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TO PARTIES OF RECORD IN PETITION 16-08-016 AND R. _____:

This is the proposed decision of assigned Commissioner Michael Picker. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's March 23, 2017 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ DARWIN E. FARRAR for KVC
Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER PICKER**
(Mailed 2/17/2017)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Petition of the Wireless Infrastructure Association to Adopt, Amend, or Repeal General Order 95 Pursuant to Pub. Util. Code § 1708.5.

Petition 16-08-016
(Filed August 29, 2016)

Order Instituting Rulemaking Proceeding to Consider Amendments to the Revised Right-of-Way Rules Adopted by Decision 16-01-046.

R. _____

**ORDER GRANTING PETITION 16-08-016
AND ORDER INSTITUTING RULEMAKING PROCEEDING TO
CONSIDER AMENDMENTS TO THE REVISED RIGHT-OF-WAY RULES
ADOPTED BY DECISION 16-01-046**

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**ORDER GRANTING PETITION 16-08-016
AND ORDER INSTITUTING RULEMAKING PROCEEDING TO
CONSIDER AMENDMENTS TO THE REVISED RIGHT-OF-WAY RULES
ADOPTED BY DECISION 16-01-046**

Summary

The Revised Right-of-Way Rules adopted by Decision 16-01-046 provide commercial mobile radio service carriers with a right to install antennas and related facilities on public utility poles, ducts, conduits, and rights-of-way (together, "wireless pole attachments"), subject to specified terms, conditions, and limitations. This Order grants the petition filed by the Wireless Infrastructure Association to institute a rulemaking proceeding to consider whether the Revised Right-of-Way Rules should apply to competitive local exchange carriers' (CLECs') wireless pole attachments. The scope of the rulemaking proceeding includes the consideration and possible adoption of new regulations to ensure that CLECs' wireless pole attachments are constructed, operated, and maintained to (i) protect worker safety and public safety, and (ii) preserve the reliability of co-located utility facilities (e.g., power lines).

1. Procedural Background

The Wireless Infrastructure Association (WIA)¹ filed Petition 16-08-016 on August 29, 2016, pursuant to California Public Utilities Code Section (Cal. Pub. Util. Code §) 1708.5, which allows "interested persons to petition the commission to adopt, amend, or repeal a regulation." In Petition 16-08-016, WIA asks the California Public Utilities Commission (Commission) to institute a rulemaking proceeding to consider if the revised Right-of-Way Rules (Revised ROW Rules)

¹ WIA represents more than 230 companies that design, build, own, and/or manage telecommunications facilities.

adopted by Decision (D.) 16-01-046 should apply to competitive local exchange carriers' (CLECs') antennas and related facilities installed on public utility poles, ducts, conduits, and rights-of-way (together, "wireless pole attachments").²

D.16-01-046 was issued in Rulemaking (R.) 14-05-001.

WIA served a copy of Petition 16-08-016 on the service lists for Petition 16-07-009³ and R.14-05-001. Notice of Petition 16-08-016 appeared in the Commission's Daily Calendar on August 31, 2016. No responses were filed.

2. Regulatory Background

Public utilities are required by Title 47 of the United States Code, at Section 224(f) (47 U.S.C. § 224(f)), to provide "a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by" the utility,⁴ unless a utility cannot provide access because of "insufficient capacity and for reasons of safety, reliability and generally applicable engineering principles." The Federal Communications Commission (FCC) is required by 47 U.S.C. § 224(b)(1) to "regulate the rates, terms, and conditions" for nondiscriminatory access to utility poles. The FCC's regulations for nondiscriminatory access are set forth in Title 47 of the Code of Federal Regulations, Sections 1.1401 - 1.1424. The FCC has

² The caption for this docket incorrectly characterizes Petition 16-08-016 as a request to adopt, amend, or repeal General Order 95. In reality, the Petition asks the Commission to open a rulemaking proceeding to consider whether the Revised ROW Rules should apply to CLECs' wireless pole attachments.

³ In Petition 16-07-009, the California Cable and Telecommunications Association asked the Commission to institute a rulemaking proceeding to consider if the Revised ROW Rules should apply to cable television corporations' wireless pole attachments. In D.17-02-006, the Commission denied Petition 16-07-009 without prejudice.

⁴ 47 U.S.C. § 224(a)(1) defines the term "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications."

determined that the benefits and protections of 47 U.S.C. § 224 apply to wireless carriers and their wireless pole attachments.⁵

A State may opt to regulate pole attachments⁶ under state law pursuant to 47 U.S.C. § 224(c)(1) by certifying to the FCC that the State has enacted regulations that meet the following criteria in 47 U.S.C. §§ 224(c)(2) and (3):

- (2) Each State which regulates the rates, terms, and conditions for pole attachments shall certify to the [FCC] that - -
 - (A) it regulates such rates, terms, and conditions; and
 - (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachment, as well as the interests of the consumers of the utility service.
- (3) For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments - -
 - (A) unless the State has issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments; and
 - (B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter - -
 - i. within 180 days after the complaint is filed with the State; or
 - ii. within the application period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

⁵ *Report and Order and Order on Reconsideration*, 26 FCC Rcd. 5240, 52, at ¶¶ 12, 77, and 153.

⁶ 47 U.S.C. § 224(a)(4) defines the term "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."

A State's regulation of pole attachments does not have to conform to the FCC's rules for pole attachments. As set forth in 47 U.S.C. § 224(c)(1), "[n]othing in [47 U.S.C. § 224] shall be construed to apply to, or to give the [FCC] jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State." A State may also deviate from FCC's rules for pole attachments in accordance with 47 U.S.C. § 253(b), which provides that a State may adopt "on a competitively neutral basis and consistent with Section 254, requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers."

The Commission is authorized by Cal. Pub. Util. Code §§ 451, 701, 767, 767.5, 767.7, and 1702, *inter alia*, to regulate public utilities and to establish reasonable rates, terms, and conditions for joint use of utility poles, ducts, conduits, and rights-of-way (together, "utility rights-of-way" or "utility ROW"). In D.98-10-058, the Commission adopted rules that provide facilities-based competitive local exchange carriers (CLECs)⁷ and cable television (CATV) corporations with nondiscriminatory access to utility ROW that is owned or controlled by (1) large and mid-sized incumbent local exchange carriers; and (2) major investor-owned electric utilities. D.98-10-058 also provided certification to the FCC that the Commission regulates the rates, terms, and conditions for nondiscriminatory access to utility ROW in conformance with 47 U.S.C. §§ 224(c)(2) and (3). As a result of these actions, the Commission has

⁷ D.98-10-058 uses the terms "competitive local carrier" and "CLC" to identify a competitive local exchange carrier.

exercised its option under 47 U.S.C. § 224(c)(1) to regulate nondiscriminatory access to utility ROW under California state law.

