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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA
P1607009

Petition to Adopt, Amend, or Repeal General Order 95 Pursuant to Pub. Util. Code § 1708.5	Petition No. _____

PETITION OF THE CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION (CCTA) FOR A RULEMAKING TO EXTEND THE ROW RULES FOR CMRS FACILITIES TO WIRELESS FACILITIES INSTALLED BY CABLE CORPORATIONS

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I. INTRODUCTION AND SUMMARY

Pursuant to Pub. Util. Code § 1708.5, and Rule 6.3 of the Commission's Rules of Practice and Procedure of the Public Utilities Commission of the State of California ("Commission" or "CPUC"), the California Cable & Telecommunications Association ("CCTA")[1] petitions the Commission to extend the Right-of-Way Rules ("ROW Rules") adopted in Decision ("D") 16-01-046 for commercial mobile radio service ("CMRS") facilities to the wireless facilities installed by cable corporations on distribution poles. CCTA further requests that the relief sought in this Petition be granted on an expedited basis.

Earlier this year, the Commission adopted D.16-01-046 after the conclusion of a comprehensive proceeding. In that decision, the Commission invited cable operators to file a petition to extend the wireless attachment rights granted to CMRS providers to cable operators. In particular, the Commission recognized that "there is no obvious reason why"[2] cable operators should not be afforded the same wireless attachment rights as CMRS providers. CCTA agrees

[1] CCTA is a trade association consisting of incumbent cable television corporations whose systems pass approximately 96% of California's homes.
[2] D.16-01-046, mimeo at 43.

and hereby requests that the Commission extend its ROW Rules adopted in D.16-01-046 to wireless facilities installed by cable corporations on distribution poles, including the *per foot* rate for those wireless facilities.

As detailed herein, there are multiple reasons why the extension of the ROW Rules to cable operators' wireless attachments is both sound public policy and required by law. First, there are no material differences between the wireless facilities installed on poles by CMRS providers and those facilities proposed to be installed by cable operators. Second, extension of the Revised ROW Rules is required by federal law and is consistent with CPUC precedent. Third, extension of the Revised ROW Rules will advance state policies intended to enhance competition and promote the deployment of broadband to the public.

In D.16-01-046, the Commission set forth three issues that should be addressed in a petition to extend wireless attachment rights to cable operators. As detailed below, none of those issues is a barrier to the extension of the rules. Specifically, (i) the "per foot" pole attachment fee established for CMRS providers can be readily harmonized with the statutory "per pole" attachment fee for competitive local exchange carrier ("CLEC") and cable attachments in Pub. Util. Code § 767; (ii) it is a straight-forward matter to identify and distinguish the facilities that should be subject to the wireline "per pole" fee from those subject to the wireless "per foot" fee; and (iii) the Commission's conclusion in D.15-05-002 that the term "cable" in Pub. Util. Code § 216.4 does not include satellite and other forms of wireless transmission does not preclude extending wireless attachment rights to cable operators in this proceeding.

Because there are no material facts in dispute and CCTA merely is seeking an extension of the same rules and rates that apply to CMRS wireless attachments in D.16-01-046 with no

modification, CCTA respectfully submits that the Commission should be able to conduct this proceeding on a streamlined, expedited basis.

II. BACKGROUND

A. The AT&T Petition and D.16-01-046

In 2013, AT&T Mobility filed a petition requesting an amendment to the Right-of-Way Rules adopted in D.98-10-058, which granted non-discriminatory access to public utility infrastructure, but did not extend those access rights to wireless attachments.[3] Citing federal pole attachment law and "federal and state interests in greater wireless coverage and the further deployment of broadband services," AT&T's petition requested that the Commission extend the ROW Rules adopted in D.98-10-058 to wireless attachments.[4] In response to that petition, the Commission issued Order Instituting Rulemaking 14-05-001 (the "OIR") to consider whether and how the ROW Rules adopted in D.98-10-058 should be amended to extend to CMRS carriers. Numerous parties actively participated in the OIR, including wireless associations, electric investor-owned utilities, The Utility Reform Network, the International Brotherhood of Electrical Workers, the Office of Ratepayer Advocates, and CCTA. Parties were given substantial opportunities to provide input on the extension of the ROW Rules to CMRS facilities and the appropriate attachment rate through a variety of procedural vehicles, including workshops, prehearing conferences, responses to information requests, and comments on the OIR, Workshop Report and Proposed Decision. As a result, the record developed in the docket was comprehensive and robust.

