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August 26, 2024

VIA ELECTRONIC FILING

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

Re: Adoption of Federal Communications Commission Regulations
Pursuant to 52 Pa. Code § 77.4
Docket No. L-2018-3002672

Dear Secretary Chiavetta:

Enclosed please find Verizon's Comments in the above captioned matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Suzan D. Paiva

SDP/sau

Enclosure

cc: Colin W. Scott, Assistant Counsel (colinScott@pa.gov)
Tiffany L. Tran, Law Bureau (tiftran@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Adoption of Federal Communications
Commission Regulations Pursuant
to 52 Pa. Code § 77.4

L-2018-3002672

VERIZON COMMENTS

By Secretarial Letter dated July 29, 2024 and published in the Pennsylvania Bulletin August 10, 2024, the Commission requested comments relating to two changes to the Federal Communications Commission’s (“FCC”) pole attachment regulations released in the December 15, 2023 Fourth Report & Order in WC Docket No. 17-84, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment (“Fourth Report & Order”)*. For the reasons set forth in the following Verizon¹ comments, the Commission should allow these FCC rule changes to take effect in Pennsylvania by operation of law.

I. BACKGROUND

The Commission’s Final Rulemaking Order entered September 3, 2019, effective upon its publication on January 18, 2020, exercised reverse preemption over pole attachments and promulgated 52 Pa. Code Chapter 77 as its regulations to govern these issues in Pennsylvania.² The Commission determined to adopt in turn-key fashion “the rates, terms and conditions of access to and use of utility poles, ducts, conduits and rights-of-way to the full extent provided for in 47 U.S.C. § 224 and 47 CFR Chapter I, Subchapter A, Part 1, Subpart J (relating to pole

¹ These Reply Comments are filed on behalf of Verizon Pennsylvania LLC, Verizon North LLC, MCImetro Access Transmission Services Corp., XO Communications Services, LLC, and Cellco Partnership, d/b/a Verizon Wireless (together “Verizon”).

² *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Docket L-2018-3002672 (Final Rulemaking Order entered September 3, 2019) (“*Final Rulemaking Order*”).

attachment complaint procedures), *inclusive of future changes as those regulations may be amended.*” 52 Pa. Code § 77.4(a) (emphasis added).

There was considerable comment in the rulemaking proceeding regarding adoption of future FCC rule changes through an automatic process. Ultimately, the Commission was persuaded by the comments of numerous communications industry members – those who are actively investing in Pennsylvania’s broadband future – stressing the crucial importance of maintaining uniformity and regulatory certainty by adopting the FCC rules in their entirety, along with future changes, to maintain a stable regulatory environment and avoid creating entry barriers that would deter broadband investment in the Commonwealth. The broadband providers, including Verizon, noted that even though they did not always agree with all aspects of the FCC’s regulatory regime, the Commission should not permit every argument fully decided by the FCC to be rehashed by parochial interests here in Pennsylvania in an attempt to get a better result for themselves, because on balance parity with the FCC’s rules would minimize industry disruption and promote the regulatory predictability and uniformity that will attract broadband investment. The Commission determined that this parity would best promote the goal of attracting speedy broadband deployment and would avoid putting Pennsylvania at a disadvantage compared to FCC-governed states.

The Commission did establish “safeguards” to “continuously review amendments to the FCC’s rules to consider how proposed changes affect the public interest,” with the assistance of the Pole Attachment Working Group, but cautioned that “the Commission’s decision to establish a process for input prior to changes to the federal rules taking effect should not be construed as an invitation for Pennsylvania utilities and other interested parties to regularly rehash or reargue

determinations of the FCC. Rather, this process should be utilized to focus on the Pennsylvania-specific impacts of such changes.” (*Final Rulemaking Order* at 25).

