April 1, 2016

INITIAL COMMENTS OF AT&T—CPS ENERGY POLE ATTACHMENT STANDARDS Version 1.0

AT&T Texas appreciates the opportunity to comment on the proposed CPS Energy Pole Attachment Standards, Version 1.0 (hereinafter "Standards" or "proposed Standards"). AT&T and CPS have been attaching to one another's utility poles pretty much from when telephone service first came to the City. That business relationship has been governed by mutually agreed terms and conditions memorialized in a joint use agreement, the most recent of which was signed in 1987. CPS has now terminated the pole attachment agreements of numerous entities and announced plans to replace those negotiated arrangements with a unilateral set of standards incorporated into an apparently non-negotiable, form agreement. As will be detailed below, AT&T has concerns about the process by which the proposal is being vetted and with the lawfulness and reasonableness of certain requirements.

Before reaching those issues, AT&T notes that it and other attaching entities have not been given sufficient time and information to review and effectively comment on the proposed standards. The standards, drafted with the help of Utilimap Corporation, an outside engineering firm based in St Louis, Missouri, appear to have been under review and development for many months, if not an entire year. Yet the attaching entities, who will be dramatically affected by the proposal, have had no voice in the process and even now have had less than 45 days to provide comments on well over 100 pages of detailed engineering and legal documentation. On December 15, 2015, AT&T Network personnel were advised by CPS that a new approach could be implemented in 2016, but at no time did CPS invite AT&T to discuss this new approach. Moreover, CPS has provided very limited information necessary to evaluate the detailed proposal, particularly the rates and fees. Likewise CPS has denied requests for a more reasonable period of time to analyze and comment on the Standards.[1] AT&T provides these Responses and Comments, based on the limited information that CPS has provided, but objects to the inadequacy of the process. AT&T strongly urges CPS to take a step back, slow down, and set up a series of workshops to enable a meaningful discussion of the key concepts of the proposed standards, including the new rates and fees structure, the new pro forma agreement, the inventory (ongoing and future), the very different approach to make-ready work, and the proposed enforcement plan.

As will be detailed below in response to specific questions and additional comments on the Pole Attachments Standards, AT&T has a number of significant legal concerns with the Standards, as currently proposed. Among those issues are rates and charges, the

[1] CPS initially gave the parties only 30 days to respond. On February 26, AT&T and Time Warner requested an extension of at least 30 days, to be tied to CPS' responses to information requests submitted by AT&T on that same day. In response, CPS extended the deadline by 14 days. To date, CPS has not provided a response to AT&T's February 26 information request. See Attachment C, Correspondence.

tiered approach to make-ready work responsibility and the professional engineer requirement.

Rates and Charges

AT&T's overwhelming concern with the CPS Pole Attachment Standards is the proposed rates and fee schedule. The rate a municipal utility may charge for pole attachments is governed by PURA § 54.204(c) and must be set according to the formula developed by the FCC. CPS' proposed $18.76 pole attachment fee is nearly 30% higher than the TPUC adopted rate of $14.68 for 2010 and more than 90% higher than the 2010 rate as adjusted by the 2011 change to the FCC formula. AT&T also has concerns regarding CPS' apparent intention to charge the pole attachment rate on a per attachment basis, rather than a per pole basis as has been the practice for decades. Applying the pole attachment rate on a per attachment basis is not consistent with the manner in which the FCC formula has been developed or the manner by which it appears that CPS has calculated the rate.

CPS's refusal thus far to provide complete supporting documentation so that attaching parties can evaluate the rate calculation is troubling, in light of CPS' obligations under PURA § 54.204(c). This is of particular concern, given the experience of AT&T and Time Warner on the very issue of CPS' pole attachment rates in PUC Docket 36633. The PUC made it clear in its February 1, 2013 Order that it has the jurisdiction to "review and modify each input, including defaults and rebuttable presumptions, used to calculate the maximum allowable pole-attachment rate under the rules adopted by the FCC…." In that proceeding, as now, AT&T is concerned about CPS' calculations and lack of transparency.

Even assuming $18.76 is a reasonable rate under the FCC's formula, CPS proposes to charge additional fees and penalties, including an Application Fee of $8.77 per pole. The application fee violates PURA § 54.204 which requires an MOU's maximum allowable pole attachment rate to be determined pursuant to the FCC formula, in particular 47 U.S.C. § 224(e). CPS would doubly-recover if it were allowed to receive a proportionate share of its administrative expenses both in the attachment rate and in specific fees. As discussed below, AT&T estimates that the proposed rates and fees would significantly increase AT&T's cost to bring GigaPower to San Antonio and thus is likely to curtail investment in the City.

Tiered Approach to Make-Ready Responsibility

As addressed in more detail in response to Question 1, below, CPS' proposed tiered approach violates PURA. The plain language of PURA § 54.204 prohibits discrimination. The Commission affirmed this in Docket 36633.

There is no legitimate basis for CPS's tier proposal. The lines CPS has drawn appear to be arbitrary. CPS's proposal increases responsibilities and costs based on the attaching entity's total number of attachments. The attaching entity, however, has already paid for its attachments based on the rate calculated under the FCC formula. There does not

appear to be any economic or other basis that would justify shifting additional costs to an attaching entity simply because it has more attachments.

CPS's tiered approach also violates PURA's uniform rate provision. Although CPS proposes to charge attaching entities the same pole attachment rate, the tiered approach is an attempt to circumvent the uniform rate provision by imposing additional costs on entities with the most attachments. These additional costs amount to an up-charge on the pole attachment rate in violation of the uniform rate provision.

Professional Engineer Requirement

As discussed in more detail below at p. 15, the new standards mandate reliance on the services of a professional engineer ("PE") for permit preparation, make-ready work, including pole load analysis, and overlashing. Requiring the use of PE for pole attachment work is inconsistent with state law. AT&T and other telephone companies are not required to engage professional engineers to do telephone construction work. The Texas Occupations Code provides an exemption from the use of a PE to "[a]n operating telephone company, an affiliate of the company, or an employee of the company or affiliate…with respect to any plan, design, specification, or service that relates strictly to the science and art of telephony." V.T.C.A. OC 1001.061.

CPS's proposed standards ignore the provision of the Occupations Code that expressly exempts telephone companies and their employees from the licensing requirement when performing work that relates to telephony. The standards therefore are unlawful and should not be adopted. As explained in more detail below, the Standards should be modified to comply with the law: there should be no PE requirement where the attaching entity is exempt under the Occupations Code.

AT&T RESPONSES TO CPS' QUESTIONS

Q1: In the draft Standards, CPS Energy proposes four (4) different Permit Application processes, each designed to best meet the business needs of a diverse set of Attaching Entities. Do you agree with the eligibility thresholds for each process? If no, what would you recommend and why?

