

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

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

Investigation 17-06-027  
(June 29, 2017)

Order Instituting Rulemaking into Access by  
Competitive Communications Providers to  
California Utility Poles and Conduit,  
Consistent with the Commission's Safety  
Regulations.

Rulemaking 17-06-028

**REPLY COMMENTS OF CTIA  
TO THE ADMINISTRATIVE LAW JUDGE'S RULING REQUESTING  
PARTY COMMENTS ON RIGHT OF WAY RULES**

GOODIN, MACBRIDE,  
SQUERI & DAY, LLP  
Jeanne B. Armstrong  
505 Sansome Street, Suite 900  
San Francisco, California 94111  
Telephone: (415) 392-7900  
Facsimile: (415) 398-4321  
Email: [jarmstrong@goodinmacbride.com](mailto:jarmstrong@goodinmacbride.com)

Attorneys for CTIA

Dated: June 24, 2019

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

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

Investigation 17-06-027  
(June 29, 2017)

Order Instituting Rulemaking into Access by Competitive Communications Providers to California Utility Poles and Conduit, Consistent with the Commission’s Safety Regulations.

Rulemaking 17-06-028

**REPLY COMMENTS OF CTIA  
TO THE ADMINISTRATIVE LAW JUDGE’S RULING REQUESTING  
PARTY COMMENTS ON RIGHT OF WAY RULES**

Pursuant to the *Administrative Law Judge’s Ruling Requesting Party Comments on the Right of Way Rules* dated May 10, 2019, CTIA submits the following reply comments.

**I. INTRODUCTION**

CTIA agrees with the majority of commenters who assert that a utility pole owner should not be permitted to condition the sale of an interest in a pole to a communications provider on the purchaser’s agreement to purchase the entire communications space, or on the purchaser adopting the duty to manage and administer attachments by others in the communications space.<sup>1</sup>

---

<sup>1</sup> See Comments of the Public Advocates Office on the Questions in the May 10, 2019 Administrative Law Judge’s Ruling Requesting Party Comments on Right of Way Rules, R.17-06-028 (June 10, 2019) (“PAO Comments”) at 5-7; Opening Comments of AT&T on Questions Set Forth in May 10, 2019 Administrative Law Judge’s Ruling, R.17-06-028 (June 10, 2019) (“AT&T Comments”) at 4-5; Combined Reply Comments of Cellco Partnership, MCIMetro Access Transmission Services Corp. and XO Communications Services on Administrative Law Judge’s Ruling Requesting Party Comments on Right of Way Rules, R.17-06-028 (June 10, 2019) (“Verizon Comments”) at 3-6; Crown Castle Fiber LLC Comments on Right of Way Rules, R.17-06-028 (June 10, 2019) (“Crown Castle Comments”) at 6-10; Extenet Systems (California) Comments on Administrative Law Judge’s Ruling Requesting Party Comments on Right of Way Rules, R.17-06-028 (June 10, 2019) at 4-5.

As highlighted in several parties' opening comments and elucidated more below, such conditions are antithetical to the non-discriminatory access principles of the Commission's Right-of-Way Decision<sup>2</sup> as well as to the State's broadband deployment goals.

## **II. CONDITIONING ACCESS TO THE COMMUNICATIONS SPACE CONTRAVENES THE RIGHT-OF-WAY DECISION AND THE STATE'S BROADBAND DEPLOYMENT GOALS**

### **A. Conditioning Access to the Communications Space Disregards the Non-Discriminatory Access Tenets of the Commission's Right-of-Way Decision**

A provision in a pole attachment agreement requiring the attacher to purchase the entire communications space and/or administer attachments by others in the communications space violates the bedrock principle of non-discriminatory access embedded in the Commission's Right-of-Way Decision. Therein the Commission recognized that "[n]ondiscriminatory access to the incumbent utilities' poles, ducts, conduits, and rights of way is one of the essential requirements for facilities-based competition to succeed."<sup>3</sup> The Commission reaffirmed that this principle was indispensable to a competitive market by extending its right-of-way rules to commercial mobile radio service providers ("CMRS").<sup>4</sup> Utility practices that contravene the principle of non-discriminatory access should therefore not be allowed.

As highlighted by Verizon, conditioning future access to utility poles on the purchase of the entire communications space and/or the agreement to administer the entire space "is discriminatory against new entrants or existing competitive carriers as to new and future deployment activities."<sup>5</sup> Similarly, as noted by the Public Advocates Office ("PAO"), the practice of requiring the purchase of the entire communications space "would pose a barrier to

---

<sup>2</sup> See D.98 -10-058, 1998 Cal PUC LEXIS 879 ("Right-of-Way Decision").

<sup>3</sup> Right-of-Way Decision at \*181, Finding of Fact No. 2.

<sup>4</sup> See D.16 -01-046 at 14.

