

ALJ/TRP/tcg

Decision 95-11-074

**ORIGINAL**

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

Order Instituting Rulemaking on the  
Commission's Own Motion Into Competition for  
Local Exchange Service.

Rulemaking 95-04-043  
(Filed April 26, 1995)

Order Instituting Investigation on the  
Commission's Own Motion Into Competition for  
Local Exchange Service.

Investigation 95-04-044  
(Filed April 26, 1995)

**ORDER CORRECTING ERRORS  
IN DECISION (D.) 98-10-058**

This order corrects certain errors which inadvertently appear in Decision 98-10-058, regarding the Commission's rules for access to rights of way by telecommunications carriers and cable television companies. The correction of errors all relate to Appendix A of the order which sets forth the adopted rules. The errors to be corrected are enumerated below, and the amended pages providing the corrected language are appended to this order.

**Summary of Corrections**

The language in Rule II.C (DEFINITIONS) is amended to insert the words "or a cable TV company" on line 2 in order to accurately define the applicability of the rules relating to pole attachments.

The language in Rule IV.B.3 (RESPONSES TO REQUESTS FOR ACCESS) is amended to be consistent with the language appearing in Conclusion of Law 4 of the decision which makes reference to carriers' obtaining "the necessary access and/or use rights from the underlying property owner(s)."

The language in Rule VI.D (UNAUTHORIZED ATTACHMENTS) is amended as follows:

In Rule VI.D.1, the word "parties" is deleted and substituted with the words "telecommunications carrier or cable TV company." This revision more specifically defines which entities are covered under the rule's provision.

In Rule VI.D.3, the sentence is corrected to insert the following words that were inadvertently omitted. On line 5, after the word "attaching," a period is inserted, followed by the words: "Any Commission order imposing such sanctions..." The remaining portion of the sentence is unchanged.

### ORDER

IT IS ORDERED that:

1. Decision (D,) 98-10-058, Appendix A, is amended to incorporate the revised pages attached to this order.
2. The revised pages shall supersede the previous version of the these pages issued as part of Appendix A of D.98-10-058.

Dated NOV 25 1998, at San Francisco, California.

  
WESLEY M. FRANKLIN  
Executive Director

## I. PURPOSE AND SCOPE OF RULES

A. These rules govern access to public utility rights-of-way and support structures by telecommunications carriers and cable TV companies in California, and are issued pursuant to the Commission's jurisdiction over access to utility rights of way and support structures under the Federal Communications Act, 47 U.S.C. § 224(c)(1) and subject to California Public Utilities Code §§ 767, 767.5, 767.7, 768, 768.5 and 8001 through 8057. These rules are to be applied as guidelines by parties in negotiating rights of way access agreements. Parties may mutually agree on terms which deviate from these rules, but in the event of negotiating disputes submitted for Commission resolution, the adopted rules will be deemed presumptively reasonable. The burden of proof shall be on the party advocating a deviation from the rules to show the deviation is reasonable, and is not unduly discriminatory or anticompetitive.

## II. DEFINITIONS

- A. "Public utility" or "utility" includes any person, firm or corporation, privately owned, that is an electric, or telephone utility which owns or controls, or in combination jointly owns or controls, support structures or rights-of-way used or useful, in whole or in part, for telecommunications purposes.
- B. "Support structure" includes, but is not limited to, a utility distribution pole, anchor, duct, conduit, manhole, or handhole.
- C. "Pole attachment" means any attachment to surplus space, or use of excess capacity, by a telecommunications carrier or cable TV company for a communications system on or in any support structure owned, controlled, or used by a public utility.
- D. "Surplus space" means that portion of the usable space on a utility pole which has the necessary clearance from other pole users, as required by the orders and regulations of the Commission, to allow its use by a telecommunications carrier for a pole attachment.

3. If the utility does not own the property on which its support structures are located, the telecommunication carrier or cable TV company must first obtain the necessary access and/or use rights from the underlying owner of that property before attaching or installing its facilities. The telecommunication carrier or cable TV company by using such facilities shall defend and indemnify the owner of the utility facilities, if its franchise or other rights to use the real property are challenged as a result of the telecommunication carrier's or the cable TV company's use or attachment.

