

10-13-20

ITEM 2Q  
RTC #20- 693

**Simrat Dhadli**

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**To:** Manuel Pineda; Nora Pimentel  
**Cc:** Nadine Nader  
**Subject:** RE: Comcast - Santa Clara 2020-2021 Pole Attachment Rates

**From:** Appel, Ryan [<mailto:RyanAppel@dwt.com>]  
**Sent:** Friday, October 09, 2020 2:40 PM  
**To:** Joseph Bruzzone <[jbruzzone@SantaClaraCA.gov](mailto:jbruzzone@SantaClaraCA.gov)>  
**Cc:** Browne, Maria <[MariaBrowne@dwt.com](mailto:MariaBrowne@dwt.com)>  
**Subject:** Comcast - Santa Clara 2020-2021 Pole Attachment Rates

Mr. Bruzzone,

Davis Wright Tremaine is outside counsel to Comcast. Attached is a letter that conveys Comcast's concerns with the City of Santa Clara's Report on Derivation of FY 2020-2021 Pole Attachment Rates. Be safe and well.

Sincerely,

Ryan Appel

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October 9, 2020

VIA EMAIL AT [jbuzzzone@SantaClaraCA.gov](mailto:jbuzzzone@SantaClaraCA.gov)

Mr. Joseph Bruzzzone  
Electric Utility Engineer  
Silicon Valley Power  
1500 Warburton Avenue  
Santa Clara, CA 95050

Re: Report on Derivation of FY 2020-2021 Pole Attachment Rates

Dear Mr. Bruzzzone:

I write on behalf of Comcast concerning the pole attachment rate methodology employed by the City of Santa Clara in its Report on Derivation of FY 2020-2021 Pole Attachment Rates ("2020-2021 Report"). As you know, Cal. Pub. Util. Code § 9512 prohibits the City of Santa Clara from charging pole attachment rates that exceed "an amount determined by multiplying the *percentage of the total usable space that would be occupied by the attachment* by the annual costs of ownership of the pole and its supporting anchor." Cal. Pub. Util. Code § 9512(a) (emphasis added). The statute presumes that the "percentage of total usable space occupied by attachment" is 7.41% (one foot of 13.5 feet of usable space), which is subject to "factual rebuttal." *See id.*

In the 2020-2021 Report, the City inappropriately strayed from the 7.41% space allocation percentage and applied a 9.52% space allocation factor because it claims "that wind resistance related to the profile of the attached cables creates additional stress and increases the effective amount of space occupied by each attachment." *See* 2020-2021 Report at 4. The City's explanation does not constitute a sufficient "factual rebuttal" required under California law because the City merely and vaguely relied on the "experience" of its engineers. *See id.* The City did not provide any evidence to support its assertion that wind resistance of the attachments increases the amount of space occupied. Moreover, this argument is simply not true.

Cal. Pub. Util. Code § 9512 follows the Federal Communications Commission's widely employed pole attachment formula, which assigns costs to attachers by utilizing a rebuttable space allocation factor of 7.41%. *See* 47 C.F.R. § 1.1410. The California Public Utilities Commission employs the same space allocation factor in its pole attachment formula that investor-owned utilities are required to follow.<sup>1</sup> *See Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, D. 98-10-058, R.95-04-043, 1998 Cal. PUC LEXIS 879, \*88, Appendix A § VI(B) (CA PUC 1998) ("CA ROW Rules") ("Since the 7.4% allocation applies to the cost of the entire pole, it results in a fair cost apportionment in deriving attachment rates, for either cable or telecommunications services."). Neither of these formulas contemplate the impact

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<sup>1</sup> Investor-owned utilities may not rebut the 7.4% space allocation factor that is used in the CPUC's pole attachment formula. *See* CA ROW Rules Appendix at \*88, A § VI(B).

Mr. Joseph Bruzzone  
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Sincerely,

/s/ Ryan M. Appel  
Ryan M. Appel

cc: Maria T. Browne