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VIA PUC eFILING SYSTEM ONLY

Ms. Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: Proposed Pole Attachment Rulemaking – Docket No. L-2018-3002672
Comments of Central Bradford Progress Authority and RuralNet, Inc.

Dear Secretary Chiavetta:

Please accept this letter as the comments of Central Bradford Progress Authority and its technical consultant, RuralNet, Inc. (collectively, the “Commenters”), regarding the Commission’s Notice of Proposed Rulemaking published on September 29, 2018 in the Pennsylvania Bulletin.

I. Background of Commenters

Central Bradford Progress Authority (“CBPA”) is a municipal authority originally formed in February 1993 as the Central Bradford County Economic Development Authority. CBPA assumes the countywide economic development services for Bradford and Susquehanna Counties. CBPA focuses on direct projects involving industrial development, small business development, business financing, public infrastructure development, site preparation, marketing, and workforce development for the benefit of the community it serves. CBPA has worked to address business needs and expansion opportunities through advocacy, funding assistance, and project facilitation since 1993.

CBPA has a vital interest in pole attachment issues. It is in the process of developing an Open Access Network, a fiber optic data cable network that provides a middle mile, un-serviced fiber optic cable backbone that can be leased for use. The high-capacity fiber optic cable will be strung along a mostly aerial route around strategic corridors in Bradford County. The Open Access Network Network would provide Internet Service Providers (“ISPs”) some of the requisite infrastructure to provide Internet service to end users. It is anticipated that the Open Access Network will give private businesses and public organizations access to fiber optic cabling throughout Bradford County to connect their buildings and facilities. Moreover, it is

anticipated that this infrastructure will support emergency management services communications and encourage the expansion of high-speed broadband services to rural portions of the county. CBPA's Open Access Network was the subject of a petition for a declaratory order filed on January 16, 2018, which was granted by the Commission in an Order entered July 12, 2018. *See* Petition of Central Bradford Progress Authority, Docket No. P-2018-2642849.

To assist it with pole attachment and routing issues relative to the Open Access Network, CBPA has retained RuralNet, Inc. ("RuralNet") as an advisor on technical issues. RuralNet offers its customers fiber optic internet, and has the capabilities to deliver low latency, reliable, extreme speed access from a range of various Internet POPs and peering exchanges. Additionally, RuralNet offers:

- wireless connectivity, through multiple tower sites throughout the states ready to beam spectrum to a given location, through licensed or unlicensed spectrum, WiFi or LTE, and multi-megabit or multi-gigabit throughput;
- site to site/site to multisite transport solutions, through its fully ringed fiber backbone, with the reliability and security to handle the sensitive, important tasks of any IT infrastructure and meet multisite requirements of VPLS, QoS, transit encryption, or routing;
- colocation of equipment at geographically diverse locations, whether to meet uptime and availability requirements or for private secure connection back to facilities.

II. General Comments on the Commission's Proposed Rulemaking

The Commenters support the Commission's decision to regulate pole attachments. The Commenters agree with the observations by another commenter, NetSpeed LLC, that "the Commission's expertise regarding electric utilities and electric distribution service will provide a basis for wise regulation that the Federal Communications Commission unavoidably lacks" and that "[s]tate-level regulation also will allow Pennsylvania, should it choose, to distinguish itself among states as a jurisdiction especially amenable to broadband deployment and availability."

III. Specific Responses to Requests Posed By Commissioners

The Notice of Proposed Rulemaking contained various comments from the Commissioners. To that end, the various comments and requests have been organized below, each one immediately followed by the Commenters' perspective.

A. *Chairperson Brown's Request to "address development on pole attachments that have occurred since issuance of the FCC's 2011 Pole Attachment Order, particularly how the Commission's adoption of FCC rules should address rules that may not necessarily reflect a consensus view of Pennsylvania's providers"*

The Commenters believe that if the goal is to expand broadband connectivity ubiquitously across the Commonwealth, new and current attachers need to gain access to the infrastructure to build out those services. It is truly a gating issue to be solved, before any meaningful progress can be made. The Commenters further believe that the interests of rigorous

competition should prevail over the provincial concerns of any single incumbent infrastructure owner, and the process of attachment approval, as currently implemented by some of the pole owners, should not continue to be a deterrent to progress.

An appropriate solution to pole attachment requires balancing the needs and costs of pole owners, existing and potential attachers and service providers, and the public. Given the varying positions, the Commenters believe that consensus may not be possible across those groups. The Commenters fear that attempting to find a common ground among providers would regrettably delay broadband development, to the detriment of consumers and attachers.