These safeguards for adoption of future changes were codified in Section 77.4 as follows:

- (a) This chapter adopts the rates, terms and conditions of access to and use of utility poles, ducts, conduits and rights-of-way to the full extent provided for in 47 U.S.C. § 224 and 47 CFR Chapter I, Subchapter A, Part 1, Subpart J (relating to pole attachment complaint procedures), inclusive of future changes as those regulations may be amended.
- (b) For an amendment or modification under paragraph (a) that takes effect in Pennsylvania by operation of law under paragraph (c) or (e), the Commission will publish notice of the effective date in Pennsylvania in the *Pennsylvania Bulletin*.
- (c) Notwithstanding paragraph (b), an amendment or modification under paragraph (a) shall take effect 60 days after the effective date of the Federal change unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.
- (d) A Commission notice issued under paragraph (c) will provide an opportunity for public comment on the Federal change. Comments may be filed with the Commission no later than 15 days following publication of the Commission notice in the *Pennsylvania Bulletin*.
- (e) An amendment or modification under paragraph (a) that is the subject of a Commission notice pursuant to paragraph (c) shall become effective 60 days after publication of the notice in the *Pennsylvania Bulletin* unless the Commission determines otherwise for good cause shown.

The FCC’s *Fourth Report & Order* marks the first time the Commission is faced with substantive changes to the FCC regulations since the Commission adopted 52 Pa. Code § 77.4 to incorporate future changes.

In the *Fourth Report & Order* the FCC adopted a new subsection (c)(4) to existing 47 C.F.R. § 1.1411, requiring pole owners to provide to attachers upon written request information from cyclical pole inspection reports. It also adopted a new section 47 C.F.R. § 1.1415, establishing an agency-wide rapid response team and procedure to provide coordinated review and assessment of pole attachment disputes that impede or delay broadband deployment. These

rules took effect July 25, 2024, upon their final publication in the Federal Register after the Office of Management and Budget completed its review.

Pursuant to 52 Pa. Code § 77.4(c), this Commission published notice in the Pennsylvania Bulletin on August 10, 2024 indicating that these rule changes would not take effect automatically 60 days after their federal effective date and providing a 15-day opportunity for comment pursuant to 52 Pa. Code § 77.4(d).

II. COMMENTS ON FCC RULE CHANGES

The FCC’s purpose in adopting the two rule changes and other interpretations and clarifications of existing rules as set forth in its *Fourth Report & Order* was to “take additional steps to speed broadband deployment by making the pole attachment process faster, more transparent, and more cost effective.” (*Fourth Report & Order* ¶ 2). It is worth noting that the FCC considered a wide array of comments and proposals but declined to impose a number of other requested requirements on pole owners, in consideration of the costs, burdens, and lack of utility of some of the demands. In adopting the two rule changes at issue here, the FCC discussed in depth the pros and cons raised in the comments and concluded that its decision “strikes a reasonable balance between additional transparency for prospective attachers and ensuring the utilities’ expenditure of resources is no greater than necessary.” (*Fourth Report & Order* ¶ 23).

The question now before this Commission under the terms of Chapter 77 is whether to allow these two rule changes to become effective as part of the Pennsylvania rules automatically by operation of law on October 9, 2024 or whether “good cause” has been shown to do “otherwise.”

A. Cyclical Inspection Report Rule 47 C.F.R. § 1.1411(c)(4)

The new rule at 47 C.F.R. § 1.1411(c)(4) requires pole owners to provide to an attacher, within 10 business days of receipt of a written request, a cyclical pole inspection report, defined as “any report that a utility creates in the normal course of its business that sets forth the results of a routine inspection of its poles during the utility’s normal pole inspection cycle,” but the FCC made clear that this rule “does not require utilities to collect or create new information for the sole purpose of responding to such requests or to provide all information they may possess on the affected poles outside their pole inspection reports.” (*Fourth Report & Order* ¶’s 24, 26). This rule has already taken effect in the states that are subject to FCC regulation for pole attachments and should take effect in Pennsylvania automatically under 52 Pa. Code § 77.4(e).

