaking proceeding is quasi-legislative. There is no preliminary need for an evidentiary hearing in this rulemaking proceeding.

4. The Executive Director shall serve a notice of availability of this Order on the following:

(i) The e-mail and postal addresses provided by each Commercial Mobile Radio Service (CMRS) carrier with a utility identification number issued by the Commission. A list of these CMRS carriers is provided in Attachment B of this Order.

(ii) The e-mail and postal addresses provided by each person and entity on the official service lists for Petition 13-12-009, Rulemaking 08-11-005, and the consolidated dockets of Rulemaking 95-04-043 and Investigation 95-04-044.

5. The deadline in this rulemaking proceeding to file and serve notices of intent to claim intervenor compensation is 30 days after the date of the prehearing conference or as otherwise directed by the assigned Commissioner or the assigned Administrative Law Judge.

6. The request by Google Inc. to expand the scope of this rulemaking proceeding is denied.

7. Petition 13-12-009 is granted to the extent set forth above. The Petition is denied in all other respects.

8. Petition 13-12-009 is closed.

This Order is effective today.

Dated _____, at Los Angeles, California.

Appendix A: AT&T Mobility's Proposed Revisions to the ROW Rules

AT&T Mobility's proposed revisions to the ROW Rules adopted by Decision 98-10-058 are shown below with bold font, underline for new text, and strikethrough for deleted text.

APPENDIX A

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
  B. RESPONSES TO REQUESTS FOR ACCESS
  C. TIME FOR COMPLETION OF MAKE READY WORK
  D. 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
  B. MANNER OF PRICING ACCESS
  C. CONTRACTS
  D. UNAUTHORIZED ATTACHMENTS
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. EXPENDITED 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) providers**, and cable TV companies in California, and are issued pursuant to the Commission's jurisdiction over access to utility rights of way and support structures under the Federal Communications Act, 47 U.S.C. § 224(c)(1) and subject to California Public Utilities Code §§ 767, 767.5, 767.7, 768, 768.5 and 8001 through 8057. These rules are to be applied as guidelines by parties in negotiating rights of way access agreements. Parties may mutually agree on terms which deviate from these rules, but in the event of negotiating disputes submitted for Commission resolution, the adopted rules will be deemed presumptively reasonable. The burden of proof shall be on the party advocating a deviation from the rules to show the deviation is reasonable, and is not unduly discriminatory or anticompetitive.

II. DEFINITIONS

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

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

"Pole attachment" means any attachment to surplus space, or use of excess capacity, by a telecommunications carrier for a communications system on or in any support structure owned, controlled, or used by a public utility.

"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 for a pole attachment.

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

"Usable space" means the total distance between the top of the utility pole **(including any attachment at the top of the pole or on a pole top extension)** and the lowest possible attachment point that provides the minimum allowable vertical clearance.

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

"Rearrangements" means work performed, at the request of a telecommunications carrier, 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, 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 may request replacement of an existing structure with a different or larger support structure.

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

"Telecommunications carrier" generally means any provider of telecommunications services that has been granted a certificate of public convenience and necessity by the California Public Utilities Commission. These rules, however, exclude ~~**Commercial Mobile Radio Service (CMRS) providers and**~~ interexchange carriers from the definition of "telecommunications carrier."

"Commercial Mobile Radio Service (CMRS) provider" generally refers to a provider of cellular services, personal communications services, wide-area specialized mobile radio services, and two-way radiotelephone services.

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

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

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

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

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

III. REQUESTS FOR INFORMATION

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

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

structures and for evaluating access to a specified area of the utility's rights of way identified by the carrier.

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

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

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

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

A. INFORMATION REQUIREMENTS OF REQUESTS FOR ACCESS

The request for access shall contain the following:

1. Information for contacting the carrier, **CMRS provider,** 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.

B. RESPONSES TO REQUESTS FOR ACCESS

1. A utility shall respond in writing to the written request of a telecommunications carrier, **CMRS provider,** or cable TV company for access ("request for access") to its rights of way and support structures as quickly as possible, which, in the case of Pacific or GTEC, shall not exceed 45 days. The response shall affirmatively state whether the utility will grant access or, if it intends to deny access, shall state all of

the reasons why it is denying such access. Failure of Pacific or GTEC to respond within 45 days shall be deemed an acceptance of the request for access.