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[3] D.98-10-058, mimeo at 27.
[4] Petition (P.) 13-12-009 at 12.

At the conclusion of the proceeding, the Commission issued D.16-01-046, which amended the ROW Rules to extend non-discriminatory access to public utility infrastructure to CMRS providers (the "Revised ROW Rules").[5] Decision 16-01-046 found that CMRS providers have a right to non-discriminatory access to public utility infrastructure under federal law, and that providing CMRS carriers with such access will help achieve the policy goals of Pub. Util. Code § 709 and will encourage broadband deployment.[6] Towards this end, the Revised ROW Rules provide CMRS carriers with the same access to utility infrastructure as CLEC and cable corporations, with one exception.[7] To reflect the greater use of pole space by wireless facilities, D.16-01-046 requires public utilities to charge an annual attachment fee of 7.4% of the average annual carrying cost of a pole *for each vertical foot of pole space* occupied by the wireless facilities, subject to certain limitations.[8] This is in contrast to the annual wireline attachment fee of 7.4% *per pole* that applies to CLECs and cable corporations.[9]

B. The Commission Recognized in D.16-01-046 that "there is no obvious reason" Why the Revised ROW Rules Should Not Extend to Wireless Facilities Installed by Cable Corporations.

Notwithstanding requests made by petitioner CCTA and party PCIA in R.14-05-001,[10] in Decision 16-01-046 the Commission declined to extend the Revised ROW Rules to wireless attachments installed by CLECs and cable corporations on procedural grounds, noting that "[t]he Scoping Memo specifically excluded from the scope of this proceeding 'revised fees and charges

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[5] D.16-01-046, mimeo at 2.
[6] D.16-01-046, mimeo at 13-15.
[7] D.16-01-046, mimeo at 2.
[8] D.16-01-046, mimeo at 2 (emphasis added).
[9] Pub. Util. Code § 767.5(a)(3).
[10] Opening Comments of PCIA on the Proposed Decision at 1-2 (Nov. 19, 2015); Opening Comments of CCTA on the Proposed Decision at 2 (Nov. 19, 2015).

for [CLEC] and cable TV pole attachments.'"[11] However, significantly, D.16-01-046 found that "there is no obvious reason why the revised ROW Rules adopted by today's decision for CMRS facilities should not apply to wireless facilities installed by CLECs and CATV corporations" and encouraged CLECs and cable companies to file "at their earliest convenience" a petition for a rulemaking to extend the Revised ROW Rules to wireless facilities installed by CLECs and cable companies.[12] Decision 16-01-046 directed any such petition to address three issues relating to the extension of the Revised ROW Rules to cable corporations:

(i) How to harmonize the "per foot" pole-attachment fee adopted by D.16-01-046 for CMRS pole attachments with the statutory provision in Pub. Util. Code § 767.5(a)(3) that establishes a 7.4% "per pole" fee for CATV wireline communication system attachments (and which applies to CLEC pole attachments pursuant to D.98-10-058);

(ii) For CLEC and CATV pole installations that include both wireline communication system components and wireless communication system components, how to identify and distinguish components that are subject to the "per pole" fee and the components that are subject to the "per foot fee";

(iii) The Commission's authority to apply and enforce its Revised ROW Rules and safety regulations with respect to CATV corporations' wireless facilities in light of the Commission's conclusion in D.15-05-002 that the term "cable" in Pub. Util. Code § 216.4 does not include satellite and other forms of wireless transmission.[13]

