REPLY 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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Pursuant to theAssigned 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 reply comments.

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

Joint Venture supports the Opening Comments of A&T Mobility dated December 19, 2014 (“AT&T Comments”) because after sixteen years of evaluation, the Commission has the opportunity to extend the benefits of the rules adopted in Decision 98-10-058 (“ROW Rules”) to wireless infrastructure so that Californians may benefit from improved and expanded wireless voice and broadband services. (AT&T Comments, 1.) This can be accomplished in part by bringing commercial mobile radio service (“CMRS”) carriers into the fold.

Additionally, Joint Venture agrees with both AT&T and PCIA that the application of the ROW Rules should encompass wireless attachments generally, whether they are attached by a CMRS or other type of communications infrastructure provider already included in the ROW Rules. (Id. at 3; Comments of PCIA – The Wireless Infrastructure Association and the HetNet
In order to ensure the rules apply to wireless attachments in a nondiscriminatory manner, Joint Venture agrees with AT&T’s urging that the same logic and methodologies of the existing ROW Rules be applies to wireless attachments. (AT&T Comments, 3.) Otherwise, the Commission will risk having a discriminatory, two-tiered system.

Joint Venture does not support the Joint Written Comments of Pacific Gas & Electric Company (U39-E), San Diego Gas & Electric Company, and Southern California Edison Company dated December 19, 2014 (“Joint Parties”) for several reasons. First, they mischaracterize the historic policy behind nondiscriminatory access to poles as something that can only be obtained if there is proven barrier to entry into a market. (Joint Parties, 2.) However, the purpose of utilizing existing infrastructure efficiently is not one of last resort (e.g., wireline infrastructure could be placed on new poles lines or underground), but rather to support the expansion of new and critical communications services. The current state of wireless expansion is not in dispute. Even the Joint Parties recognize this, quoting PCIA “that wireless infrastructure is projected to be $34 to $36 billion per year over the next five years.” (Id. at 2-3.) The ROW Rules are designed to support increased infrastructure and services, not discourage innovation by treating a certain type of attacher as a second-class citizen.

Second, the Joint Parties fail to provide evidence for their perplexing contention that there will be some sort of detrimental “market transformation” if CMRS carriers receive the nondiscriminatory benefits of the ROW Rules. (Id. at 3.) There is no reason to presume that CRMS rooftop installations, which are already fully zoned, constructed, operational and under long-term leases, would be moved to utility poles because of the inclusion in the ROW Rules. Currently, there is such high consumer demand on wireless networks that installations on utility
poles are often “network densification,” not—as the Joint Parties imply without support—a substitute for existing rooftop installations.

Third, the Joint Parties contend that access to the ROW is never needed for wireless infrastructure. (Id.) And while a “barrier to entry” should never be the burden of proof for obtaining the benefits and protections of the ROW Rules, in hard to cover areas, utility pole installations are often the only way to provide improved and expanded services. The ROW Rules were developed to support exactly this type of increased and improved infrastructure, and that is why it is time to expand these protections to CMRS carriers and all wireless attachments.

2. Fees and Charges for CMRS Pole Attachments

The subtle irony of this docket is that if the Joint Parties had offered CMRS carriers and wireless attachers an annual attachment fee anywhere in the neighborhood of “just and reasonable,” there never would have been a need for AT&T or anyone else to seek the Commission’s regulatory recognition that they should receive the benefits and protections of the ROW Rules. However, now that the issue is raised, there is no compelling reason or evidence in the record to deny wireless attachments anything but the full nondiscriminatory benefits and much needed protections of the ROW Rules. Additionally, apart from certain antennas, the equipment, cabling, and pole extensions are similar, if not identical, to existing attachments.

The Joint Parties’ contention that the 7.4% pricing structure “does not recover the full cost of electric utility inspection and maintenance” is neither supported nor justified as to why an increased fee should be applied solely to wireless attachments. (Id. at 4.) If there is a valid issue that the 7.4% pricing structure is too low, that should be addressed in a separate docket with all necessary and interested parties. However as of now, the established approaches to calculating annual attachment fees should not be changed.

2.1. Antennas
Antennas in the communication space seem to be largely uncontroversial, which leaves the issue of pole top antennas. Joint Venture supports AT&T’s proposal that wireless attachers pay for the portion of the pole occupied by the attachment bracket based on a multiplier of the per-foot fee (e.g., if the bracket is 16-inches, then the fee would be for two feet). (AT&T Comments, 6-7.) Additionally, the pole top extension should not be part of the calculation because it is purchased and maintained by the wireless attacher and does not actually occupy any part of the pole. (Id.)

Joint Venture disagrees with the pricing solution proposed by the Joint Parties regarding pole top antennas because it departs from the well-established practice of only charging an attacher for the occupied portion of the pole on a per-foot basis. The Joint Parties suggest that they should be able to charge based on the “larger of 1) the actual encumbered space . . . or 2) the actual attachment size.” (Id. 5.) The ROW Rules do not and have never contemplated any other basis for charges other than actual encumbered space.

