

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

Order Instituting Investigation into the  
Creation of a Shared Database or Statewide  
Census of Utility Poles and Conduit in  
California

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And Related Matters

Investigation 17-06-027  
(Filed June 29, 2017)

Rulemaking 17-06-028  
Rulemaking 17-03-009

**COMMENTS OF CTIA  
ON CREATION OF SHARED, STATEWIDE DATABASE  
OF UTILITY POLE AND CONDUIT INFORMATION**

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Pursuant to the Assigned Commissioner and Assigned Administrative Law Judge’s Ruling Requesting Comments on Creation of Shared Statewide Database of Utility Pole and Conduit Information issued in the above-captioned proceeding on January 11, 2018 (“Ruling”), CTIA submits the following comments.

**I. INTRODUCTION**

CTIA acknowledges the importance of the two overarching interests that the Commission is striving to promote through this proceeding – the safety of, and competitive access to, utility infrastructure.<sup>1</sup> In pursuit of these interests, the Order Instituting Investigation (“OII”) requested stakeholders’ input on strategies or models that the Commission should pursue to “achieve the

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<sup>1</sup> See Order Instituting Investigation into the Creation of a Shared Database or Statewide Census of Utility Poles and Conduit, I. 17-06-027 / Order Instituting Rulemaking into Access by Competitive Communications Providers to California Utility Poles and Conduit, R. 17-06-028 (July 29, 2017) (“OII”/“OIR”), p. 1 (“We open this proceeding to consider strategies for increased and non-discriminatory access to poles and conduit by competitive communications providers, the impact of such increased access on safety, and how best to ensure the integrity of the affected communications and electric supply infrastructure going forward.”).

most efficient, accurate, and comprehensive access to pole and conduit data possible, in a form which is most easily usable and transparent to Commission staff” and, potentially, to “existing stakeholders and potential new market entrants in the future.”<sup>2</sup>

However, despite the OII’s clear intent to consider a variety of strategies for ensuring “efficient [and] accurate” access to pole information by Commission staff and market participants, the Ruling, through its presentation of a detailed Staff Proposal on the information fields that would populate a statewide cross-utility pole inventory database, appears to presuppose its creation. It does so without any analysis or determination that such a database would meaningfully promote the safety and competitive access goals set forth in the OII. Indeed, as will be discussed below, the record to date indicates that such a database may not provide Commission Staff the “most efficient [and] accurate” access to pole and conduit data, and that the use of a database to promote competitive access is questionable, if not counterproductive.

Prior to proceeding with database design, the Commission should undertake a thorough analysis of whether a database would materially promote the stated goals of the OII / OIR or whether there are alternate strategies the Commission should pursue. As part of this analysis, the Commission should take into account other foundational issues that have been raised by parties to date, including the security concerns implicated by the creation of a statewide cross- utility pole inventory database and the feasibility of creating and maintaining such a database.

## **II. THE COMMISSION DEPARTS FROM THE INTENT OF THE OII BY PRESUPPOSING THE CREATION OF A DATABASE**

The intended purpose of the OII is clear. The Commission stated its intent to “*investigate the feasibility*” of a data management platform that would allow stakeholders to share key pole

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<sup>2</sup> See OII /OIR, p. 34.

attachment and conduit information.”<sup>3</sup> The Ruling appears to stray from that purpose.

By setting forth a proposed, far-reaching set of database fields without first determining the feasibility and efficacy of a database, the Ruling appears to sidestep an investigation of the feasibility and efficacy of a database and advances straight to database design. This is not consistent with the intent of the OII. Nor is it consistent with sound regulatory practices that dictate the Commission, prior to determining that the state’s utility industries should embark on the creation of a statewide cross-utility pole inventory data base, must consider the numerous issues raised by stakeholders regarding the usefulness and feasibility of such a database. These issues include: (1) an examination of whether and how the database would materially promote the stated goals of the OII regarding safety and competitive access; (2) the security concerns implicated by the collection of information on all of the state’s electric utility and communications infrastructure in a single database; (3) the competitive implications of competitors having access to information on each other’s network facilities installation; and (4) the practicability of creating and maintaining such a database. Moreover, the Commission should not foreclose discussion of steps, other than the creation of a database, that can be taken to advance the goals of the OII. The record in this proceeding should be developed in a manner that addresses all of these issues prior to the Commission reaching a determination regarding the creation of a statewide cross-utility pole inventory database and the appropriate information fields with which it should be populated.

### **III. RESPONSES TO QUESTIONS**

#### **A. The Proposed Database Fields Will Neither Promote Safety nor Competitive Access**

withFor example, pole attachers generally need pole-specific information about the (1) location,

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<sup>3</sup> *Id.*, p. 1 (emphasis added).