III. REQUESTED MODIFICATION

CCTA requests that the Commission extend the Revised ROW Rules adopted in D.16-01-046 to wireless facilities installed by cable corporations on distribution poles, including the *per foot* rate. CCTA is not requesting that the *per pole* rate from Pub. Util. Code § 767.5 apply to cable wireless attachments. In accordance with Rule 6.3, Appendix A sets forth the proposed

[11] D.16-01-046, mimeo at 43.
[12] D.16-01-046, mimeo at 43.
[13] D.16-01-046, mimeo at 43-44.

changes to the Revised ROW Rules which consist primarily of the addition of a section for "CATV wireless pole attachments" that tracks the section added by D.16-01-046 for "CMRS pole attachments."

IV. JUSTIFICATION FOR THE REQUESTED RELIEF

As discussed in Section II, the Commission recognized in D.16-01-046 that there is no reason why the Revised ROW Rules should not apply to cable corporations that install wireless facilities on distribution poles.[14] CCTA agrees and sets forth in this section the various reasons why the extension of the Revised ROW Rules to cable operators' wireless attachments is sound public policy and required by law. First, there are no material differences between wireless facilities installed on poles by CMRS providers and those wireless facilities proposed to be installed by cable operators. Second, extension of the Revised ROW Rules is required by federal and state law. Third, extension of the Revised ROW Rules will advance state policies to enhance competition and promote the deployment of broadband to the public. Finally, none of the issues raised by the Commission in D.16-01-046 present a barrier to the extension of the Revised ROW Rules to cable operators.

A. The Wireless Attachments of CMRS Providers Do Not Differ from those Proposed to be Installed by Cable Operators.

At the outset, CCTA would like to emphasize that there are no material physical differences between the wireless facilities installed on distribution poles by CMRS providers and those installed by cable operators. In D.16-01-046, the Commission found that a wireless attachment for a CMRS provider consists of an antenna attached to a pole or pole top and the ancillary equipment directly supporting the antenna, including but not limited to a shut-off

[14] D.16-01-046, mimeo at 43.

switch, power meter, battery backup, radio amplifier, power cabinet and risers for communication and power cable to connecting with the antenna.[15] This list is very comprehensive and includes all the components of a wireless attachment that may be installed on distribution poles by cable operators. Given the physical similarity of the wireless facilities, disparate legal treatment under California law is not warranted.

B. Extending the Revised ROW Rules to Cable Operators' Wireless Devices Will Ensure Non-discriminatory Access to Poles as Required by Federal and CPUC Precedent.

Federal law, specifically 47 U.S.C. § 224(f)(1), provides that "[a] utility shall provide a cable television system or any telecommunications carrier with non[-]discriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it." Notably, the non-discriminatory access provisions of federal law apply to both telecommunications carriers, which include CMRS providers,[16] and cable operators, including CCTA's members.

Pursuant to federal law (namely, 47 U.S.C. § 224(c)), the Commission certified that it met the requirements of 47 U.S.C. § 224 in D.98-10-058 by regulating the "rate[s], terms, and conditions of access to poles, ducts, conduits, and ROW in conformance with [47 U.S.C.] § 224(c)(2) and (3)."[17] In so doing, the Commission committed to affording non-discriminatory access to poles in the ROW Decision.[18] The Commission recognized in D.16-01-046 that in

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[15] D.16-01-046, mimeo at 27-28.
[16] *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd. 15499 at ¶ 993 (FCC 1996) ("all CMRS providers are telecommunications carriers").
[17] D.98-10-058, mimeo at 9.
[18] *See, e.g.*, D.98-10-058, Appendix A, Section VI.A "General Principle of Nondiscrimination"; *see also* 47 U.S.C. § 253.

asserting such jurisdiction under federal law to regulate non-discriminatory access it assumed the obligation to promulgate rules that apply to wireless attachments installed by CMRS providers.[19]

