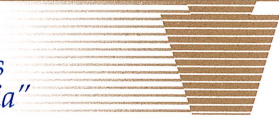


Pennsylvania Telephone Association

*"The Communications
Leader in Pennsylvania"*



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Steven J. Samara
President

October 29, 2018

VIA ELECTRONIC FILING
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Assumption of Commission Jurisdiction over Pole Attachments from the Federal
Communications Commission Docket No. L-2018-3002672

Dear Secretary Chiavetta:

Enclosed for filing are the Comments of the Member Companies of the Pennsylvania Telephone Association to the Pennsylvania Public Utility Commission's Notice of Proposed Rulemaking entered July 12, 2018 in the above-referenced matter.

Please feel free to call me with any questions or concerns.

Sincerely,

Steven J. Samara
President

cc: Colin W. Scott, Law Bureau (via email)
Shaun A. Sparks, Law Bureau (via email)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Assumption of Commission Jurisdiction :
over Pole Attachments from the Federal : Docket No. L-2018-3002672
Communications Commission :

JOINT COMMENTS OF
THE MEMBER COMPANIES OF THE PENNSYLVANIA TELEPHONE ASSOCIATION
TO THE NOTICE OF PROPOSED RULEMAKING ORDER
ENTERED JULY 12, 2018

- Armstrong Telephone Company — North
- Armstrong Telephone Company — Pennsylvania
- Bentleyville Communications Company
- Citizens Telephone Company of Kecksburg
- Consolidated Communications of Pennsylvania Company, LLC
- Hancock Telephone Company
- Hickory Telephone Company
- Ironton Telephone Company
- Lackawaxen Telecommunications Services, Inc.
- Laurel Highland Telephone Company
- Marianna & Scenery Hill Telephone Company
- North-Eastern Pennsylvania Telephone Company
- North Penn Telephone Company
- Palmerton Telephone Company
- Pennsylvania Telephone Company
- Pymatuning Independent Telephone Company
- South Canaan Telephone Company
- TDS Telecom/Deposit Telephone Company
- TDS Telecom/Mahanoy & Mahantango Telephone Company
- TDS Telecom/Sugar Valley Telephone Company
- Venus Telephone Corporation
- West Side Telephone Company
- Windstream Buffalo Valley, Inc.
- Windstream Conestoga, Inc.
- Windstream D&E, Inc.
- Windstream Pennsylvania, LLC
- Yukon-Waltz Telephone Company

Dated: October 29, 2018

I. INTRODUCTION

Pursuant to a Notice of Proposed Rulemaking appearing in the *Pennsylvania Bulletin*,¹ the Pennsylvania Public Utility Commission (PUC or Commission) seeks comments regarding proposed rules designed to assume jurisdiction – referred to as “reverse preemption” – over pole attachments from the Federal Communications Commission (FCC). *See also*, Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission, Docket No. L-2018-3002672, Notice of Proposed Rulemaking, Order entered July 12, 2018.

The Pennsylvania Telephone Association (PTA) appreciates the opportunity to provide comments on this important matter and commends the Commission for adroitly recognizing the critical role pole attachments play in the ongoing challenges facing PTA Member Companies (Companies) when deploying broadband in rural Pennsylvania.

The Companies have extensive experience in deploying broadband throughout the Commonwealth under a variety of statutory and regulatory directives including the provisions of Act 183 of 2004 and the FCC’s Connect America Fund (CAF).

Act 183 statutorily mandated universal broadband availability to any customer at speeds of 1.544Mbps within ten business days of a request. The Companies met their statutory obligations and, in most if not all areas throughout Pennsylvania, have exceeded them.

As a means to aid in deployment, some of the Companies have applied for and received support from the various phases of the CAF program to deploy broadband at 10/1 Mbps speeds in unserved/underserved areas of the Commonwealth. Additionally, the PTA has committed to working with the Pennsylvania Office of Broadband Initiatives to explore any alternatives which would facilitate the accelerated deployment of broadband services in rural Pennsylvania.

All of the Companies understand not only the challenges of deploying rural broadband but also the challenges of providing basic voice service in rural areas as carriers of last resort (COLR). Since many of these areas are simply uneconomic to serve, the costs associated with providing service command significant scrutiny. Consequently, the Companies are uniquely positioned to be able to identify what represents a normal cost of doing business and what does not. When the costs associated with attaching to poles falls into the latter category, rural customers (and, in this case, potential rural broadband customers) suffer the consequences of delays in receiving service. Enforcing pole attachment rates can eliminate uncertainty and reduce the costs of deployment of broadband infrastructure in higher cost rural areas.

