

State of California  
Business, Transportation and Housing Agency  
Department of Transportation

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POLICY MATTERS  
Renewal of the Wireless  
Licensing Program  
Action Item  
CTC Meeting: June 13, 2002  
Reference No. 4.9

Original Signed By:  
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June 3, 2002

RENEWAL OF THE WIRELESS LICENSING PROGRAM AND REPLACEMENT OF  
CALIFORNIA TRANSPORTATION COMMISSION RESOLUTION G-98-07

RECOMMENDATION:

In May 1997, upon recommendation of the Airspace Advisory Committee (AAC), the Wireless Telecommunications Program, also known as the Wireless Licensing Program, came into being when the California Transportation Commission (CTC) voted to approve the Program for an initial five-year term commencing July 1, 1997 and ending June 30, 2002. At their April 2002 meeting, the AAC reviewed and approved the renewal of the Program for another five-year term subject to approval by the CTC.

The Department requests the CTC concur with the AAC and approve the renewal of the Wireless Licensing program for another five-year term commencing July 1, 2002.

SUMMARY:

In 1996, an Executive Order was issued to all Departments and Agencies in State Government to help facilitate and develop policies to improve telecommunications within California. As a result of that order, the Department of Transportation's Division of Right of Way, with guidance from the Airspace Advisory Committee (AAC), and approval from the California Transportation Commission (CTC), developed the Wireless Licensing Program as a part of the existing Airspace Program.

The Wireless Licensing Program's goals are to partner with telecommunications providers to improve its service to the traveling public by providing potential sites for those telecommunications providers. The essence of the goal is to provide assistance to the industry while at the same time insuring that any proposed telecommunications facility would not interfere with the operations of the freeway system or compromise the safety of the traveling public.

Another goal, not specifically mentioned in official Department policy statements, was the generation of revenues for the State Highway Account.

A Master License Agreement (MLA) was developed containing terms and conditions, and a Site License Agreement (SLA) is required for each selected site specifying the rate, term and use. Facility owners are required to provide co-locations for other providers when feasible and provide space for future Department needs.

The Program is structured such that each wireless carrier must execute the MLA prior to initiating a request to place a wireless facility within Department right of way. Right of way, for the purposes of this specific program is defined not only as freeway operating right of way, but also Park and Ride Lots, Rest Stop Areas, Department Maintenance Stations, Department-owned buildings and other real estate assets. This program only applies to freeway rights of way, expressways and other access-controlled highways. The Program does not license facilities within conventional highway rights of way. Wireless carriers who desire to construct cell towers in conventional highway rights of way must contact the Department's Encroachment Permit Branch and are not subject to the terms and conditions of the MLA.

Each SLA issued has a term of ten years with three five-year options. The MLA, however, has a five-year term, which requires an action by the CTC to renew. When the Program was initiated, it was decided a short-term MLA was preferable as the future of the industry and the technology was uncertain.

Pricing of individual cell sites is calculated using a simple formula based on the following: location (rural, urban, and prime urban), size of the facility or "footprint" and number of antenna. These pricing variables are placed within a pricing "matrix" to arrive at an easily calculated annual rent. The simplicity of the matrix is a major benefit to the industry, since they are able to know the licensing fee prior to submitting any site proposal. The Department benefits as well, as there is no protracted appraisal or valuation process to hinder the processing of a siting proposal. Prices are currently automatically adjusted upward annually at approximately 3.5%.

The Wireless Program is clearly a success story. The Department has met its goal of assisting the telecommunications industry and in helping meet the needs of the public. The Program has shown steady consistent growth. Since its implementation, approximately 110 sites have been constructed with total revenues through December 31, 2001 of over \$5.5 Million. The income from the Wireless Licensing Program is deposited into the State Highway Account, and once a year transferred into the Public Transportation Account where the funds are made available for programming by the CTC for public mass transportation projects statewide.

Nearly five years after inception of the Department's program, the majority of other State Transportation Departments still do not have a process to place cell towers in their rights of way. Those that do, utilize a multitude of processes and pricing mechanisms. Some states individually negotiate the price for each site; other states charge a nominal fee, while others have agreements to allow sites in exchange for cell phone and related services.

Discussions with the wireless carriers have indicated they are generally pleased with the program. Our published Wireless Licensing Guidelines are available on the Internet and clearly outline the process a carrier must undertake to place a cell tower within the Department's right of way.