This suggestion would be a detrimental departure and open the door to pricing schemes based on the size or loading impact of an attachment. Additionally, if pole owners did not start charging all attachers based on windloading or size of the equipment, it would raise issues of discrimination, particularly if a wireless attachment had a higher fee with a smaller proportional windloading impact. (AT&T Comments, 11; see generally, Joint Venture Silicon Valley and California Cable & Telecommunications Association Response to Administrative Law Judge’s Ruling Directing Certain Parties to File and Serve Documents Containing Specified Information (Dec. 5, 2014).)

Joint Venture also does not agree with the Joint Parties contention that “[t]his model would provide proper pricing incentives.” (Joint Parties, 6.) By this logic, pole owners should be
able to charge for every overlashed cable because smaller cables have a lower loading impact. Thus, because the ROW Rules have never been calculated based on attachment size or windloading, Joint Venture requests the Commission disregard any requests to depart from the well-established precedent of fees based on occupied space.

2.2. Cabinets and Equipment

Joint Venture mistakenly assumed that the Joint Parties would continue treating cabinets and equipment in an equivalent manner regardless of the type of attaching entity, as is current practice. It is a disappointing shock that the Joint Parties are now proposing a blanket ban unless the wireless attacher overcomes a burden of “not practicable” (whatever that means). (Joint Parties, 6.) This suggestion would essentially gut the existing ROW Rules and be a huge step backwards for California, particularly since the Joint Parties admit “there are many different methods to construct and attach CMRS equipment to poles without causing GO 95 safety issues.” (Id. at 10.) There is ample evidence to support that statement—the numerous existing cabinets and equipment, including meters, currently attached to poles throughout the state in compliance with GO 95. Because of this, Joint Venture agrees with AT&T that “[t]here is no basis to treat wireless cabinets and equipment differently than any other cabinets and equipment attached to poles.” (AT&T Comments, 7.)

Additionally, Joint Venture requests the Commission make it clear that meters are necessary equipment with the same rights to access poles. When a power company refuses to allow a meter on a utility pole (this is done in a de facto manner by refusing to bring power), wireless equipment cannot operate. Placing meter pedestals introduces months of delay and additional clutter in the public rights of way, contrary to the intent of the ROW Rules and the wishes of communities. (See Id. at 17.) There is no reason to have a blanket ban on this small,
but very necessary, piece of equipment, particularly now that meters are read wirelessly. The wireless attachers would be very grateful if the Commission could add this point of clarification.

Finally, it is Joint Venture’s understanding, and supported in AT&T’s comments, that currently pole owners are not charging for the numerous existing cabinets and equipment deployed by wireline attachers. (Id. at 9). Wireless attachers only want to be treated equally, yet throughout this docket the Joint Parties seem determined to destabilize even the most well-established practices under the ROW Rules—first by suggesting that pricing be based on windloading and now seeking to have a blanket ban on “wireless” cabinets and equipment. Will they next be requesting a blanket ban on wires unless the attacher proves there is a prohibition on undergrounding, which is what they have essentially already proposed for CMRS carriers? (Joint Parties, 3.) Joint Venture urges the Commission to reject any suggestions aimed at restricting access or charge discriminatory fees because they depart from well-established precedent and are contrary to California’s goal of supporting wireless broadband infrastructure.

3. Safety Issues

Joint Venture appreciates the overview and explanation AT&T provides regarding the years of proceedings that resulted in extensive wireless rules in GO 95. (Id. at 11-13.) It is beneficial to remember the amount of time and effort that went into their development. The parties agree that wireless attachers must follow these extensive rules. (Id. at 14; Joint Parties, 7-8.) Unfortunately, the Joint Parties attempt to raise doubts with vague and unsupported hypotheticals of what could go wrong if an attacher violated an existing law, such as “If the rules are not applied in the design and construction of CMRS attachment, electrical worker that need access to and from their work area will encounter safety hazard.” (Joint Parties, 8.) Statements like this are not helpful, particularly when the Joint Parties have admitted that CMRS equipment can be attached in compliance with the rules. (Joint Parties, 10.) As AT&T points out, “The Joint
Utilities did not identify any safety hazards that the Commissions current safety rules do not address.” (AT&T, 14.)

AT&T also provides a detailed analysis regarding how the suggestions of the Safety and Enforcement Division (“SED”) raise much larger issues that are not unique to wireless attachments. (Id. at 15.) For example, changes to pole loading rules must have broad applicability or else they would be discriminatory. Also, pole top extensions are used to reasons unrelated to pole top antennas, and the attachers that would be impacted by SED’s proposed Rule 94.11 Pole Top Extensions are not part of this proceeding.

Joint Venture agrees with CTIA that “[t]he Commission should reject requests to modify the Commission’s existing ROW Rules or General Order 95 which are unnecessary, discriminatory, or provide no enhancement to safety. The record demonstrates that compliance with General Order 95 as currently structured is sufficient to ensure the safe attachment of wireless infrastructure to utility poles.” (Opening Comments of CTIA-The Wireless Association®, 3.) If the Commission desires to explore issues of safety, Joint Venture requests it be done in a separate proceeding inclusive of all attachers in order 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 reply comments.

Respectfully submitted,

/s/
NATASHA C. ERNST
January 7, 2015
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
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