

**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
ON RULING REQUESTING COMMENTS ON TRACK 2 ISSUES**

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Pursuant to the *Administrative Law Judge's Ruling Requesting Comments on Track 2 Issues* dated October 8, 2020 ("Ruling"), CTIA replies to comments submitted in the above captioned proceeding on November 9, 2020.

I. INTRODUCTION

The Opening Comments reveal that a large majority of pole owners and attachers (and their representative associations) participating in the proceeding question whether the Ruling's proposed additions to the data access portals will, in fact, advance the Order Instituting Investigation ("OII") articulated goals of enhancing safety monitoring and pole access.¹ In fact,

¹ See e.g., *Southern California Edison Company's Comments in Response to Questions in ALJ Mason's October 8, 2020 Ruling*, I. 17-06-027 (November 9, 2020) ("SCE Comments"), p. 1 ("SCE respectfully notes that this additional data is costly and unnecessary, and in fact, could introduce new risks."); *Opening Comments of the California Cable & Telecommunications Association on Administrative Law Judge's Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) ("CCTA Comments"), p. 4 ("None of the Track 2 data is essential to accommodate CCTA's members' or other attachers' needs in obtaining access to poles."); *Comments of Frontier California Inc., Citizens Telecommunications Company of California Inc. and Frontier Communications of the Southwest Inc. on Administrative Law Judge's Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) ("Frontier Comments"), p. 2 ("Review of the additional data requirements and the rationales set forth in the ALJ Ruling raise an initial question that should be addressed of whether Track 2

the record is clear that pole databases cannot replace the necessity for pole visits to compile accurate, up-to-date information. Commenters demonstrate that instead of replacing the need for in-person pole visits, a database merely increases the amount of human labor necessary by adding the Sisyphean task of attempting to maintain a database that, due to the sheer volume of information, if not for other reasons, will be inaccurate and out-of-date shortly after or even before data is entered. The record also shows that this problem would only be exacerbated by proposals to add even more types of data points.

Irrespective of whether or not the data attachment fields will add value consistent with the goals of the OII, prior to implementing any expansion of the data access portals to include attachment fields in Track 2, the California Public Utilities Commission (“Commission”) must address the need to protect the confidentiality of this information. Recommendations that the information be broadly available to the public would threaten to undermine competition and could play into the hands of bad actors, and thus should be rejected.

Additionally, the Commission should not alter its determination that each pole owner should have an individual data access portal, rather than create a statewide portal. While the Public Advocates Office (“PAO”) asserts that a statewide portal would be more efficient,² that supposition has already been considered and rejected in the instant proceeding.

Finally, given the numerous questions and issues raised in the record to date, the Commission should proceed cautiously, heeding the request of most commenters to hold

is necessary.”); *Comments of CTIA on Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) (“CTIA Comments”), p. 2 (There is “no record support to indicate that any of the 12 data points set forth in the Ruling as proposed additions to the pole owners’ data access portals would improve safety monitoring or competition.”).

² See *Opening Comments of the Public Advocates Office on the October 8, 2020 Administrative Law Judge’s Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) (“PAO Comments”), p. 5.

workshops in order to examine whether any additions to the required data fields in the data access portals meet the intended purposes of the OII in a cost-effective manner.³

II. THE RECORD DEMONSTRATES EXPANSION OF THE DATA ACCESS PORTALS WILL NOT PROMOTE EFFICIENCY OR ACCURACY BECAUSE A DATABASE CANNOT REPLACE FIELD VISITS

Of all the industry participants that commented on the Ruling, only two, Extenet and Sonic, were in favor of expanding the data access portals to include the attachment data points set forth in the Ruling. However, the rationale presented by those parties -- that an expanded pole database would enhance the efficient and timely deployment of broadband⁴ -- is belied by the record of this proceeding.⁵ The position of the industry participants who support data access portal expansion to include detailed attachment information is that this information will be maintained with sufficient accuracy, and in “real-time,” to make site visits superfluous, thereby

³ See e.g., SCE Comments, p. 4 (“However, should the Commission decide to investigate further, SCE suggests focused workshops be convened to examine whether any actual benefit is derived and weigh it against the initial and long-term costs.”); CCTA Comments, pp. 2-3 (“[I]f the Commission nonetheless decides to move forward with Track 2, CCTA respectfully submits that it should conduct workshops to address the major problems associated with Track 2 and address these problems in the least detrimental manner.”); *Comments of San Diego Gas & Electric Company and Southern California Gas Company on Administrative Law Judge's Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) (“SDG&E Comments”), p. 3 (“SDG&E respectfully suggests that a series of workshops be convened to further examine the necessity, cost benefit, definition, accuracy, and other relevant factors for the suggested data points.”).