In adopting such rules, the Commission recognized that the Federal Communications Commission ("FCC") has determined that the benefits and protections of 47 U.S.C. § 224 apply to wireless carriers and wireless pole attachments.[20] By this Petition, CCTA is merely seeking an extension of those rules to wireless pole attachments installed by cable providers. Significantly, nothing in federal law or FCC regulations or orders limits the rights of non-discriminatory access to wireless attachments installed *by CMRS providers*.[21] To the contrary, at least one FCC order specifically contemplates that such rights extend to wireless attachments installed by cable operators.[22]

Moreover, while under Section 253(c) of the Communications Act, the Commission may "manage the public rights-of-way," it must do so "*on a competitively neutral and non-discriminatory basis . . . .*"[23] Failing to extend the Revised ROW Rules to wireless attachments

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[19] D 16-01-046, mimeo at 13 ("In D.98-10-058, the Commission asserted jurisdiction under federal law to regulate non-discriminatory access. By asserting such jurisdiction, the Commission assumed the obligation to promulgate rules for nondiscriminatory access that apply to CMRS carriers.").

[20] D.16-01-046, mimeo at 4 (citing *In the Matter of Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 at ¶¶ 12, 77, and 153 (FCC 2011)).

[21] 47 U.S.C. § 224(f)(1) affords non-discriminatory access to poles to "a cable television system or any telecommunications carrier," while 47 U.S.C. § 224(a)(4) broadly defines the term "pole attachment" to mean "***any*** attachment by a cable television system or provider of telecommunications service to a pole … owned or controlled by a utility." (Emphasis added.) In 1998, the FCC ruled that the term "pole attachment" encompasses wireless devices. *Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd. 6777 at ¶¶ 39-40 (FCC 1998), *affirmed, National Cable & Telecommunications Ass'n v. Gulf Power*, 534 U.S. 339-341 (2002). Thus, cable operators' wireless attachments are afforded the same rights and protections under 47 U.S.C. § 224 as those of telecommunications carriers.

[22] *See e.g., In the Matter of Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 at ¶ 42 (FCC 2011) ("We address those concerns by adopting two modifications to our basic timeline for wireless attachments by telecommunications carriers ***and cable operators*** that are located above the communications space.") (Emphasis added).

[23] 47 U.S.C. § 253(c) (emphasis added).

by cable corporations while allowing such facilities to be installed by CMRS providers would constitute an unlawful form of discrimination against cable operators in contravention of 47 U.S.C. § 253(c).

C. Extending the Revised ROW Rules to Cable Operators' Wireless Devices Will Enhance Competition and Promote Broadband Deployment Consistent with State Law Policies.

Pub. Util. Code § 709 states: "[t]he Legislature hereby finds and declares that the policies for telecommunications in California are as follows … (g) To remove the barriers to open and competitive markets and promote fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice." The Commission recognized in D.98-10-058 that "[n]ondiscriminatory access to the incumbent utilities' poles, ducts, conduits, and rights-of-way is one of the essential requirements for facilities-based competition to succeed."[24] The extension of the Revised ROW Rules to cable operators' wireless facilities will enhance competition among broadband providers in furtherance of state policy.[25] Enhanced competition will promote the growth of broadband deployment. More specifically extending non-discriminatory pole access rights and rates to cable companies will enable those companies to offer new and innovative wireless broadband services directly to the public. Such non-discriminatory access also will enable cable companies to offer competitive

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[24] D.98-10-058, mimeo at 113 (Findings of Fact 2).