A. No. AT&T does not agree with the eligibility thresholds set forth in the proposed standards because they violate PURA. PURA § 54.204 contains two non-discrimination provisions (subparts (a) and (b)) and a uniform rate provision (subpart (c)). PURA § 54.204(a) provides that "a municipality or a municipally owned utility may not discriminate against a certificated telecommunications provider regarding . . . a municipal utility pole attachment rate or term." PURA § 54.204(b) provides: "In granting consent, a franchise, or a permit for the use of a public street, alley, or right-of-way, a municipality or municipally owned utility may not discriminate in favor of or against a CTP regarding …. municipal utility pole attachment or underground rates or terms." PURA § 54.204(c) (the uniform rate provision) states that not later than September 1, 2006, a municipality or a municipally owned utility must charge "a single, uniform pole attachment or underground conduit rate to all entities that are not affiliated with the municipality or municipally owned utility

regardless of the services carried over the networks attached to the poles or underground conduit."

Under CPS's proposed tiered approach, an attacher's responsibilities and costs would be different depending on whether or not the attacher was considered a "small entity" (*i.e.,* less than 300 attachments) or whether it was planning a "medium volume" (it is not clear in the Standards, but this appears to be more than 400, but less than 800 attachments per month), or a "high volume" (800 or more attachments per month) deployment. This tiered approach violates the non-discrimination provisions of PURA. In Docket 36633, the Commission explained that "CPS Energy's pole attachment agreements with third-party attachers must have the same terms and rates in order to comply with the non-discrimination provisions of PURA § 54.204."[2] CPS's tiered approach, however, increases the responsibilities and costs of an attacher based solely on the number of attachments, which means larger carriers will have more responsibilities and pay more costs than smaller carriers. Such disparate treatment is discriminatory in violation of PURA.

This is true even if the "tier" provisions are included in CPS's contracts with every attaching entity, *i.e.,* even if all contracts contain the exact same language. As a practical matter, the more onerous provisions would apply only to the largest carriers placing the highest volume of attachments and would be entirely meaningless in the smaller carriers' contracts. Setting forth all of the rules in all of the contracts does not make them any less discriminatory in their application.

The "tier" proposal would discourage competition, contrary to the intent of PURA. The Commission has explained that the intent of PURA is "to facilitate broadband competition and to ensure non-discrimination in the telecommunications industry." Under CPS's tiered approach, carriers would be incented to stay below the arbitrary thresholds set by CPS so as to avoid the additional obligations and costs that come with having more attachments to CPS's poles. This would discourage competition.

Moreover, there is no legitimate basis for CPS's tiered proposal. The lines CPS has drawn appear to be arbitrary. CPS's proposal increases responsibilities and costs based on the attaching entity's total number of attachments or the size of its deployment. The attaching entity, however, has already paid for its attachments based on the rate calculated under the FCC formula. There does not appear to be any economic or other basis that would justify shifting additional costs to the attaching entity simply because it has or plans more attachments. Such an approach is discriminatory. Indeed, in the *CPS Order,* the Commission did not allow different treatment of AT&T even though it (unlike other entities) owned poles to which CPS attaches.

CPS's tiered approach also violates PURA's uniform rate provision. Under that provision, CPS is required to charge all entities a uniform rate. CPS' tiered approach is an attempt to circumvent that provision by imposing additional, significant costs on attaching entities

[2] *Petition of CPS Energy for Enforcement Against AT&T Texas and Time Warner Cable Regarding Pole Attachments,* PUC Docket 36633, Final Report and Order, para 4.

in the top tiers simply because they will attach more facilities to CPS's poles. In the *CPS Order,* the Commission made clear that when determining whether the uniform rate provision has been met, it would look beyond whether the pole attachment rates being charged by the pole owner are the same for all entities. Thus, even when CPS was invoicing pole attachers the same rate, the Commission found CPS was not in compliance with PURA's uniform rate provision when it did other things to undermine the supposedly uniform rates. For example, the Commission found that CPS's act of retroactively charging an attaching entity the same rate was still a violation of the uniform rate provision, because the competitive harm had already occurred by the time the retroactive adjustment had been made. In addition, even when CPS invoiced attachers a uniform rate, the Commission found that CPS violated the uniform rate provision when it failed to take meaningful action to require some of those carriers to pay the full amount invoiced.

Although CPS intends to charge attaching entities the same pole attachment rate, its tiered approach is an attempt to circumvent the uniform rate provision by imposing additional costs on entities with the most attachments. These additional costs amount to an up-charge on the pole attachment rate in violation of the uniform rate provision.

Q2: Safety is a core value of CPS Energy. CPS Energy and each Attaching Entity have a duty and obligation to keep their facilities safe for their employees and the general public. The draft Standards propose a Safety Violation Fee as part of CPS Energy's efforts to address and work to eliminate violations of the Applicable Engineering Standards which may pose a danger to the public. CPS Energy seeks comments on the appropriate amount of the Safety Violation Fee to encourage Attaching Entities to self-identify and remedy any potential Safety Violations on their own Attachments and/or Overlashings.

A. The Standards provide that "[i]f during an Inspection or otherwise, CPS Energy determines an Attaching Entity's Attachments…are…in violation of these Standards; the Attaching Entity shall upon notice from CPS Energy pay a Safety Violation Assessment as provided in Appendix H for each Safety Violation(s) noted…." This strict liability approach to safety violations is too draconian, particularly in light of the requirement that attaching entities use CPS-approved contractors for all work. AT&T may place or maintain an attachment in full compliance with CPS standards, but that attachment may later be out of compliance as a result of factors outside of AT&T's control, such as work by CPS or another attaching entity, gradual failure of some attachment components over time, road or other construction, or other actions of third parties. Accordingly, there should be an opportunity to have a dialogue in such situations, rather than unilateral action. Moreover, since CPS has reserved the right to modify the Standards with very little notice[3], attachments in compliance when installed may fall out of compliance. Accordingly, the Standards should be revised to allow a reasonable opportunity to cure prior to the imposition of any fines.

[3] G.1 Notices.

CPS' proposed enforcement measure process (which suspends all new permits for any violations not remediated within 7 days) fails to take into account the specific circumstances causing the non-compliance (quantity of attachments, fault, weather, etc.).[4] Under the Standards, where the violation is deemed to be an emergency, CPS can perform the work and bill the attaching entity—that seems reasonable. But the Standard becomes unreasonable when it authorizes CPS to "impose a ten percent (10%) surcharge on the cost of conducting any work to correct or remedy a violations."[5]

A more reasonable and business-appropriate approach would be to allow the parties to determine an appropriate period of time to correct any violation (considering the circumstances surrounding and reason(s) for the violation) prior to an enforcement action or fine. Fines (or surcharges) clearly would not be justified where the attaching entity was not at fault or resolved the violation within a reasonable time. Moreover, under no circumstance should new permits be suspended for unrelated violations.