⁴ See Extenet Comments, pp. 2-3; *Comments of Sonic Telecom on Administrative Law Judge's Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) (“Sonic Comments”), p. 2.

⁵ Any implication that stakeholders collaborated as part of a working group to compile a strawman list of attachment data that should be included in the data access portals is inaccurate. See *Comments of Extenet Systems Inc. and Extent Systems California on Administrative Law Judge's Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) (“Extenet Comments”), p. 3 (“The data categories in the ALJ Ruling also closely track a strawman proposal prepared by a working group in the fall of 2019 to prepare for Track 2.”). The purported “working group” was in fact one teleconference during which one stakeholder presented its proposal for additional fields that should be added to the data access portals. There was no agreement among the stakeholders as to the necessity of any of the data points set forth in the strawman list.

expediting the deployment of infrastructure.⁶ The inaccuracy of this position was made evident by several parties in their opening comments.

The addition of attachment data to the data access portals will *not* expedite deployment because it will not obviate the need for a field visit to the pole or poles in question when an attacher seeks to expand its network.⁷ First, maintaining the accuracy of the databases that would be required cumulatively to have hundreds of millions of fields is highly improbable and perhaps impossible.⁸ Moreover, as detailed by AT&T, field visits “will always be necessary” to properly perform pole loading calculations.⁹ Data integral to a correct calculation, necessary to ensure the safety of the pole, can only be identified by visually examining the pole and its attachments in the field. For example there may be an unauthorized attachment, or the pole may have deteriorated over time. Indeed, as attested to by California Cable & Telephone Association (“CCTA”) expert Dr. Lawrence Slavin, a significant amount of real-world information, traditionally obtained through and reliant on field surveys, would not be captured in an abstract

⁶ See e.g., Extenet Comments, pp. 2-3 (“Without a database, competitors are often required to send personnel to the site to conduct an inventory of attached equipment and available space on the pole. This manual process is slow and expensive and hampers the efficient and timely deployment of broadband and telecommunications services.”) and p. 1 (lack of an accurate, real-time database hampers ExteNet’s planning efforts).

⁷ See e.g., CCTA Comments, p. 5.

⁸ See *Opening Comments of AT&T in Response to Administrative Law Judge’s Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) (“AT&T Comments”), p. 4 (the dynamic and constantly changing nature of attachment data points means that “there will always be a percentage of inaccurate, corrupted or missing data for a variety of reasons.”); see also *Comments of Cellco Partnership, MCIMetro Access Services Corp. and XO Corporation to Administrative Law Judge’s Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020) (“Verizon Comments”), p. 2 (attachment data is constantly changing and can be rendered outdated within a day of when an attacher places a line on a pole).

⁹ AT&T Comments, p. 4.

pole attachment database.¹⁰ The record shows that when engineers perform a field visit to gather data for a pole loading calculation, they collect at least 120 data points for a basic pole configuration – *i.e.*, a pole that has only power, telephone, and cable television attachments, and no guy wires, anchors, or other attachments or equipment on the pole.¹¹ More complex configurations require collection of even more data points.¹² In short, as confirmed by Dr. Slavin, “A field visit is the only reliable – and the only necessary – means to obtain detailed, reliable, consistent, and current pole and attachment information prior to the submission of an application to attach.”¹³ Adding attachment data to the data access portals will not alleviate the need for this core practice and thus, contrary to the assertions of certain stakeholders, will not expedite infrastructure deployment.

III. THE COMMISSION MUST ESTABLISH REASONABLE CONFIDENTIALITY PROTOCOLS FOR ANY ATTACHMENT DATA FIELDS ADDED TO THE DATA ACCESS PORTALS IN TRACK 2

Responses to the Ruling’s inquiry regarding the confidentiality of the additional data fields primarily acknowledge that certain of the data fields, when reviewed collectively, as they could be in a data access portal, could be used to determine confidential proprietary information regarding the market area served by an attacher, as well as providing insight into where a provider is building its network, its coverage needs, its deployment strategies, and the type of

¹⁰ See Declaration of Dr. Lawrence Slavin in Support of CCTA’s Comments on Administrative Law Judge’s Ruling Requesting Comments on Track 2 Issues, I. 17-06-027 (dated November 6, 2020) (“Slavin Declaration”), ¶10.

¹¹ See Declaration of Jillian Harvey in Support of CCTA’s Comments on Administrative Law Judge’s Ruling Requesting Comments on Track 2 Issues, I. 17-06-027 (dated November 9, 2020), ¶ 3.

