BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding
the Applicability of the Commission’s
Right-of-Way Rules to Commercial Mobile
Radio Service Carriers.  Rulemaking 14-05-001
(Filed May 1, 2014)

COMMENTS OF THE WIRELESS COMMUNICATIONS INITIATIVE OF JOINT
VENTURE: SILICON VALLEY AND THE CALIFORNIA WIRELESS ASSOCIATION
ON THE MAY 1, 2014 ORDER 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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July 7, 2014
BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding
the Applicability of the Commission’s
Right-of-Way Rules to Commercial Mobile
Radio Service Carriers. 

Rulemaking 14-05-001
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Pursuant to Rule 14.3 of the California Public Utilities Commission’s (“Commission”) Rules of Practice and Procedure, the Wireless Communications Initiative of Joint Venture: Silicon Valley (“Joint Venture”) and the California Wireless Association (“CalWA”) (together these entities are referred to as the “Commenters”) respectfully submit these opening comments on the May 1, 2014 Order Regarding Petition for Rulemaking and Order Instituting Rulemaking Regarding the Applicability of the Commission’s Right-of-Way Rules to Commercial Mobile Radio Service Carrier (“Order”) in this proceeding.1

The Commenters support the Commission willingness to open a rulemaking to modernize California’s pole attachment laws. Even though California is a “certified state” under 47 U.S.C. § 224,2 this rulemaking will bring California closer to the current Federal Communications Commission (“FCC”) 2011 Pole Attachment Order.3 In the 2011 Pole Attachment Order, the

1 Joint Venture is a regional non-profit and its Wireless Communications Initiative is composed
2 47 C.F.R. 1.1414(b).
FCC clarified that wireless equipment would be treated equal to other types of telecommunications equipment by receiving the regulated rate and antennas would have access to the pole top at such regulated rate.\textsuperscript{4} In the three years since these FCC clarifications, a wide majority of pole owners in FCC states have been treating wireless telecommunications infrastructure in a nondiscriminatory manner, which has greatly improved the predictability of gaining access to existing wooden utility poles in the public rights of way for wireless infrastructure. The Commenters request the Commission do the same for California.

I. THE COMMISSION SHOULD EXPAND POLE ATTACHMENT LAW TO APPLY TO COMMERCIAL MOBILE RADIO SERVICE PROVIDERS

The Commenters support the Commission’s rulemaking to expand pole attachment law to apply to commercial mobile radio service (“CMRS”) providers. Under California Public Utilities Code section 7901, CMRS providers are considered “telephone corporations.” As such, CMRS providers may access the public rights of way with the same rights as other telephone corporations, such as incumbent local exchange carriers and those with certificates of public convenience and necessity.

Over the last decade or so, the public rights of way have been the ideal location to deploy small cell infrastructure. Small cell infrastructure, including distributed antennas system (“DAS”) networks, is the newest generation of wireless technology. Unlike towers or rooftop antennas, small cell installations are very small—in total, typically not larger than 17 cubic feet including the antennas, equipment boxes, and battery backup units. The small cells are typically connected to fiber optic cable, which is also placed in the public right of way and provides high-speed backhaul connection into the greater wireless networks. Because of their size and need to

\textsuperscript{4} Id. at ¶¶ 19, 153 (all citations are to paragraphs in the April 7, 2011 order).

be attached to a fiber, the public rights of way and existing utility poles are optimal locations for these deployments.

All other types of telephone corporations have regulated rights to attach to existing wooden utility poles. Because of when and how pole attachment law came about in California, CMRS providers were not included under these protections. Some CMRS providers have been able to work out negotiated agreements with pole owners or other arrangements to gain access, such as through the Northern California Joint Pole Association and the Southern California Joint Pole Committee. However, without being under the full protection of the pole attachment regulations, CMRS providers do not have certainty when poles owners wish to block access or charge unreasonable rates, particularly for antennas at the pole top above power facilities. For these reasons, the Commenters support the Commission expanding pole attachment rights and protections to CMRS providers.

II. THE COMMISSION SHOULD CLAIRFY POLE ATTACHMENT LAW TO ALLOW ATTACHMENT AT THE POLE TOP UNDER REGULATED RATES

The Commenters request the Commission also follow the lead of the FCC and prohibit blanket bans on pole top antennas. As outlined in the Commission’s Order, significant safety standards have been added to General Order 95 for the safe installation of pole top antenna(s) over both secondary and primary power poles. These safety standards have been in place for several years, but as recognized in the Order, there has not been full cooperation from pole

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6 The power companies have blocked access to the pole top for joint poles, leaving wireless attachers no other option than to attempt to negotiate an agreement with the power company.
7 2011 Pole Attachment Order at ¶ 19.
8 Order at § 4 (discussing the addition of Rule 94 regarding pole top antennas).
owners. Because pole owners have not been predictable in their treatment of pole top antennas, the Commenters request the Commission clarify that pole top access may only be denied on a pole-by-pole basis for specific engineering reasons based on aspects of a single pole, e.g., being a primary power riser pole.

Additionally, it is critical the Commission make clear that pole top antenna attachments receive a cost-based, regulated rate. As discussed by AT&T, the rates demanded by pole owners for “pole-top attachments generally exceed the maximum rate allowed by California and federal law.” Since the FCC made a similar clarification several years ago, telecommunications companies—whether DAS or CMRS providers—have been able to reduce pole top rates that were upwards of $1000 per year to a regulated rate of around $50–100 per year, depending on the size of the antennas and multiplying by the regulated telecom rate. By bringing these same protections to California, critical and state-of-the-art wireless infrastructure will be able to access existing utility infrastructure at reasonable rates and on a predictable basis.

III. CONCLUSION

For the foregoing reasons, both Joint Venture and CalWA request the Commission adopt the changes it has outlined in the Order to increase access to existing utility poles for wireless infrastructure.

[signatures on following page]

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9 Id. (discussing that AT&T has either not been able to gain access at all or for a reasonable rate to the pole top).
10 Id.
Respectfully submitted,

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July 7, 2014