2. If, pursuant to a request for access, the utility has notified the telecommunication carrier, **CMRS provider,** 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.
3. If the utility does not own the property on which its support structures are located, the telecommunication carrier, **CMRS provider,** or cable TV company must obtain written permission from the owner of that property before attaching or installing its facilities. The telecommunication carrier, **CMRS provider,** 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 provider's,** or the cable TV company's use or attachment.

C. TIME FOR COMPLETION OF MAKE READY WORK

1. If a utility is required to perform make ready work on its poles, ducts or conduit to accommodate a carrier's, **CMRS provider'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.

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 wire communications, **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 provider,** 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 carrier's, **CMRS provider'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 provider,** 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 provider,** or cable TV company must arrange a specific schedule with the electric utility. The telecommunications carrier, **CMRS provider,** 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 provider,** or cable TV company must allow the electric utility, in the utility's discretion to inspect the ~~**telecommunication's**~~ 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, **CMRS provider,** 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 provider'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.

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 provider'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 providers**, ~~**or cable TV company**~~ 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 provider,** 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 providers,** 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 provider,** 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 and a telecommunications carrier, **CMRS provider,** or cable TV company, or associations, therefore, are unable to agree upon 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.

b. An annual recurring fee computed as follows:

(1) For each pole and supporting anchor actually used by the telecommunications carrier, **CMRS provider,** 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 support structures used by the telecommunications 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 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 or cable TV company's equipment.

c. A utility may not charge a telecommunications carrier, **CMRS provider,** 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.

C. CONTRACTS

1. A utility that provides or has negotiated an agreement with a telecommunications carrier, **CMRS provider,** 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 providers,** 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 providers,** 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 provider,** 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 providers,** 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 CLC, **CMRS provider,** 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 of safety or reliability requirements which are more elaborate than a telecommunications-only trench, the telecommunications carriers should not pay more than they would have incurred for their own independent trench. Disputes regarding the sharing of the cost of capacity expansions and modifications shall be subject to the dispute resolution procedures contained in these rules.

IX. EXPEDITED DISPUTE RESOLUTION PROCEDURES

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

1. Following denial of a request for access, parties shall escalate the dispute to the executive level within each company. After 5 business days, any party to the dispute may file a formal application requesting Commission arbitration. The arbitration shall be deemed to begin on the date of the filing before the Commission of the request for arbitration. Parties to the arbitration may continue to negotiate an agreement prior to and during the arbitration hearings. The party requesting arbitration shall provide a copy of the request to the other party or parties not later than the day the Commission receives the request.

2. **Content**
A request for arbitration must contain:
   a. A statement of all unresolved issues.
   b. A description of each party's position on the unresolved issues.
   c. A proposed agreement addressing all issues, including those upon which the parties have reached an agreement and those that are in dispute. Wherever possible, the petitioner should rely on the fundamental organization of clauses and subjects contained in an agreement previously arbitrated and approved by this Commission.
   d. Direct testimony supporting the requester's position on factual predicates underlying disputed issues.
   e. Documentation that the request complies with the time requirements in the preceding rule.

3. **Appointment of Arbitrator**
Upon receipt of a request for arbitration, the Commission's President or a designee in consultation with the Chief Administrative Law Judge, shall appoint and immediately notify the parties of the

identity of an Arbitrator to facilitate resolution of the issues raised by the request. The Assigned Commissioner may act as Arbitrator if he/she chooses. The Arbitrator must attend all arbitration meetings, conferences, and hearings.

4. **Discovery**
Discovery should begin as soon as possible prior to or after filing of the request for negotiation and should be completed before a request for arbitration is filed. For good cause, the Arbitrator or Administrative Law Judge assigned to Law and Motion may compel response to a data request; in such cases, the response normally will be required in three working days or less.