¹² *Id.*

¹³ Slavin Declaration, ¶ 6.

technologies or equipment that the provider is using.¹⁴ In addition, such data could provide a road map for bad actors wishing to wreak havoc on critical utility infrastructure.¹⁵

Parties offered a variety of ideas to address these confidentiality concerns, including: (1) limiting access to the database;¹⁶ (2) a preemptive designation of confidentiality under General Order 66-D for certain data fields;¹⁷ and (3) access to certain data limited to those who execute a non-disclosure agreement.¹⁸ All of these ideas are worthy of exploring. However, CTIA submits that the issue of confidentiality should be addressed subsequent to the Commission deciding which of the attachment data points, if any, will be added to the data access portals. In that manner the specific nature of each data point can be examined and its necessary level of protection determined. It would be premature to make blanket decisions regarding confidentiality without a concrete determination of the types of information they would govern.

In this regard, PAO argues that the Commission should follow the precedent it set in R. 14-08-013, wherein it addressed the investor owned utilities' confidentiality concerns regarding electric distribution system planning data.¹⁹ Specifically, PAO asserts that:

"The Commission should require Pole Owners and attachers to show why information should be treated confidentially. If the Commission finds their arguments persuasive, then it should redact any confidential information, then make the remaining information available to interested third parties through a defined registration process."²⁰

¹⁴ See e.g., AT&T Comments, p. 11; Sonic Comments, p. 9; Verizon Comments, p. 7.

¹⁵ See e.g., Verizon Comments, p. 7; SCE Comments, pp. 8-9; CCTA Comments, pp. 8-9; *Comments of the California Municipal Utilities Association on Email Ruling Requesting Comments on Track 2 Issues*, I. 17-06-027 (November 9, 2020), pp. 5-6.

¹⁶ See e.g., Frontier Comments, p. 6; SCE Comments, p. 8.

¹⁷ See e.g., AT&T Comments, pp. 11-12.

¹⁸ See e.g., Verizon Comments, p. 7.

¹⁹ See OPA Comments, p. 7.

²⁰ *Id.*

CTIA submits that the approach advanced by PAO is reasonable, with appropriate modification. First, as part of this proceeding and prior to the implementation date for any additions to the pole access portals, the Commission should provide the opportunity for pole owners and attachers to make the necessary showing that certain categories of information (*i.e.*, data fields) should be treated as confidential for all providers. The Commission could then issue a ruling setting forth its determinations on confidentiality, allowing such data fields to be masked in the data access portals. Second, access to the confidential data should be limited. Identified members of the Commission's staff would be provided access to the masked data. Identified employees of competitive service providers and pole owners who sign an appropriate nondisclosure agreement ("NDA") may be provided access to the masked data dependent upon which data fields are included in the data access portals. There may be certain data fields that are sufficiently competitively sensitivity that even the protection afforded by an NDA is insufficient. The Commission should predetermine if such data fields exist and allow for those fields to remain masked to competitive service providers. Finally, with the confidential information protected and access to that information limited, the data access portals could be made available to interested third parties through a defined registration process.

CTIA would note that the only party that advances widespread availability of the data – the Safety and Enforcement Division ("SED") – grounds its position in faulty rationale and SED did not even allege there would be any public benefit to widely exposing sensitive data.

SED believes that attachment data (indeed, the entirety of data in the data access portals) should be open to the public, “since poles and most pole attachments are visible to the public, individuals with requisite technical knowledge of attachment equipment could easily gather

attachment information by observation.”²¹ It is true that most pole attachments are visible, and information regarding the attachments on one pole, or even several poles, would likely raise no confidentiality concerns. But SED’s recommendation would allow for detailed information on all the attachments in each pole owners’ respective service territories to be made readily available to anyone and everyone through the data access portals. Such volume of information cannot be “easily gather[ed]” by “individuals with requisite technical knowledge,”²² and would take decades to gather. SED would be opening the door for anyone to quickly and efficiently gather significant information regarding the state’s critical infrastructure. The Commission recently affirmed that information that provides a road map for bad actors to harm a carrier’s network must be protected.²³ SED’s position regarding the confidentiality of the information in the data access portals must therefore be rejected.

IV. THE COMMISSION SHOULD NOT REEXAMINE ITS PRIOR CONCLUSION TO REJECT A SINGLE STATEWIDE DATABASE

Contrary to OPA’s recommendations, the Commission should not revisit the issue of whether a single statewide database should be created. In Track 1, based on the Workshop Report and party comments, the Commission determined that:

"First and foremost, the working groups can work on the assumption that pole and conduit data access by service area rather than a statewide or centralized

²¹ *Opening Comments of the Safety and Enforcement Division on Administrative Law Judge’s Ruling on Track 2 Issues*, I. 17-06-027 (November 9, 2020), p. 6.