B. Chairperson Brown's Request to "address what, if any, impact the pending Broadband Deployment Advisory Committee (BDAC) deliberations and recommendations will have on pole attachment in Pennsylvania"

It is the position of the Commenters that the impact of the FCC's BDAC will only be felt based on any rules or regulations that the FCC may adopt coming from that group. The Commenters observe that the Commission's proposed Section 77.4 would make the adopted FCC rules "inclusive of future changes as those regulations may be amended." If the Commission adopts a regulatory regime that is automatically tied to changing FCC rules, then any changes spurred by the BDAC's recommendations will be felt in due course.

Any attempt to address what the BDAC's "deliberations" may result in would at this time be speculative. Conceptually, though, BDAC's points of emphasis may take a high-level approach that is too generalized (i.e., nationally focused), without meaningfully addressing the engineering and cost-recovery details that bedevil attachers in Pennsylvania.

C. Vice Chairperson Place's Request regarding "[t]he 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 Commenters believe the General Assembly is uniquely positioned to provide targeted attention to Pennsylvania-specific concerns involving pole attachment, which statutory authority may include delegation of certain powers to the Commission that may augment the authority to be incorporated by reference to the FCC's regulatory framework. In the event that a state statute conflicts with a Commission rule, it will be the responsibility of Pennsylvania's state judiciary to resolve any disputes.

D. Vice Chairperson Place's Request regarding "[t]he technical and legal ramifications of adopting the FCC regulatory framework for pole attachments in Pennsylvania while the FCC may proceed with future changes to its own regulations on pole attachments at the federal level," including whether "the Pennsylvania pole attachment regulations [would] be automatically linked with the corresponding FCC regulatory framework changes at the federal level" or whether "the Commission [would] be obliged to institute a new rulemaking or other proceedings with appropriate due process notice and comment under applicable Pennsylvania

law in order to consider such future changes in the FCC's own regulatory framework for pole attachments”

The Commenters believe that an initial adoption of the FCC’s rules is an appropriate starting point. However, proposed Section 77.4’s automatic adoption of the FCC’s rules “inclusive of future changes as those regulations may be amended” and proposed Section 77.5(c)’s treatment of FCC orders “as persuasive authority” may unnecessarily go too far. In this regard, proposed Section 77.4 might be reconsidered, in favor of a situation whereby FCC laws concerning pole attachment (i.e., 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 *et seq.*) would undergo prompt review by the Commission (with public notice and comment allowed), starting within a matter of a few months after the potential rules become effective at the federal level. This would allow the Commission to determine whether those rules adequately address the technical aspects and regulatory framework of pole attachment in Pennsylvania. Likewise, proposed Section 77.5 should be amended to note that FCC orders and Federal court decisions reviewing FCC rules and interpretations would be treated as “persuasive, but not presumptive, authority in construing the provisions of 47 U.S.C. § 224 and 47 C.F.R. 1.1401-1.1425.”¹

E. *Vice Chairperson Place’s Request regarding “[w]hether the Commission's existing exercise of jurisdiction, including ratemaking mandates, over public utility entities that are and will be subject to pole attachment regulations, will present any unique issues that may require Pennsylvania-specific changes to the FCC's applicable regulatory framework” and Commissioner Kennard’s Request regarding “the value of establishing an ongoing working group across public and private entities discuss pole attachment issues and ideas”*

The Commenters believe that it may be too early to anticipate what exact Pennsylvania-specific questions may arise. Among them, though, may be issues involving challenges posed by unique geographic and topographic concerns, disparities between the number and financial positions of pole owners and attachers in any given region (particularly rural areas), and existing access to other middle-mile and last-mile alternatives.

The Commenters believe that Pennsylvania may benefit from its own state-specific advisory Committee, the purview of which may include pole attachment issues. Such a committee could have a broad membership comprised of individuals from the Commission’s technical personnel, regulated utilities, incumbent ILECs, current and potential attachers (both large and small), and governmental entities. This Committee’s attention to pole attachment issues could include providing recommendations to the Commission regarding engineering and cost recovery issues, and could provide the PUC with annual reports of its progress made examining pole attachment matters.

¹ Additionally, the Commenters would point out that if written to delimit the applicable C.F.R. sections to 1.1401 through 1.1425, the proposed regulation may not cover interpretations of later adopted sections (e.g., enumerated sections after Section 1.1425). Of course, if the Commenters’ proposal is followed, whereby later-adopted rules by the FCC would undergo a review and comment period at the Commission, the adoption of new FCC rules could also involve a corresponding change to proposed Sections 77.4 and 77.5(c).