The Commission's rules for nondiscriminatory access to utility ROW (referred to as the "ROW Rules") address the following matters:

1. Requests for information by CLECs and CATV corporations regarding the availability of a utility's ROW.
2. Requests to access a utility's ROW by CLECs and CATV corporations, including the contents of the requests; deadlines for utility responses and the contents of utility responses; timeframe for the utility to complete make-ready work; and the use of qualified personnel to perform make-ready work, rearrangements, attachments, and installations.
3. Protections for proprietary information.
4. Fees and contracts for access to utility ROW.
5. Reservations of ROW capacity for future use.
6. Access to customer premises.
7. Procedures for expedited resolution of disputes.
8. Safety standards for access to utility ROW.

The ROW Rules allow CLECs and CATV corporations to use utility ROW to the extent there is "surplus space" or "excess capacity." Access to utility ROW is on a first come, first served basis. A utility may deny access to its ROW only when there is a lack of space or capacity, or where there are safety, reliability, or engineering limitations. A utility may reclaim space or capacity from a CLEC or CATV corporation for the utility's own use.

In situations whether there is lack of surplus space or excess capacity, the ROW Rules allow CLECs and CATV corporations to request that new space or capacity be added, such as a new utility pole that can support additional attachments. The requesting entity must pay for most, if not all, of the costs to

install the new pole and to transfer all existing attachments from the old pole to the new pole.⁸

To ensure safety and reliability, the ROW Rules specify that access to utility ROW shall be governed at all times by (i) Title 8 of the California Occupational Safety and Health Regulations, and (ii) Commission General Orders (GOs) 95 and 128. The ROW Rules further specify that where appropriate, said GOs shall be supplemented by the National Electric Safety Code and reasonable safety and construction standards required by the utility.

The ROW Rules are set forth in Appendix A of D.98-10-058. These rules apply to wireline pole attachments installed by CLECs and CATV corporations, and to “fixed wireless” pole attachments installed by CLECs for the purpose of providing wireless point-to-multipoint local service. Significantly, D.98-10-058 did not apply the ROW Rules to commercial mobile radio service (CMRS) carriers.⁹

In D.16-01-046, the Commission revised the ROW Rules to provide CMRS carriers with nondiscriminatory access to utility ROW (the Revised ROW Rules). With one exception, the Revised ROW Rules provide CMRS carriers with the same access to utility ROW as CLECs and CATV corporations. The one exception concerns pole-attachment fees. The ROW Rules adopted by D.98-10-058 allow public utilities to charge each CLEC

⁸ D.98-10-058, at Section VIII.B, COL 59, and Appendix A, Section VIII.

⁹ D.98-10-058, at Section III.F.2. CMRS includes cellular service, personal communication service, wide-area specialized mobile radio service, and two-way radiotelephone service. (D.98-09-024, at Footnote 1.) CMRS carriers are “telephone corporations” and therefore public utilities subject to the Commission’s jurisdiction under Pub. Util. Code §§ 216, 233, and 234. 47 U.S.C. § 332(c)(3)(A) limits State jurisdiction over CMRS carriers to “other terms and conditions” of CMRS service, such as facility siting and public safety.

and CATV pole installation an annual attachment fee equal to 7.4 percent of a utility's cost-of-ownership of the host pole. This annual fee is based on the assumption that a CLEC or CATV pole installation typically consists of a single wireline attachment that occupies one foot of vertical space on a pole.

In contrast, the Revised ROW Rules adopted by D.16-01-046 allow public utilities to charge an annual pole-attachment fee of 7.4 percent for each foot of vertical pole space occupied by CMRS pole installations, subject to certain limitations.¹⁰ The annual 7.4 percent "per-foot" fee for CMRS pole installations is distinct from, and usually exceeds, the annual 7.4 percent "per-pole" fee that applies to CLECs' and CATV corporations' pole installations pursuant to D.98-10-058. The 7.4 percent "per-foot" fee for CMRS pole installations reflects the fact that CMRS pole installations typically occupy more pole space than CLEC and CATV pole installations.

Of importance to today's Order, D.16-01-046 did not apply the Revised ROW Rules to wireless facilities installed by CLECs and CATV corporations. Nonetheless, the Commission stated in D.16-01-046 that:

"[There] is no obvious reason why the revised ROW Rules adopted by [D.16-01-046] for CMRS facilities should not apply to wireless facilities installed by CLECs and CATV corporations once certain issues, identified below, are resolved. We encourage CLECs and CATV corporations to file at their earliest convenience, pursuant to Rule 6.3 of the Commission's Rules of Practice and Procedure, a petition for a rulemaking proceeding to extend the ROW Rules for CMRS facilities to the wireless facilities installed by CLECs and CATV corporations. Any such petition should address the following issues:

¹⁰ D.16-01-046, at 2. The per-foot fee adopted by D.16-01-016 does not apply to conduits, risers, and electric utility meters that are attached to a pole as part of a CMRS installation. (D.16-01-046, at 42, Conclusion of Law (COL) 19, and Appendix A, Section VI.B.1.b(2)(vi).)

- 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 percent “per-pole” fee for CATV wireline communication system attachments.
- For CLEC and CATV pole installations that include both wireline communication system components and wireless communication system components, how to distinguish the components that are subject to the “per-pole” fee and the components that are subject to the “per-foot” fee.
- The Commission’s authority to apply and enforce its 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 satellites and other forms of wireless transmission.” (D.16-01-046 at 43 – 44. Footnotes omitted.)

In addition to adopting the Revised ROW Rules, D.16-01-046 adopted several amendments to GO 95¹¹ to ensure that CMRS pole attachments are designed, constructed, operated, and maintained in a way that protects safety and reliability.

3. Summary of Petition 16-08-016

In Petition 16-08-016, WIA asks the Commission to open a rulemaking proceeding for the purpose of extending the Revised ROW Rules adopted by D.16-01-046 for CMRS carriers to wireless pole attachments installed by CLECs, including the annual “per-foot” fee adopted by D.16-01-046 for CMRS pole attachments. Appendix A-2 of Petition 16-08-016 sets forth WIA’s proposed amendments to the Revised ROW Rules. The proposed amendments consist

¹¹ GO 95 prescribes rules for the design, construction, operation, inspection, maintenance, repair, and replacement of overhead lines and support structures.

primarily of a new section for CLEC wireless pole attachments that tracks the section added by D.16-01-046 for CMRS pole attachments.