[25] *See* Pub. Util. Code § 709 ("The Legislature hereby finds and declares that the policies for telecommunications in California are as follows . . . [t]o encourage the development and deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer need and encourages the ubiquitous availability of a wide choice of state-of-the-art services"); Interim Opinion Implementing California Advanced Services Fund, D.07-12-054, mimeo at 2-4 (noting that "[b]roadband deployment will be a key measure of success in our information economy and is crucial to future productivity growth of the State").

options for small cell and other solutions to non-ILEC CMRS providers who at times must rely on the ILECs for access to infrastructure.[26]

In addition, the extension of Revised ROW Rules also would be consistent with the policy set forth in Pub. Util. Code § 9510(a) in which the Legislature recognized that cable providers would install wireless facilities as part of broadband deployment: "in order to promote wireline *and wireless* broadband access and adoption, it is in the interest of the state to ensure that local publicly owned electric utilities . . . make available appropriate space . . . to cable television corporations . . . under reasonable rates, terms, and conditions."[27]

D. None of the Issues Raised in D.16-01-046 Is a Barrier to the Extension of the Revised ROW Rules to Cable Wireless Attachments.

In D.16-01-046, the Commission identified three issues that should be addressed in a petition relating to the extension of the Revised ROW Rules to cable corporations. As detailed below, none of those issues present a barrier to the extension of the rules to cable operators.

1. Harmonizing the "per foot" pole attachment fee established for CMRS providers with the statutory "per pole" attachment fee for CLEC and CATV attachments in Pub. Util. Code § 767.5

As noted above, D.16-01-046 extended the ROW Rules to CMRS wireless installations with one exception: instead of providing a *per pole* rate, the decision adopted a *per foot rate* for the installation of the wireless facilities.[28] Decision 16-01-046 thus directed cable operators seeking to extend the D.16-01-046 to cable wireless facilities to address how the "per foot" rate can be harmonized with the "per pole" rate set forth in Pub. Util. Code § 767.5. CCTA respectfully suggests that there is no need for such harmonization. Because cable operators seek

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[26] *See* Opening Comments of CCTA in R.14-15-001 at 7.
[27] Pub. Util. Code § 9510(a) (emphasis added).
[28] D.16-01-046, mimeo at 2-3.

access for their wireless attachments on the same rates and terms afforded to CMRS providers in the Revised ROW Rules, there is no need to "harmonize" the two rates. CCTA suggests that the "per foot" rate for cable wireless pole attachments should be subject to the rate approach set forth in D.16-01-046, while the "per pole" rate for cable wireline attachments should remain subject to the rate approach set forth Pub. Util. Code § 767.5. If, however, the Commission is concerned about such a possible conflict, one potential solution would be for the Commission to extend the "per foot" rate approach of Revised ROW Rules to cable operators who voluntarily agree to this rate.

2. Identifying and distinguishing components subject to the "per pole" fee and the components subject to the "per foot" fee

Decision 16-01-046 also asked petitioners to identify and distinguish the components that would be subject to "per foot" fees as opposed to the "per pole" fee.[29] This issue, however, is not unique to cable wireless attachments. Other types of providers (such as AT&T) install both wireline and wireless attachments on distribution poles. The Commission should use the same techniques to distinguish between wireline and wireless facilities installed by cable corporations used to distinguish those facilities installed by traditional telephone companies.

To the extent, however, that the Commission may wish to adopt a specific test for distinguishing between the components subject to the "per pole" fee versus the components subject to the "per foot" fee, CCTA recommends that the Commission use a "but for" test to determine the appropriate rate for the component(s) in question. In other words, if the equipment would not be installed on the pole "but for" its support of wireless transmission, it should be subject to the CMRS rate; otherwise, the equipment should be subject to the per pole wireline

[29] D.16-01-046, mimeo at 43.

rate. Under this test, the antennas and equipment attached to the pole that directly support the antenna would be subject to the per-foot CMRS rate, and other equipment necessary to support wireline cable plant would be subject to the per-pole rate. Although this is the general test that should apply, consistent with D.16-01-046,[30] the 7.4% per foot rate should not apply to (i) conduits and risers connecting the antennas and (ii) any electric meters associated with the antenna to the extent the meters are required by the pole owner(s).