F. *Commissioner Kennard's Request regarding "[i]f possible, [an] estimate [of] the forecasted number of disputes that might be brought to the Commission for resolution under the proposed adoption of existing FCC regulations on pole attachments" and Commissioner Sweet's Request regarding "the additional caseload and demands on the Commission's resources that this undertaking has the potential to impose" (including "the potential cost to the Commission of this undertaking" and the lack of "identified . . . new revenue sources, such as assessment under Section 510 of the Public Utility Code, that will provide this Commission the revenues necessary to address these new responsibilities")*

Anecdotally, it is widely understood in the realm of pole attachment that complaints before the FCC may take a significant amount of time and money to come to a resolution. Therefore, the Commenters believe that the number of FCC disputes of record may be potentially lower than the number of actual disputes with origins in Pennsylvania; that is, the time and cost of litigating before the FCC may be artificially depressing the number of actual disputes, through strategic choices of pole owners and attachers to either modify proposed attachments or come to negotiated (if potentially one-sided) agreements.

In terms of the cost to the Commission of regulating pole attachments, the Commenters believe that any such cost is appropriate given the shared goal of expanding broadband across Pennsylvania, even if there may be a short-term potential for incomplete dollar-for-dollar cost coverage by the Commission. While the exact cost to the Commission is unknown, the Commenters believe that it would be appropriate to impose a modest fee upon complainants. For example, a flat filing fee (say, \$500.00), plus an additional fee for each implicated pole for which a pole attachment dispute exists (e.g. \$1.00 per pole), may be appropriate.

G. *Commissioner Kennard's Request regarding "whether the FCC regulations provide a means for pole owners to address unauthorized attachment or whether some additional mechanism(s) is necessary"*

Currently, 47 C.F.R. 1.1403(c)(1) provides for a utility's notice prior to "removal of facilities . . . such removal arising out of a rate, term or condition of the cable television system operator's of telecommunications carrier's pole attachment agreement." Additionally, 47 C.F.R. § 1.1415 permits the FCC to "issue such other orders and so conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice." Whether additional, specific procedures are necessary will be a subject for the Commission's consideration.

H. *Commissioner Kennard's Requests regarding "any suggestions to streamline or otherwise improve the Commission's existing adjudicatory and dispute resolution processes" and "the value of adopting an expedited dispute resolution process similar to that used in New York, pursuant to the NY Public Service Commission's Order Adopting Policy Statement on Pole Attachment, issued on August 6, 2004"*

The Commenters will not address the adjudicatory processes in existence. However, as to dispute resolution, the Commenters agree that some manner of dispute resolution is quite appropriate for pole attachment disputes.

The Commenters believe that the approach to be taken here may incorporate various aspects of the mediation processes available in Title 52 of the Pennsylvania Code, such as:

- The pre-mediation process for a Commission designee’s review, found at 52 Pa. Code § 63.222(c); followed by
- The mediation process found at 52 Pa. Code §§ 69.391 – 69.397.

Whether the pre-mediation process might also require, as a prerequisite, some manner of initial alternative dispute resolution (ADR) with an ombudsman for the pole owner (e.g., New York’s approach) may also be worth considering. Regardless of the mediation approach chosen, any type of ADR (whether at the company level or before the Commission) should allow for prompt resolutions of disputes, and any ADR before the Commission should involve staff members knowledgeable about pole attachment issues.

I. *Commissioner Kennard’s Request regarding “suggestions on the creation of a comprehensive registry of poles and attachments maintained by the pole owner accessible by for current and future pole attachers”*

The Commenters are in favor of a centralized, comprehensive registry of poles and attachments. Whether that registry will be “maintained” by each pole owner, or whether the registry will simply be fed information from all such pole owners, should be considered by the Commission. No matter who maintains the registry, to ensure maximal efficacy, the Commenters believe that the registry should be:

- accessible by current and future pole attachers;
- free of cost of access;
- include not only what is attached, but also an identification of which space (e.g., telecommunications, electrical, etc.) each such attachment is located in and the spacing between the various attachments;
- be updated with information at an adequate frequency to ensure that updated information may be identified by attachers; and
- contain industry-accepted measurement data (e.g., IKE data).

J. *Commissioner Kennard’s Request regarding “whether standardized agreements or tariffs for pole attachments should be developed”*

In due course, the Commission may wish to arrive at standardized formulae and terms for agreements for pole attachments, whether using FCC models or creating its own forms. However, the Commenters do not believe it should be a first priority, as receiving and coalescing the various terms and conditions advocated by the various interest groups may prove time-intensive and if treated as a threshold obligation prior to adoption of pole attachment rules, could unduly delay progress towards ubiquitous broadband availability in the Commonwealth.

IV. Conclusion

The Commenters appreciate the opportunity to offer its observations regarding the Commission's proposed rulemaking. Should you have any questions, or if you would like to receive live testimony from the Commenters at any hearing to be scheduled, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Zachary R. Gates". The signature is written in a cursive style.

Zachary R. Gates

cc: Shaun A. Sparks, Esq., PUC Law Bureau Assistant Counsel (shsparks@pa.gov, by email)
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