5. **Opportunity to Respond**
Pursuant to Subsection 252(b)(3), any party to a negotiation which did not make the request for arbitration ("respondent") may file a response with the Commission within 15 days of the request for arbitration. In the response, the respondent shall address each issue listed in the request, describe the respondent's position on these issues, and identify and present any additional issues for which the respondent seeks resolution and provide such additional information and evidence necessary for the Commission's review. Building upon the contract language proposed by the applicant and using the form of agreement selected by the applicant, the respondent shall include, in the response, a single-text "mark-up" document containing the language upon which the parties agree and, where they disagree, both the applicant's proposed language (bolded) and the respondent's proposed language (underscored). Finally, the response should contain any direct testimony supporting the respondent's position on underlying factual predicates. On the same day that it files its response before the Commission, the respondent must serve a copy of the Response and all supporting documentation on any other party to the negotiation.

6. **Revised Statement of Unresolved Issues**
Within 3 days of receiving the response, the applicant and respondent shall jointly file a revised statement of unresolved issues that removes from the list presented in the initial petition those issues which are no longer in dispute based on the contract language offered by the respondent in the mark-up document and adds to the

list only those other issues which now appear to be in dispute based on the mark-up document and other portions of the response.

7. **Initial Arbitration Meeting**
An Arbitrator may call an initial meeting for purposes such as setting a schedule, simplifying issues, or resolving the scope and timing of discovery.

8. **Arbitration Conference and Hearing**
Within 7 days after the filing of a response to the request for arbitration, the arbitration conference and hearing shall begin. The conduct of the conference and hearing shall be noticed on the Commission calendar and notice shall be provided to all parties on the service list.

9. **Limitation of Issues**
The Arbitrator shall limit the arbitration to the resolution of issues raised in the application, the response, and the revised statement of unresolved issues (where applicable). In resolving the issues raised, the Arbitrator may take into account any issues already resolved between the parties.

10. **Arbitrator's Reliance on Experts**
The Arbitrator may rely on experts retained by, or on the Staff of the Commission. Such expert(s) may assist the Arbitrator throughout the arbitration process.

11. **Close of Arbitration**
The arbitration shall consist of mark-up conferences and limited evidentiary hearings. At the mark-up conferences, the arbitrator will hear the concerns of the parties, determine whether the parties can further resolve their differences, and identify factual issues that may require limited evidentiary hearings. The arbitrator will also announce his or her rulings at the conferences as the issues are resolved. The conference and hearing process shall conclude within 3 days of the hearing's commencement, unless the Arbitrator determines otherwise.

12. **Expedited Stenographic Record**
An expedited stenographic record of each evidentiary hearing shall be made. The cost of preparation of the expedited transcript shall be borne in equal shares by the parties.

13. **Authority of the Arbitrator**
In addition to authority granted elsewhere in these rules, the Arbitrator shall have the same authority to conduct the arbitration process as an Administrative Law Judge has in conducting hearings under the Rules of Practice and Procedure. The Arbitrator shall have the authority to change the arbitration schedule contained in these rules.
Participation Open to the Public Participation in the arbitration conferences and hearings is strictly limited to the parties negotiating a ROW agreement pursuant to the terms of these adopted rules.

14. **Arbitration Open to the Public**
Though participation at arbitration conferences and hearings is strictly limited to the parties that were negotiating the agreements being arbitrated, the general public is permitted to attend arbitration hearings unless circumstances dictate that a hearing, or portion thereof, be conducted in closed session. Any party to an arbitration seeking a closed session must make a written request to the Arbitrator describing the circumstances compelling a closed session. The Arbitrator shall consult with the assigned Commissioner and rule on such request before hearings begin.

15. **Filing of Draft Arbitrator's Report**
Within 15 days following the hearings, the Arbitrator, after consultation with the Assigned Commissioner, shall file a Draft Arbitrator's Report. The Draft Arbitrator's Report will include (a) a concise summary of the issues resolved by the Arbitrator, and (b) a reasoned articulation of the basis for the decision.

