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 JOINT VENTURE SILICON VALLEY ADDRESSING MATTERS
IDENTIFIED IN THE BODY OF ADMINISTRATIVE LAW JUDGE’S RULING
DATED NOVEMBER 17, 2014

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December 19, 2014
Pursuant to the Assigned Commissioner’s Scoping Memo and Ruling issued on August 27, 2014 (“Scoping Memo”), and the Administrative Law Judge’s Ruling issued November 17, 2014 Regarding the Content and Common Outline for the Written Comments Due on December 19, 2014 (“ALJ Ruling”), Joint Venture Silicon Valley (“Joint Venture”) respectfully submits these opening comments.

The ALJ Ruling states “[p]arties do not need to address every item in the common outline.” ALJ Ruling at 4. Accordingly, Joint Venture will limit its comments to the areas where it has relevant knowledge in the following sections:

1) Whether the Right-of-Way Rules Should Apply to CMRS Carriers
2) Fees and Charges for CMRS Pole Attachments
3) Safety Issues: SED’s Report

1. Whether the Right-of-Way Rules Should Apply to CMRS Carriers

The right-of-way (“ROW”) rules should apply to CMRS carriers and all wireless attachments because our current rules have failed to keep up with the advancements in telecommunications technology being deployed in the right-of-way. AT&T’s network functionality has come a long way since the days the telegraph, yet its newest
telecommunications facilities (i.e., pole top antennas) are singled out for discriminatory treatment by pole owners, thus effectively prohibiting AT&T from deploying its infrastructure in a manner allowed under General Order (“GO”) 95.

In 2011, the Federal Communications Commission (“FCC”) repeated that Congress always intended to treat wireless attachments the same as wired in the federal Telecommunications Act of 1996 and reaffirmed “that wireless carriers are entitled to the benefits and protections of section 224, including the right to the telecom rate under section 224(e).”\(^1\) This reaffirmation has allowed high-speed wireless broadband infrastructure to be treated in a nondiscriminatory manner in the 29 states controlled by the FCC.

Whether wireless facilities are being deployed by a CMRS carrier or any other type of regulated entity, wireless attachments should be treated equivalent to the other types of utility facilities attached to utility poles. Bringing CMRS carriers and wireless attachments firmly into the scope of our ROW rules is a necessary and long overdue update to California’s pole attachment structure. Good policy should not be committed to living in the days of technologies past, but that is where we find ourselves today.

2. **Fees and Charges for CMRS Pole Attachments**

   The 7.4% fee should apply to CMRS pole attachments because there is no compelling reason to treat them in a discriminatory manner.

   2.1. **Antennas**

   Pole attachment rules have been evolving to treat antennas and appurtenant equipment in an equivalent manner to all other types of utility pole attachments. Since 1998, the FCC has

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repeatedly rejected arguments that there should be “separate rules” for wireless attachments.  
*Report & Order* 11-50 at ¶153. Additionally, utility workers have grown accustomed to working in 
the presence of radio frequency emitting devices because of the proliferation of smart meter 
antennas on utility poles. What may have seemed novel fifteen years ago is now the new normal 
in the deployment of high-speed wireless broadband networks.

2.1.1. Antennas in the Communications Space

The Northern California Joint Pole Association (“NCJPA”) and the Southern California 
Joint Pole Committee (“SCJPC”) already allow antennas in the communications space in an 
equivalent manner to other communications space attachments. The cost sharing calculations do 
not single out the type of equipment, but rather allocates cost based how much space an 
attachment will occupy. This seems to be working well, but is not extended to the pole top.

San Diego Gas & Electric (“SDG&E”) is not part of a joint pole ownership arrangement. 
However, during the November 5 & 6 workshops, Joint Venture asked if it charges a regulated 
rate for communications space, and SDG&E confirmed that it does. This shows that if one 
places a communications space antenna in SDG&E, Pacific Gas & Electric (“PG&E”), or 
Southern California Edison (“SCE”) territory, it receives a nondiscriminatory rate already, which 
should continue without change.

2.1.2. Pole-Top Antennas

Before the FCC’s Report and Order 11-50, some investor owned utilities scattered around 
the country charged an unjust and unreasonable fee for pole top antennas. The FCC rejected their 
arguments that there was justification for charging a premium for pole top antennas or having a 
Additionally, the responses to Administrative Law Judge’s Ruling Directing Certain Parties to File and Serve Document Containing Specified Information (“ALJ’s Information Request”) filed on December 5, 2014 show that pole top antennas do not have a disproportionate impact. Joint Venture’s response goes into great detail showing that pole top antennas have a smaller impact than other types of common attachments, even when the pole owner allows a pole top extension. Joint Venture’s Information Request Response at 3.