WIA offers several reasons for extending the Revised ROW Rules to CLECs' wireless pole attachments. First, WIA asserts there are no material physical differences between the wireless facilities installed on poles by CMRS carriers and the wireless facilities that would be installed by CLECs. Given the asserted physical similarity of the wireless facilities, WIA sees no reason for disparate legal treatment under California law.

Second, WIA argues that federal laws and FCC regulations require the Commission to extend the Revised ROW Rules to CLECs' wireless pole attachments. WIA cites 47 U.S.C. § 224(f)(1), which states that "[a] utility shall provide... any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit or right-of-way owned or controlled by it." WIA also cites 47 U.S.C. § 224(a)(4), which defines the term "pole attachment" to mean "*any* attachment by a... provider of telecommunications service to a pole... owned or controlled by a utility." (Emphasis added.) In addition, the FCC held in 1998 that the right of nondiscriminatory access includes wireless pole attachments.¹²

Third, WIA notes that in D.98-10-058, the Commission certified to the FCC that the Commission regulates utility ROW in conformance with 47 U.S.C. §§ 224(c)(2) and (3). In so doing, the Commission committed itself to a regulatory regime that affords nondiscriminatory access to utility poles.¹³

¹² *Report and Order*, 13 FCC Rcd. 6777 at ¶¶ 39-40, *affirmed*, *National Cable & Telecommunications Ass'n v. Gulf Power*, 534 U.S. 327, 339-341 (2002).

¹³ D.98-10-058, at 9 and Appendix A, Section IV.A, "General Principles of Nondiscrimination."

Fourth, WIA avers that extending the Revised ROW Rules to CLECs' wireless pole attachments will advance the State's policy articulated in Pub. Util. Code § 709 of enhancing competition among telecommunications providers and promoting the deployment of broadband to the public. WIA submits that "extending non-discriminatory pole access rights and rates to CLECs' wireless attachments will enable CLECs to offer competitive options for small cell and other solutions to CMRS carriers who often must rely upon the incumbent local exchange carriers for access to infrastructure."¹⁴

Finally, WIA notes that D.16-01-046 identified three issues that should be addressed in a petition to extend the Revised ROW Rules to CLECs. For the reasons explained below, WIA asserts that none of these issues prevents the extension of the Revised ROW Rules to CLECs' wireless pole attachments.

Issue 1. D.16-01-046 directed any petition to extend the Revised ROW Rules to CLECs' wireless pole attachments to address the issue of how to harmonize the 7.4 percent "per-foot" fee adopted by D.16-01-046 for CMRS pole installations with the 7.4 percent "per-pole" fee adopted by Pub. Util. Code § 767.5(a)(3) for CATV pole installations. WIA proposes that CLECs pay the same per-foot fee for wireless pole attachments that CMRS carriers pay pursuant to D.16-01-046, and that CLECs continue to pay the per-pole fee for wireline pole attachments set forth in D.98-10-058 and Pub. Util. Code § 767.5.

Issue 2. Decision 16-01-046 directed petitioners to address how to identify wireless pole attachments installed by CLECs that would be subject to the "per-foot" fee for wireless facilities in the Revised ROW Rules.¹⁵ WIA recommends

¹⁴ Petition 16-08-016, at 10.

¹⁵ D.16-01-046, at 43.

that antennas, and the equipment that directly supports antennas, should be subject to the per-foot fee, while other attachments necessary for wireline CLEC service (e.g., fiber-optic cable) should be subject to the per-pole fee.

Issue 3. Decision 16-01-046 directed petitioners to address the Commission's authority to enforce its Revised ROW Rules and safety regulations with respect to CATV corporations' wireless facilities in light of the conclusion in D.15-05-002 that the term "cable" in Pub. Util. Code § 216.4¹⁶ does not include satellites and other forms of wireless transmission.¹⁷ WIA believes this issue is not relevant to Petition 16-08-016 because CLECs are not CATV corporations.

4. Discussion

The issue before us is whether to grant WIA's Petition to institute a rulemaking proceeding to consider whether the Revised ROW Rules adopted by D.16-01-046 should be amended to encompass CLECs' wireless pole attachments. WIA has the burden of demonstrating that it is in the public interest to institute the requested rulemaking proceeding.

The Commission has elected to regulate pole attachments in accordance with California state law pursuant to 47 U.S.C. § 224(c). Therefore, our decision to grant or deny Petition 16-08-016 must conform to the Cal. Pub. Util. Code.

CLECs are public utilities pursuant to Cal. Pub. Util. Code §§ 216, 233, and 234. The Commission has authority to regulate public utilities and to establish reasonable rates, terms, and conditions for joint use of public utility ROW pursuant Cal. Pub. Util. Code §§ 451, 701, 767, and 1702, *inter alia*. Of particular

¹⁶ Pub. Util. Code § 216.4 states: "Cable television corporation' shall mean any corporation or firm which transmits television programs by cable to subscribers for a fee."

¹⁷ D.16-01-046, at 44, citing D.15-05-002, at COL No. 5.

importance is § 767, which authorizes the Commission to require public utilities to provide CLECs with access to utility ROW, subject to terms and conditions that (1) protect safety and reliability, and (2) reasonably compensate public utilities for CLECs' use of utility ROW.

We agree with WIA's assessment that extending the Revised ROW Rules to CLECs' wireless pole attachments would advance the State's policy objectives in Cal. Pub. Util. Code § 709. These objectives include:

- Providing affordable, high quality telecommunications services to all Californians. (§ 709(a).)
- Promoting the deployment of new technologies and the equitable provision of services in a way that efficiently meets consumer needs and encourages the ubiquitous availability of a wide choice of state-of-the art services. (§ 709(c).)
- Bridging the digital divide by encouraging expanded access to state-of-the art technologies for rural, inner-city, low-income, and disabled Californians. (§ 709(d).)
- Promoting economic growth, job creation, and the substantial social benefits that result from the rapid implementation of information and communications technologies by adequate investment in the necessary infrastructure. (§ 709(e).)
- Removing barriers to open and competitive markets and promoting fair product and price competition in a way that encourages greater efficiency, lower prices, and more consumer choice. (§ 709(g).)