Unfortunately, there have been instances where pole owners have simply refused to respond to attachment requests, or respond, accept payment for make ready work or attachment costs, and fail to do the work. In other cases, the Companies have experienced exorbitant and/or unjustified make-ready/attachment quotes. In one specific example which the PTA hopes will be commonplace as a result of this proceeding, a pole owner became more responsive and renegotiated exorbitant make-ready estimates after inquiries from local elected officials. The

¹See, 48 Pa.B. 6273.

“local” adjudication of disputes by the PUC as opposed to the FCC envisioned by the reverse preemption in this docket should encourage this type of productive dialogue among the parties and provide a scenario for the efficient deployment of broadband in rural Pennsylvania.

In addition to the Commission’s Order, the accompanying Commissioner Statements raise a series of questions that this filing will endeavor to address in an effort to provide the Commission with a company perspective on the real world financial challenges created by the current pole attachment environment.

II. COMMENTS TO PROPOSED RULES

The threshold concern highlighted by the Commission in its Order is that, while it seeks to move expeditiously to facilitate attachments, it wants to be cautious not to stray suddenly from directives of the FCC on this matter.

The perspective of the Companies on this point is that the reverse preemption envisioned in the Motion which accompanies the Order would allow the Commission to proceed in both a cautious and expeditious manner. The former would be achieved by following whatever rules the FCC has in place currently and any subsequent changes that the Commission may make going forward. The latter would be accomplished by simply filing a letter with the FCC indicating that Pennsylvania intends to assume the responsibility of regulating pole attachments from the FCC.

The Companies are not advocating that the PUC initiate a comprehensive rulemaking to establish its own set of pole attachment regulations. Rather, the PUC should follow the regulations established by the FCC and simply adopt a streamlined process to adjudicate complaints in a timely manner. Should the PUC wish to address pole attachment rule changes, these should be considered only after the industry and regulators have had time to review the success or failure in implementation of the upcoming FCC rule changes described below.

While the FCC has recently taken strides to improve the situation in its Accelerating Broadband Deployment by Removing Barriers to Infrastructure Investment Order² the agency has proven not to be an effective venue for adjudicating grievances which the Companies may have with pole owners for a variety of reasons; most notably the costs associated with the time and effort required to achieve a resolution. This dynamic is not conducive to meeting the public policy goal of efficient deployment of broadband service in rural Pennsylvania as highlighted in the PUC’s Order even though the Broadband Deployment Advisory Committee did weigh in heavily with the FCC during the drafting of its Order.³

² *In re Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment and Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 and WT Docket No. 17-79 (rel. Aug. 3, 2018) (“*Broadband Investment Order*”), available at <https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf>.

³ FCC Chairman Ajit Pai from his statement on the *Broadband Investment Order*:

It is difficult to forecast how many disputes may find their way to the PUC, and the Companies recognize that there exists the potential for an increased burden on PUC personnel if it assumes the adjudication of these types of complaints. The PTA submits however, that a set of clear dispute resolution rules may serve to discourage complaints and encourage the type of communication between parties which facilitates efficient infrastructure deployment. This has been the experience in New York, whose Public Service Commission's 2004 Order⁴ on dispute resolution of pole attachment issues has helped to limit the number of complaints. In addition, the New York Order's expedited process for dispute resolution may be beneficial in allowing the Companies to meet deadlines and provide the necessary certainty to alert customers when broadband services may be available. An expedited dispute resolution process would certainly be less cumbersome, time-consuming and expensive than the Commission's formal complaint process employed for the Companies and their customers.

III. REMAINING QUESTIONS FROM COMMISSIONER STATEMENTS

Do FCC regulations provide a means for pole owners to address unauthorized attachment or are additional mechanism(s) necessary?

Current FCC regulations do provide a means for the Companies to address unauthorized pole attachments, so additional mechanisms would not be necessary at this juncture. However, in certain cases, removal of unauthorized attachments may require the pole owner to take the unauthorized attacher to court for trespass. This could occur if an unauthorized attacher does not have a pole attachment agreement and refuses to enter into an agreement. To the extent the PUC has the authority to do so, taking jurisdiction over this type of enforcement action could be beneficial to pole owners. This should be considered after the PUC assumes jurisdiction over pole attachments and there is a proven need for this type of enforcement.

Finally, we would not have arrived on this pro-competitive path without the tireless work of the Broadband Deployment Advisory Committee, or BDAC. One of the major recommendations from the BDAC's work was the Commission should adopt an OTMR regime. And I'm pleased that today's Order largely follows the path prescribed by the BDAC. I know there were many long hours of debate, and plenty of genuine disagreements, but at the end of the day the BDAC was able to coalesce around a solid, balanced policy. I promised the members of the BDAC early on that they wouldn't just be marking time. And I stood by my word. Make-ready is not make-work – it is a major step toward better, faster, and cheaper Internet access for all Americans.