In establishing the process for reviewing new FCC rule changes set forth in Section 77.4, the Commission cautioned that it is not “an invitation for Pennsylvania utilities and other interested parties to regularly rehash or reargue determinations of the FCC” and therefore the only arguments properly raised in support of doing anything other than letting the rule take effect must “focus on the Pennsylvania-specific impacts of such changes” that were not necessarily considered by the FCC. (*Final Rulemaking Order* at 25). As the Commission noted when it took jurisdiction of pole attachments and adopted the FCC’s rules as its own, it is important that “the Commission’s rules will consistently mirror those of the FCC” because of “how critical it is to provide regulatory certainty rather than additional burdens and expenses where broadband investment is contemplated and desired.” (*Final Rulemaking Order* at 38-39). The Commission contemplated that the additional comment process would only apply for “federal regulatory changes that may have Pennsylvania-specific impacts and may need to be investigated further before becoming effective in the Commonwealth.” *Id.* There is nothing specific to Pennsylvania

that would differentiate the cyclical pole inspection report rule here from the rule that will apply in all of the other states that are still subject to the FCC regulations. Indeed, many of the electric utilities and broadband attachers that operate in Pennsylvania also operate in those other states (either directly or through their affiliates) and are already subject to this rule.

The Commission should not set a precedent of allowing a second bite at the apple every time the FCC changes its rules. It should make the comment process the exception rather than the norm, and since there is nothing Pennsylvania-specific that could not have already been argued at the FCC it should allow 47 C.F.R. § 1.1411(c)(4) to take effect in Pennsylvania by operation of law.

B. Rapid Response Team Rule 47 C.F.R. § 1.1415

As discussed above, FCC rule changes generally should be permitted to take effect automatically in Pennsylvania so that the rules consistently mirror each other. To that end, Verizon does not object to having the new 47 C.F.R. § 1.1415 dispute resolution rule take effect in Pennsylvania by operation of law.

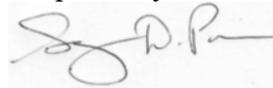
That being said, Verizon acknowledges that this is a procedural rule rather than a substantive one and that based on discussions of the Pole Attachment Working Group there is concern that the FCC bureaus and processes (such as the accelerated docket) addressed in this rule do not have an apples-to-apples counterpart under this Commission's structures and procedures. Further, the Commission's *Final Rulemaking Order* made a point of saying that its own procedural rules will control except where they are silent and that "reliance on the Commission's rules of procedure is more efficient and cost-effective than attempts to resolve a Pennsylvania-specific proceeding using federal rules that differ." *Final Rulemaking Order* at 49-50.

In this case, it might be helpful for the Commission to clarify how the FCC rule at 47 C.F.R. § 1.1415 will be applied in Pennsylvania utilizing the procedures and bureaus available to this Commission. In adopting this new rule, the FCC emphasized “that we expect all parties to comply with the Commission’s pole attachment rules and to negotiate in good faith to craft solutions that suit the needs of attachers and utilities to facilitate deployment projects” so that formal dispute resolution would not be needed, and that should also be the case in Pennsylvania. (*Fourth Report & Order* ¶ 8). But if a dispute cannot be resolved between the parties, the FCC created its new rule and its intra-agency rapid response team to “prioritize and expedite the resolution of pole attachment disputes that impede or delay broadband deployment” and “to provide coordinated review and assessment of such disputes.” (*Id.*) The Commission should consider how it might achieve the same objectives under its own procedures, perhaps with the assistance of the Pole Attachment Working Group.

III. CONCLUSION

For the foregoing reasons, the Commission should allow the new FCC rules to take effect in Pennsylvania on October 9, 2024 by operation of law pursuant to 52 Pa. Code § 77.4(e), although the Commission might choose to clarify how 47 C.F.R. § 1.1415 will operate under this Commission’s procedures.

Respectfully submitted,



Dated: August 26, 2024

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