A related and equally important goal of the State of California is the widespread deployment of broadband services. Like electricity a century ago, broadband is a foundation for improved education, new industries, economic growth, job creation, global competitiveness, and a better way of life. The Commission has long recognized the essential role of broadband

communications in the lives of people and society at large.¹⁸ The Commission recently affirmed in D.16-12-025 that “the economic and social importance of the telecommunications network has multiplied, making the network an essential infrastructure for the 21st century.”¹⁹

The ROW Rules adopted by D.98-10-058 and revised by D.16-01-046 are indispensable to the development of essential telecommunications infrastructure. This is because, in part, the ROW Rules facilitate the ability of competitive telecommunications carriers to build infrastructure by establishing terms and conditions for nondiscriminatory access to bottleneck facilities such as utility poles.²⁰

For the preceding reasons, we conclude that it is in the public interest to grant WIA’s Petition to open a rulemaking proceeding to consider whether the Revised ROW Rules adopted by D.16-01-046 should apply to CLECs’ wireless pole attachments. Our goal for the rulemaking proceeding is to advance the public’s interest in the development of safe and competitive telecommunications infrastructure that provides ubiquitous, competitive, and affordable telecommunications services. The scope of the rulemaking proceeding is

¹⁸ D.07-03-014, at 5. (“Advanced video and broadband systems are critical to social and economic development in our state.”) There are several California programs to help close the digital divide. The California Advanced Services Fund increases geographic access to broadband. The California Emerging Technology Fund promotes access to broadband. And the California Lifeline program provides free or reduced cost cell phones to low-income households to enable access to wireless voice, text, and internet.

¹⁹ D.16-12-025, at 4.

²⁰ *See, for example, D.16-12-025, at 3.* (“Competitive 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. One particular bottleneck is access to utility poles, where the Commission’s safety mandate meets, and must be reconciled with, the Commission’s goal of a competitive market.”)

described in more detail below. Today's Order does not decide whether the Revised ROW Rules should apply to CLECs' wireless pole attachments or any other issues within the scope of the rulemaking proceeding.

We recognize that reaching our goal of ubiquitous, competitive, and affordable telecommunications services must take into account the finite capacity of existing utility ROW to accommodate additional telecommunications infrastructure, including wireless pole attachments. In situations where there is constrained capacity on existing utility poles for new attachments, the ROW Rules allow CLECs to ask the pole owners to replace existing poles on a one-for-one basis with new poles that have more space and/or load-bearing capacity. At the same time, the ROW Rules require those CLECs that request replacement poles to bear much, if not all, of the cost of the new poles. The cost of replacing poles may present a barrier to entry that frustrates investment in telecommunications infrastructure.

Although the scope of this proceeding is limited to CLECs' wireless pole attachments, we will take comment on (1) whether there is sufficient space and load-bearing capacity on the stock of existing utility poles to support additional telecommunications attachments, including wireless pole attachments, that may be necessary to provide ubiquitous, competitive, and affordable telecommunications services; (2) whether the cost of replacing existing poles to support additional telecommunications attachments poses a barrier to entry; and (3) whether urban streetscapes can accommodate more pole attachments, the replacement of existing poles with larger poles, and possibly an increase in the number of poles. We will also take comment on the range of pole attachments and services contemplated by WIA.

5. Order Instituting Rulemaking Proceeding

For the preceding reasons, we hereby institute a rulemaking proceeding pursuant to Pub. Util. Code § 1708.5. This Order Instituting Rulemaking (OIR) contains a preliminary scoping memo pursuant to Rule 7.1(d) of the Commission's Rules of Practice and Procedure (Rules) that sets forth the issues and schedule for this rulemaking proceeding, preliminarily determines the category of this proceeding and the need for hearings, and addresses other matters that are necessary to scope this proceeding.

5.1. Preliminary Scoping Memo

5.1.1. Scope

The scope of this rulemaking proceeding is to consider whether and how the Revised ROW Rules adopted by D.16-01-046 should be amended to encompass CLECs' wireless pole attachments. The following issues are within the scope of this proceeding:

1. Whether it is in the public interest to amend the Revised ROW Rules adopted by D.16-01-046 to encompass CLECs' wireless pole attachments.²¹
2. The specific amendments to the Revised ROW Rules that are necessary to provide nondiscriminatory access to utility ROW for CLECs' wireless pole attachments. Such amendments may include, but are not limited to, WIA's proposed amendments to the Revised ROW Rules in Appendix A of today's Order. The scope of potential amendments to the Revised ROW Rules is limited to CLECs' wireless pole attachments and any associated CLEC wireline attachments.

²¹ This OIR uses the following definition of "pole attachment" in the Revised ROW Rules adopted by D.16-01-046, Appendix A, Section II: "[A]ny attachment to surplus space, or use of excess capacity, by a telecommunications carrier or CMRS carrier for a communications system on or in any support structure owned, controlled, or used by a public utility." A "wireless" pole attachment is used for a "wireless" communications system.

3. The specific Commission authority that a CLEC must possess to install wireless pole attachments, such as (A) a certificate of public convenience and necessity (CPCN) to provide full facilities-based competitive local exchange service²²; (B) a CPCN to provide limited facilities-based competitive local exchange service²³; (C) an up-to-date Wireless Information Registration (WIR) to provide facilities-based CMRS on file at the Commission²⁴; and/or (D) a final environmental impact report, negative declaration, or other document(s) that may be required by the California Environmental Quality Act (CEQA)²⁵ for the installation of wireless pole attachments.
4. Just and reasonable fees for CLECs' wireless pole attachments, including specific amount(s), formula(s), or guideline(s) that reflect the space requirements and other characteristics of CLECs' wireless pole attachments.
5. Additional regulations that may be necessary, if any, to ensure that CLECs' wireless pole attachments are designed, constructed, operated, inspected, and maintained to (A) protect worker and public safety, and (B) preserve the reliability of co-located utility facilities (e.g., power lines and telephone lines). The scope of new regulations, if any, is limited to wireless pole attachments and any other facilities installed on poles due to the presence of wireless pole attachments.

²² See, for example, D.16-04-009 wherein the Commission granted a CPCN to 5 Bars, LLC, to provide full facilities-based local exchange service using Wi-Fi and distributed antenna service networks. (D.16-04-009, at 3.)