(2) available capacity, and (3) safety information (e.g., pole loading and intrusive test data) of poles to prepare pole attachment applications. All such information is currently available from pole and is provided upon request. However, even if a database existed, an attacher could not assume that the database information was up-to-date and would need to contact the pole owner to ensure the receipt of the most recent information (which is the process used today). In other words, the database would have little practical value with respect to facilitating competitive access.

Similarly, as discussed in more detail below, it is unclear from a safety perspective what usefulness a The Electric and Reliability Branch of the Commission's Safety and Enforcement Division ("SED"), charged with ensuring the safety of all overhead and underground electric and communications line construction in California,<sup>4</sup> has stated that:

So we have not seen, to our – for our point of view, in terms of enforcing safety regulations, a great need for a centralized database.

We don't need to know where 4 and half million poles are. There just has not been a need for us to know where all poles are, unless an issue arises specific to a circuit or a specific geographic area, in which case we get current information about the poles as we need it.<sup>5</sup>

Before proceeding with database design and creation, the Commission must ensure that it would yield clear benefits consistent with the goals of the OII – i.e., enhancement of pole safety and the promotion of competitive access. CTIA does not believe that, at present, the record contains evidence of benefits sufficient to support the creation of a statewide cross-industry pole inventory database. At minimum, additional analysis is needed.

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<sup>4</sup> See <http://cpuc.ca.gov/General.aspx?id=7659>.

<sup>5</sup> OII / OIR Prehearing Conference Transcript (December 5, 2017), pp. 25 and 26 (statements of Charlotte Terkeurst, Program Manager of the Electric Safety and Reliability Branch of SED).

**B. The Sensitive, Confidential Nature of Data Proposed for Insertion into the Database Raises Serious Concerns Pertaining to Cybersecurity, Critical Infrastructure Security, and Competition**

The Ruling’s query as to the confidential nature of individual information categories<sup>6</sup> overlooks the broader confidentiality and security concerns raised by collecting information on all of the state’s pole-mounted communications and electric infrastructure in one place. Focusing on the confidential nature of individual pieces of data, while important, does not address the host of issues that could arise from the sharing of information between and among pole owners and attachers. Consolidating and/or making available detailed information about all pole-mounted electric and communications infrastructure in a single database raises significant cybersecurity, critical infrastructure security, and, potentially, competitive concerns. These concerns were raised previously in CTIA’s August 21, 2017 comments in this proceeding<sup>7</sup> (as well as in the comments of other stakeholders),<sup>8</sup> and at the December 5, 2017 prehearing conference.<sup>9</sup>

**C. The Database Will Not Promote Safety or Competitive Access, so Database Fields Essential to Accomplishing the Commission’s Safety, Competition, and Access Goals Cannot be Identified**

The Ruling states that the Staff Proposal “relates to the data fields that might be useful to industry participants and the Commission, from safety, competition, and access perspectives”<sup>10</sup> and asks parties which of the fields are most essential to accomplish these goals. It is not readily

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<sup>6</sup> See Ruling, p. 1.

<sup>7</sup> See Opening Comments and Prehearing Conference Statement of CTIA, I. 17-06-027 (August 21, 2017), pp. 4–6.

<sup>8</sup> See, e.g., Phase I Combined Opening Comments and Prehearing Conference Statement of the California Cable and Telecommunications Association, I. 17-06-027 (August 21, 2017), pp. 4, 7–8, and 9; Phase I Combined Opening Comments and Prehearing Conference Statement of the California Municipal Utilities Association, I. 17-06-027 (August 21, 2017), p. 4.

<sup>9</sup> See, e.g., OII / OIR Prehearing Conference Transcript (December 5, 2017), pp. 30–31, 59, and 60.

<sup>10</sup> Ruling, p. 1.

apparent, nor has the Commission yet analyzed, whether a centralized database is necessary to achieve, or even meaningfully promote, the safety or competitive access goals of the OII.

It is unclear whether or how a statewide cross-utility pole inventory database would enhance safety. General Order 95, along with General Order 165, comprehensively regulate the installation, inspection, and maintenance of poles and attachments. SED has authority to audit any utility to ensure compliance. As referenced above, SED has stated that it does not see a need for a centralized database.<sup>11</sup> SED's practice when it requires information about a specific pole is to contact the owner. By doing so, SED is able to receive the most current information on the pole. This practice has worked for SED.<sup>12</sup>

Likewise, the value of a statewide cross-utility pole inventory database for the promotion of competitive access is not readily apparent. The current practices used to obtain information necessary to complete and submit an attachment application have been generally effective. For example, AT&T noted:

[T]here is no evidence that AT&T California's current attachment application process impairs competitive access. AT&T California processes attachment applications for tens of thousands of poles and over a million feet of conduit annually. Over the past four years, AT&T California has approved more than 82,000 pole attachments and 5.5 million feet of conduit access pursuant to 173 different structure access agreements in California. And despite all that activity, very few attachers have voiced complaints.<sup>13</sup>

Similarly, PG&E noted that in the past two years it had a mean response time of 37 days for

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<sup>11</sup> See OII / OIR Prehearing Conference Transcript (December 5, 2017), pp. 25–26.