More importantly, the safety violation penalty of $1000 per violation is patently excessive, particularly given the no fault approach under the proposed Standards. Under the proposed Standards as written, CPS could become the "speed trap" for utilities, using safety citation practices as a revenue opportunity. The FCC's analysis of appropriate penalties in the context of unauthorized attachments is instructive. The FCC recognized that penalties as low as the annual pole attachment fee may not provide incentive for attachers to follow the authorization process. However, the FCC also recognized that is would not be reasonable to impose severe penalties in every circumstance. The FCC therefore found it reasonable for agreements to provide varying degrees of penalties depending on the circumstances surrounding the violation. For example, the FCC found that a penalty not to exceed $500 was reasonable for pole attachers without a contract, and a penalty not to exceed five times the annual pole attachment fee was reasonable for pole attachers without a permit that have self-reported or discovered the violation through a joint inspection. Here, in stark contrast, the proposed Standard seeks a $1000 per violation penalty regardless of the circumstances surrounding the safety violation, *e.g.,* fault, severity. In addition, the FCC found it reasonable to give attachers an opportunity to avoid sanctions by correcting the violation within a certain amount of time. CPS should provide a similar opportunity to attachers for safety violations. AT&T would revise the Standards as follows to reflect that additional time may be needed for safety violation that may have been introduced by the actions of third parties and that the expense should be borne by the entity causing the issue:

> 3. If during an Inspection or otherwise, CPS Energy determines an Attaching Entity's Attachments, or any part thereof, are installed, used, or maintained in violation of these Standards; the Attaching Entity shall upon notice from CPS Energy pay a Safety Violation Assessment as provided in Appendix H for each Safety Violation(s) noted; and the Attaching Entity that owns the Attachments shall correct such Safety Violation(s) as soon as

[4] K.3.a).

[5] *Id* (at b).

possible but no later than seven (7) calendar days or such other longer period of time as the parties may reasonably agree upon in light of the circumstances of the violation ~~at Attaching Entity's expense~~. Should Attaching Entity fail to correct the Safety Violation within seven (7) calendar days from receipt of written notice of the violation(s) from CPS Energy, the following enforcement measures shall take place:

Q3: The Standards introduce a One-Touch Transfer Process limited to the Simple Transfer of Attachments, and a separate process for Complex Transfers which addresses the relocation of Attachments that require the splicing or cutting of the Attachment. CPS Energy seeks comments on the escalation process for Complex Transfers applicable to Attaching Entities that fail to relocate their own lines in a timely basis.

A. As discussed below in response to Question 5, the NJUNS process and similar programs are far superior to a rigid escalation process. The entity seeking to place attachments could abuse a fixed process and force unreasonable penalties upon their competitors. Some projects are bigger or more complex than others and therefore a more cooperative project-specific approach is preferred. It is unnecessary to have fines to encourage closer cooperation—business necessity is all the encouragement that is needed. A simple escalation process and expedited dispute resolution process with short time intervals is a better approach since it generally results in improved operational activities.

Q4: The One-Touch Transfer Process in the Standards requires that only contractors certified by CPS Energy to perform communications work be permitted to do Simple Transfers. CPS Energy seeks comments on the specific qualifications to consider in developing the certification criteria in order to ensure qualified contractors are used to undertake and complete Simple Transfers on behalf of the Attaching Entities. CPS Energy also welcomes recommendations of communication contractors in the San Antonio area to consider for certification.

A. The contractor selection process should be open and transparent with all attaching entities given the opportunity to comment on the Request for Proposal Process and responses. Moreover, there should be a process to evaluate contractors and for the removal of poor performers.

Q5: The draft Standards contemplate the use the National Joint Utilities Notification System (NJUNS) as a notification system to track Pole Attachment activities. NJUNS provides for a universal, independent, and documentation-based process management system for Pole Attachment transfer notifications. Do you support the use of NJUNS for this purpose? If no, please recommend another industry standard notification system that CPS Energy may adopt.

A. AT&T supports NJUNS and similar processes.

Q6: The Standards provide for a series of timelines for either action and/or response on the part of both CPS Energy and an Attaching Entity in the Pole Attachment Application process. In the development of the various timelines, CPS Energy strived to balance the business needs of both CPS Energy and Attaching Entities. CPS Energy seeks comments as to the appropriate duration of the timeframes proposed in the Standards.

A. The time frames, if used as a "no more than" standard, so that all necessary activities and approvals can be completed more quickly when possible, seem workable.

Q7: In the development of the Standards, CPS Energy strived to develop a process that is fair, equitable, and non-discriminatory regarding the instance of multiple Attaching Entities seeking access to the same Pole. Do you agree with approach adopted in the draft Standards? If no, please describe the methodology you would support that meets the fair, equitable, and non-discriminatory treatment of competing Attaching Entities seeking access to the same Pole.

A. Not without clarification. The process seems to contemplate a first in, first out (FIFO) approach; which is the standard and preferred approach: "CPS Energy shall consider complete Applications received from multiple Attaching Entities to attach to the same Pole on a "first-come, first-served", non-discriminatory basis." But the Standard goes on to provide that "[s]hould the first in time Application require CPS Energy to undertake and complete any Make-Ready Electrical Construction on a Pole with a subsequent request for Attachment received before CPS Energy completes such Make-Ready Electrical Construction, CPS Energy shall allocate the costs to complete this Make-Ready Electrical Construction evenly between the Attaching Entities requesting access to the Pole." Allocation of costs in this manner is inconsistent with the FCC and industry approach which calls for the cost causer to pay. There should be no cost sharing among multiple entities seeking to attach at the same time. The entity causing the need for a pole replacement or rearrangement should be responsible for all related costs.

Q8: In considering the overall Pole Attachment program, CPS Energy seeks comments as to any perceived burdens imposed on small Attaching Entities. Please be specific in your response.

A. As discussed in response to Question 1, AT&T is concerned that the tiered approach, which imposes greater responsibilities for make-ready work and therefore greater costs on the entities with a need to attach a higher number of attachments, is discriminatory in violation of PURA. All entities should be subject to the same process by which the attaching entity may to elect or decline to complete electrical make-ready design and construction and the One Touch Transfer process.

Q9: Please provide any comments you may have that may improve the draft Pole Attachment Agreement.

A. AT&T's red line with comments on the proposed agreement is attached hereto as Attachment A.

Q10: Please provide any additional comments you may have regarding the draft Standards.

ADDITIONAL COMMENTS OF AT&T

These additional comments will follow the order of the Standards as much as possible, but will only address AT&T's concerns about specific sections that it has been able to identify in the limited timeframe given for comments. Failure to comment on any particular provision should not be interpreted as acceptance or approval. AT&T reserves the right to offer additional comments should concerns arise upon further review.

