

## Glossary of Terms & Phrases Re Los Angeles WTF Proliferation/Regulation

### **Wireless Telecommunication Facilities (WTFs)**

Equipment installed and used by telecommunication providers (e.g., Verizon, T-Mobile, etc.) for wireless telecommunication services. Terms commonly used to describe WTFs or their component parts include:

- **Cell tower:** a colloquial term generally describing a tall pole with antennas affixed to the top, used for cellular telephone services.
- **Antennas:** equipment necessary for wireless cell phone or Internet reception; can be mounted on a pole, a building or other structure. “Joint pole use,” “co-location,” or “attachment” are terms variously used when antennas are affixed to utility poles that also “share” other equipment (e.g., electrical, phone or cable TV lines; conductors).
- **Monopole:** a freestanding pole which supports cellular antennas; can be metal or wooden (*i.e.*, like a utility pole); if metal, power lines typically run through the inside of the pole; if wooden, lines run via conduits attached to the outside of the pole.
- **Utility pole:** wooden pole installed typically in the public right of way (PROW); often used to support cellular antennas. As distinguished from a “monopole,” a “utility pole” (whether new, existing or replacement) which has lines or wires affixed to the top is exempt from regulation under the city’s Above Ground Facility (AGF) ordinance (see below).
- **Power cabinet/pedestal/box:** ancillary equipment used for WTFs or other telecommunication installations (such as fiber-optic TV/Internet systems). Depending upon the installation, boxes may contain fans (which can be very noisy and have led to complaints from residents) or lead-acid batteries (which some believe to be fire hazards); free-standing cabinets installed in PROWs require AGF permits; pole-mounted boxes do not require such permits but may be subject to review for technical or safety concerns.

### **Telecommunications Act of 1996 (TCA)/federal regulations**

Federal law governing telecommunication facilities. Important provisions:

- Local governments *cannot* prohibit telecommunication services and *cannot* unreasonably discriminate among providers.
- Local governments *cannot* regulate based on health or environmental concerns; objections to WTFs cannot be raised based on radio frequency (RF) emissions that are within currently permissible levels (as established by the FCC).
- Local governments *can* regulate placement, construction and modification of WTFs, *subject to* the above provisions – which until recently were construed by courts and/or regarded by local officials as severely limiting local regulatory efforts.

### ***Sprint v. Co. of San Diego (Sprint)*/federal case law**

Important recent 9<sup>th</sup> Circuit (U.S. Court of Appeals) decision:

- The Court held that a comprehensive San Diego County zoning ordinance which extensively regulated WTF siting and appearance *on its face* did not violate the TCA’s provisions against prohibition of service or discrimination among providers.

- *Sprint* makes it clear local governments now have more latitude and ability to regulate WTFs for location and appearance than had previously been understood to be the case under federal law; many cities are seeking to revise their existing ordinances in line with *Sprint*. (Caution: providers can still show that *as applied*, the ordinance *in fact* violates the TCA; *i.e.*, regardless of an ordinance’s requirements, a city cannot deny a permit if it cannot disprove a provider’s showing that it has no other feasible alternative and that a denial would effectively act as a ban on service.)

### **Public Utilities Code (PUC)/state regulations**

The PUC regulates operations of public utilities in PROWs in California; the law dates back to the 1800s, when telegraph poles and lines were first deployed (WTFs are now within its purview). Some important aspects or concerns:

- Public utilities (including telecom providers) which obtain a “Certificate of Public Convenience & Necessity” to operate their facilities (*i.e.*, to erect poles, wires and other necessary infrastructure) are deemed to have been conferred a statutory “franchise right” in PROWs.
- Providers have argued that state law preempts most local regulation, and that by virtue of their state-conferred franchise they have *carte blanche* to operate in PROWs. However, the PUC provides that 1) installations cannot “incommode” public access to streets, and 2) local governments *can* regulate facilities in PROWs as to “*time, place* [location] and *manner* [height, appearance, aesthetics, etc.]”
- Although there are few published decisions on the issue, the weight of current opinion appears to be in favor of recognizing a broad ability on the part of local governments to regulate location and appearance and to issue permits for pole installations in PROWs (which state law does not completely preempt).
- Although PUC rules do appear to preempt certain technical aspects specifically related to *equipment* affixed to utility poles (conductors, wires, crossbars, etc.), Public Utilities Commission representatives maintain that they have no jurisdiction over DWP in regard to pole installation or permit issuance (DWP owns or controls most existing poles in Los Angeles).
- DWP’s involvement in reviewing new or replacement pole installations proposed by telecom providers is unclear, but DWP officials claim they are supposedly *required* by the “Joint Pole Agreement” (see below) to approve proposed joint uses of their poles, subject only to minimal safety or maintenance considerations.