<sup>5</sup> Verizon Comments at 5.

communications providers that are unable or unwilling to purchase the entire communications space on a utility pole.”<sup>6</sup> The PAO further observed that such a practice “would be especially harmful to small competitive communications providers and new market entrants that have limited resources to purchase interest [sic] in poles.”<sup>7</sup>

Moreover, in order to ensure non-discriminatory access, the Commission has limited a pole owner’s right to condition access to a pole. Specifically, the Commission has stated that “[t]he incumbent utility may only restrict access to a particular facility or may place conditions on access for specified reasons relating to safety or engineering reliability.”<sup>8</sup> There is nothing on the record of this proceeding indicating that the safety or engineering reliability of poles necessitates the purchase of the entire communications space or administration of the entire communications space by one entity.<sup>9</sup> While both Pacific Gas and Electric Company and Southern California Edison Company support granting the pole owner the autonomy to determine all terms and conditions of the sale of an interest in a pole (including the conditions of buying and/or administering the entire communications space), neither provides justification for their position nor states why such conditions are necessary for the safety or engineering reliability of a pole.<sup>10</sup>

---

<sup>6</sup> PAO Comments at 5.

<sup>7</sup> *Id.*; see also AT&T Comments at 4 (conditions impose “an undue burden and expense that creates an improper barrier to joint ownership and competitive access.”)

<sup>8</sup> Right-of-Way Decision at \*31.

<sup>9</sup> See Crown Castle Comments at 8 (“There is no evidence, and it is hard to imagine any evidence, demonstrating that the ability to provide reliable service is impacted by selling attachers the amount of space they need for their facilities (*e.g.*, 1 foot) as opposed to selling excess space in the communications zone.”).

<sup>10</sup> See Southern California Edison Company’s Opening Comments on Administrative Law Judge’s Ruling Requesting Party Comments on Right of Way Rules, R.17-06-028 (June 10, 2019) at 4-5; Pacific Gas and Electric Company’s Responses to Administrative Law Judge’s Ruling Requesting Party Comments on Right of Way Rules, R.17-06-028 (June 10, 2019) at 4.

**B. Conditioning Access to the Communications Space is Inconsistent with the State’s Broadband Deployment Goals**

A provision in a pole attachment agreement requiring purchase of the entire communications space and/or administering attachments by others in the communications space runs counter to the State’s broadband deployment goals as embedded in state law and policy. Accordingly, utility practices that impose such requirements should not be allowed.

Specifically, Public Utilities Code Section 709 provides that it is the policy of the State of California to, among other things, (1) 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,<sup>11</sup> and (2) 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.<sup>12</sup> The Commission has concluded that providing wireless carriers with nondiscriminatory access to public utility infrastructure will help achieve these stated policy objectives. Specifically, the Commission determined that:

“Enabling CMRS carriers to obtain nondiscriminatory access to public utility infrastructure will facilitate investment in wireless infrastructure and thereby help to achieve the State of California’s ambitious goals for telecommunications services, particularly broadband. Conversely, the inability of CMRS carriers to obtain nondiscriminatory access may limit and deter investments by CMRS carriers to the detriment of California.”<sup>13</sup>

As recognized by Crown Castle, any condition that requires the purchase of capacity in excess of what the purchaser requires unnecessarily places on the purchaser the financial burden of paying for the costs of that additional space, thereby diminishing the funds available for a

---

<sup>11</sup> Cal. Pub. Util. Code § 709(c).

<sup>12</sup> *Id.* at § 709(g).

<sup>13</sup> D. 16-01-046, Finding of Fact No.5.

purchaser to invest in its network and slowing the delivery of advanced communications.<sup>14</sup>

Verizon likewise commented on how a requirement to purchase the entire communications space could “significantly slow or impede the deployment of broadband throughout the state.”<sup>15</sup>

Similarly, mandating that the purchase of an interest in a pole be coupled with the obligation to serve as manager or administrator for the entire communications space imposes a burden on a purchaser and, thus, could thus impede deployment. For example, as noted by Crown Castle, if required to serve as administrator of the communications space, competitive carriers would “incur significant costs over the long-term to restructure their business to manage tenants.”<sup>16</sup> Such diversion of resources could deter advancement towards achievement of the State’s broadband objectives.

### **III. CONCLUSION**

A provision in a pole attachment agreement requiring the attacher to purchase the entire communications space and/or administer attachments by others in the communications space violates the principle of non-discriminatory access and is inconsistent with the State’s broadband deployment goals. Accordingly, utility practices that impose such requirements should not be allowed.

---

<sup>14</sup> See Crown Castle Comments at 8.

<sup>15</sup> Verizon Comments at 7; *see also id.* (“Purchase of the entire communications space would cost significantly more and create a barrier to entry for smaller carriers due to the increased costs of purchasing the entire zone (and then managing the space as landlord.)”).

<sup>16</sup> Crown Castle Comments at 10.

Respectfully submitted June 24, 2019, at San Francisco, California.

By: /s/ Jeanne B. Armstrong  
Jeanne B. Armstrong

GOODIN, MACBRIDE,  
SQUERI & DAY, LLP  
505 Sansome Street, Suite 900  
San Francisco, California 94111  
Telephone: 415.392.7900  
Facsimile: 415.398.4321  
Email: [jarmstrong@goodinmacbride.com](mailto:jarmstrong@goodinmacbride.com)

Attorneys for CTIA

3100/015/X209479.v1