²³ See, for example, D.16-12-018 wherein the Commission granted a CPCN to Ridge Communications, Inc., to provide limited facilities-based local exchange service using distributed antenna service networks, among other facilities. (D.16-12-018, at 2. The first page of this decision mistakenly identifies the decision as D.12-06-018.)

²⁴ D.13-05-035, Attachment D, describes the process for filing a WIR and the required contents of a WIR. Among other things, a WIR to provide facilities-based CMRS must include the registrant's FCC Federal Registration Number and Universal Licensing System wireless call sign.

²⁵ CEQA is codified in Cal. Pub. Res. Code § 21000 *et seq.*

6. Certification of any adopted amendments to the Revised ROW Rules in accordance with 47 U.S.C. 224(c).

Consistent with Rule 6.3(a), any amendments to the Revised ROW Rules adopted in this rulemaking proceeding will apply prospectively. The scope of this proceeding excludes the contractual rates, terms, and conditions for existing pole attachments. The assigned Commissioner may refine the scope of this proceeding, as appropriate, in the scoping memo issued pursuant to Rule 7.3(a).

It is possible that the scope of this rulemaking proceeding could overlap with other proceedings that may be instituted by the Commission in the near future. Should overlap occur, this rulemaking proceeding may be consolidated with the other overlapping proceedings.

5.1.2. Category and Need for Hearings

Pursuant to Rule 7.1(d), we preliminarily determine that category for this rulemaking proceeding is quasi-legislative as that term is defined in Rule 1.3(d), and that there is no need for hearings in this proceeding. As permitted by Rule 6.2, parties may address these preliminary determinations in their written comments that are filed and served in accordance with the schedule set forth below. The assigned Commissioner will make a final determination regarding the category of this proceeding and the need for hearings in a scoping memo issued pursuant to Rules 7.1(d) and 7.3(a).

Pub. Util. Code § 1708.5(f) provides that “the commission may conduct any proceeding to adopt, amend, or repeal a regulation using notice and comment rulemaking procedures, without an evidentiary hearing, except with respect to a regulation being amended or repealed that was adopted after an evidentiary hearing, in which case the parties to the original proceeding shall retain any right to an evidentiary hearing accorded by Section 1708.” Because

the Commission adopted the ROW Rules in D.98-10-058 and the Revised ROW Rules in D.16-01-046 without an evidentiary hearing, Pub. Util. Code § 1708.5(f) allows the Commission to amend the Revised ROW Rules in the instant rulemaking proceeding without an evidentiary hearing. Nonetheless, today's Order allows parties to request an evidentiary hearing as set forth in Section 5.1.3 of today's Order. The assigned Commissioner may choose to hold a hearing, if warranted.

5.1.3. Schedule and Written Comments

The preliminary schedule for this rulemaking proceeding is set forth below. The schedule and procedures for this proceeding may be revised by the assigned Commissioner and/or the assigned Administrative Law Judge (ALJ) to develop an adequate record, afford due process, conduct this proceeding in an orderly and efficient manner, and achieve a fair resolution of this proceeding.

Preliminary Schedule for the Rulemaking Proceeding	
Event	Date (Measured from the Issuance Date of this OIR)¹
Combined Opening Comments and Prehearing Conference Statements Filed and Served	30 Days ²
Reply Comments Filed and Served	40 Days ²
Prehearing Conference (PHC)	To Be Determined
Workshops, Additional Written Comments, Briefs, Etc., If Appropriate	To Be Determined
Hearings, If Warranted	To Be Determined
Projected Submission Date (if applicable)	To Be Determined
¹ The issuance date is on the first page of this OIR, at the upper right corner. ² Day 30 and Day 40 are measured from the issuance date of this OIR. The issuance date is on the first page of this OIR, at the upper right corner.	

The assigned Commissioner and/or the assigned ALJ will schedule a PHC as soon as practicable. The combined opening comments and PHC statements due on Day 30 shall address the following matters:

1. The matters set forth in Rule 6.2, including any objections to the preliminary scoping memo regarding the category of this proceeding, need for hearings, issues to be considered, and/or the schedule. Comments that include factual assertions must be verified in accordance with Rule 1.11.
2. Whether it is in the public interest to apply the Revised ROW Rules adopted by D.16-01-046 for CMRS carriers' pole attachments to CLECs' wireless pole attachments.
3. The specific amendments to the Revised ROW Rules that are necessary to provide CLECs with nondiscriminatory access to utility ROW for wireless pole attachments. Such amendments may include, but are not limited to, WIA's proposed amendments in Appendix A of this Order.
 - A. WIA's proposed amendments to the text of the Revised ROW Rules use the term "CLEC", which is not defined in the Revised ROW Rules. Therefore, WIA's comments shall include proposed amendments to the text for the Revised ROW Rules that (i) define the term "CLEC,"²⁶ or (ii) use an already defined term.²⁷
4. A list and description all pole attachments covered by WIA's Petition, including (A) all wireline and wireless facilities and equipment; (B) the amount of pole space needed for such attachments; (C) the weight of such attachments; (D) the wind load of such attachments; and (E) the amount of pole space and pole

²⁶ By way of reference, the terms "competitive local carrier" and "local exchange carrier" are defined in D.95-12-056, Appendix C, Rules 3.A and 3.B.

²⁷ The Revised ROW Rules define the terms "telecommunications carrier" and "commercial mobile radio service carrier," but not the term "competitive local exchange carrier." (Revised ROW Rules, Section II.)

load-bearing capacity (weight and wind load) that will be needed for all elements of a typical CLEC wireless pole installation.

5. Whether existing Commission regulations for the design, construction, operation, inspection, and maintenance of CLECs' wireless pole attachments, such as GO 95, adequately protect public safety, worker safety, and the reliability of co-located utility pole attachments (e.g., power lines and telephone lines). If not, the party's comments shall provide the following information:
 - A. A detailed explanation regarding why existing regulations do not adequately protect safety and/or reliability.
 - B. Whether the asserted threat to public safety and/or reliability is disproportionately associated with CLEC wireless pole attachments and, if so, why?
 - C. Detailed proposal(s) to mitigate the threat(s), such as the text for a new GO 95 rule. The scope of new regulations, if any, is limited to wireless pole attachments and any other facilities installed on poles due to the presence of wireless pole attachments.

