

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042.

Investigation 15-11-007
(Filed November 5, 2015)

**COMMENTS OF GOOGLE FIBER INC. ON
PROPOSED DECISION OF ALJ BEMESDERFER**

The California Public Utilities Commission (Commission or CPUC) plays a key role in promoting broadband availability across California. This is a critical and longstanding goal of the State that still has not been achieved. Broadband is fundamental for education, job creation, improved standards of living, and delivery of essential services such as health care. Put simply, “Californians who lack reliable and affordable access to [broadband networks] are unable to participate fully in the economy and society of the 21st century.”¹ While progress in increasing broadband access has been made, significant areas for improvement remain that deserve the Commission’s attention.

¹ *Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions raised in the Limited Rehearing of Decision 08-09-042*, Proposed Decision of ALJ Bemesterfer in Investigation 15-11-007, at 4 (Oct. 18, 2016) (*Proposed Decision*), available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M168/K604/168604492.PDF>.

I. Introduction & Summary

Google Fiber Inc. (Google Fiber) is a competitive broadband provider that offers superfast Internet, as well as crystal clear television and VoIP services, to residents and small businesses in eight markets across the country and is working to bring its services to additional markets. Google Fiber's subsidiary, Webpass, Inc., offers high-speed Internet service in six markets, including portions of San Francisco, San Diego, and Oakland. Google Fiber commends the Commission for its continuing efforts to identify and remove barriers that stifle broadband competition and welcomes the opportunity to provide these comments.²

The Proposed Decision correctly notes that "bottlenecks and barriers to entry in the telecommunications network limit new network entrants and may raise prices for some telecommunications services above efficiently competitive levels."³ While significant progress has been made to reduce barriers to constructing broadband networks, important work remains. In particular, it is generally recognized that "access to poles and conduits is essential for the provision of both wireline and wireless service to retail end-users."⁴ And, as the Federal Communications Commission (FCC) recently observed, "[h]istorically, restrictions on access to utility poles have been a significant impediment to the deployment of competitive telecommunications services."⁵

² See California Public Utilities Commission Rules, Rules of Practice and Procedure, Rule 14.3.

³ *Proposed Decision* at 3, Findings of Fact 24.

⁴ *Id.* at 102.

⁵ Letter from Howard J. Symons, General Counsel, FCC, to Benjamin C. Mizer, Principal Deputy Assistant Attorney General, Civil Division, U.S. Department of Justice, at 2 (Oct. 31, 2016) (citing *National Broadband Plan* at 111 (Recommendation 6.2) (filed in *BellSouth Telecommunications, LLC v. Louisville/Jefferson County Metro Government*,

Too often, access still remains a “critical obstacle to making the telecommunications market fully competitive.”⁶ As recently as 2011, the FCC found “pervasive and widespread problems of delays in survey work, delays in make-ready performance, delays caused by a lack of coordination among existing attachers, and other issues’ that create significant obstacles for new attachers.”⁷ These barriers are present in California, as well as other states. California should move quickly to join other states acting to ensure that all broadband providers can access the utility infrastructure necessary to provide competitive services.

As the Proposed Decision appropriately suggests, there are a number of steps the Commission can take within its jurisdiction to address this continuing problem. Specifically, the Commission should ensure that access to necessary utility infrastructure is available for deployment of new wireless broadband technologies; update its pole attachment rules to ensure access by all broadband Internet access service (BIAS) providers in conformance with the FCC’s *2015 Open Internet Order*⁸; prohibit utilities from using either their own internal policies or joint association membership rules to frustrate the purpose of California’s infrastructure access obligations; and adopt “one-touch make-ready” procedures for pole attachments to enable safer, faster, and less-costly broadband deployment.

No. 3:16-cv-00124 (W.D. Ky.) (Oct. 31, 2016)) (*FCC Statement of Interest*), available at <http://media.bizj.us/view/img/10220615/fcc-letter-louisville.pdf>.

⁶ *Proposed Decision* at 102.

⁷ *FCC Statement of Interest* at 2.

⁸ *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015) (*2015 Open Internet Order*).