II. General Administrative Provisions

A. Definitions

The definition of Attachment is problematic because it is unclear which types of facilities would be categorized as an attachment. Attachment is defined as:

> 7. **Attachment** means (a) each aerial cable together with its associated Messenger cable, guy wire, anchors, and associated hardware, and each amplifier, repeater, receiver, appliance or other device or piece of equipment, whether comprised of steel, aluminum, copper, coaxial, optical fiber, or other media or material, affixed to a CPS Energy Pole and utilized to provide Communications Services; and (b) any hardware or equipment identified in Section II.A.15. An Attachment occurs whether Attaching Entity's Communications Facilities are connected to the Pole itself or are supported by an Attachment Arm, bracket, support stand, or other support devices, provided however that Overlashing an existing Permitted Attachment and Service Drops shall not count as separate Attachments. This definition shall not apply to communications wires or facilities installed by CPS Energy for its own internal communications requirements or energy Information Services such as automated meter reading. Attaching Entity's payment of the appropriate fees and charges required by Section II.I and Appendix H permits Attaching Entity to make one Attachment to a Pole.

It is unclear whether CPS proposes to impose an Annual Attachment Connection Fee on each item listed in the definition (*e.g.,* aerial cable, messenger cable, guy wire, anchor, associated hardware, amplifier, repeater, receiver, appliance, device or piece of equipment) or whether some attachments would be treated as a single attachment for billing purposes. It is also unclear whether CPS' intends to exclude risers from the

assessment of an Annual Attachment Connection Fee, similar to Service Drops and Overlashing.

AT&T is concerned about professional engineer requirements as addressed more fully at p. 15. We recommend modifying the definition of Engineer to comply with the Occupations Code, as shown below.

> **23.** **Engineer** means any licensed professional engineering firm approved by CPS Energy to complete Engineering work on CPS Energy Facilities or a Telephone Company Engineer.

Consistent with the appropriate assignment of costs to the cost causer, the definitions of Mass Deployment-High Volume Process and Mass Deployment-Medium Volume Process should be modified. Moreover, the definition and concept should more clearly explain that only the attachments associated with a specific mass deployment project are included when determining whether the attachments in the relevant time period meet the criteria to be classified as a mass deployment.

> **31.** **Mass Deployment — High Volume Process** means the available and voluntary Application submission and Permit approval process applicable to a broadband network deployment within the CPS Energy service area characterized by an Attaching Entity's submission of Applications to attach or Overlash to Poles at a rate of eight-hundred (800) or more Poles per month for a single, unified deployment project, excluding attachments related to routine installations and maintenance; and assumption of the responsibility to prepare Make-Ready Engineering, manage Make-Ready Electrical Construction and Make-Ready Communications Construction ~~and incur all expenses associated with Make Ready Work.~~
>
> **32.** **Mass Deployment — Medium Volume Process** means the available and voluntary Application submission and Permit approval process applicable to a broadband network deployment within the CPS Energy service area characterized by an Attaching Entity's submission of Applications to attach or Overlash to Poles at a rate of four- hundred (400) or more but less than eight-hundred (800) Poles per month for a single, unified deployment project, excluding attachments related to routine installations and maintenance; and assumption of the responsibility to prepare Make-Ready Engineering, manage Make-Ready Communications Construction, the option to manage Make-Ready Electrical Construction ~~and incur all expenses associated with Make Ready Work.~~

C. Execution of Pole Attachment Agreement

AT&T comments on this section are included in response to Question 9, above.

F. Annual Reporting Requirements

The Standards eequire that attachers report, by CPS pole number, all attachments installed that year, including risers and drops, even where no permit is required. CPS should provide a reasonable ramp up period to adjust to the new requirements.

G. Notices

Amount of notice given depends on whether a revision is a tier 1 (45 days) or tier 2 (90 days). Tier 1 are revisions to the CPS Pole Attachment Standards which do not require changes in the collection of field data necessary to prepare an Application for submission; and tier 2 are ones that would require such changes. The Standards should be clarified to provide that existing attachments and those with approved designs are grandfathered changes to Standards.

H. Scope of Standards

All attachers must be given adequate opportunity to oppose changes in the standards. Of particular concern would be the annual rates and fees, timelines, and engineering practices. The Standards, and proposed agreement, do not appear to allow any opportunity for input or opposition to CPS unilateral amendments.[6]

Consistent with public policy, the Restoration of CPS Service Section 7 should be modified, as shown below, so that CPS is not absolved from its own gross negligence of intentional misconduct.

> **7. <u>Restoration of CPS Energy Service</u>.** CPS Energy's service restoration requirements shall take precedence over any and all work operations of any Attaching Entity on CPS Energy's Poles. CPS Energy may relocate, replace, or remove an Attaching Entity's Attachments, transfer them to substituted Poles or perform any other work in connection with such Attachments that CPS Energy deems necessary in order to safely and efficiently restore electrical service. CPS Energy shall not be liable, <u>except in the case of its gross negligence or willful misconduct</u>, to the Attaching Entity for any actions CPS Energy takes pursuant to this Section II.J.~~9~~<u>7</u>. The affected Attaching Entity shall reimburse CPS Energy for the expenses that CPS Energy incurs relating to such work within forty- five (45) calendar days of the date CPS Energy issues an invoice for such work.

3. <u>Permit Issuance Conditions</u>

Issuance of a permit is conditioned on capacity and CPS can deny if there is insufficient capacity. The contingency should be on replacement of the pole rather than a denial.

[6] *See* Standards p. 2, (pdf p. 11). "CPS Energy reserves the tight to amend these Standards at any time and manner…."

11. Authorization for Use of One-Touch Transfer Process

AT&T is not opposed to a reasonable One Touch Process that is not inconsistent with labor agreements and allows the facility owner to approve the contractor that will be permitted to rearrange its facilities.

I. Fees and Charges

AT&T's overwhelming concern with the CPS Pole Attachment Standards is the proposed rates and fee schedule. The rate a municipal utility may charge for pole attachments is governed by PURA § 54.204(c) and is limited as follows: "a pole attachment rate… [may not exceed] the fee the municipality or municipally owned utility would be permitted to charge under rules adopted by the Federal Communications Commission under 47 U.S.C. section 224(e) if the municipality's or municipally owned utility's rates were regulated under federal law and the rules of the Federal Communications Commission." PURA § 54.204(c). In other words, pole attachment rates must be set according to the formula developed by the FCC. CPS' proposed $18.76 pole attachment fee is nearly 30% higher than the TPUC adopted rate of $14.68 for 2010 and more than 90% higher than the 2010 rate adjusted for the FCC rules change. And there is no way for AT&T and others to test CPS' proposed rate as CPS has not provided supporting documentation or work papers. Moreover, in some situations the Standards would apply the fee per attachment, rather than per pole,[7] which is another radical departure from longstanding and current practice. Moreover, applying the rate on a per attachment basis is not consistent with how the FCC formula is structured or how CPS has calculated its rate. There is a clear prescription for accounting for the average amount of space occupied per pole by each attaching entity and it does not appear that CPS has consistently followed that process. Rather, CPS has calculated its rate on the assumption that each attacher occupies one foot of space, but then proposes to apply that rate as though some attachers are occupying more than one foot of space (by charging for multiple attachments on the same pole).