#### B. TIME FOR COMPLETION OF MAKE READY WORK

1. If a utility is required to perform make ready work on its poles, ducts or conduit to accommodate a carrier's or a cable TV company's request for access, the utility shall perform such work at the requesting entity's sole expense. Such work shall be completed as quickly as possible consistent with applicable legal, safety, and reliability requirements, which, in the case of Pacific or GTEC shall occur within 30 business days of receipt of an advance payment for such work. If the work involves more than 500 poles or 5 miles of conduit, the parties will negotiate a mutually satisfactory longer time frame to complete such make ready work.

#### C. USE OF THIRD PARTY CONTRACTORS

1. The ILEC shall maintain a list of contractors that are qualified to respond to requests for information and requests for access, as well as to perform make ready work and attachment and installation of wire communications or cable TV facilities on the utility's support structures. This requirement shall not apply to electric utilities. This requirement shall not affect the discretion of a utility to use its own employees.
  - c. A telecommunications carrier or cable TV company may use its own personnel to attach or install the carrier's communications facilities in or on a utility's facilities, provided that in the utility's reasonable judgment, the carrier's or cable TV company's personnel or agents demonstrate that they are trained and qualified to work on or in the utility's facilities. To use its own personnel or contractors on electric utility poles, the

### C. CONTRACTS

1. A utility that provides or has negotiated an agreement with a telecommunications carrier or cable TV company to provide access to its support structures shall file with the Commission the executed contract showing:
  - a. The annual fee for attaching to a pole and supporting anchor.
  - b. The annual fee per linear foot for use of conduit.
  - c. Unit costs for all make ready and rearrangements work.
  - d. All terms and conditions governing access to its rights of way and support structures.
  - e. The fee for copies or preparation of maps, drawings and plans for attachment to or use of support structures.
2. A utility entering into contracts with telecommunications carriers or cable TV companies or cable TV company for access to its support structures, shall file such contracts with the Commission pursuant to General Order 96, available for full public inspection, and extended on a nondiscriminatory basis to all other similarly situated telecommunications carriers or cable TV companies. If the contracts are mutually negotiated and submitted as being pursuant to the terms of 251 and 252 of TA 96, they shall be reviewed consistent with the provisions of Resolution ALJ-174.

### D. Unauthorized Attachments

1. No telecommunications carrier or cable TV company may attach to the right of way or support structure of another utility without the express written authorization from the utility.
2. For every violation of the duty to obtain approval before attaching, the owner or operator of the unauthorized attachment shall pay to the utility a penalty of \$500 for each violation. This fee is in addition to all other costs which are part of the attacher's responsibility. Each unauthorized pole attachment shall count as a separate violation for assessing the penalty.

3. Any violation of the duty to obtain permission before attaching shall be cause for imposition of sanctions as, in the Commissioner's judgment, are necessary to deter the party from in the future breaching its duty to obtain permission before attaching. Any Commission order imposing such sanctions will be accompanied by findings of fact that permit the pole owner to seek further remedies in a civil action.
4. This Section D applies to existing attachments as of the effective date of these rules.

#### VII. RESERVATIONS OF CAPACITY FOR FUTURE USE

- A. No utility shall adopt, enforce or purport to enforce against a telecommunications carrier or cable TV company any "hold off," moratorium, reservation of rights or other policy by which it refuses to make currently unused space or capacity on or in its support structures available to telecommunications carriers or cable TV companies requesting access to such support structures, except as provided for in Part C below.
  - B. All access to a utility's support structures and rights of way shall be subject to the requirements of Public Utilities Code § 851 and General Order 69C. Instead of capacity reclamation, our preferred outcome is for the expansion of existing support structures to accommodate the need for additional attachments.
- A. Notwithstanding the provisions of Paragraphs VII.A and VII.B, an electric utility may reserve space for up to 12 months on its support structures required to serve core utility customers where it demonstrates that: (i) prior to a request for access having been made, it had a bona fide development plan in place prior to the request and that the specific reservation of attachment capacity is reasonably and specifically needed for the immediate provision (within one year of the request) of its core utility service, (ii) there is no other feasible solution to meeting its immediately foreseeable needs, (iii) there is no available technological means of increasing the capacity of the support structure for additional attachments, and (iv) it has attempted to negotiate a cooperative solution to the capacity problem in good faith with the party