<sup>12</sup> *Id.*, p. 25 (“Our practice is when we have – we need information about specific poles, we contact the pole owners and get it. And we have not had a problem doing that so far.”)

<sup>13</sup> Opening Comments and Prehearing Conference Statement of AT& on Phase I of Pole Attachment OII, I. 17-06- 027 (August 21, 2017) (“AT&T Comments”), pp. 7–8.

processing attachment applications.<sup>14</sup> With this in mind, it bears noting that the Commission has yet to engage in any discussion of how the costs of creating and maintaining a statewide cross-utility pole inventory database will be allocated. If such costs fall, even in part, to attachers who may see little benefit from database creation, it will not serve the intended purpose of promoting competitive access.

Moreover, the general efficacy of the current application process is facilitated by steps the Commission has already taken to help secure the timely processing of attachment applications. For example, the Commission's Right-of-Way Rules impose deadlines on incumbent local exchange companies ("ILECs") to process requests for access.<sup>15</sup> The Commission has also adopted rules to ensure that pole owners and tenants cooperate with one another and share relevant information in connection with pole attachments. For example, General Order 95, Rule 44, requires that, for the purpose of performing the load calculations necessary to determine whether an attachment to an existing pole can be safely made, all entities on the subject pole (i.e., the owner and all attachers on the pole) must promptly<sup>16</sup> provide to the proposed attacher all information necessary to perform the calculation. Similarly, Rule 31.4 requires electric utilities and telecommunications carriers, when undertaking new construction or reconstruction, to cooperate with one another to ensure that their facilities do not conflict in a manner that creates a safety hazard. Further, the Commission recently approved a modification

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<sup>14</sup> See OII / OIR Prehearing Conference Transcript (December 5, 2017), p. 56. While the application processing time described by PG&E appears, without further review of the details, reasonable, CTIA also supports Verizon's comments urging the Commission to reassess certain presumptions regarding regulation of investor owned utilities ("IOUs") relative to attachment of communications facilities to IOU poles. See *infra* p. 9.

<sup>15</sup> See, e.g., Rules Governing Access to Rights-of-Way and Support Structures of Incumbent Telephones and Electric Utilities ("ROW Rules"), Section IV.B.1.

<sup>16</sup> "Promptly" is defined in General Order 95, Rule 44.4 to mean "as soon as practicable but, absent exigent circumstances or mutual agreement, no more than fifteen (15) business days from the date of the request."

to Rule 38 of General Order 95, governing minimum clearances between wires, that requires “[t]he utilities of interest (including electric supply and/or communication companies) shall cooperate and provide relevant information for sag calculations for their facilities, upon request.”<sup>17</sup>

The Commission can take other actions besides the creation of a statewide cross-utility pole inventory database in order to facilitate competitive access. Parties to the proceeding have made various proposals aimed removing barriers to broadband deployment that the Commission should consider. For example, Verizon proposed that the Commission re-assess the provision of the Commission’s current Right-of-Way Rules that allows investor owned electric utilities (“IOUs”) to reserve space on their own poles.<sup>18</sup> As Verizon pointed out, the Commission’s rationale for allowing the reservation of space – i.e., that IOUs have not been in direct competition with competitive local exchange carriers and therefore the anticompetitive concerns regarding ILECs’ ability to favor themselves at the expense of competitive local exchange carriers (“CLECs”) were not applicable to IOUs<sup>19</sup> – may no longer hold. PG&E’s recent application for CLEC authority demonstrates that IOUs are entering the communications market.<sup>20</sup> The Commission should explore additional strategies to promote competitive access prior to embarking on database design.

#### **IV. CONCLUSION**

Prior to making a determination of whether to proceed with the creation of a statewide

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<sup>17</sup> General Order 94, Rule 38, as modified in Decision 17-12-024.

<sup>18</sup> *See* Combined Rulemaking Prehearing Conference Statement and Opening Comments of Cellco Partnership, MCI Metro Access Transmission Services Corp. and XO Communications Services, I. 17-06-027 / R. 17-06-028 (September 8, 2017), pp. 16–17.

<sup>19</sup> *See* D. 98-10-058, p. 83.

<sup>20</sup> *See* Application 17-04-010.

cross-utility pole inventory database, the Commission should first examine whether and how the database would materially promote the stated goals of the OII regarding safety and competitive access, the security and competitive concerns implicated by the creation of such a database, and the feasibility of creating and maintaining such a database. Moreover, the Commission should consider other actions besides the creation of a database that could facilitate safety and competitive access.

Respectfully submitted February 8, 2018, at San Francisco, California.

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