CPS's refusal to provide supporting documentation so that attaching parties can evaluate the rate calculation is troubling, in light of CPS' obligations under PURA § 54.204(c). It is even more troubling in light of the experience of AT&T and Time Warner on the very issue of CPS' pole attachment rates in PUC Docket 36633. Like here, CPS took the untenable position that it did not have to provide supporting documentation for its rates, and that attaching parties and the PUC should just trust CPS. That of course is not what Section

[7] The exemption is for overlashing and drops.

54.204 provides, as the PUC noted in its February 1, 2013 Order. "The Commission has the jurisdiction to review and modify each input, including defaults and rebuttable presumptions, used to calculate the maximum allowable pole-attachment rate under the rules adopted by the FCC under 47 U.S.C. § 224(e)." February 1, 2013 Order, Conclusion of Law 5D. And in that proceeding, AT&T, Time Warner and the PUC Staff's concerns about PUC's calculations and lack of transparency were very well founded. CPS has asserted that it was entitled to charge as much as $28.20 per pole. Docket 36633, Escamilla Direct Testimony at 7. The PUC disagreed, finding that CPS was entitled to charge between $14.68 and $18.10. On appeal, the District Court overturned the PUC in part, which results if applied now would result in even lower rates.[8]

Even assuming $18.76 is a reasonable rate under the FCC's formula, CPS proposes to tack on additional fees and penalties,[9] including an Application Fee of $8.77 per pole.[10] The application fee violates PURA § 54.204 which requires an MOU's maximum allowable pole attachment rate to be determined pursuant to the FCC formula, in particular 47 U.S.C. § 224(e). In evaluating its pole attachment formula, the FCC has explained that additional administrative fees are not permissible and would result in double recovery. *In The Cable Television Association of Georgia, et al., Complainants, v. Georgia Power Company*,18 FCC Rcd 16333, 16342, para. 18 (FCC 2003), the FCC explained: "Through the annual rate derived by the Commission's formula, an attacher pays a portion of the total plant administrative costs incurred by a utility. Included in the total plant administrative expenses is a panoply of accounts that covers a broad spectrum of expenses. A utility would doubly-recover if it were allowed to receive a proportionate share of these expenses based on the fully-allocated costs formula and additional amounts for administrative expenses. The allocated portion of administrative expenses covers any routine administrative costs associated with pole attachments" and, thus, that an additional administrative services fee was unreasonable. *Id*. at para. 18. Similarly, in the same order, the FCC held that separate fee for routine inspection of poles was impermissible, stating: "[C]osts attendant to routine inspections of poles, which benefit all attachers, should be included in the maintenance costs account and allocated to each attacher in accordance with the Commission's formula. Consequently, we find the New Contract's provision requiring the Cable Operators to pay for routine pole inspections to be unreasonable." *Id*.

With simple arithmetic, we can determine that the fee would add $8,700 to a deployment of 1000 poles. Aside from exceeding the rate permitted under the FCC's formula, such unreasonable and unnecessary additional costs will have a dramatic impact on investment in San Antonio. This fee, if implemented, has the potential to drastically

[8] Since that time, the FCC has changed the formula to reduce even further the maximum allowable rates. All of this calls into serious question CPS' proposed rate of $18.76 and demonstrates why full disclosure of the backup documentation for CPS' rate calculation is necessary.

[9] *See* Response to Question 2, infra.

[10] Appendix H, 1. *see also* Section C. 1a)---it appears that no separate application is required for overlashing that "where the facilities comprising the Overlashing and Attachment do not exceed three and one-half (3.5) inches in diameter and such Overlashing fully complies with the Applicable Engineering Standards."

reduce the financial viability and ultimate deployment of AT&T's gigabit speed internet offering.

3. Advance Payment for Make-Ready Work (I.3.C)

Additionally, the Standards with regard to Advance Payment for Make Ready Work (I.3.C) provide for a true up only on request. A true up should be standard procedure with any advance payment. AT&T recommends the following language be deleted.

~~(C) Any request for true up must be submitted by the Attaching Entity in writing and received by CPS Energy before January 31 of the year following the year that the work orders were closed.~~

5. Unauthorized Attachment Charge

Without the requested documentations supporting CPS' attachment fee calculation, it is impossible to know if the proposed unauthorized attachment fee is lawful. As explained in the Rates and Fees discussion above, a pole owner may not receive compensation beyond that allowed under the FCC's pole attachment formula. Having provided no access to CPS' calculations, accounts or other back up data AT&T cannot determine if the unauthorized attachment charge is permissible. Moreover, there is also an issue in light of the definition of Attachment. Since many attachments were placed without opposition from CPS prior to these more formal processes, applying an application requirement to existing attachments and charging for all existing, but not inventoried attachments, would be unreasonable; existing attachments should be grandfathered. The charge, if permissible under the FCC formula, should be on a going forward basis only and contingent on the completion of an appropriate inventory.

J. Claims

The claims process should reflect that if any court, commission, arbitrator or mediator of competent jurisdiction make a determination of fault that conflicts with the finding by CPS, such determination shall control.

K. Compliance with Pole Attachment Standards & CPS Energy Enforcement

AT&T's comments on this Section are addressed in response to Question 3, above.

L. Conflict Resolutions

AT&T recommends the following changes:

1. Informal Conflict Resolution.

(c) If a resolution is not achieved at the final management level within their allotted time ~~at the operational level~~, then either party is directed to follow the Dispute Resolution process, ~~and~~

defined in the Pole Attachment Agreement, for further escalation.

M. Liability and Insurance Indemnification

AT&T's comments are reflected in Attachment A (Pro Forma Agreement).

N. Indemnification

AT&T's comments are reflected in Attachment A (Pro Forma Agreement).

O. Performance Bond

This requirement should not apply to entities upon proof of financial fitness, as more fully addressed in Attachment A.

III. General Technical Provisions

A. General Design & Construction Standards & Specifications

1. Professional Engineer. The new standards mandate reliance on the services of a professional engineer ("PE") for permit preparation, make-ready work, including pole load analysis, and overlashing.[11] Requiring the use of PE for pole attachment work is inconsistent with state law requirements and unnecessary, and will increase construction costs.

AT&T and other telephone companies are not required to engage professional engineers to do telephone construction work. The Texas Occupations Code provides an exemption to "[a]n operating telephone company, an affiliate of the company, or an employee of the company or affiliate…with respect to any plan, design, specification, or service that relates strictly to the science and art of telephony." V.T.C.A. OC 1001.061. The purpose behind the Occupations Code is to (1) protect the public health, safety, and welfare; (2) enable the state and the public to identify persons authorized to practice engineering in this state; and (3) fix responsibility for work done or services or acts performed in the practice of engineering. V.T.C.A. OC 1001.004. The Occupations Code therefore entrusts the privilege of practicing engineering only to people that are licensed and practicing according to the statute. That the Legislature granted an exemption to telephone companies and their employees, so long as the person exempt "does not offer to the public to perform engineering services," clearly evinces its determination that the design and construction work normally performed by a licensed PE can be safely and competently accomplished by telephone company employees engaged in the work they are specifically trained to do, *i.e.*, "telephony."[12] V.T.C.A. OC 1001.051.