II. Access to Existing Utility Infrastructure Is Essential to Providing Competitive Broadband Services

As the Proposed Decision observes, one “particular bottleneck is access to utility poles.”⁹ Adding lines to existing utility poles (or, where available, ducts or conduit), rather than installing still more poles or excavating streets to lay new conduits underground, minimizes aesthetic and environmental impacts, as well as noise, inconvenience, and public safety concerns arising from outside plant construction. But delays in or unreasonable conditions on providing access to poles and other utility infrastructure can significantly impede the deployment of new broadband networks. If broadband providers have more efficient and timely access to existing infrastructure, California residents and businesses will benefit through increased access to competitive broadband services.

A. The CPUC’s Leadership Has Improved Access to Necessary Utility Infrastructure in California

The Commission already has taken some meaningful steps to ensure reasonable access to poles, conduits, and rights of way for broadband and other providers. In 1998, the Commission became a national leader in this area through Decision No. 98-10-058.¹⁰ Strong implementing decisions followed, including Decision 15-05-002, in which the Commission expressly recognized the pre-existing right of wireline video service providers (VSPs) like Google Fiber to obtain regulated access to

⁹ *Proposed Decision* at 3, Finding of Fact 25.

¹⁰ *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission’s Own Motion into Competition for Local Exchange Service*, Decision No. 98-10- 058, 82 CPUC 2d 510 (1998), available at <ftp://ftp.cpuc.ca.gov/telco/Important%20Decisions/D.98-10-058.pdf>.

poles, ducts, and conduits.¹¹ Similarly, the CPUC's recent action in Decision 16-01-046 to give CMRS carriers nondiscriminatory access to public utility infrastructure will "facilitate investment in wireless infrastructure, encourage widespread deployment of broadband wireless services, [and] foster the provision of wireless service in previously unserved areas."¹²

B. *Additional Commission Actions Can Enable More Efficient Competitive Broadband Deployment that Benefits Consumers*

Building on this foundation of pro-competitive actions, the CPUC should take additional steps within its jurisdiction to ensure that all broadband competitors have timely and reasonable access to necessary utility infrastructure and that Californians can realize the significant benefits that flow from additional competition.

1. *Supporting Wireless Broadband Technologies*

As an initial matter, the CPUC should ensure that its infrastructure access rules fully support the introduction of new wireless broadband technologies, including small cells and distributed antenna systems, from a variety of broadband providers. This action is particularly important as wireless deployments become more reliant on

¹¹ *Order Instituting Rulemaking to Consider the Adoption of a General Order and Procedures to Implement the Digital Infrastructure and Video Competition Act of 2006, Decision Denying Google Fiber Inc.'s Petition to Modify Decision 07-03-014, Decision 15-05-002 (May 11, 2015) (D.15-05-002), available at <http://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M151/K560/151560796.PDF>.*

¹² *Order Instituting Rulemaking Regarding the Applicability of the Commission's Right-of-Way Rules to Commercial Mobile Radio Service Carriers, Decision Regarding the Applicability of the Commission's Right-of-Way Rules to Commercial Mobile Radio Service Carriers, Decision 16-01-046, at 2 (Jan. 28, 2016) (D.16-01-046), available at <http://docs.cpuc.ca.gov/publisheddocs/published/g000/m158/k118/158118757.pdf>.*

smaller antennas to “boost network capacity and improve spectral efficiency.”¹³ A meaningful first step would be extending D.16-01-046 to cover wireless facilities installed by providers that are not CMRS carriers. Specifically, the CPUC could ensure access by all providers offering broadband service using wireless infrastructure. The Commission could begin by granting the Wireless Infrastructure Association’s petition to extend D.16-01-046 to wireless facilities installed by CLECs, and the California Cable and Telecommunications Association’s petition to extend D.16-01-046 to wireless facilities installed by cable corporations.¹⁴ Wireless facilities installed on poles by these and other types of broadband providers would not differ materially from those installed by CMRS carriers, and thus would not raise unique safety concerns. As the Commission itself stated, “there is no obvious reason why the [rules] adopted . . . for CMRS facilities should not apply to wireless facilities installed by CLECs and CATV corporations[,]” and this logic extends to similar attachments installed by other broadband providers.¹⁵

Indeed, both the *WIA Petition* and *CCTA Petition* positively acknowledge the Commission’s authority to apply and enforce its safety regulations to these

¹³ *Enabling the Wireless Networks of Tomorrow: Rules of the Road for Pole Attachments in States Across America*, CTIA, Apr. 2016, at 3, available at <http://www.ctia.org/docs/default-source/default-document-library/enabling-the-wireless-networks-of-tomorrow.pdf>.

