

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**Assumption of Commission Jurisdiction
Over Pole Attachments from the Federal
Communications Commission**

**PUBLIC MEETING: August 29, 2019
3002672-LAW**

Docket No. L-2018-3002672

**STATEMENT OF COMMISSIONER ANDREW G. PLACE
CONCURRING IN PART AND DISSENTING IN PART**

Before us is a recommendation for the adoption of a Final Rulemaking Order and final form regulations that will enable this Commission to assert jurisdiction over pole attachment matters in Pennsylvania through the adoption of germane Federal Communications Commission (FCC) rules. I am cognizant that the assertion of this jurisdiction will entail the timely accomplishment of new tasks to enforce this federal regulatory regime, however this assertion of jurisdiction will also provide an available adjudication forum for the timely resolution of pole attachment disputes. The resolution of such disputes through the enforcement of applicable federal rules and the use of the Commission's administrative adjudication procedures will facilitate the continuous deployment of wireline and wireless telecommunications and communications network facilities throughout the Commonwealth, thus increasing the availability of broadband access services for the citizens of Pennsylvania. Applicable statutes make such a deployment a joint responsibility between this Commission and the FCC.¹ For these reasons, I am supporting the assumption of this Commission's jurisdiction over pole attachments.

It is self-evident that the adjudications of pole attachment issues and complaints are inherently complex.² The recommended adoption of the FCC rules provides a basic framework for asserting Commission jurisdiction. However, there is a pending federal appeal involving the FCC's 2018 rules on one-touch make-ready activities regarding pole attachments which engenders a certain degree of uncertainty.³ The adoption of the present Final Rulemaking Order and final form regulations cannot possibly account for all future contingencies involving the Commission's enforcement of the FCC's pole attachment rules and related dispute resolution or adjudication. For these various reasons, I would have preferred a constructive dialogue engagement between our Staff and interested stakeholders after the receipt of the formal initial and reply comments to the Commission's proposed rules and prior to the submission of the recommendation that is before us today. It is my sincere hope that the function of the contemplated Working Group will provide the future opportunity for this constructive dialogue as the Commission proceeds with the assertion of its jurisdiction and the implementation of the final form regulations on pole attachments.

¹ See, e.g., 66 Pa. C.S. §§ 3011(1) ("...a balance between mandated deployment and market-driven deployment of broadband facilities and advanced services throughout this Commonwealth..."); 47 U.S.C. § 1302(a) ("The Commission [FCC] and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans...").

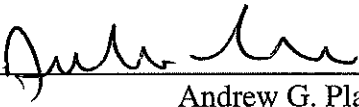
² See, e.g., *In re MAW Communications, Inc., Complainant v. PPL Electric Utilities Corporation, Defendant*, EB Docket No. 19-29, File No. EB-19-MD-001 (FCC Enforcement Bur., Rel. Aug. 12, 2019), *slip op.* DA 19-771.

³ Broadband Cable Association of Pennsylvania (BCAP) Comments at 2-3 (citations omitted); BCAP Reply Comments at 3-4 (citations omitted). See also *Telecommunications Reports Daily*, "FCC Defends Pole Attachment Order from Utilities' Challenge," August 23, 2019; Brief for Respondents, *American Electric Power Service Corp., et al. v. FCC*, (9th Cir.) (Nos. 18-72689(L), 19-70490), submitted August 22, 2019.

I believe that the filing of pre-existing pole attachment agreements with the Commission — or the summaries of their respective essential terms, conditions, and rates — even on a protected and proprietary basis could have assisted our agency in its future tasks of asserting jurisdiction in this area and potentially discerning the existence of any discriminatory patterns.⁴ The filing of such pre-existing pole attachment agreements could have taken place on a one-time basis.⁵ It is my hope that the Working Group will more comprehensively examine this issue in the near future. I note that wholesale interconnection agreements between incumbent local exchange carrier telephone companies and competitive telecommunications carriers, as well as the amendments to such agreements, are often, and publicly, submitted for this Commission's review and approval.⁶

For the above-referenced reasons, I will be concurring in part and dissenting in part in the recommended adoption of the Final Rulemaking Order and the final form regulations while supporting the overall assertion of Commission jurisdiction over pole attachments and the adoption of the corresponding FCC regulations.

Dated: August 29, 2019



Andrew G. Place
Commissioner

⁴ ExteNet Systems, Inc. Comments at 10 (Transparency and Equity).

⁵ *In Re: Implementation of the Telecommunications Act of 1996*, Docket No. M-00960799, Order entered June 3, 1996, at 36-40, and Ordering Paragraph No. 5 at 51 (*TA-96 Implementation Order*) (submission and review of interconnection agreements existing before the enactment of the federal Telecommunications Act of 1996).

⁶ 47 U.S.C. § 252(e)(1); *TA-96 Implementation Order* at 24-34, and Ordering Paragraph No. 4 at 51.