[11] Section II.A.27; III. Section C. 1; Appendix G.1.

[12] "Telephony is commonly referred to as the ***construction*** or operation of telephones and telephonic systems and as a system of telecommunications in which telephonic equipment is employed in

CPS's proposed Pole Attachment Standards would prohibit AT&T employees from performing certain analysis required for applications unless they are licensed under the Texas Occupations Code. Section II.A.23 defines "Engineer" as "any licensed professional engineering firm approved by CPS Energy to complete Engineering work on CPS Energy Facilities." (Emphasis added.) Section III.A.1 requires an attaching entity to utilize a "licensed professional engineer" "to undertake and complete the engineering analyses required in completing an Application for Permit as described in Section IV." That section further explains that such Engineer "shall include engineering employees or contractors with a valid state of Texas professional engineering license in good standing." Section IV.B.2.e, in turn, provides that an attaching entity's application for a pole attachment permit shall include a "detailed description and design documents, prepared or reviewed by an Engineer which includes the Attaching Entity's estimated cost of proposed Make-Ready Work for each Attachment." (Emphasis added). Similarly, Section III.C.1, requires all attaching entities to submit an application for each Overlashing project, and provides that an application "shall be deemed incomplete if it does not include the signed certification of a professional engineer provided therein." Appendix G further provides that any pole loading analysis "submitted as part of the Application package shall be signed and sealed by a licensed professional engineer approved by CPS Energy."

Under these proposed standards, AT&T employees would have to be licensed PEs in order to perform any of the engineering analysis required for applications, even though the Occupations Code expressly exempts an operating telephone company and its employees from the PE licensing requirements "with respect to any plan, design, specification, or service" that relates to telephony. V.T.C.A. OC 1001.061. CPS' plan to include the licensing requirement in its pole attachment agreements with AT&T and other telecommunications companies is not legally permissible. Under Texas law, "[i]t is uniformly held . . . that a contract cannot impair the validity of any law, nor control or limit the provisions of a statute." Wilson v. Teacher Retirement System of Texas, 617 S.W.2d 329, 332 (Tex. Civ. App. 1981)(although parties undoubtedly tried to make a valid agreement to assign funds, "they sought to set at naught the law which prohibits the assignment" and "the law will not enforce an agreement to do that which the same law says shall not be done."); *see also* Yamaha Motor Corp, U.S.A. v. Motor Vehicle Div., Texas Dept. of Transp., 860 S.W.2d 223, 226 (Tex. App. 1993), writ denied (Jan. 5, 1994) ("parties to a contract may not by agreement control or limit the provisions of a statute"); Housing Authority of El Paso v. Lira, 282 S.W.2d 746, 748 (Tex. Civ. App. 1955), writ refused NRE ("It seems elementary that parties cannot by agreement repeal or modify a statute.").

CPS's proposed standards ignore the provision of the Occupations Code that expressly exempts telephone companies and their employees from the licensing requirement when performing work that relates to telephony. The standards therefore are unlawful and should not be adopted. As implicitly recognized by the legislature, permit preparation, make-ready work and overlashing can be done by qualified telecommunications personnel; a PE is not required. Telecommunication providers have been exempt from

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the transmission of speech or other sound between points, with or without the use of wires." (emphasis added) Webster's Dictionary.

the PE requirement for "telephony" work, including the placement of telecommunications facilities in the rights-of-way, for seventy-eight years. AT&T has attachments on over 2.2 million poles throughout Texas. In the normal course of business AT&T attaches to poles every day and this work is done by AT&T construction and engineering employees or qualified contractors under their direction. Requiring a PE will only add cost without adding value.

The Standards should be modified to comply with the law: there should be no PE requirement where the attaching entity is exempt under the Occupations Code. The following changes to the Standards are recommended:

1. **Professional Engineer.** An Attaching Entity shall utilize ~~a~~an licensed professional engineer (Engineer) or a qualified Telephone Engineer to undertake and complete the engineering analyses required in completing an Application for Permit as described in Section IV. For the purposes of these Standards, an Engineer shall include engineering employees or contractors with a valid state of Texas professional engineering license in good standing or the requisite training for telephony engineering. All Engineers considered by the Attaching Entity must be approved by CPS Energy before undertaking any engineering work on behalf of the Attaching Entity. CPS Energy approval shall not be unreasonably withheld, conditioned, or delayed.

2. **Contractors**

The proposed Standard allows attaching entities to use their own employees with CPS approval. An interpretation of this provision to recognize the Occupations Code exemption for Telephone Company workers would eliminate the PE issue under III.A.1 above.

3. **Right to Review**

In this Section, "CPS Energy reserves the right to perform its own (either by CPS Energy employees or contractors) engineering and field evaluation or verification as appropriate or necessary. The costs for CPS Energy to undertake such additional engineering and field evaluation shall be paid by the Attaching Entity."[13] If this clause, as applied, allows CPS to require use of its approved contractor and then allow CPS or the same contractor to perform evaluations or verifications, it could lead to abuse. Where CPS has approved the workers or the contractor, no additional review or evaluation should be necessary, especially not at the attaching entity's cost.

4. **Installation and Maintenance of Communications Facilities**

[13] III.A.2.

Appendix D. 2. Sag and Mid-Span Clearances does not conform to NESC standards with respect to mid-span clearances. CPS should not adopt standards that are more stringent than applicable state or industry standards particularly in light of the proposed fines for noncompliance.

6. Request Waiver

This subsection states that an "Attaching Entity may request a waiver of specific items of the Applicable Engineering Standards by making such request in writing to be included on the Application Form at the time of Application submission."[14] The waiver process should be extended to the entire Standards to account for the fact that all attaching entities may not be similarly situated and that circumstances of particular applications may differ.

7. Tagging

The CPS-specific tagging requirement will be unduly burdensome unless it allows the tagging of existing facilities to be accomplished as an entity performs maintenance on the affected pole. It is simply not practical to go back and tag all existing facilities installed over a period of many decades. AT&T has used tagging for many years and rather than retag all of its poles would ask that the standards allow for entity-specific tags subject to any applicable requirements under local law. AT&T recommends the following changes:

> **Tagging.** Each Attaching Entity shall Tag all of their Attachments and/or Overlashings as specified in Appendix K and/or applicable federal, state and local regulations in effect at the time of installation. Entity-specific tags, consistent with applicable law, are also permissible.
>
> a) Found Untagged Attachments or Overlashings. Should CPS Energy discover Attachments and/or Overlashings that are untagged, excluding service drops, CPS Energy shall request and the non-compliant Attaching Entity shall agree to provide a written plan to Tag the Attachments and/or Overlashings consistent with completing the tagging of all untagged Attachments and/or Overlashings at such time as work is performed on the affected pole ~~within twelve (12) month period following CPS Energy's written request for tagging plan. Further, the Attaching Entity shall provide CPS Energy a written report by th 15th of each month of the progress made to remedy all untagged Attachments or Overlashings.~~ Failure to provide proper tagging of new Attachments and/or Overlashings shall be a violation of the Applicable Engineering Standards and may result in a suspension of Application processing and review by CPS Energy until a satisfactory tagging plan and process

[14] III.A.5.

is committed to by the Attaching Entity.