¹⁴ See *Petition of the Wireless Infrastructure Association for a Rulemaking to Extend the Rights of Way Rules for CMRS Facilities to Wireless Facilities Installed by CLECs*, Petition 16-08-016 (filed Aug. 29, 2016) (*WIA Petition*), available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M166/K499/166499615.PDF>; *Petition of the California Cable and Telecommunications Association (CCTA) for a Rulemaking to Extend the Right of Way Rules to CMRS Facilities to Wireless Facilities Installed by Cable Corporations*, Petition 16-07-009 (filed July 15, 2016) (*CCTA Petition*), available at <http://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M165/K330/165330819.PDF>.

¹⁵ D.16-01-046 at 43.

attachments.¹⁶ Thus, the Commission should act expeditiously to extend D.16-01-046 to all wireless broadband providers.

2. *Making California's Pole Attachment Regime "Effective" Pursuant to Federal Law*

The CPUC also should ensure that its rules for access to public utility infrastructure continue to conform to federal requirements in light of the FCC's *2015 Open Internet Order*.¹⁷ In discussing the implications of that order's classification of broadband Internet access as a telecommunications service under federal law, the FCC concluded that the benefits of Section 224 of the Communications Act¹⁸ and its implementing rules should apply to all BIAS providers.¹⁹ Thus, the FCC held that utility companies subject to pole attachment requirements must provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way to BIAS providers, even if those broadband access providers are not already eligible for access as cable operators or telephone companies.²⁰

¹⁶ See *WIA Petition* at 13 (noting that because "CLECs are not cable corporations," the applicability of the safety issue was not relevant to its petition); *CCTA Petition* at 15-16 (noting that the "Commission's authority to enforce its safety regulations with respect to cable pole attachments – including wireless pole attachments – is clear" because "Pub. Util. Code § 768.5 does not limit the Commission's jurisdiction to only wireline cable facilities." Furthermore, the Commission "has recognized that federal law provides state regulatory agencies with the direct authority to regulate cable companies with regard to the safe construction, maintenance, and operation of plant and equipment" and the Commission has "exercised its safety jurisdiction by conducting regular audits of cable plant under GO 95 and GO 128 and by pursuing enforcement actions against cable operators").

¹⁷ See *2015 Open Internet Order* ¶¶ 478-485.

¹⁸ Section 224 requires telephone and electric utility companies to provide cable operators and telecommunications service providers nondiscriminatory access to the utilities' poles, ducts, conduits, and rights-of-way. 47 U.S.C. § 224.

¹⁹ See *2015 Open Internet Order* ¶¶ 478-485.

²⁰ *Id.*

Having exercised its rights under Section 224(c) to regulate the “rates, terms, and conditions for pole attachments”²¹ at the state level, California must, in light of that statute and the *2015 Open Internet Order*, maintain “effective rules and regulations implementing [its] regulatory authority over pole attachments,” or else allow the FCC’s pole attachment rules to apply in California instead.²² California’s regulations cannot be “effective” if they exclude a class of providers that is entitled under federal law to receive the benefits of access to utility poles, ducts, conduits, and rights-of-way. But that is the situation today in California, where the right of nondiscriminatory access is expressly guaranteed only to those BIAS providers that are also telephone companies, cable operators, or (after Decision 15-05-002) VSPs that qualify as “cable television corporations,” and not to other providers of consumer broadband Internet access. To address this legal and policy shortcoming, the CPUC should act expeditiously to bring its regulatory regime for pole attachments in line with the federal standard.