3. Clarifying the Commission's authority to apply and enforce its Revised ROW Rules and safety regulations with respect to cable corporations' wireless facilities in light of the Commission's conclusion in D.15-05-002 that the term "cable" in Pub. Util. Code § 216.4[31] does not include satellite and other forms of wireless transmission[32]

Lastly, D.16-01-046 asked cable petitioners to address the Commission's authority to enforce its Revised ROW Rules and safety regulations with respect to cable corporations' wireless facilities in light of the Commission's conclusion in D.15-05-002 that the term "cable" in Pub. Util. Code § 216.4[33] does not include satellites and other forms of wireless

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[30] D.16-01-046, mimeo at 42 ("We agree with the parties that the 7.4% per-foot attachment fee should not apply to conduits, risers, and electric utility meters that are attached to a pole as part of a CMRS installation. In our opinion, it is neither necessary nor feasible to devise a rule that specifies the amount of pole space that a CMRS conduit or riser renders unusable for non-CMRS attachments. The electric utility meter for a CMRS installation is owned by the electric utility. Because the electric utility decides where to place the meter (*e.g.*, on the pole, on a surface-mound enclosure, or in an underground vault), the CMRS carrier should not be charged a pole-attachment fee if the electric utility elects to place the meter on the pole.").

[31] Pub. Util. Code § 216.4 ("'Cable television corporation' shall mean any corporation or firm which transmits television programs by cable to subscribers for a fee.").

[32] D.15-05-002, mimeo at 40 (Conclusion of Law No. 5) ("The term 'cable' in Pub. Util. Code § 216.4 applies to any type of cable facility (e.g., coaxial cable, fiber optic cable, or wired facility) that is used to transmit television programs to subscribers for a fee, regardless of whether the 'cable' is also used to provide other services (in addition to transmitting television programs) such as broadband internet service. The term 'cable' in § 216.4 does not include satellites and other forms of wireless transmission.").

[33] Pub. Util. Code § 216.4 ("Cable television corporation' shall mean any corporation or firm which transmits television programs by cable to subscribers for a fee.").

transmission.[34] A decision interpreting the definition of a "cable television corporation" in an unrelated matter does not impede the Commission's ability to apply the Revised ROW Rules to cable wireless attachments or to enforce those rules. This is especially true in a case such as this one where (as discussed above), such application is mandated by federal law and state precedent requiring non-discriminatory access to poles and the state's and the Commission's policies promoting competition and broadband deployment.

As an initial matter, the Commission's authority to enforce its *safety regulations* with respect to cable pole attachments – including wireless pole attachments – is clear and is not affected by D.15-05-002's interpretation of the term "cable" in Pub. Util. Code § 216.4. As the Commission recognized in D.15-05-002, Pub. Util. Code § 768.5 gives the Commission broad safety jurisdiction over any aspect of a cable operator's "plant." [35] Section 768.5 provides:

> The commission may, after a hearing, by general or special orders, rules, or otherwise, require every *cable television corporation* to construct, maintain, and operate its *plant, system, equipment, apparatus*, and premises in such manner as to promote and safeguard the health and safety of its employees, customers, and the public, and may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, customers, or the public may demand. (Emphasis added.)

Significantly, Pub. Util. Code § 768.5 does not limit the Commission's jurisdiction to only *wireline* cable facilities. Moreover, the Commission has recognized that federal law provides state regulatory agencies with the direct authority to regulate cable companies with

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[34] D.16-01-046, mimeo at 44.

[35] D.15-05-002, mimeo at 24 ("The Commission may also promulgate and enforce safety regulations with respect to cable TV corporations' facilities, operations, and practices pursuant to § 768.5. The ROW Rules adopted by D.98-10-058 establish the rates, terms, and conditions for cable TV corporations' access to utility support structures and associated safety regulations.").

regard to the safe construction, maintenance, and operation of plant and equipment. For example, in its decision adopting regulations to reduce fire hazards associated with overhead power lines and communication facilities, the Commission found: "[l]ikewise, the Cable Communications Policy Act of 1984 specifically grants states jurisdiction over cable service in safety matters. (47 U.S.C. § 556 (a))."[36] As discussed above, federal law extends attachment rights to wireless facilities installed by cable corporations. The Commission has also 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.[37]

