

Glossary of Terms & Phrases Re 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 wireless cellular phone and data services.
- **Antennas:** equipment necessary for wireless cell phone or data 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 poles that “share” other equipment (*e.g.*, electrical, phone or cable TV lines; conductors).
- **PROW:** public-right-of-way; private property with easement (access rights) to the city, typically adjacent to front or back property line, e.g., sidewalk, planting strip or parkway, street dedicated for public use. Cell towers are increasingly being sited in PROWs.
- **Monopole:** a freestanding pole which supports cellular antennas but no overhead *electrical* lines (*i.e.*, can have other overhead TV or phone cables); can be metal or wooden (*i.e.*, like a utility pole); if metal, power supply 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 PROW; often used to support cell antennas. As distinguished from a monopole, a utility pole (whether new, existing or replacement) which supports overhead *electrical* lines 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 systems). Boxes and cabinets 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/pedestals installed in PROWs (frequently referred to as “AGFs”) 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 Regulation and Case Law

Federal law ultimately governs telecommunication facilities. Important provisions of the TCA:

- 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.

Important 9th Circuit Court of Appeals decisions:

- *Sprint v. Co. of San Diego (2008)*: 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. The case 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. (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 a provider proves that the denial would effectively act as a ban on service.)
- *Sprint v. City of Palos Verdes Estates (2009)*: confirmed the ability of local governments to regulate WTFs in PROWs based on aesthetic considerations. Commentators have stated that this case “represents a major blow to the wireless industry.”

Public Utilities Code (PUC)/State Regulation

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:

- 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 a statutory “franchise right” in PROWs.
- Providers have argued that as a result 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, etc.]” The *Sprint v. Palos Verdes* case confirmed the ability to regulate for aesthetics in PROWs under relevant PUC provisions.
- PUC rules do appear to preempt certain technical aspects specifically related to *equipment* affixed to utility poles (conductors, wires, crossbars); however, Public Utilities Commission representatives maintain that they have no jurisdiction over DWP in regard to pole installation or permit issuance (DWP owns or controls many, but not all, existing poles in Los Angeles).
- DWP’s exact involvement in pole installations proposed by telecom providers is unclear, but DWP officials have claimed that the “Joint Pole Agreement” (see below) supposedly authorizes all members to install joint poles in PROWs *whenever or wherever they wish*, subject only to negotiations among pole users as to shares in operating expenses and the like, with minimal or no safety reviews or considerations (e.g., DWP admits that *poles as high as 110 feet have been erected without local regulation* in Los Angeles PROWs, and that many poles which do not have DWP equipment or electrical wires don’t involve DWP at all)! DWP officials “defer to the City Attorney” regarding the legal basis for their position.

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 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 JPA’s terms are also administrative rather than regulatory in nature; they do not address issues of pole installation, appearance, height, placement, etc.
- The JPA expressly 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 via a Public Records request of DWP. DWP is *not a listed member* (the city of Los Angeles is the named member). PPRA has requested that the City Attorney follow up to obtain additional documents that may shed light on the meaning/scope of the JPA (including an SCJPC Handbook which DWP claims governs replacement pole installations).
- A Deputy City Attorney who is preparing a report on WTF regulation for the Council Public Works Committee recently confirmed to PPRA and other concerned community leaders that he has concluded (consistent with PPRA’s conclusion) that utility poles are *not* regulated by the JPA and *can* be regulated by the city if it chooses to do so. (The city of Glendale, also a JPA member, *does* regulate installations involving utility poles – unlike Los Angeles – under that city’s comprehensive new WTF ordinance enacted in Spring 2010.)

WTF Ordinance/City Regulation

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 data capability) had been developed or even contemplated. These rapidly-developing technologies have resulted in the claimed need for a massive increase in antennas and other infrastructure in residential 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 thought 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 limited setback and landscaping requirements, there is no provision for permit denial on aesthetic grounds, many of its standards are vague, and it does not offer substantial protection for residential neighborhoods in terms of siting – something that is now permissible post-*Sprint*.

Above Ground Facility (AGF) Ordinance/City Regulation

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

- The ordinance was enacted in 2003 to deal with the then-increasing number of 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, the AGF ordinance was intended to be separate from the WTF ordinance and to regulate only power cabinets, not poles, towers or other structures. City documents available online confirm this to be the case.
- 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 (initial hearings are only required in a few exceptions such as Specific Plan 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 that they are otherwise under JPA regulation or authority).
- There is lack of clarity as to whether monopoles – *i.e.*, free-standing poles that do not support electrical wires – are covered by the ordinance; a drafting participant states that they were *not* intended to be covered and publicly available documents confirm this intent (cell towers being erected in PROWs in residential areas were not anticipated when the ordinance was drafted), but providers who now seek to install monopoles in PROWs are required to obtain AGF permits, even though the ordinance has no specific standards or requirements related to poles.
- The BOE engineer who handles 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 (an appeal process is available *only to adjoining homeowners who received notice initially*).
- It is only in the past two years – as demand for new and rapidly developing data technologies has dramatically increased – that new disturbing developments (unintended by the ordinance drafters) have occurred: antennas being installed in more and more places, including residential neighborhoods and near schools; obtrusive cell towers being installed in PROWs *with little or no notice, regulation or opportunity for residents to meaningfully object*.

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