

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17120**

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

**Public Meeting June 14, 2018  
3002672-CMR  
Docket No. L-2018-3002672**

**MOTION OF COMMISSIONER NORMAN J. KENNARD**

One of the basic mainstays of the delivery of telecommunications and electric services is so commonplace as to be invisible. I am speaking about utility poles and the countless miles of wire and equipment that comprise the physical backbone of our utility facilities. These humble poles and the wires, lines, and equipment they carry ensure the safe and reliable delivery of electricity, communications, cable, telecommunications, data and more, to millions of Americans, every moment of every day.

The 1996 Telecommunications Act established the federal statutory rules for pole attachments at 47 U.S.C. § 224. This federal statute provides for regulation of pole attachments by the Federal Communications Commission's (FCC) or, through reverse-preemption, state regulation. Thus, pole owners and attaching entities fall under either federal regulation by default or state regulation if a state expressly opted out. 47 U.S.C. § 224(c)(1) *et seq.* The Pennsylvania Public Utility Commission (Commission) has not, thus far, elected to regulate pole attachments and, thus, jurisdiction still resides at the FCC.

Currently, pole owners in Pennsylvania follow the federal procedures developed in 2011 and specified at 47 C.F.R § 1.1401 *et seq.* *In The Matter of Implementation of Section 224 of the Act*, WC Docket No. 07-245; A National Broadband Plan for Our Future, GN Docket No. 09-51 (April 7, 2011) (*2011 FCC Pole Order*). The *2011 FCC Pole Order* was unanimously upheld by the DC Circuit Court of Appeals in its Opinion decided February 26, 2013. *Am. Elec. Power Serv. Corp. v. FCC*, 2013 U.S. App. LEXIS 3924 (D.C. Cir. Feb. 26, 2013).

These federal rules cover a multitude of issues and are fairly prescriptive. For example, the *2011 FCC Pole Order* establishes a four-stage timeline (survey, estimate, acceptance and make ready) for wireline and wireless attachment to a pole's communications space. When pole owners fail to meet these deadlines, attaching entities may engage utility-approved contractors to complete the work. The pole owner must specifically explain any attachment refusal based on capacity, safety, reliability, or engineering concerns. Regarding rates, the *2011 FCC Pole Order* reduced the disparity between current telecommunications rates and the lower, cable television (CATV) rates. Penalties for unauthorized attachments were increased.

A state seeking to exercise reverse preemption must simply send a letter to the FCC certifying that the state regulates pole attachments. 47 U.S.C. §224(c)(2). Many states have adopted jurisdiction by this procedure. States are free to follow their own rules and are not required to follow those of the FCC. Some states have closely adopted the FCC rules.

There can be no serious question that this Commission has the authority under existing state law to regulate pole attachment rates, terms and conditions. 66 Pa.C.S. §§102, 501, 1301, 1501. Poles clearly constitute jurisdictional “used and useful property” and we have historically regulated it as such.

The Internet and data technology has led to quantum leaps in education, medicine, business, industry, entertainment, and societal development. But these new technologies have created new issues related to pole attachments, and the current system of federal oversight is inadequate because there is no ready or efficient means to enforce them. This is particularly evident as policymakers seek to expand broadband access for all Commonwealth residents, businesses, schools, hospitals, particularly in the more rural and remote portions of the Commonwealth.

This Commission has the opportunity to bring its expertise and adjudicatory resources to bear on this important issue. We can provide just and timely resolution of these matters and facilitate the creation of broadband for all residents of the Commonwealth. Based on my personal experiences in the telecommunications industry, along with numerous discussions with industry stakeholders, legislative leaders, and in observing the recent initiatives at the federal and state level, including Governor Wolf’s recent creation of the Office of Broadband and commitment of state funds, this Commission should actively consider to asserting jurisdiction over this vital issue.

The Commission should move cautiously, but promptly, on this important question. Cautious because complete and unqualified adoption of the federal pole rules preserves the status quo and does not impose new requirements on any pole operator. Prompt because we should move quickly to make our adjudicatory and enforcement processes available to resolve the disputes that arise for both the pole owners and those who attach poles.

I look forward to reviewing the comments of the parties as we commence this rulemaking.

**THEREFORE, I MOVE:**

1. That the Law Bureau initiate a rulemaking proceeding consistent with this Motion.
2. That the Secretary’s Bureau create a Docket Number for the rulemaking proceeding.

**DATE: June 14, 2018**

  
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**NORMAN J. KENNARD**  
**COMMISSIONER**