Similarly, nothing in D.15-05-002 prohibits the Commission from applying the Revised ROW Rules to wireless attachments by cable operators or from enforcing the Revised ROW Rules with respect to those attachments. First and foremost, D.15-05-002 was issued in a context of deciding whether video service providers under DIVCA have pole attachment rights, and not in the context of whether, as a matter of state and federal law, cable operators' access rights extend to wireless facilities to poles in a non-discriminatory manner. These are fundamentally different issues. There is no question that CCTA's members squarely fit the definition of CATV providers and do, in fact, provide television services via coaxial cable, fiber optic cable, or wired facilities. The question here is whether those cable companies also should be permitted to install wireless facilities on poles on a non-discriminatory basis pursuant to the Revised ROW Rules.

Second, as discussed above in Section IV(B), any interpretation of D.15-05-002 that would limit cable corporations' ability to avail themselves of the Revised ROW Rules for their

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[36] D.12-01-032, Decision Adopting Regulations to Reduce Fire Hazards Associated with Overhead Power Lines and Communication Facilities, mimeo at 12.
[37] *See, e.g.,* D.10-04-047, Decision Approving and Adopting the Witch/Rice and Guejito Fire Settlements.

wireless attachments would be inconsistent with the non-discriminatory access provisions of federal law, and the Commission's commitment in the ROW Decision to adopt non-discriminatory right-of-way rules.[38] Such an interpretation also would contravene state statutes and Commission precedent (discussed above), which require regulation in a competitively and technologically neutral manner.

V. REQUEST FOR EXPEDITED TREATMENT

CCTA respectfully requests the issuance of a decision on this Petition on an expedited schedule. Because CCTA merely is seeking an extension of the same rules and rates that apply to CMRS attachments in D.16-01-046 with no modification and because there are no material facts in dispute, CCTA respectfully submits that the Commission should be able to conduct this proceeding on a streamlined, expedited basis. An expedited schedule also is warranted because the extension of the Revised ROW Rules to cable wireless attachments will promote the broadband deployment in California consistent with Commission's policy goals set forth in Section 709.

VI. CONCLUSION

For the reasons set forth above, the Commission should promptly act to extend the Revised ROW Rules to wireless facilities installed by cable corporations on distribution poles.

By: /S/ Jerome F. Candelaria
Jerome F. Candelaria

[38] D.98-10-058, Appendix A, Section VI.A "General Principle of Nondiscrimination."

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July 14, 2016

Verification

Jerome F. Candelaria, under penalty of perjury, states as follows:

I am Vice President and Counsel, Regulatory Affairs for the California Cable & Telecommunications Association (CCTA) and make this verification for and on behalf of the Association. I have read the foregoing Petition of CCTA to Adopt, Amend, or Repeal General Order 95 Pursuant to Pub. Util. Code § 1708.5, and the contents thereof, and the facts stated therein are true to the best of my knowledge, information and belief.

Dated at Sacramento, California, this 14th day of July, 2016.

/S/ Jerome F. Candelaria

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Jerome F. Candelaria

APPENDIX A – CCTA's Proposed Changes to Section VI(B) of the Commission-Adopted Rules Governing Access to Rights-of-Way and Support Structures of Incumbent Telephone and Electric Utilities

VI. PRICING AND TARIFFS GOVERNING ACCESS

* * *

B. MANNER OF PRICING ACCESS

1. Whenever a public utility and a telecommunications carrier, CMRS carrier, or cable TV company, or associations, therefore, are unable to agree upon the terms, conditions, or annual compensation for pole attachments or the terms, conditions, or costs of rearrangements, the Commission shall establish and enforce the rates, terms and conditions for pole attachments and rearrangements so as to assure a public utility the recovery of both of the following:

   a. A one-time reimbursement for actual costs incurred by the public utility for rearrangements performed at the request of the telecommunications carrier or CMRS carrier.

   b. An annual recurring fee computed as follows:

      (1) **Except as provided in section (3) below, f**~~F~~or each pole and supporting anchor actually used by the telecommunications carrier or cable TV company, the annual fee shall be two dollars and fifty cents ($2.50) or 7.4 percent of the public utility's annual cost of ownership for the pole and supporting anchor, whichever is greater, except that if a public utility applies for establishment of a fee in excess of two dollars and fifty cents ($2.50) under this rule, the annual fee shall be 7.4 percent of the public utility's annual cost of ownership for the pole and supporting anchor.