16. **Filing of Post-Hearing Briefs and Comments on the Draft Arbitrator's Report**
Each party to the arbitration may file a post-hearing brief within 7 days of the end of the mark-up conferences and hearings unless the Arbitrator rules otherwise. Post-hearing briefs shall present a party's argument in support of adopting its recommended position with all supporting evidence and legal authorities cited therein. The length of post-hearing briefs may be limited by the Arbitrator and shall otherwise comply with the Commission's Rules of Practice and Procedure. Each party and any member of the public may file

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

17. **Filing of the Final Arbitrator's Report**
The arbitrator shall file the Final Arbitrator's Report no later than 15 days after the filing date for comments. Prior to the report's release, the Telecommunications Division will review the report and prepare a matrix comparing the outcomes in the report to those adopted in prior Commission arbitration decisions, highlighting variances from prior Commission policy. Whenever the Assigned Commissioner is not acting as the arbitrator, the Assigned Commissioner will participate in the release of the Final Arbitrator's Report consistent with the Commission's filing of Proposed Decisions as set forth in Rule 77.1 of the Commission's Rules of Practice and Procedure.

18. **Filing of Arbitrated Agreement**
Within 7 days of the filing of the Final Arbitrator's Report, the parties shall file the entire agreement for approval.

19. **Commission Review of Arbitrated Agreement**
Within 30 days following filing of the arbitrated agreement, the Commission shall issue a decision approving or rejecting the arbitrated agreement (including those parts arrived at through negotiations) pursuant to Subsection 252(e) and all its subparts.

20. **Standards for Review**
The Commission may reject arbitrated agreements or portions thereof that do not meet the requirements of the Commission, including, but not limited to, quality of service standards adopted by the Commission.

21. **Written Findings**
The Commission's decision approving or rejecting an arbitration agreement shall contain written findings. In the event of rejection, the Commission shall address the deficiencies of the arbitrated agreement in writing and may state what modifications of such agreement would make the agreement acceptable to the Commission.

22. **Application for Rehearing**
A party wishing to appeal a Commission decision approving an arbitration must first seek administrative review pursuant to the Commission's Rules of Practice and Procedure.

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

X. ACCESS TO CUSTOMER PREMISES

A. No carrier may use its ownership or control of any right of way or support structure to impede the access of a telecommunications carrier 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 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

A. 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.
B. 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 APPENDIX A)

Appendix B: List of CMRS Carriers

List of CMRS Carriers with a
Commission-Issued Utility Identification Number

List of CMRS Carriers with a Commission-Issued Utility Identification Number	
1	Cellco Partnership
2	GTE Mobilnet of Ca., Ltd. Ptnrshp
3	Los Angeles Smsa Limited Partnership
4	Sacramento Valley Ltd. Partnership
5	Fresno Msa Ltd. Partnership
6	GTE Mobilnet of Santa Barbara
7	New Cingular Wireless PCS, LLC
8	Santa Barbara Cellular Systems, Ltd.
9	AT&T Mobility Wireless Operations Holdings Inc.
10	WWC License, LLC
11	California Rsa No. 3 Ltd. Partnership
12	Verizon Wireless, LLC
13	Modoc RSA Limited Partnership
14	California Rsa No. 4 Ltd. Partnership
15	United States Cellular Corporation
16	T-Mobile West LLC
17	New Cingular Wireless Pcs, LLC
18	Cricket Communications, Inc.
19	Metropcs California, LLC
20	Accessible Wireless, LLC
21	California Valley Broadband, LLC
22	North American Cellular Telephone, Inc.
23	Nova Cellular West, Inc.
24	Digital Communications Network, Inc.
25	Cellular Systems Int'l Ltd.
26	Digital Cellular Inc.
27	Robo Wireless, Inc
28	Galaxy Cellular Communications
29	Cybernet Communications
30	Body Wise Communications Advantage
31	Tracfone Wireless
32	Everything Wireless, LLC
33	Fisher Wireless Services, Inc
34	Working Assets Funding Service, Inc.