Interference that is CPS's fault should be addressed at CPS expense.

9. Performance Interference. To the extent an Attaching Entity identifies any interference with its Communications Services impacting its customers that may or may not be related to CPS Energy Facilities, the Attaching Entity shall not identify CPS Energy to its customers as the source of such interference absent a test report verifying the source and prior notice to CPS Energy of the report's findings. ~~The Attaching Entity shall cooperate with CPS Energy to investigate the source of any such signal interference and shall conduct a test verifying the source of such interference at CPS Energy's request at the Attaching Entity's expense.~~ The test equipment used for verifying the source of interference must be calibrated to the standards provided by the National Institute of Standards and Technology or any similar, mutually agreeable standards organization. In the event such testing provides conclusive evidence that CPS Energy Facilities are the source of such interference, CPS Energy shall reimburse Attaching Entity for the expense of the testing and work with Attaching Party to mitigate the interference.

10. Enclosures

The standard requires enclosures and pedestals in the ROW to be place four feet away from CPS's poles. Any such restriction would have to be nondiscriminatory and necessary to protect the health, safety, and welfare of the public. The ROW is not owned or controlled by CPS in its capacity as CPS. Rather, it is owned and controlled by the City of San Antonio. While CPS is owned by (or a division of) the City of San Antonio, that does not mean that CPS has power to regulate the ROW without any of the due process built into the City's processes for issuing ordinances. Under Chapter 283 of the Municipal Code, any restriction on the location of pedestals and enclosures would need to be reasonably necessary to protect the health, safety, and welfare of the public. [15] In addition, under PURA any restriction on the location of facilities in the ROW would have to be applied in a nondiscriminatory manner. It is unclear whether CPS's proposed standard – requiring enclosures and pedestals to be four feet away from its poles – meets these requirements as CPS has not articulated any reason for the requirement, nor whether it intends to abide by the same standard. It is clear, however, that this provision will have the effect of increasing costs without any corresponding benefit. AT&T recommends removing the 4 foot restriction.

11. Vegetation Management

[15] Section 283.056.

Because attachers will be performing tree trimming around both AT&T and CPS poles, it would be preferable to specify industry standards to avoid confusion and noncompliance. AT&T recommends the following changes:

~~All Attaching Entities shall be responsible for performing, or causing the performance of, all tree trimming and other vegetation management necessary for the safe and reliable installation, use, and maintenance of their Attachments and/or Overlashings, and to avoid stress on Poles caused by contact between tree limbs and the Attaching Entities' Attachments and/or Overlashings.~~

All tree trimming shall be performed in accordance with ~~CPS Energy tree trimming policies~~ industry standards, such as those set out in Appendix O~~, as may be amended from time to time.~~ Attaching Entities shall use qualified tree trimming contractors, ~~approved by CPS Energy~~, who shall adhere to ~~all~~ industry tree trimming standards and requirements ~~of CPS Energy. Failure of the tree trimming contractor to adhere to and comply with CPS Energy standards and requirements may result in CPS Energy retracting its approval of the tree trimming contractor to perform further work of any kind on CPS Energy Facilities~~. An Attaching Entity may be required to remedy any and all work, conducted by its tree trimming contractor that fails to comply with industry tree trimming standards and requirements ~~of CPS Energy~~. CPS Energy reserves the right to halt all work by any such tree trimming contractor that CPS Energy in its discretion deems to be unsafe or performs work contrary to ~~CPS Energy industry~~ standards and requirements.

12. Removal of Attaching Entity's Facilities

AT&T recommends the following additional language:

a) Abandoned Facilities. An Attaching Entity shall report; through the annual registration process described in Section II.F and remove at the Attaching Entity's expense; all abandoned, non-functional, and obsolete Attaching Entity's Attachments and/or other Communications Facilities, excluding service drops on CPS Energy Poles which the Attaching Entity (1) no longer utilizes for providing Communications Services; (2) has abandoned or plans to abandon during the next reporting period; or (3) has replaced with operating capacity of alternative facilities.

B. Pole Modifications and / or Replacement

4. Aesthetics

Regarding this section, AT&T recommends that where feasible, attaching entities be brought into the process sooner.

4 **Aesthetics.** From time-to-time, CPS Energy undertakes aesthetic projects as required by ordinance or directive of the City or other governmental entities that direct CPS Energy to underground its facilities which will result in the removal of Poles by CPS Energy upon completion of the aesthetic project.

a) For any project that CPS Energy undertakes for aesthetic reasons as set forth in this Section III.B.4 herein, CPS Energy will provide the affected Attaching Entities the estimated design and construction schedule applicable to each specific aesthetic project, as soon as feasible, but no later than, **within forty-five (45) calendar days** of the date CPS Energy expects to receive formal authorization or directive to begin work.

5. Undergrounding

The Standards imply that attaching entities must remove and bury their facilities when CPS is involved in projects for aesthetic reasons.[16] While AT&T understands that such projects are generally at the behest of a municipality, the Standards should, at a minimum, acknowledge that state law governs reimbursement for such expenses.[17]

The right of telecommunications companies to occupy the right of way is subservient only to a municipality's exercise of legitimate police power. Municipal Code §283.052; *see also Southwestern Bell Telephone Company v. Bigler,* 563 S.W.2d 851, 853 (Tex. Civ. App.-San Antonio 1978, no writ). Section 283.056 expressly prohibits a municipality from directly or indirectly seeking to recover any compensation for access to the ROW other than municipal fees. Requiring a telecommunications provider to effectively pay for part of an undergrounding project for the purpose of aesthetics would violate that provision. Moreover, PURA § 54.203(c), limits the power of a municipality to require relocation *at the utility's expense* to projects to widen or straighten streets: "[t]he governing body of a municipality may require a certificated telecommunications utility to relocate the utility's facility at the utility's expense to permit the widening or straightening of a street...." Further, attaching entities should not be obligated to take their poles down pending resolution of reimbursement issues, if any, with the affected municipality.

7. Allocation of Costs

The Standards should be revised to provide that "If CPS Energy intends to modify or replace a Pole solely for its own electric business requirements and not for aesthetic purposes under Section III.B.4, CPS Energy shall be responsible for the costs related to the modification or replacement of the Pole, including ~~. Any affected Attaching Entities shall be responsible~~ for the rearrangement or transfer of ~~their~~ all Attachments ~~at their~~

[16] III.B.4, 5.

