BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company (U 39 E) for a certificate of public convenience and necessity to provide: (i) full facilities-based and resold competitive local exchange service throughout the service territories of AT&T California, Frontier California Inc., Consolidated Communications of California Company, and Citizens Telecommunications Company of California; and (ii) full facilities-based and resold Non-dominant interexchange services on a Statewide basis.	A. 17-04-010

RESPONSE OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION ON THE APPLICATION OF PACIFIC GAS AND ELECTRIC (U 39 E) FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

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The California Cable & Telecommunications Association (CCTA) hereby files its response to the above-captioned application of Pacific Gas and Electric Company, (U 39 E) (PG&E) for a certificate of public convenience and necessity (CPCN) to provide full facilities-based, resold competitive local exchange service, and resold non-dominant interexchange services on a statewide basis, pursuant to Rule 2.6 of the Commission's Rules of Practice and Procedure.

CCTA does not object to PG&E's application insofar as it seeks to provide competitive telecommunications services in California. But, PG&E's application raises issues related to nondiscriminatory access to PG&E's support structures and rights of way, including poles and conduits, by other communications providers offering competitive services that must be addressed in any decision issuing a CPCN.

I. Introduction

PG&E asserts that it seeks a CPCN in order to offer telecommunications services over its existing telecommunications network which, according to its application, "it began developing decades ago and which it utilizes for its electric and gas utility operations." (Application at 5). When there are no existing fiber or conduits available to utilize with respect to the telecommunications services it will offer under the requested CPCN, PG&E "may install fiber and related facilities and equipment in or on existing poles, towers, buildings, fiber, conduits, ducts, rights-of-way, trenches, and other facilities and structures of other entities." (*Id*.) PG&E may also "extend its fiber optic network aerially and/or underground and will utilize pubic rights of way and easements." (*Id*.)

According to its application, PG&E will "continue to adhere to Commission decisions, including D. 98-10-058, as modified by D. 16-01-046 ('the ROW rules"), to ensure that all similarly situated carriers are treated uniformly and provided access to [its] support structures on a nondiscriminatory, first-come, first-served basis". PG&E claims that its "internal procedures will ensure that [its] telecommunications business does not receive preferential access." (Application at 12). The Commission's ROW rules, however, were written at a time when the electric companies weren't considered competitors to telecommunications or cable companies, and do not address potential anticompetitive actions by those specific pole and conduit owners. Moreover, PG&E's application fails to describe the "internal procedures" that will prevent it from providing preferential access to its facilities, which it admits are to be used for its gas and electric as well as its communications services. Accordingly, any CPCN granted

must specifically address PG&E's obligations to provide nondiscriminatory access to its ROW for all communication attachments.

II. The Commission's ROW rules do not adequately address access to the electric-owned ROW where the electric company is providing competitive telecommunications services.

One of the more significant barriers to broadband deployment in California results from the lack of Commission-established timelines for processing requests for access to Investor-owned utilities (IOUs) poles. As a result, IOUs have considerable discretion over the timing of (i) processing pole attachment applications; and (ii) the performance of make-ready work, which can delay broadband buildouts for months if not years.

ROW decision (D. 98-10-058) recognized that incumbent utilities hold an advantage in pole attachment negotiations finding that:

> if no standard for response times is imposed, there will be little incentive for incumbent utilities to provide timely information. The CLC could be faced with unreasonable delays in receiving information if the utility's response time obligations were open-ended, and there were no performance standards against which to hold the utility responsible.[1]

In the ROW decision the Commission established standards for response times *for ILEC*[2] processing of pole attachment requests. The decision requires that Pacific and GTE (the incumbent local exchange carrier pole owners at the time) must respond to initial requests concerning the general availability of space within 10 days if no field study was required, and within 20 days if a field-based survey of support structures was required. Pacific and GTE are also required to respond to pole attachment applications within 45 days of receipt of a written

[1] Id.
[2] ROW Decision, mimeo at 24. 1998 Cal. PUC LEXIS 879, *82 CPUC 2d 510.

request, with a list of the rearrangements or changes required to accommodate the carrier's facilities, and an estimate of the utility's portion of the rearrangement or changes.[3] Although these standard response times were established for ILECs, the Commission concluded in 1998 that the record was insufficient to apply a specified response time to other utilities.[4] As a result, no timelines were imposed upon the IOUs.[5]

The absence of a state-mandated timeline for electric pole owners is in contrast to the FCC's current pole attachment rules intended to facilitate timely access to all investor-owned poles. Those rules, based upon Section 224 of the Communications Act of 1934,[6] specify a "four-stage timeline" for both wireline and wireless requests to access space on utility poles, and provide times for: (i) application review and engineering surveys; (ii) cost estimates; (iii) attacher acceptance; and (iv) make-ready requests (with some allowance for larger requests.

Given that PG&E will actively attach communications facilities to its own poles and maintain its own communications structure, this Commission must ensure that PG&E's provision of competitive telecommunications services will not rely on ROW rules that allow PG&E to favor access for its own communications facilities over its competitors. To avoid that

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[3] Id. at 511.

[4] Id.

[5] No other Commission rules compensate for the lack of specific timelines for access to IOU poles, including GO 95 Rule 44.4 (the so-called "cooperation " rule) That rule only requires pole owners to provide to attachers information needed to perform pole loading calculations in a specified timeframe. It does not require IOU pole owners to process applications within any specific timeframe.

[6] Section 224(a)(4) of the Act authorizes the FCC to prescribe rules ensuring just and reasonable rates, terms, and conditions for pole attachments and nondiscriminatory access to poles.

outcome, the Commission should condition the CPCN on PG&E's adherence to the ILEC timelines in the ROW decision for processing applications to attach to PG&E support structures.

Moreover, the "internal procedures" that PG&E intends to use to ensure nondiscriminatory access should be revised to reflect compliance with those rules and be made available to attachers and potential attachers upon request.

Conclusion:

CCTA does not oppose PG&E's Application for a CPCN to provide competitive communications services. Rather it requests that the Commission condition any CPCN on (i) PG&E's compliance with the application processing timeframes that already apply to the ILECs in the ROW rules and (ii) internal procedures that reflect those obligations.

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