List of CMRS Carriers with a Commission-Issued Utility Identification Number	
35	Onstar LLC
36	Virgin Mobile USA, LP
37	Consumer Cellular, Incorporated
38	Nextel Boost of California, LLC
39	PNG Telecommunications, Inc.
40	Movida Communications, Inc.
41	Globalstar USA, LLC
42	Ztar Mobile, Inc.
43	Helio, LLC
44	Granite Telecomminications, LLC
45	Treyspan, Inc.
46	Total Call Mobile, Inc.
47	Credit Union Wireless
48	Coast To Coast Cellular, Inc.
49	Affinity Mobile, LLC
50	Nosva Limited Partnership
51	I-Wireless, LLC
52	Touchtone Communications, Inc.
53	DeltaCom, LLC
54	CTC Communications Corp.
55	Telscape Communications, Inc.
56	Greatcall, Inc
57	Lightyear Network Solutions, LLC
58	Airpeak Communications
59	Atrium Wireless Partners, LLC
60	MCI Communications Services, Inc
61	Nexus Communications, Inc.
62	WDT Wireless Telecommunications, Inc.
63	St Messaging, LLC
64	Conexions, LLC
65	Telava Mobile, Inc.
66	Ernest Communications, Inc
67	Mitel Netsolutions, Inc.
68	Truphone, Inc

List of CMRS Carriers with a Commission-Issued Utility Identification Number	
69	U.S. Telepacific Corp.
70	Americatel Corporation
71	Mother Lode Internet, LLC
72	Medallion Telecom, Inc.
73	France Telecom Corporate Solutions, LLC
74	TDS Long Distance Corporation
75	BullsEye Telecom, Inc.
76	NTT Docomo USA, Inc
77	TC Telephone, LLC.
78	Tag Mobile, LLC
79	Budget PrePay, Inc.
80	Flash Wireless, LLC
81	Safari Communications, Inc.
82	US Connect LLC
83	Q Link Wireless LLC
84	PrepaYd Wireless, Inc.
85	Midwestern Telecommunications, Inc.
86	Global Connection Inc of America
87	EZ Reach Mobile, LLC
88	Curatel, LLC
89	Cintex Wireless, LLC.
90	Ciao Telecom, Inc.
91	Wall Street Network Solutions, LLC
92	Reunion Wireless Services, LLC
93	Lycamobile USA Inc.
94	Enhanced Communications Network Inc.
95	Telefonica USA, Inc.
96	Bandwidth.com, Inc.
97	Connectto World, Inc.
98	Clear Choice PCS, LLC
99	Boomerang Wireless, LLC
100	Blue Jay Wireless, LLC
101	MCImetro Access Transmission Services, LLC
102	Verizon California, Inc.

List of CMRS Carriers with a Commission-Issued Utility Identification Number	
103	Solavei, LLC
104	UVNV, Inc
105	Telrite Corporation
106	Silicon Business System
107	Tri-M Communications, Inc.
108	Red Pocket, Inc.
109	Puretalk Holdings, LLC
110	ItsOn, Inc.
111	365 Wireless, LLC
112	Air Voice Wireless, LLC
113	MCC Telephony of the West, LLC
114	Free Mobile, Inc.
115	PLDT (US) Mobility, LLC
116	BCN Telecom, Inc
117	Sage Telecom Communications, LLC
118	American Broadband and Telecommunications Company
119	AmeriMex Communications Corp.
120	Tempo Telecom, LLC
121	Aio Wireless LLC
122	Ready Wireless, LLC
123	Zoommediaplus, Inc.
124	Ting, Inc.
125	James Robert McKeown
126	Wirelessco, LP
127	Sprint Telephony PCS, LP
128	Nextel of California, Inc.
129	Flat West Wireless, LLC
130	Madera Radio Dispatch
131	Fresno Mobile Radio Inc.
132	American Messaging Services, LLC
133	Velocita Wireless
134	USA Mobility Wireless, Inc.
135	Telefonica USA, Inc.

(END OF APPENDIX B)