6. A list and description of the services that CLECs may offer to the public (including other communications carriers) using pole attachments that are installed pursuant to amended Revised ROW Rules that may be adopted in this proceeding. Such services might include, but are not limited to, the following:
 - A. Fixed wireless, point-to-multipoint service.
 - B. CMRS.
 - C. Wi-Fi service.
 - D. Broadband wireless internet access service.
 - E. Providing other carriers with access to, or interconnection with, wireless facilities and infrastructure.
 - F. Providing backhaul service for other wireless carriers.²⁸
 - G. Other wireless and wireline services (list and describe).

7. The specific Commission regulatory authority that a CLEC must possess to install wireless pole attachments pursuant to amended Revised ROW Rules that may be adopted in this proceeding, and an explanation as to why such regulatory authority is required. Such regulatory authority might include, for example, the following:
 - A. CPCN to provide full facilities-based competitive local exchange service or limited facilities-based local exchange service.
 - i. Must a CPCN include explicit authority to install wireless pole attachments? Please explain your response and cite relevant provisions in the California Public Utilities Code, Commission decisions, and other controlling legal authority.
 - B. An up-to-date WIR to provide facilities-based CMRS on file at the Commission.

²⁸ A description of backhaul service is provided in D.16-12-025, D.15-12-005, and Order Instituting Investigation 15-11-007.

from the CEQA and, if so, why. Any assertion that CEQA does not apply must cite the relevant statutes and/or regulations where the exemption is listed. Conversely, any assertion that CEQA does apply must (A) cite the relevant statutes and/or regulations that show this, and (B) list the steps that need to occur under CEQA before the Commission can amend the Revised ROW Rules.

11. Whether a hearing is needed. Any party that requests a hearing must (A) identify the disputed material facts, (B) summarize the evidence that the party intends to offer at a hearing, and (C) provide a schedule for all hearing-related events.
12. A proposed schedule for this proceeding, including all major events contemplated by the party such as additional written comments, workshops, workshop reports, mediation, discovery cutoff, evidentiary hearings and/or briefs, requests for oral argument, etc.
13. If not included in the response to Item 4, above, a description of all types of pole attachments installed by CLECs for “radiofrequency transport services,” an explanation of how those attachments differ – if at all – from the attachments that are the subject of Petition 16-08-016, and a best estimate of the number of California poles that currently have such attachments.³⁰
14. If not included in the response to Item 5, above, an explanation of whether pole attachments installed by CLECs for “radiofrequency transport services” present any additional or unique issues pertaining to safety or reliability.

³⁰ See, for example, D.03-01-061 (granting NextG Networks [now Crown Castle] authority to provide competitive local exchange services as a limited facilities-based carrier; D.06-01-006 (clarifying that NextG’s limited facilities-based CLEC authority “allowed it to engage in non-construction activities, including radiofrequency (“RF”) transport service, and the installation of microcells and antennas in or on existing utility poles”); and D.07-07-023 (granting NextG full facilities-based authority).

15. The estimated number of existing utility poles that will have CLEC wireless pole attachments installed over the next ten years (through 2027) as a result of this rulemaking proceeding.
16. The estimated number of existing utility poles that will have to be replaced with larger and/or stronger poles over the next ten years (through 2027), as a result of this rulemaking proceeding, in order to provide sufficient space and/or load-bearing capacity for CLECs' wireless pole attachments.
17. The estimated number of new utility poles (not replacement poles) that will be installed over the next ten years (through 2027), as a result of this rulemaking proceeding, by CLECs that have CPCNs to provide facilities-based local exchange services
18. Whether there is sufficient space and load-bearing capacity on the existing stock of utility poles to support ubiquitous, competitive, and affordable telecommunications services, including wireline services, wireless services, and broadband.
19. Whether the provisions of the ROW Rules that require CLECs, CMRS carriers, and CATV corporations to pay for most, if not all, of the cost of replacing existing poles with stronger and/or larger poles to support additional telecommunications attachments pose a barrier to entry.
20. Whether the provisions of the ROW Rules that provide access to surplus space on public utility poles (and other public utility ROW) on a first come, first served basis are a barrier to achieving the State's goal of universal access to affordable, high quality broadband telecommunications services.
21. Whether urban streetscapes can accommodate more pole attachments, the replacement of existing poles with larger poles, and possibly more poles.
22. Any other matters that are relevant to the scope, schedule, and/or conduct of this rulemaking proceeding.

To receive service of comments and reply comments, persons should request to be added to the Official Service List for this proceeding as described in Section 5.1.7 of today's Order.

Pursuant to Pub. Util. Code § 1708.5(f), the Commission may conduct this proceeding using notice and comment rulemaking procedures. Therefore, the comments and reply comments due on Day 30 and Day 40,³¹ respectively, may constitute the record used by the Commission to decide matters within the scope of this proceeding. Parties should include in their comments and reply comments all legislative facts and other information they want the Commission to consider in this proceeding, as there may not be another opportunity for parties to present such information to the Commission.

Consistent with Pub. Util. Code § 1701.5(a), we intend to complete this proceeding within 18 months from the date this proceeding was initiated. The final schedule for this proceeding will be established by the assigned Commissioner in a scoping memo issued pursuant to Rule 7.3(a). In accordance with § 1701.5(b), the scoping memo may establish a completion date for this proceeding that is later than 18 months from the date this proceeding was initiated if the scoping memo includes specific reasons for the necessity of a later date and the assigned Commissioner approves the later date.

5.1.4. Public Notice of Workshops

Any workshops in this proceeding shall be open to the public and noticed on the Commission's Daily Calendar. Said notice shall inform the public that a decisionmaker or an advisor may be present at the workshop. Parties shall check the Daily Calendar regularly for such notices.

³¹ Day 30 and Day 40 are measured from the issuance date of today's Order. The issuance date is shown on the first page of this Order, at the upper right corner.

5.1.5. Ex Parte Communications

This rulemaking proceeding is preliminarily categorized as quasi-legislative. In a quasi-legislative proceeding, *ex parte* communications with the assigned Commissioner, other Commissioners, their advisors, and the ALJ are permitted without restriction or reporting as described in Pub. Util. Code § 1701.4(c) and Article 8 of the Commission's Rules.

Pursuant to Rule 8.5(b), the applicable rules for *ex parte* communications in a quasi-legislative proceeding apply until the date of the assigned Commissioner's scoping memo that finalizes the proceeding's category pursuant to Rule 7.3(a). The assigned Commissioner's scoping memo establishes the applicable rules for *ex parte* communications beginning on the date the scoping memo is issued.