²² *Id.*

²³ See Rulemaking 11-12-001, *Proposed Decision Addressing Carriers’ Confidentiality Claims Related to Network Study* (October 19, 2020), p. 78 (stating that public detailed maps which identify locations of critical infrastructure facilities should not be made public as “[t]he detail in the maps exposes infrastructure information that might make it easier for the carriers’ networks to be attacked and thus pose a risk to public safety.”); see *id.*, pp. 86-87 (agreeing with AT&T that its maps showing the statewide locations of AT&T Service Area Interfaces and Remote Terminals is critical network infrastructure information and that the release of this mapping would be harmful in that it could provide a comprehensive roadmap for sabotage of AT&T facilities).

database *meets this Order Instituting Investigation's (OII's) goals.*"²⁴

OPA's assertion that it "would be more efficient" to have all data housed in one place²⁵ is contrary to the Commission's prior conclusion and not grounded in the record. Indeed, OPA provides no support for its assertion. The fact is that additional efficiencies will not be gained, and could be lost, though efforts to house all data in one place. For example, a statewide database would necessitate moving a massive amount of information currently housed in the data access portals of each of the state's pole owners. Such a data migration project would be an enormous and costly undertaking and would open up the opportunity for error in data transference. Moreover, it is questionable that compilation of the information in one place would be more efficient from the viewpoint of an attacher who, more likely than not, will be targeting expansion in a specific geographic area, rather than statewide. Similarly, it is difficult to fathom how a statewide database would be more efficient for the regulator who, at any given time, will not be aiming enforcement efforts statewide, but will have a more narrow focus.²⁶

OPA's unsubstantiated assertions of increased efficiency are therefore insufficient for the Commission to reexamine its prior determination that data access by service territory is consistent with the goals of the OII.

V. THE COMMISSION SHOULD ADHERE TO THE PROCESS USED IN TRACK 1 AND PROVIDE FOR WORKSHOPS

The call for workshops to further explore whether the proposed additions to the data fields in the data access portals meet the intended purposes of the OII in a cost-effective manner

²⁴ *Administrative Law Judge's Ruling Approving Recommendations / Next Steps from the Southern California Edison Workshop Report for Workshops Held on November 15, 2018 and January 22-23, 2019*, I. 17-06-027 (June 4, 2019), p. 3 (emphasis added).

²⁵ OPA Comments, p. 5.

²⁶ In addition, compilation of the information in one place raises additional cybersecurity concerns. *See, e.g.*, Opening Comments and Prehearing Conference Statement of CTIA, I. 17-06-027 (August 21, 2017), pp. 3-6.

was almost universal among commenters.²⁷ Commenters raised numerous issues that should be addressed and vetted through workshops prior to any determination of whether to expand the data access portals. Illustrative of those issues are:

- (1) Identification of use cases that are intended to advance competitive access or safety;²⁸
- (2) Examination of what data points may be necessary to facilitate the identified use cases, and how they can best be made available (which may not be via a database);²⁹
- (3) Determination of industry definitions for the proposed data points;³⁰
- (4) Assessment of whether the addition of attachment data to the data access portals negatively impacts safety;³¹
- (5) Assessment of whether the expense of collecting, importing, maintaining and updating the data points is cost justified;³² and
- (6) Determination of needed security measures and confidentiality protocols for the data access portals.³³

The above list demonstrates that the record of this proceeding is not sufficiently robust for the Commission to proceed with any determination to add any data fields to the data access portals. The Commission should adhere to the process used in Track 1 of this proceeding and provide for a workshop process to identify the attachment data points, if any, that should be added to the data access portals.

²⁷ Only three commenters -- Extenet, Sonic and SED -- did not advocate for workshops.

²⁸ See e.g., AT&T Comments, pp. 4-5; SDG&E Comments, p. 3.

²⁹ *Id.*

³⁰ See e.g., Verizon Comments, p. 3; SDG&E Comments, p. 3.

³¹ See e.g., Verizon Comments, pp. 2-3.

³² See e.g., CTIA Comments, p. 4; SCE Comments, p. 4.

³³ See e.g., CCTA Comments, p. 17; AT&T Comments, p. 11.

VI. CONCLUSION

The Opening Comments highlight that there are numerous unresolved issues surrounding the addition of attachment data to the data access portals, not least of which is whether the proposed additions will, in fact, advance the goals of the OII. The Commission should engage in the necessary process, including workshops, to ensure that all the issues raised by parties are explored and fully vetted prior to the Commission rendering any determinations as to whether any attachment data should be added to the data access portals.

Respectfully submitted November 30, 2020 at San Francisco, California.

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