

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298**Date: April 3, 2021****From: Eric Van Wambeke, P&PS
Alex Abramson, PURA III
Lisa Marie Clark, Public Utilities Counsel IV****General Order 69-C Annual Report Summary**

This report highlights the overreliance and potential abuse of General Order (GO) 69-C by the telephone and electric utilities to underreport revenue generated from leases of utility property and access to rights-of-way, specifically those concerning communications equipment and facilities. GO 69-C permits utilities to enter into specific transactions without Commission approval.¹ Until recently, such transactions have largely gone unnoticed as no reporting mechanism requires the utilities to notify the Commission of new or existing agreements—and related incomes—that the utilities designate as falling under GO 69-C.²

To further shed light on these transactions, Communications Division commenced an extensive review focusing on AT&T California, Frontier Communications, Consolidated Communications, the thirteen small Independent Local Exchange Carriers (small ILECs), and the three energy IOUs (PG&E, SCE, and SDG&E). Staff assessed records from data requests, issued subsequent data requests, and held conference calls with the utilities' representatives to seek additional clarification. Staff uncovered a significant number of transactions that were improperly classified as GO 69-C, which allows certain transactions to move forward without Commission approval or disclosure through an obligatory reporting mechanism. In 2019 alone, the utilities miscategorized 4,855 agreements as GO 69-C—with AT&T carrying the bulk of these transactions—that should have otherwise been approved by application or advice letter.

¹ The Commission last addressed General Order 69-C in a Workshop Report found appended to D.05-04-055. Although that decision indicates a desire to provide further guidance on GO 69-C, further attempts to clarify the General Order have largely been abandoned.

² As of January 3, 2020, AT&T California, Frontier Communications, Consolidated Communications, the thirteen small Independent Local Exchange Carriers (small ILECs), and the three energy IOUs (PG&E, SCE, and SDG&E) are required to include information of all GO 69-C transactions in its Annual Report.

Findings

In May 2018, CD Staff launched an informal review of telephone and electric utilities' use of Public Utilities Code § 851, GO 173, and GO 69-C for leases of utility property and access to rights-of-way.³ CD Staff sent data requests to AT&T, Frontier, PG&E, SCE, SDG&E, and the 13 Small LECs. The data requests asked for, among other things, a list of current licenses and leases approved by the Commission pursuant to PU Code § 851 or GO 173, and a list of all easements, licenses, and rights-of-way that are currently in effect subject to GO 69-C. Staff focused on three categories of transactions that generate income for the utilities: dark fiber, real estate, and pole attachments/rights-of-way.⁴

Staff analyzed a total of 9,923 agreements that respondents self-classified as GO 69-C transactions that proceeded without prior Commission approval. To identify "misuse," Staff looked at whether the companies applied the Commission's GO 69-C general principles, as explained in the January 3, 2020 Guidance Document and discussed in a workshop as ordered in D.02-10-057.⁵ Staff concluded the respondent utilities liberally construed GO 69-C transactions to an extent where the exception was inconsistently or incorrectly applied, with some respondents acting more egregiously than others.

The table below shows the number and percentage of agreements incorrectly treated as a GO 69-C designation, and which are subject to Commission review under PU Code § 851 or GO 173 (depending on the value of the transaction). The table also contains the results from 2020, which includes information from the initial data requests in 2018 and the carriers' 2020 Annual Report.⁶

³ A.17-02-001 (Application of SCE to Lease Dark Fiber to Verizon), SCE Advice Letter 182 (Requesting Authority Under GO 173 to Lease Dark Fiber to CyberNet), and A.17-04-010 (Application of PG&E for a Certificate of Public Convenience and Necessity to Provide Telecommunications Services).

⁴ Dark fiber was focused on as it had become increasingly clear with past proceedings that IOUs were leasing and/or licensing out their dark fiber in significant quantities without notifying the Commission via Advice Letter; Real estate because towers, office space, and other properties appeared to have been potentially leased or licensed without the income being reported; and pole attachments/right-of-way due to the increasing importance of such items in both modern and future expansion of broadband and VOIP services.

⁵ https://docs.cpuc.ca.gov/PublishedDocs/WORD_PDF/COMMENT_DECISION/44577.PDF

⁶ GO69-C transaction information was collected as part of carriers' annual report filings in 2020

Table 1: Total GO 69-C Agreements and Earnings Through 2019

Company	Total # of GO 69-C Agreements	Potential Misuse of GO 69-C		Total # of GO 69-C Agreements		Potential Misuse of GO 69-C		2019 Earnings
		#	% of Total Agreements	2020 Annual Report	Lifetime Value of Agreements	#	% of Total Agreements	
<i>May 2018 Data Request</i>								
AT&T	7	7	100.00%	4,878	\$186 M	4,588	94.05%	\$12.702 M
Frontier	123	32	26.02%	169	Unknown ⁷	18	10.65%	\$282.3 K
Consolidated ⁸				3	\$150 K	3	100.00%	\$46.8 K
PG&E ⁹	1,514	9	0.59%	2,914	\$57.9 M	173	5.93%	\$6.332 M
SCE ¹⁰	58	5	0.62%	1,883	\$305.13 M	9	>.001%	\$431.3 K
SDG&E	0	0	0%	3	\$336.37 K	3	100.00%	\$62.4 K
13 Small LECs ¹¹	35	12	34.29%	73	\$9.39 M	61	83.56%	\$1.194 M
Total	2,491	65	2.6094%	9,923	\$559.21 M¹²	4,855	48.93%	\$ 21.105 M

⁷ Frontier could not provide these values, due to records issues.

⁸ Consolidated was not initially a part to the request in 2018.

⁹ PG&E's recent Data Request Response included 3 entities in total, include their New Revenue Division, which included the by far the largest share of the agreements.

¹⁰ SCE filed for both itself and its three subsidiary organizations that also were party to filing agreements in the prior request. They did not do so in the Annual Report/Data Request.

¹¹ Calaveras, Cal-Ore, Ducor, Foresthill, Happy Valley), Hornitos, Kerman, Pinnacles, Ponderosa, Sierra, Siskiyou, Volcano, and Winterhaven.

¹² Total excludes Frontier.