

# Memorandum

To: CHAIR AND MEMBERS  
Real Estate Advisory Panel

Date: March 6, 2008

File: AIRSPACE  
Wireless Program

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Subject: Wireless Program Renewal

## HISTORY AND BACKGROUND:

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 (Program) as a part of the existing Airspace Program.

The Program's goals are to partner with telecommunications providers to improve their service to the traveling public by providing potential sites for those telecommunications providers, while at the same time insuring that any proposed telecommunications facility will 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, is the generation of revenues for the State Highway Account.

The Program was officially implemented July 1, 1997. 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, Safety Roadside Rest Areas, Department Maintenance Stations, Department-owned buildings and other real estate assets. As far as highway right of way, the 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 deal with 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 that was renewed once in 2002 and then expired on June 30, 2007. Six-month extensions to the existing agreements were executed with companies who are interested in new sites and now the five-year term agreements are due for renewal. If the Program, for whatever reason, were not renewed, each SLA would be valid for the life of its term. At the time 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 formula based on: 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 a calculated annual rent. The matrix is attached as an Addendum for your reference. The matrix is a major benefit to the industry, since the carriers are able to calculate 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 automatically adjusted upward annually at approximately 3.5%.

#### THE PROGRAM TODAY

The Department has met its goal of assisting the telecommunications industry in meeting the communication needs of the public. Since its implementation, approximately 231 sites have been constructed with yearly revenues of over \$5.3 Million.

The Program has shown steady growth but more flexibility would most likely allow for more growth. Most of the sites have been constructed in the San Francisco Bay Area and, to a lesser extent, the Los Angeles and San Diego Areas. Very few sites have been constructed on freeway rights of way outside of those urban areas.

Ten 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 satisfied with the Program. Our published Wireless Licensing Guidelines are available on the Internet at <http://www.dot.ca.gov/hq/row/rps/airspace.htm> and clearly outline the process a carrier must undertake to place a cell tower within Department-owned property.

Internal processing of individual proposals can be time consuming as many functions within the Department must review and approve proposed site locations and construction details. This process accounts for many carriers preferring to locate their facilities on privately owned property so only the local governmental agencies becomes involved in the siting process. By law, the Department's Airspace and Wireless leasing must acknowledge local zoning and regulations so a carrier will often choose to locate on private property and then deal with only the one local governmental agency.

Research and discussion with industry insiders indicates that our current pricing matrix is adequate for pricing cell facilities within Department rights of way and property. Pricing information and market data of sites on private property is very difficult, if not impossible to obtain. Such information is usually deemed proprietary and is generally not available for review. Pricing information that can be obtained is often found as a range of values that may or not be adjusted for location. There has been some mention that perhaps our prices for some prime urban locations may be too low while our prices in rural areas may be too high. This cannot be validated due to lack of

market data. It seems logical to assume that there may be Department-owned sites that may be of extremely high value while others may have very little value due to the proximity of siting alternatives. This might explain the virtual absence of cell sites placed on Department property in rural areas. The Department surveyed a number of local agencies and public utilities to see if the pricing matrix is still valid. From the range of values given by these entities our matrix, with its 3.5% escalation factor, is still current with the market.

Industry representatives we have talked to indicate that new innovations are the norm. They see changes occurring in the market with wireless Internet, consolidation of providers and new technologies that make the future uncertain. One example is that some entities are placing Nano sites on streetlight standards to accommodate these new technologies. Staff investigations into the market did not find these Nano sites and therefore were unable to address them in this document but we also acknowledge that they may be the wave of the future. Another idea that surfaced was to offer volume discount pricing where companies get lower rental rates based on the number of sites they have under license on the Department's property.

#### RECOMMENDATION:

The Department's Legal Division as well as representatives of the industry have reviewed the existing MLA and are satisfied that it adequately addresses all issues. Based on our successful experiences of the Program's first ten years, we are proposing only minor changes to the existing Program. These updates would not amend any of the significant provisions of the Program, but clean up and clarify some of the provisions. We ask that the REAP advise the Department on our direction with the Program by providing industry insight on new technologies, volume discounts based on number of sites per carrier and reasonable pricing for sites that will fulfill the industry's requirements. Once those items are addressed we will seek approval of the Program from the CTC for another five years with the following changes:

- Allow the Department to update the pricing matrix using the 3.5% yearly increase through 6/30/13.
- Allow the Department to adopt the changes that the REAP recommends based on their investigation requested above.

ADDENDUM

ANNUAL BASE LICENSE FEE, adjusted 3.5% per year  
 (Rounded to the nearest whole dollar and divisible by 12)  
 July 1, 2007 - June 30, 2013

	<i>July 1, 2007</i>	<i>July 1, 2008</i>	<i>July 1, 2009</i>	<i>July 1, 2010</i>	<i>July 1, 2011</i>	<i>July 1, 2012</i>
<b>MACROCELL</b>						
Prime Urban (Cat 1)	\$29,628	\$30,660	\$31,728	\$32,844	\$33,996	\$35,184
Urban (Cat 2)	\$22,848	\$23,652	\$24,480	\$25,332	\$26,208	\$27,144
Rural (Cat 3)	\$16,932	\$17,520	\$18,132	\$18,768	\$19,428	\$20,100
<b>MINICELL</b>						
Prime Urban (Cat 1)	\$25,392	\$26,280	\$27,204	\$28,152	\$29,136	\$30,156
Urban (Cat 2)	\$21,156	\$21,900	\$22,668	\$23,460	\$24,276	\$25,128
Rural (Cat 3)	\$16,932	\$17,520	\$18,132	\$18,768	\$19,428	\$20,100
<b>MICROCELL</b>						
Prime Urban (Cat 1)	\$21,156	\$21,900	\$22,668	\$23,460	\$24,276	\$25,128
Urban (Cat 2)	\$16,932	\$17,520	\$18,132	\$18,768	\$19,428	\$20,100
Rural (Cat 3)	\$13,968	\$14,460	\$14,964	\$15,480	\$16,020	\$16,584