[17] Section III.B.5-6.

~~expense~~."[18] CPS should be responsible for costs associated with any pole replacement expenses associated with its own system needs, just as an attaching entity would be responsible for costs associated with pole replacement expenses associated with the attaching entity's system needs.

C. Overlashing

1. Application Required

Under the standards, an application for a permit is required prior to overlashing all facilities except those facilities that fall within a narrow exception.[19] Requiring an application is inconsistent with FCC practice. Moreover the application fee of $8.76 for overlashing is excessive and unnecessary. This additional fee also violates the nondiscrimination and uniform rate provisions of PURA as discussed above. See Attachment B for recommended edits to this section.

D. Inspection and Inventory of Attaching Entity's Facilities

Without question, an inventory has a significant impact on the pole attachment rate under the FCC pole attachment formula. Inventories are essential as well in establishing the ownership of poles. The Standards provide that, "All Attaching Entities shall cooperate and participate in the Inventory and share the cost on a pro-rata basis with all other Attaching Entities based on the number of found Attachments belonging to each Attaching Entity." Cost sharing should be per attaching entity including CPS, as all entities benefit equally from the inventory, regardless of the number of attachments. Allocating the costs per attachment, and excluding CPS, will require AT&T to pay for the bulk of CPS' inventory.

The Standards also provide that "CPS shall have sole responsibility for the management, review and approval of the inventory."[20] While AT&T understands that CPS intends to allow input from the attaching entities and pole owners, the proposed standards do not currently include language that would allow for meaningful opportunity to participate. Instead, the Standards at subsection D.5. provide that an attaching entity may perform its own inventory. A cooperative process, including reasonable advance notice, should be required. That is the standard in the industry for successful inventories by pole owning entities in the same geographic area. Neither pole owner could reasonably be expected to accept the results of an inventory that did not include its participation in planning for the settlement of pole ownership conflicts and application of its own records. This is particularly important to an entity like AT&T which owns a significant number of poles in

[18] III.B.7.

[19] III C.1.A "…an Attaching Entity may Overlash its own Attachments where the facilities comprising the Overlashing and Attachment do not exceed three and one-half (3.5) inches in diameter and such Overlashing fully complies with the Applicable Engineering Standards. In such cases, the Attaching Entity shall provide CPS Energy with ten (10) calendar days' prior written notice of the Overlashing and its compliance with the requirements set forth in this Section…."

[20] III.D.3(a)

CPS territory. In fact, the only real input that a pole owner or attaching entity has under the proposed Standards, other than responding to questions CPS may or may not ask, is to challenge the final written report – within just five days of receipt or be deemed to have accepted the report as "correct and final." III.D.3(c) - (d). That is not sufficient due process.

Moreover, this take it or leave it approach to the pole inventory process could have a dramatic effect on the attaching entities until the next inventory occurs no sooner than 5 years later[21]. Indeed, the inventory determines the baseline for pole attachment fees, unauthorized attachments and corresponding penalties. Additional recommended edits to this Section are included on Attachment B.

IV. SPECIFICATIONS FOR WIRE ATTACHMENTS

A. Pole Attachment Process

The pole attachment process is divided into tiers with the responsibility increasing with each tier.[22] AT&T's concerns with that approach are discussed in response to Question 1, above.

B. Standard Process

5. Make-Ready Communications Construction – One Touch Transfer

The discussion of Cost Responsibility, with the exception of defective poles, lacks clarity with respect to such responsibility. A discussion of CPS' intent and subsequent edits to reflect the intent would eliminate confusion.

D. Mass Deployment—High Volume Process

4. Make-Ready Electrical Space Construction

The proposed standards require an attaching entity to take responsibility for transferring or rearranging CPS electric facilities when circumstances dictate. Under current practice with CPS and other electric utilities with whom AT&T has agreements, the electric utility is responsible for rearranging its own facilities—that is the way it has always worked and the way it should be done. AT&T recognizes that the attaching entity is responsible for paying for the work CPS performs when AT&T's attachments necessitate a new pole. The Standards, however, require the attaching entity to engage a contractor to replace the pole and rearrange CPS facilities. AT&T is not in the electric business; it should play no role in arranging or supervising a contractor engaged to rearrange CPS facilities. CPS

[21] III.D.1., 3(e).

[22] IV.A.

could provide the option for the utility to engage the contractor in exchange for a shorter application review by CPS.

i. Make Ready Electrical InspectionA

The Standards do not specify that this inspection shall be at CPS's expense. It should be. The only party that benefits from this work is CPS. AT&T's additional comments on Make-Ready work are contained in Attachment B.

8. Post-Construction Inspection

The Standards provide that CPS will perform post construction inspections, at the attaching entities' expense, for all attachments and overlashings. And if the inspection discloses what CPS believes to be a noncompliant work, the attaching entity must take corrective action within 30 days or CPS will perform the work and issue a bill. A reasonable period of time must be given to perform corrective action; 30 days may not be sufficient. Shifting responsibility for managing construction of CPS facilities to non-CPS entities (and then penalizing them if anything is wrong) will discourage economically beneficial investment in San Antonio.

APPENDIX G: CPS POLE LOADING REQUIREMENTS

The proposed standards would require a load analysis for all attachments.[23] That is not the practice in place today and is not necessary for safety or protection of property. AT&T, which owns millions of poles nationwide, undertakes a host of actions to protect property and ensure continuity of service. While the general rule for AT&T's national construction and engineering staff is that all pole placements, pole replacements, cable installations, or equipment installations require a pole loading analysis, there are some exceptions that the Standards should recognize:

- When placing new fiber cables and there are three (3) or less existing cables (fiber or copper) totaling less than 1200 copper pairs in total weight on an existing pole
- When placing 72-strand or smaller fiber optic cable
- When placing fiber in existing aerial inner duct
- When overlashing is in temperate areas where snow and ice are rare, or NESC-identified "light" loading zones, such as San Antonio

AT&T urges CPS to take a closer look at the pole loading analysis requirements and recognize reasonable exceptions. This will eliminate unnecessary cost and work for everyone.

[23] Appendix 11.

Additional Comments on the Standards may be found in Attachment B, a redline of the Standards (only pages with proposed edits or comments have been included).

CONCLUSION

AT&T appreciates the significant effort that is clearly reflected in the proposed Standards, as well as the opportunity to comment. We urge close review and consideration of the concerns about the lawfulness of certain aspects of the proposal and the recommended edits. Processes that include the input and perspective of the attaching communication providers will be much more likely to be workable and meet with a high level of cooperation and compliance.

Regarding wireless attachments, AT&T welcomes the opportunity to provide input as those standards are developed and would encourage CPS to seek input of all interested parties via meetings and presentations prior to committing proposed standards to writing.

Respectfully submitted,

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