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

Petition to Adopt, Amend, or Repeal General
Order 95 Pursuant to Pub. Util. Code Section
1708.5

Petition 16-07-009

**MOTION OF THE CALIFORNIA CABLE & TELECOMMUNICATIONS
ASSOCIATION TO WITHDRAW PETITION**

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January 20, 2017

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Pursuant to Rule 11.1 of the Rules of Practice and Procedure of the Public Utilities Commission of the State of California (“Commission” or “CPUC”), the California Cable & Telecommunications Association (“CCTA”)¹ respectfully moves to withdraw Petition 16-07-009 (the “Petition”), which was filed with the Commission on July 14, 2016. Concurrently with this motion, CCTA is filing a motion seeking to defer the procedural schedule in this docket, including filing comments on or consideration of the Proposed Decision of President Picker dated January 9, 2017 (“Proposed Decision”), until after a ruling on this Motion to Withdraw. For the reasons set forth below, good cause exists for the grant of this Motion.

First, the Proposed Decision makes clear that the Commission would benefit from additional information regarding the cable industry’s interest in attaching antennas to joint-use utility poles, the services they intend to provide using those devices, and the regulatory authority they intend to rely on to provide such services. Citing Pub. Util. Code § 767.5, the Proposed Decision notes that CATV² providers arguably would have a right to attach a wireless facility if such attachment were part of a wired communication system that is used to provide cable

¹ CCTA is a trade association consisting of incumbent cable television corporations whose systems pass approximately 96% of California’s homes.

² “CATV” refers to “community antenna television.” *See* California Gov. Code § 53054.2(b).

television service.³ However, the Proposed Decision goes on to note that it appears that the cable entities will use the antennas to provide non-cable services.⁴ The Proposed Decision further states that the Petition fails to explain why cable providers cannot obtain the access they desire by registering to become a commercial mobile radio service (“CMRS”) provider or obtain a certificate of public convenience and necessity (“CPCN”) as a competitive local exchange carrier (“CLEC”) and cites this “significant ambiguity” in the Petition as a basis for declining to commence a rulemaking.⁵ CCTA respectfully submits that under these circumstances the public interest would be better served by permitting withdrawal of the Petition than by issuing a final decision based on incomplete (and potentially incorrect) information.

Second, it appears the Petition may be – as the Proposed Decision characterizes it – “largely moot”⁶ if cable providers can install wireless attachments in reliance on CLEC authority. Most, if not all, of CCTA’s cable provider members have CLEC affiliates. Therefore, reliance on CLEC authority to install antennas does, in fact, appear to be a viable option⁷ – particularly if the Commission grants the WIA Petition⁸ and commences a rulemaking that considers the extension of the CMRS ROW Rules adopted in Decision 16-01-046 to wireless facilities installed by CLECs on utility poles. The Commission’s action on the pending WIA Petition, therefore, may obviate the need for a separate rulemaking for cable providers.

³ Proposed Decision at 15.

⁴ CCTA emphasizes that none of its members seeks or intends to offer services without the requisite authority from the Commission.

⁵ Proposed Decision at 18.

⁶ Proposed Decision at 21.

⁷ For reasons that CCTA will not belabor in this Motion, unless a cable company itself is an FCC spectrum licensee, it does not appear that it would be permitted to register as a facilities-based WIR and/or rely on its WIR authority to install wireless antennas.

⁸ See Wireless Infrastructure Association (“WIA”) Petition 16-08-016, filed August 29, 2016, requesting the commencement of a rulemaking to extend the Commission’s ROW Rules for CMRS facilities to wireless facilities installed by competitive local exchange carriers (“CLECs”).

There is well-established Commission precedent that the Commission should not act to resolve disputes that are moot – issuing what effectively would be an advisory opinion. Advisory opinions are heavily disfavored by the Commission, as well as by federal and California and other state courts. As the Commission has previously explained, it “seldom issue[s] advisory opinions,”⁹ as rendering an opinion in the absence of a live case or controversy would waste “scarce decision making resources.”¹⁰ This “policy against issuing advisory opinions is not unique to the CPUC [or] other administrative agencies but is a policy long-adopted by the courts.”¹¹

Third, the Proposed Decision as drafted could be read to suggest that cable television providers’ use of even the wired facilities they install may be limited to providing cable (i.e., video) service and not, for example broadband services¹² and/or that they have no rights to install wireless pole attachment even in furtherance of their provision of cable television services.¹³ Although CCTA does not believe the Proposed Decision intends to make such unexpected findings, CCTA is concerned that without modification the Proposed Decision could be misinterpreted and improperly used by pole owners to attempt to restrict cable providers’ access rights. This, in turn, would likely generate pole access disputes, which would unnecessarily consume Commission

⁹ D.99-08-018, 1999 Cal. PUC LEXIS 515 at *5 (Aug. 5, 1999).

¹⁰ *Id.* (citing D.98-03-038, 1998 Cal. PUC LEXIS 74 at *5 (Mar. 12, 1998)).

¹¹ *Id.* (citing *Pacific Legal Foundation v. California Coastal Comm’n* (1982) 33 Cal 3d 158, 170, for the proposition that ripeness requirement prevents courts from issuing purely advisory opinions).

¹² Proposed Decision at 15 (“Arguably, CATV corporations’ right under the California Public Utilities Code to attach wireline facilities to utility poles could encompass wireless pole attachments if such attachments were an integral part of a “wire communication system” *that is used to provide “cable” television service.*”

¹³ Proposed Decision at 2 (“CATV corporations do not have a right under the Public Utilities Code to install wireless pole attachments.”).

resources. The Commission's grant of withdrawal of the Petition would avoid the potential for misinterpretation and avoid having to review these controversial issues.

Fourth, grant of this Motion is warranted because it would conserve agency and party resources. Rather than devoting resources on commenting on the Proposed Decision and pursuing this Petition, parties can focus their efforts on clarifying wireless access issues for CLECs (assuming the Commission grants the WIA Petition).¹⁴ Moreover, if a particular CATV corporation is faced with a wireless access issue in the future, it could file a petition with the Commission providing additional detail about its particular circumstances, including the services it intends to provide.

Finally, no party would be prejudiced by the grant of this Motion. Indeed, no party submitted comments in response or opposition to the Petition.

* * *

For the reasons set forth above, the public interest would be best served by allowing for the withdrawal of CCTA's Petition. Accordingly, CCTA respectfully requests that the Commission grant this Motion.

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¹⁴ See Proposed Decision at footnote 27.

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**[[PROPOSED ORDER]]
ORDER GRANTING MOTION OF THE CALIFORNIA CABLE &
TELECOMMUNICATIONS ASSOCIATION TO WITHDRAW PETITION**

On January 20, 2017, the California Cable & Telecommunications Association
("CCTA") filed a Motion to Withdraw Petition 16-07-009.

The Commission has considered CCTA's Motion and, good cause having been shown,
grants CCTA's Motion.

Accordingly, it is hereby ORDERED that:

1. CCTA's Motion to Withdraw Petition is granted.
2. The Proposed Decision issued by the Assigned Commissioner is hereby
withdrawn.

Dated _____, 2017, at San Francisco, California.

ALJ Kenney, Administrative Law Judge