Id. at 115.

⁴ *Proceeding Motion of the Commission Concerning Certain Pole Attachment Issues*, NY Pub. Serv. Comm'n Case 03-M-0432, Order adopting Policy Statement on Pole Attachments (Aug. 6, 2004).

Is the creation of a comprehensive pole registry a good idea?

The Companies are uncertain what is to be accomplished by having a pole registry, and believe that it would be difficult to produce and expensive to maintain.

Is there a benefit to establishing an ongoing working group across public and private entities to discuss pole attachment issues and ideas?

Ongoing working groups to address issues related to pole attachment issues would be positive although most efficiently utilized if limited in scope to best practices in implementing FCC regulations and streamlining the PUC's adjudicatory processes. Including exempt entities like electric cooperatives and municipally-owned utilities would make this initiative more comprehensive and beneficial to the Companies and all interested parties.

Should standardized agreements or tariffs for pole attachments be developed?

These agreements are negotiated to reflect the specifications of each individual company and pole owners generally have standardized agreements to begin negotiations. Commission involvement should occur only in instances where negotiations are unsuccessful.

Are there any legal and technical interactions and ramifications of any future Pennsylvania statutes that may address pole attachments with any potentially adopted Commission rules on pole attachments that are based on the FCC regulatory framework?

The PUC Order proposes rules adopting the FCC's current and *future* rules. As such, the proposed rules are sufficiently broad and flexible to handle future changes flowing from the FCC. With regard to future statutes, while it is true that a new law could impact a Commission regulation, it's impossible to forecast any outcome in this matter.

Are there Any legal and technical ramifications of adopting the FCC's framework while the FCC may proceed with future changes to its own regulations? Would Pennsylvania regulations be automatically linked with the changes at the federal level or will we have to institute a rulemaking to consider future changes?

States either fall under FCC regulated status or are regulated by state commissions. Typically, many of the state rules are very similar to those of the FCC. If Pennsylvania is going to follow the FCC rules wholesale, the Pennsylvania regulations should be automatically linked with changes at the federal level.

Does the Commission’s existing exercise of jurisdiction over public utilities, including ratemaking mandates, present any unique issues that may require PA specific changes to the FCC’s applicable regulatory framework?

To the extent the Commission would want to assume pole attachment jurisdiction over entities that own poles but are exempt under the Pole Attachment Act, 47 U.S.C. § 224 – *e.g.*, municipalities, cooperative utilities, railroads, and Federal- or State-owned utilities – statutory changes would be required.

What developments on pole attachments have occurred since the FCC’s 2011 pole attachment order and how should the Commission address rules that may not necessarily reflect a consensus view of Pennsylvania’s providers?

Following the FCC’s 2011 pole attachment order were the 2013 D.C. Circuit Court ruling in the appeal of that order, and a 2015 FCC Order on Reconsideration. Those items however, were included with the PUC’s Notice of Proposed Rulemaking in this docket, so the Companies will not address those orders.

The most significant recent development is the FCC order surrounding one touch make ready (OTMR). Many, including the FCC and third party attachers, believe OTMR will speed access to the poles and thus assist with faster deployment of broadband services and 5G wireless. The FCC rules are thought to provide improvements in several areas including: the completion of the application process, make-ready timelines, process timelines, OTMR, and recognizing the overall timeline specified in the existing rules as excessive. Whether this is the case remains to be seen, as these changes do not become effective until February 2019.

In a perfect world, OTMR would allow for faster access to poles in certain circumstances. Currently the pole owner faces no statutory deadline for making the initial determination on whether an attachment application is complete. Under OTMR, the FCC proposes a revised definition of a complete application and the utility has 10 business days to determine whether the application is complete. This is a win for attachers.

Under the current rules, a regular order⁵ for pole make ready must begin within 88 days and be completed no later than 148 days⁶ from the date that a completed application is received. In contrast, simple⁷ make-ready work for wireline attachments under OTMR could begin within

⁵ Regular orders are requests for attachment to the lesser of 0.5% of the utility’s poles in the state or 300 poles within the state.

⁶ See Attachment A for time limits for pole attachment activities taken from the *Broadband Investment Order*.

⁷ A simple make-ready is defined as make-ready where “existing attachments in the communications space of a pole could be transferred without any reasonable expectation of a service outage or facility damage and does not require splicing of any existing communication attachment or relocation of an existing wireless attachment.” *Broadband Investment Order* at 10 ¶ 17 (citation omitted).

30 days⁸ of the submission of a complete application. There is no statutory deadline to complete the make ready because the new attacher is responsible for OTMR work. This party is incentivized to complete the work as promptly as possible.