      (2) For each pole and supporting anchor actually used by a CMRS carrier, the annual fee for each foot of vertical pole space occupied by the CMRS installation shall be two dollars and fifty cents ($2.50) or 7.4 percent of the public utility's annual cost of ownership for the pole and supporting anchor, whichever is greater. The per-foot fee for CMRS installations is subject to the following conditions and limitations:

(i) The vertical pole space occupied by each CMRS attachment shall be rounded to the nearest whole foot, with a 1-foot minimum.

(ii) The 7.4% per-foot fee applies to the pole space that a CMRS attachment renders unusable for non-CMRS attachments, including (A) the pole space that is physically occupied by the CMRS attachment; and (B) any pole space that cannot beused by communication and/or supply conductors due solely to the installation of the CMRS attachment.

(iii) The 7.4% per-foot fee applies to CMRS attachments anywhere on the pole.

(iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple CMRS pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each CMRS attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.

(v) The total pole-attachment fees for all CMRS attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.

(vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with CMRS installations.

(3) The per-foot fee for Cable wireless attachments is subject to the following conditions and limitations:

(i) The vertical pole space occupied by each Cable wireless pole attachment shall be rounded to the nearest whole foot, with a 1-foot minimum.

(ii) The 7.4% per-foot fee applies to the pole space that a Cable wireless pole attachment renders unusable for non-Cable wireless pole attachments, including (A) the pole space that is

physically occupied by the Cable wireless pole attachment; and (B) any pole space that cannot be used by communication and/or supply conductors due solely to the installation of the Cable wireless pole attachment.

(iii) The 7.4% per-foot fee applies to Cable wireless pole attachments anywhere on the pole.

(iv) The 7.4% per-foot fee applies once to each foot of pole height. If multiple wireless pole attachments are placed on different sides of a pole in the same horizontal plane, the 7.4% per-foot attachment fee shall be allocated to each Cable wireless pole attachment in the same horizontal plane based on the total number of attachments in the horizontal plane.

(v) The total pole-attachment fees for all multiple wireless pole attachments on a particular pole shall not exceed 100% of the pole's cost-of-ownership, less the proportion of the pole's cost-of-ownership that is allocable to the pole space occupied by all other pole attachments.

(vi) The 7.4% per-foot fee does not apply to electric meters, risers, and conduit associated with Cable wireless pole installations.

~~(3)~~ **(4)** For support structures used by the telecommunications carrier, CMRS carrier, or cable TV company, other than poles or anchors, a percentage of the annual cost of ownership for the support structure, computed by dividing the volume or capacity rendered unusable by the telecommunications carrier's, CMRS carrier's, or cable TV company's equipment by the total usable volume or capacity. As used in this paragraph, "total usable volume or capacity" means all volume or capacity in which the public utility's line, plant, or system could legally be located, including the volume or capacity rendered unusable by the telecommunications carrier's, CMRS carrier's, or cable TV company's equipment.

c. Except as allowed by Section VI.B.1.b(2) **and (3)**, above, a utility may not charge a telecommunications carrier, CMRS carrier, or cable TV company a higher rate for access to its rights of way and

support structures than it would charge a similarly situated cable television corporation for access to the same rights of way and support structures.

d. A utility may not charge a CMRS carrier a higher rate for access to its rights of way and support structures than it would charge a similarly situated **non-**CMRS carrier for access to the same rights of way and support structures.