Regarding the other costs related to a pole top installation, those are borne entirely by the wireless attacher and fully recovered by the pole owner apart from the annual fee. If a pole owner prefers to allow for a pole top extension, then the wireless attacher pays for the extension and all related make-ready. If a pole owner prefers a pole replacement in order to accommodate the required safety clearances, then the wireless attacher must pay the entire cost of replacing the existing pole with a new pole (assuming there are no pre-existing safety issues).

Depending on the type of pole and pole top antenna installation, the amount of space requirement may vary. However, the 7.4% fee itself should not change.

2.2. Cabinets and Equipment

It is Joint Venture’s understanding that cabinets and equipment are being treated in an equivalent manner regardless of the type of attaching entity. This should continue without change.

2.3. Vertical Risers and Wires

It is Joint Venture’s understanding that vertical risers and wires are being treated in an equivalent manner regardless of the type of attaching entity. This should continue without change.

2.4. Safety Clearances
Under the FCC’s Report and Order 11-50, there is still some uncertainty regarding whether there should be a charge for pole top safety clearances, and resolution is typically resolved through negotiations between both parties. With that said, some trends in this area have emerged.

First, when the pole top attacher purchases and installs a pole top extension bracket (also known as an “antenna extension bracket”), then the attacher does not pay for this clearance space because the clearance is being added by a piece of equipment owned by the pole top attacher. The attacher only pays for the portion of the pole occupied by the attachment of the extension, which is about two-feet.

In the second scenario, the attacher must pay for a taller pole. Many pole owners acknowledge that the pole top attacher is purchasing a new pole and giving it to the pole owner, and so those pole owners do not charge the attacher for the safety clearance space. Rather they only charge for pole space actually occupied by the attachment (e.g., many pole top brackets occupy about two feet). Joint Venture agrees this is the appropriate arrangement because it does not make sense that a pole owner would require the attacher to purchase the pole, give it to the pole owner, and then pay an annual fee for space on something they have purchased, but are not allowed to own.

Joint Venture recommends rules that prohibit pole owners from charging an annual fee for the safety clearance space where the pole top attacher purchases and installs either (1) a pole top extension bracket or (2) a taller pole. A clear rule is necessary because the uncertainty in FCC states allows some unscrupulous pole owners to double dip for the safety clearance space because of unequal bargaining power. Clear rules will allow pole top attachers to deploy high-
speed wireless broadband in predictable timeframes because they can avoid months or even years of protracted “negotiations” regarding just and reasonable fees.

3. Safety Issues: SED’s Report

A great deal of time and effort has gone into establishing safety requirements under GO 95, including expanding Rule 94 to account for pole top antennas. Hundreds of pole top antennas have been installed since the first pole top agreements were signed around 2009, and the thousands of pole top antennas have been installed and are operating without issue under the National Electric Safety Code for more than 15 years.

Many of the recommendations made in SED’s response to the ALJ’s Information Request, dated December 5, 2014, would establish a dangerous precedent by establishing a two-tiered system where the facilities of certain entities are prohibited, while nearly identical and larger facilities for other entities are allowed. For example, SED recommends a rule that would prohibit access for any equipment “associated with an antenna that increases loading on a pole.” SED’s Report at 3. This recommendation disregards entirely whether the pole has sufficient capacity or that all sorts of other equipment are allowed access to poles. Rather it targets one type of equipment for discriminatory treatment. This recommendation also turns the presumption of access on its head by forcing a wireless attacher to prove “good cause” to have access to the poles. Id. No other attachers have a burden of proving “good cause” to attach to a utility pole. If they were, all wired attachments could be forced underground by pole owner, which is not good public policy nor in the spirit of pole attachment laws.

Additionally, SED’s recommendations distract from the issue at hand—whether pole top antennas should receive a nondiscriminatory regulated annual fee. If the Commission desires to explore these recommendations further, Joint Venture requests they be considered in a separate proceeding inclusive of all equipment attachers because recommendations, such as banning
equipment attachments, must be applied to all entities regardless of type if California wants to abide by its commitment to treat everyone in a nondiscriminatory manner.

4. Conclusion

For the foregoing reasons, Joint Venture urges the Commission to adopt a nondiscriminatory fee structure for pole top antennas and reject recommendations that wireless equipment be targeted for discriminatory and burdensome treatment. Joint Venture respectfully submits these opening comments.

Respectfully submitted,

/s/
NATASHA C. ERNST
JOINT VENTURE: SILICON VALLEY
Director of
Wireless Communications Initiative

December 19, 2014
VERIFICATION

The undersigned, Natasha C. Ernst, verify that I am authorized to execute this Verification and that all of the facts stated above are true and accurate to the best of my knowledge.

Natasha C. Ernst /s/

Natasha Ernst
Director, Wireless Communications Initiative
Joint Venture Silicon Valley
December 19, 2014