### **Joint Pole Agreement (JPA)**

One hundred year old written agreement (most recent version in 1998) among certain Southern California cities (including Los Angeles) and public utilities (including telecom providers), governing members’ joint or shared use of utility poles. Important aspects or concerns:

- City officials have for many years maintained or believed that the JPA supposedly *prevents local regulation of joint or shared pole installations by JPA members*, who are claimed to be under the “jurisdiction” of a so-called “Joint Pole Authority” (a misnomer for the JPA).
- In fact, representatives of the Southern California Joint Pole Committee (SCJPC – the body which administers members’ joint use of poles) confirm that *no such “Authority” regulates pole installations*; instead, the SCJPC becomes involved only after a joint

pole installation has already occurred and is reported to it (usually many years after the installation has taken place); at that point, the SCJPC merely monitors members' pole use (an administrative task).

- The terms of the JPA itself are also administrative rather than regulatory in nature; they do not address issues of pole installation, appearance, height, placement, etc.
- Contrary to the belief or assertion of DWP and/or other city officials, the JPA expressly provides that members are NOT required to allow other members to use or share in the use of utility poles; it also mandates that members SHALL submit to all local regulations.
- The JPA is not accessible to the general public; Pacific Palisades Residents Association (PPRA) obtained a copy recently via a Public Records request of DWP. However, DWP is *not a listed member* of the JPA (the city of Los Angeles is instead the named member). PPRA has requested that the City Attorney follow up to obtain any additional documents that may shed light on the meaning and scope of the JPA.

### **WTF Ordinance**

City zoning ordinance regulating WTFs on *private property* and public property other than PROWs. Some important aspects or concerns:

- Originally enacted in 2000, the ordinance was drafted long before current technologies (*i.e.*, smartphones, enhanced video and Internet capability, etc.) had been developed or even contemplated. These rapidly-developing technologies have resulted in a need, within the past year alone, for a massive increase in antennas and other infrastructure, in residential as well as commercial areas – a development that the ordinance's drafters did not or could not foresee.
- The ordinance was drafted with input from telecom providers, business leaders and city officials as well as residents, at a time (*pre-Sprint*) when the TCA was deemed to severely limit local governments' ability to regulate for siting and appearance.
- The ordinance requires providers to fulfill certain requirements and obtain a CUP (in most cases) through a noticed hearing procedure administered by the Planning Dept. By its terms, it deals only with "monopoles" and "antennas" and some "support structures" (e.g., equipment cabinets) without clear definition as to all WTF components; while it does have some aesthetic requirements (limited setbacks, landscaping, camouflage and the like), many of the standards are vague and the ordinance does not offer specific or substantial protection for residential neighborhoods in terms of siting – something that is now permissible post-*Sprint*.

### **Above Ground Facility (AGF) Ordinance**

City ordinance regulating *power cabinets in PROWs*. Some important aspects or concerns:

- The ordinance was enacted in 2003 to deal with the then-increasing number of power cabinets that were being installed in PROWs and not otherwise regulated by the WTF ordinance. According to one of the participants in the drafting process (a community leader/current NC member and officer who also helped draft the WTF ordinance), the AGF ordinance was intended to be completely separate from the WTF ordinance and to regulate only power cabinets, not poles, towers or other structures.
- Input in drafting was obtained from telecom providers, business leaders, residents and city officials; DWP opted out of the process because "utility poles" in the PROW were

supposedly off-limits to local regulation due to the JPA.

- The ordinance provides for limited notice but *no hearing* prior to issuance of an AGF permit by a Bureau of Engineering (BOE) engineer in R1 zones (hearings are only required in a few exceptions such as Specific Plan, Scenic Corridor or Open Space zones). There are height, landscaping and anti-graffiti requirements related to *power cabinets* but no specific protections for residential areas. Utility poles are exempt (per the apparently mistaken belief, as expressed in the ordinance, that they are otherwise under JPA regulation or authority).
- There is lack of clarity as to whether monopoles – *i.e.*, poles without wires affixed to the top – are covered by the ordinance; the drafting participant/current NC member states that they were *not* intended to be covered, but providers who now seek to install monopoles in PROWs – as has occurred recently – apparently understand or are told that they must obtain AGF permission, even though there are no specific standards or requirements in the ordinance related to monopoles.
- The BOE engineer who handles most AGF applications states that he is “told” (unclear by whom) that he “must” grant permission for AGFs, presumably because of perceived limitations of federal and state law or the JPA. There is little or no opportunity to raise meaningful objections before permit issuance and very little on which to base an appeal (although an appeal process is available to residents who originally received notice).
- It was apparently explained to the ordinance drafters that antennas were only allowed on the top 1 ½ feet of utility poles in PROWs (origin of this “rule” is unknown). This was not a particular concern at the time; antenna “attachments” or “co-locations” were not occurring in large numbers (let alone in residential areas) and did not begin to proliferate until some time *after* the AGF ordinance was enacted, many affixed much lower than 1 ½ feet from the top of poles.
- It is only in the past year – as demand for new and rapidly developing data technologies has dramatically increased – that more new developments (unintended by the ordinance drafters) have occurred: antennas being installed in more and more places, including residential neighborhoods; obtrusive cell towers being installed in PROWs *with little or no notice, regulation or opportunity for residents to meaningfully object*.

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