5.1.6. Intervenor Compensation

Pursuant to Pub. Util. Code § 1804(a)(1) and Rule 17.1, a customer who intends to seek an award of compensation must file and serve a notice of intent to claim compensation no later than 30 days after the date of the PHC.

5.1.7. Official Service List

The Official Service List for Petition 16-08-016 shall be the initial Official Service List for the rulemaking proceeding instituted by this Order. Thus, any person or entity that is listed in the Party category, State Service category, or Information Only category on the Official Service List for Petition 16-08-016 will transfer to the same category on the Official Service List for this rulemaking proceeding. Henceforth, additions to the Party category on the Official Service List for this rulemaking proceeding shall be governed by Rule 1.4.

Persons who are not parties but wish to receive electronic service of documents filed in this proceeding may contact the Commission's Process Office

at process_office@cpuc.ca.gov for placement on the Official Service List pursuant to Rule 1.9(f) in the “Information Only” category or “State Service” category, as appropriate.

The Official Service List for this rulemaking proceeding is available on the Commission's web site. Each person and entity on the Official Service List is responsible for ensuring that their information on the Official Service List is correct and up-to-date. This information can be corrected and updated by sending an e-mail to the Process Office and everyone on the Official Service List.

5.1.8. Filing and Serving Documents

Information about procedures for electronic filing of documents at the Commission is available at www.cpuc.ca.gov/PUC/efiling. All documents formally filed with the Commission’s Docket Office must include the Docket Office’s approved caption for this rulemaking proceeding.

This proceeding will follow the electronic service protocols in Rule 1.10. All parties in this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m. on the date scheduled for service.³² Additionally, Rule 1.10 requires service on the assigned ALJ of both an electronic copy and a paper copy of documents that are filed and/or served.

When serving a document, each party must use the current Official Service List on the Commission's website. The format of served documents must comply with the requirements in Rules 1.5 and 1.6.

³² If no e-mail address is provided, service should be made by first class mail. Parties are expected to provide paper copies of served documents upon request.

The assigned Commissioner and/or the assigned ALJ may establish additional requirements for filing and/or serving documents in this proceeding.

5.1.9. Discovery

Discovery may be conducted by parties consistent with Article 10 of the Commission's Rules. Any party issuing or responding to a discovery request shall serve a copy of the request or response simultaneously on all parties.

Discovery requests and responses shall not be served on the assigned ALJ.

Electronic service under Rule 1.10 is sufficient, except Rule 1.10(e) does not apply to the service of discovery requests and responses. Deadlines for responses may be determined by the parties. Motions to compel or limit discovery shall comply with Rule 11.3.

5.1.10. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures may obtain more information by visiting the Commission's website at <http://consumers.cpuc.ca.gov/pao>; by e-mailing the Commission's Public Advisor at public.advisor@cpuc.ca.gov; or by calling the Public Advisor at 866-849-8390, 415-703-2074, or 866-836-7825 (TTY).

5.1.11. Service of this OIR

In order to notify those who might be affected by, or subject to, the amendments to the Revised ROW Rules that may be adopted in this rulemaking proceeding, we will direct the Commission's Executive Director to serve a notice of availability of this OIR on the following:

- The service lists for Petition 16-08-016 and Rulemaking 14-05-001.
- All CLECs that have a CPCN issued by the Commission to provide full facilities-based or limited facilities-based local exchange service.

- All CMRS carriers that have a CPCN or WIR to provide facilities-based CMRS.
- All California counties, incorporated cities, and incorporated towns, to the extent practical.

Such service does not confer party status in this rulemaking proceeding or result in any person or entity being added to the service list for this proceeding.

5.1.12. Compliance with Section 1711(a)

Cal. Pub. Util. Code § 1711(a) states:

Where feasible and appropriate, except for adjudication cases, before determining the scope of the proceeding, the commission shall seek the participation of those who are likely to be affected, including those who are likely to benefit from, and those who are potentially subject to, a decision in that proceeding. The commission shall demonstrate its efforts to comply with this section in the text of the initial scoping memo of the proceeding.

Petition 16-08-016 was served on the service lists for Petition 16-07-009 and R.14-05-001. Notice of Petition 16-08-016 appeared in the Commission's Daily Calendar on August 31, 2016. Today's Order directs the Executive Director to serve an notice of availability of this OIR on (A) the service lists for Petition 16-07-009 and Rulemaking 14-05-001; (B) all CLECs that have a CPCN to provide full facilities-based or limited facilities-based local exchange service; (C) all CMRS carriers that have a CPCN or WIR to provide facilities-based CMRS; and (D) all California counties, incorporated cities, and incorporated towns, to the extent practical. We find that the aforementioned service and notice of Petition 16-08-016, together with the aforementioned service of the notice of availability of this OIR, satisfy the requirements of Cal. Pub. Util. Code § 1711(a) with respect to the Preliminary Scoping Memo for this rulemaking proceeding.

6. Comments on the Proposed Order

The proposed order in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed pursuant to Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on _____, by _____. Reply comments were filed on _____, by _____.

7. Assignment of the Proceeding

For Petition 16-08-016, Michael Picker is the assigned Commissioner and Timothy Kenney is the assigned ALJ.

Findings of Fact

1. The ROW Rules adopted by D.98-10-058 provide CLECs and CATV corporations with nondiscriminatory access to public utility ROW for the purpose of installing (a) wireline pole attachments, and (b) facilities for the provision of fixed wireless, point-to-multipoint communication service by certificated local exchange carriers.

2. The Revised ROW Rules adopted by D.16-01-046 provide CMRS carriers with nondiscriminatory access to public utility ROW for the purpose of installing wireless pole attachments and associated wireline backhaul facilities.

3. D.98-10-058 allows public utilities to charge each CLEC and CATV pole installation an annual attachment fee equal to 7.4 percent of a utility's cost-of-ownership for the host pole. D.16-01-046 allows public utilities to charge an annual pole-attachment fee of 7.4 percent for each foot of vertical pole space occupied by CMRS pole installations.

4. The Commission has elected to regulate pole attachments under California state law pursuant to 47 U.S.C. 224(c).

5. Extending the Revised ROW Rules to CLECs' wireless pole attachments would advance the State's policy objectives set forth in Cal. Pub. Util. Code § 709.

6. Petition 16-08-016 was served on the service lists for Petition 16-07-009 and Rulemaking 14-05-001. Notice of Petition 16-08-016 appeared in the Commission's Daily Calendar on August 31, 2016.

Conclusions of Law

1. The Commission has authority under the California Public Utilities Code to extend the Revised ROW Rules to CLECs' wireless pole attachments.