3. *Ensuring Access to Poles*

Utilities should not be able to use their own internal policies or joint associations to avoid obligations to provide access to infrastructure and thereby delay deployment of competitive broadband infrastructure. For instance, utilities obligated to provide access should not be allowed to avoid those obligations by establishing unreasonably slow or cumbersome working arrangements with other utilities that are involved in pole-access processes, or by failing to establish arrangements that are needed to effectuate third

²¹ 47 U.S.C. § 224(c)(3).

²² *Id.* § 224(c)(3)(A).

parties' access rights.²³ Similarly, joint associations formed by pole owners should be required to update their bylaws to reflect rule changes like those in D.15-05-002, which was intended to ensure that wireline VSPs can gain regulated access to poles, ducts, and conduits. For instance, VSPs like Google Fiber continue to be excluded from membership from the Northern California Joint Pole Association if they do not possess a certificate of public convenience and necessity (CPCN).²⁴ However, because state-franchised VSPs do not need a CPCN to deploy infrastructure in the public rights of way or to offer service to consumers, this membership requirement lacks any reasonable basis for these providers. In short, Commission action may be necessary to ensure that utilities' and joint associations' policies and practices do not unreasonably interfere with competitive network deployment.

4. *One-Touch Make-Ready Procedures Should Become the Norm to Enable Faster and Less-Costly Broadband Deployment*

Once broadband providers have access to utility infrastructure, they need to be able to deploy their networks in a timely and cost-effective way to serve Californians. Yet "make-ready" processes to adjust or rearrange existing wires attached to utility poles have traditionally involved an inefficient, serial approach in which each existing attacher adjusts its own facilities, and one attacher follows another upon notification

²³ *Proposed Decision* at 105-106.

²⁴ See Letter from Austin Schlick, Director of Communications Law, Google Inc., to CPUC Executive Director Tim Sullivan (filed Feb. 5, 2016), *available at* http://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/Utilities_and_Industries/Communications_-_Telecommunications_and_Broadband/Service_Provider_Information/Video_Franchising/Google%20Fiber%20Letter%20to%20Executive%20Director.pdf.

that the prior attacher has completed its move.²⁵ This cumbersome process routinely takes months and numerous visits to each affected pole, even though the required pole work could be done by a single work crew in a matter of hours. Adoption of alternative make-ready processes like “one-touch make-ready” thus can improve public safety, expedite network deployment, and lower construction costs. As the FCC has observed, “promoting the deployment of competitive broadband infrastructure through one-touch make-ready policies is consonant with the goals of federal telecommunications policy, the Communications Act, and applicable FCC regulations.”²⁶

One-touch make-ready would enable a single construction crew, hired and paid for by the new attacher but pre-approved by the relevant pole owner, to make one trip to perform all necessary adjustments to ready the pole for the new attachment. A single construction crew—chosen from a list of contractors pre-approved by the pole owner—can perform all adjustments necessary to make the pole ready for a new attacher. Using a single crew greatly reduces the number of trips needed to complete work on a given pole as compared to the serial approach. This in turn reduces many of the other negative effects of network construction, including traffic congestion, disruption in neighborhoods, blocked sidewalks, increased wear on roads, truck emissions, and even the number of times workers need to touch utility poles, thus improving pole integrity—all of which improve public safety.

²⁵ See, e.g., Cal Pub Util Code § 9511(b)(1) (prescribing serial make-ready processes for publicly owned electric utilities in California).

²⁶ *FCC Statement of Interest* at 5.

California should act quickly to adopt one-touch make-ready, which is quickly becoming a recognized best practice among city, state, and national policymakers. Other states, such as Tennessee²⁷ and North Carolina,²⁸ already have recommended implementation of one-touch make-ready. Louisville, Kentucky,²⁹ and Nashville, Tennessee,³⁰ have recently implemented this policy by ordinance, and San Antonio, Texas's CPS Energy has put one-touch make-ready procedures into effect.³¹ Organizations that represent cities, like Next Century Cities,³² as well as those that

²⁷ Tennessee eStrategy Report: Broadband as a Driver of Economic and Social Development in Tennessee, June 2016, at 16, *available at* <http://www.tn.gov/assets/entities/ecd/attachments/broadband-study.pdf>.