The AAC has recommended approval of the Program with a few minor changes:

- The pricing matrix will be adjusted upward annually from 3.5% to 5% based on the Consumer Price Index. The matrix currently is set at an annual increase of a flat 3.5%.
- The Department will have the latitude to increase or decrease pricing of up to 25% during the first year if market conditions dictate.
- The current program is open only to wireless communications companies licensed by the Federal Communications Commission (FCC). The renewed program will be opened to non-FCC-licensed entities, but only when specific requests are first reviewed by the AAC with subsequent CTC approval.

CALIFORNIA TRANSPORTATION COMMISSION

Procedure for Leasing Airspace to Private Entities

**Resolution G-02-XX**  
**Replacing Resolution G-98-07**

- 1.1 **WHEREAS**, Section 104.12 of the Streets and Highways Code authorizes the Department of Transportation to lease the use of airspace above or below State highways to private entities in accordance with procedures to be prescribed by the California Transportation Commission; and
- 1.2 **WHEREAS**, Section 30410 of the Streets and Highways Code authorizes the Director, upon such terms and subject to such reservations as are first approved by the California Transportation Commission, to lease, sell, exchange or otherwise dispose of property acquired pursuant to the California Toll Bridge Authority Act and no longer necessary for Toll Bridge purposes or whenever it is for any other reason in the public interest to do so; and
- 1.3 **WHEREAS**, Section 21636 of the Public Utilities Code authorizes the Department to dispose of any property, airport, air navigation facility, or portion or interest, acquired pursuant to the State Aeronautics Act (PUC S21001 et seq.), by sale, lease or otherwise; and
- 1.4 **WHEREAS**, leases to private entities are to be made only after competitive bidding unless the California Transportation Commission finds by unanimous vote that in certain cases competitive bidding would not be in the best interest of the State.
- 2.1 **NOW THEREFORE BE IT RESOLVED**, that the California Transportation Commission finds it to be in the best interest of the State of California to use a Letter of Understanding and Offer and Proposal format for awarding of long-term leases providing that the California Transportation Commission approves unanimously the terms of such leases should they not be the result of competitive bidding; and
- 2.2 **BE IT FURTHER RESOLVED**, that the payment of brokers commissions be allowed as inducement for building development to licensed real estate brokers who assist in the development of airspace sites; and
- 2.3 **BE IT FURTHER RESOLVED**, that the Director of Transportation is authorized to execute nonbid, nondevelopmental leases up to three years; and
- 2.4 **BE IT FURTHER RESOLVED**, that the Director of Transportation is authorized to execute short-term nonbid leases up to a period of six months with up to one additional six-month period; and
- 2.5 **BE IT FURTHER RESOLVED**, that the Director of Transportation is authorized to execute month to month rental agreements, which are automatically renewed, with nonprofit organization son Park and Ride lots; and

- 2.6 **BE IT FURTHER RESOLVED**, that the Director of Transportation is authorized to directly negotiate and execute long term development agreements for any location for which only one telecommunications (wireless) carrier has indicated an interest, provided that those agreements only involve cash payments and no “in-kind” payments, and that all agreements involving “in-kind” payments will be individually reviewed by the Airspace Advisory Committee and approved by the Commission; and
- 2.7 **BE IT FURTHER RESOLVED**, that the Department has the authority to enter into revenue sharing agreements with any underlying fee owner, which would require that all telecommunication sites comply with the terms of the Department’s Master License Agreement and that the Base License Fee would be split 50-50. The Base License Fee must be no less than the rate established by the Master License Agreement unless the underlying fee owner requires a higher rate. The fee would only be shared with the underlying fee owner if they submitted a specific request for a portion of the fee, and only if the easement document is for highway purposes only; and
- 2.8 **BE IT FURTHER RESOLVED**, that the Airspace Advisory Committee and the Commission have reviewed and revised the Master License and Site License agreements for the telecommunications (Wireless) program by June 30, 2002, and will review and possibly revise the Master License and Site License agreements every five-years thereafter; and
- 2.9 **BE IT FURTHER RESOLVED**, that the Director of Transportation is authorized to establish policies and procedures setting forth the specific terms and guidelines within which to administer the development of airspace as prescribed in this resolution and the law; and
- 2.10 **BE IT FURTHER RESOLVED**, that Attachments 3, 4, 5, and 18 of the Resolution Continuing Policies and Delegations adopted by the California Transportation Commission March 9, 1978, are hereby rescinded; and
- 2.11 **BE IT FURTHER RESOLVED**, that Resolution G-98-07 is hereby replaced.