2. It is in the public interest to institute a rulemaking proceeding to consider if the Revised ROW Rules adopted by D.16-01-046 should apply to CLECs' wireless pole attachments.

3. Petition 16-08-016 should be granted.

4. The Executive Director should serve a notice of availability of this OIR on (A) the service lists for Petition 16-08-016 and Rulemaking 14-05-001; (B) all competitive local exchange carriers that have a CPCN issued by the Commission to provide full facilities-based or limited facilities-based local exchange service; (C) all CMRS carriers that have a CPCN or WIR issued by the Commission to provide facilities-based CMRS; and (D) all California counties, incorporated cities, and incorporated towns, to the extent practical.

5. The requirements of Cal. Pub. Util. Code § 1711(a) with respect to the Preliminary Scoping Memo for this rulemaking proceeding are satisfied by (A) the service of Petition 16-08-016, (B) the notice of the Petition 16-08-016 in the Daily Calendar, and (C) the service of a notice of availability of this OIR as set forth in the previous Conclusion of Law.

6. The following Order should be effective immediately to ensure compliance with the six-month statutory deadline for concluding this proceeding set forth in Cal. Pub. Util. Code § 1708.5(b).

O R D E R

IT IS ORDERED that:

1. A rulemaking proceeding is instituted to consider if the revised Right-of-Way Rules (Revised ROW Rules) adopted by Decision 16-01-046 for commercial mobile radio service (CMRS) carriers should apply to competitive local exchange carriers' (CLECs') wireless pole attachments. The following issues are within the scope of this proceeding:

- A. Whether it is in the public interest to amend the Revised ROW Rules adopted by D.16-01-046 to apply to CLECs' wireless pole attachments.
- B. The specific amendments to the Revised ROW Rules that are necessary to provide nondiscriminatory access to public utility ROW for CLECs' wireless pole attachments. Such amendments may include, but are not limited to, the proposed amendments to the Revised ROW Rules in Appendix A of this Order. The scope of potential amendments to the Revised ROW Rules is limited to CLECs' wireless pole attachments and any associated CLEC wireline attachments.
- C. The specific Commission authority that a CLEC must possess to install wireless pole attachments, such as (i) a certificate of public convenience and necessity (CPCN) to provide full facilities-based competitive local exchange service; (ii) a CPCN to provide limited facilities-based competitive local exchange service; (iii) an up-to-date Wireless Information Registration to provide facilities-based CMRS on file at the Commission; and/or (iv) a final environmental impact report, negative declaration, or other document(s) required by the California Environmental Quality Act.

- D. Just and reasonable fees for CLECs' wireless pole attachments, including specific amount(s), formula(s), or guideline(s) for CLECs' pole-attachment fees.
 - E. Additional regulations that may be necessary, if any, to ensure that CLECs' wireless pole attachments are designed, constructed, operated, inspected, and maintained to (i) protect worker safety and public safety, and (ii) preserve the reliability of co-located utility facilities (e.g., power lines and telephone lines). The scope of new regulations, if any, is limited to wireless pole attachments and any other facilities installed on poles due to the presence of wireless pole attachments.
 - F. Certification of the adopted amendments to the Revised ROW Rules, if any, in accordance with Title 47 of the United States Code, Section 224(c).
2. The assigned Commissioner may refine the scope of the rulemaking proceeding instituted by this Order.
3. The preliminary category for this rulemaking proceeding is quasi-legislative as that term is defined in Rule 1.3(d) of the Commission's Rules of Practice and Procedure. There is no preliminary need for an evidentiary hearing in this rulemaking proceeding.
4. The preliminary schedule for this rulemaking proceeding is set forth in Section 5.1.3 of this Order. The assigned Commissioner and/or the assigned Administrative Law Judge may modify the proceeding schedule and procedures, as they deem necessary, to develop an adequate record, afford due process, conduct this proceeding in an orderly and efficient manner, and achieve a fair resolution of this proceeding.

5. Until the date of the assigned Commissioner's scoping memo that finalizes the category of this proceeding pursuant to Rule 7.3 of the Commission's Rules of Practice and Procedure (Rules), ex parte communications are permitted in this rulemaking proceeding without restriction or reporting as described in Public Utilities Code Section 1701.4(c) and Article 8 of the Rules.

6. The Executive Director shall serve a notice of availability of this Order Instituting Rulemaking on (A) the service lists for Petition 16-08-016 and Rulemaking 14-05-001; (B) all competitive local exchange carriers that have a certificate of public convenience and necessity (CPCN) issued by the Commission to provide full facilities-based or limited facilities-based local exchange service; (C) all commercial mobile radio service (CMRS) carriers that have a CPCN or a Wireless Information Registration issued by the Commission to provide facilities-based CMRS; and (D) all California counties, incorporated cities, and incorporated towns, to the extent practical. Service of this Order does not confer party status or placement on the Official Service List for this rulemaking proceeding.

7. The Official Service List for Petition 16-08-016 shall constitute the initial Official Service List for the rulemaking proceeding instituted by this Order. Henceforth, additions to the Party category on the Official Service List for this rulemaking proceeding shall be governed by Rule 1.4 of the Commission's Rules of Practice and Procedure. Additions to the State Service and Information Only categories shall be governed by Rule 1.9(f).

8. Any person may file opening comments and/or reply comments in accordance with (A) the schedule in Section 5.1.3 of this Order, and (B) the Commission's Rules of Practice and Procedure. The scope of the comments is set forth Section 5.1.3 of this order.

9. The deadline in this rulemaking proceeding to file and serve notices of intent to claim intervenor compensation is 30 days after the date of the prehearing conference.

10. Petition 16-08-016 is granted.

11. Petition 16-08-016 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A: WIA's Proposed Amendments to the Revised ROW Rules

**WIA's Proposed Changes to
Commission-Adopted Rules Governing Access to Rights-of-Way and Support
Structures of Incumbent Telephone and Electric Utilities, Section VI(B)**

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**For 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 be used 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 CLEC wireless attachments is subject to the following conditions and limitations:

- (i) **The vertical pole space occupied by each CLEC 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 CLEC wireless pole attachment renders unusable for non-CLEC wireless pole attachments, including (A) the pole space that is physically occupied by the CLEC 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 CLEC wireless pole attachment.**
- (iii) **The 7.4% per-foot fee applies to CLEC 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 CLEC 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 CLEC 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.

(END OF APPENDIX A)