²⁸ Broadband Infrastructure Office, *Connecting North Carolina: State Broadband Plan*, June 21, 2016, at 13, <https://ncbroadband.gov/wp-content/uploads/2016/07/asdffdsasaa.pdf>.

²⁹ LOUISVILLE/JEFFERSON COUNTY METRO GOV'T CITY CODE OF ORDINANCES § 116.72 (D)(2) (2016), *available at* [http://library.amlegal.com/nxt/gateway.dll/Kentucky/loukymetro/titlexibusinessregulations/chapter116communicationandcabletelevision?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:louisville_ky\\$sanc=JD_116.72](http://library.amlegal.com/nxt/gateway.dll/Kentucky/loukymetro/titlexibusinessregulations/chapter116communicationandcabletelevision?f=templates$fn=default.htm$3.0$vid=amlegal:louisville_ky$sanc=JD_116.72).

³⁰ Metro Nashville, Ordinance No. BL2016-343 (amending Title 13 of the Metro Nashville Code of Laws, Chapter 13.18 titled "Management of Public Rights-of-Way for Make Ready Work.") (adopted Sept. 20, 2016).

³¹ CPS Energy, Pole Attachment Standards, issued May 6, 2016, <https://www.cpsenergy.com/content/dam/corporate/en/Documents/PoleAttachments/CPS%20Energy%20Pole%20Attachment%20Standards%20May%202016.pdf>.

³² Next Century Cities, "One Touch" Make-Ready Policies: The "Dig Once" of Pole Attachments, Jan. 6, 2016, <http://nextcenturycities.org/2016/01/06/one-touch-make-ready-policies-the-dig-once-of-pole-attachments/>.

represent broadband providers and suppliers, like the Fiber-to-the-Home Council,³³ also support this practice.

One-touch make-ready policies are a way of alleviating “a significant source of costs and delay in building broadband networks” by “lower[ing] the cost of the make-ready process and speed[ing] it up.”³⁴ These reforms can “‘have an immediate impact on driving fiber deeper into networks, which will advance the deployment of both wireline and wireless broadband services,’” thus “removing barriers to investment, promoting competition, and ensuring timely deployment of advanced telecommunications capability” to Californians.³⁵ The CPUC should open a proceeding to make one-touch make-ready an option for infrastructure deployment in California.

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Google Fiber agrees with the CPUC that the “economic and social importance of the telecommunications network has multiplied, making the network an ‘essential infrastructure for [the] 21st century.’”³⁶ The CPUC has taken some positive steps to encourage development and deployment of broadband infrastructure. Consistent with the Proposed Decision, Google Fiber urges the CPUC to continue taking actions to

³³ See Heather Burnett Gold, FTTH Council Americas, Build Fiber for Economic Development, Broadband Communities, at 92 (Nov./Dec. 2015), *available at* http://www.bbcmag.com/2015mags/Nov_Dec/BBC_Nov15_GigabitHighway.pdf (recommending that “all government agencies adopt ‘one touch’ make-ready policies for utility poles, which would allow a single construction crew – one that has enough skill and experience to be on an approved list and chosen by the pole owner itself – to complete all the work necessary to make a pole ready for the attachment of new equipment.”).

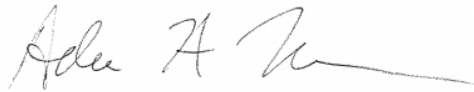
³⁴ See *FCC Statement of Interest* at 6 (citing *National Broadband Plan* at 111 (Recommendation 6.2)).

³⁵ *Id.* at 7 (citing *National Broadband Plan* at 111).

³⁶ *Proposed Decision* at 4.

ensure that all broadband providers have timely and reasonable access to infrastructure necessary to augment broadband availability for all Californians.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adam Tachner", with a long horizontal flourish extending to the right.

Adam Tachner
Vice President & General Counsel
Alphabet Access
1600 Amphitheatre Parkway
Mountain View, CA 94043
650-253-0000
atachner@google.com

November 7, 2016