By asserting jurisdiction now while also accepting FCC changes going forward, Pennsylvania's pole owners and attachers get the best of both worlds. If the FCC makes changes to improve the process, Pennsylvania will automatically follow suit. If the FCC is slow to act or takes no action to remedy any problems which remain, then the PUC could initiate its own remedy. The PUC could also act in the case where FCC rules may not line up with the interest of Pennsylvania. This would be subject to the FCC's prohibition⁹ of state and local moratoria which might make broadband service more difficult to provision.

The adoption of FCC pole attachment and make-ready rules combined with shifting of enforcement to the PUC is a suitable outcome for this proceeding. The Pennsylvania companies would be following the same federal rules on "Day 1" of the Commission's assumption of jurisdiction. However, enforcement would be handled at the state level by a utility commission much closer to the facts on the street.

IV. CONCLUSION

The Companies appreciate the opportunity to provide perspectives on this matter and look forward to working with the Commission on this critical component of addressing rural broadband deployment in Pennsylvania.

⁸ That is, 15 days for the pole owner to grant a complete application, plus the 15 days advance notice the new attacher must provide to existing attachers. It should be noted that the FCC allows these 15 day notice periods to run concurrently, meaning work can begin even faster than the 30 day interval noted herein.

⁹ *Broadband Investment Order* at 3 ¶ 4.

Phase	Prior Rules	OTMR-Based Regime	Enhanced Non-OTMR Regime
<i>Review of Application for Completeness</i>	Vague definition of complete application can lead to delays. No timeline for utility to determine whether application is complete. <i>47 CFR § 1.1411(c)</i>	Revised definition of complete application makes it clear what must be included in application. A utility has 10 business days to determine whether an application is complete; the utility must specify any deficiencies and has limited time to review resubmitted applications. <i>Appx. A §§ 1.1411(c)(1), (j)(1)(ii)</i>	
<i>Review of Whether to Grant Complete Application; Survey</i>	The utility has <u>45</u> days to decide whether to grant a complete application and to complete any surveys. The utility has an additional 15 days for large orders. <i>47 CFR § 1.1411(c)</i>	The utility has <u>15</u> days to decide whether to grant a complete application. The new attacher conducts the survey and determines its timing. <i>Appx. A § 1.1411(j)(2), (j)(3)</i>	Largely same as prior rules, except that the utility must take certain steps to facilitate survey participation by new and existing attachers. <i>Appx. A § 1.1411(c)(3)</i>
<i>Estimate</i>	The utility must provide an estimate of the make-ready charges within <u>14</u> days of receiving the survey results. <i>47 CFR § 1.1411(d)</i>	N/A – no estimate stage	Same as prior rules, except the estimate must detail basis for charges. <i>Appx. A § 1.1411(d)</i>
<i>Attacher Acceptance</i>	The attacher has <u>14</u> days or until withdrawal of the estimate by the utility, whichever is later, to approve the estimate and provide payment. <i>47 CFR § 1.1411(d)(i)-(ii)</i>	N/A – no acceptance stage	Same as prior rules. <i>Appx. A § 1.1411(d)(2)</i>
<i>Make-Ready</i>	The existing attachers must prepare the pole within <u>60</u> days of receiving notice from the utility in the communications space (105 days for larger orders) or 90 days in the above the communications space (135 days for larger orders). A utility may take <u>15</u> additional days after the make-ready period to complete make-ready itself. <i>47 CFR § 1.1411(e)(1)(ii), (e)(1)(iv), (e)(2)(ii), (e)(2)(iv)</i>	The new attacher performs all work in as little as one trip. The new attacher must provide 15 days' notice to existing attachers before commencing work, and this notice period may run concurrently with the utility's review of whether to grant the application. The new attacher must notify existing attachers within <u>15</u> days after completion of work on a pole so that existing attachers can inspect the work. <i>Appx. A § 1.1411(j)(4)</i>	The existing attachers prepare the pole within 30 days in the communications space (75 days for larger orders) or 90 days above the communications space (135 days for larger orders). A utility may take 15 additional days after the make-ready period to complete make-ready itself for work outside the communications space. <i>Appx. A § 1.1411(e)(1)(ii), (e)(2)(ii), (e)(2)(iv)</i>
<i>Self-Help Remedy</i>	New attachers in the communications space may perform work themselves when the deadlines are not met. <i>47 CFR § 1.1411(i)</i>	N/A	New attachers in any part of the pole may perform work themselves when the deadlines are not met. We take steps to strengthen the self-help remedy. <i>Appx. A § 1.1411(i)(2)</i>

15. No matter the attachment process, we encourage all parties to work cooperatively to meet deadlines, perform work safely, and address any problems expeditiously. Utilities, new attachers, and