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August 27, 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:

Pursuant to Pennsylvania Public Utility Commission's July 29, 2024 Secretarial Letter and the August 10, 2024 Pennsylvania Bulletin Notice in the above-referenced matter, attached for filing are the Comments of The Broadband Communications Association of Pennsylvania. The Comments were filed yesterday, but we are re-filing the comments today to correct a typo in the docket number for this proceeding. The substance of the Comments has not changed, and so we ask the Commission to timely accept these comments into the record.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Kenneth R. Stark".

Kenneth R. Stark
MCNEES WALLACE & NURICK LLC

c: Colin W. Scott, Esq. (via colinscott@pa.gov)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Adoption of Federal Communications Commission)
Regulations Pursuant to 52 Pa. Code § 77.4) L-2018-3002672

**COMMENTS OF
THE BROADBAND COMMUNICATIONS ASSOCIATION OF PENNSYLVANIA**

The Broadband Cable Association of Pennsylvania, Inc. (“BCAP”) submits these comments on behalf of its members in connection with the Pennsylvania Public Utility Commission’s (“Commission”) July 29, 2024 Secretarial Letter and August 10, 2024 Pennsylvania Bulletin Notice issued in the above-captioned proceeding (“Notice”). BCAP is an association of broadband cable operators, equipment suppliers, and programmers that provide broadband communications services in every Pennsylvania County.¹

BCAP files these comments because ensuring reasonable pole attachment policies, timelines, and rates is an essential foundation for effective broadband deployment. The FCCs’ *Fourth Report And Order, Declaratory Ruling, And Third Further Notice Of Proposed Rulemaking*, WC Docket No. 17-84, FCC 23-109 (December 15, 2023) (the “FCC December 2023 Order”) adopts important reforms to pole attachment processes that the Commonwealth should adopt. BCAP therefore supports the Commission’s goals of ensuring a prompt and fair process for adjudicating pole attachment complaints and facilitating increased broadband deployment in Pennsylvania. BCAP also supports the Commission’s general approach to adopt the FCC’s pole attachment rules in their entirety: “[T]he Commission is resolute in the necessity, especially at first and going forward, to proceed with a turn-key adoption of the FCC’s pole

¹ More information on BCAP is available here: www.bcapa.com.

attachment regulations. As noted in our [Notice of Proposed Rulemaking], Pennsylvania-specific regulations would be unlikely to provide anything more than incremental improvement above what are well-established installation practices.”²

Pursuant to the Notice, the Commission asks interested parties to comment on two specific topics. BCAP is mindful of the Commission’s 2019 admonition, as reiterated in the Notice, 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. If the Commission does find it necessary to amend Chapter 77 to accommodate state-specific changes, the Commission will initiate an appropriate rulemaking, and the public will be notified and provided with appropriate opportunity to comment.”³.

1. The Commission should allow the FCC’s addition of new subsection (c)(4) (Information from cyclical pole inspection reports) to existing regulation 47 C.F.R. § 1.1411 (relating to information from cyclical pole inspection reports) to become effective in Pennsylvania by operation of law.

BCAP fully supports allowing the FCC’s addition of subsection (c)(4) to existing regulation 47 C.F.R. § 1.1411 to become effective in Pennsylvania by operation of law. The FCC amended its pole attachment make-ready rules to require utilities to provide to potential attachers, upon request, the information contained in their most recent cyclical pole inspection reports, or any intervening, periodic reports created before the next cyclical inspection. The

² *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission*, Docket No. L-2018-3002672, at p. 35 (Final Rulemaking Order entered Sep. 3, 2019) (“2019 Final Rulemaking Order”).

³ Notice at p. 3 (citing 2019 PA. PUC LEXIS 267, *34).

provision is applicable to poles covered by a submitted attachment application, including whether any of the affected poles have been "red tagged" by the utility for replacement, and the scheduled replacement date or timeframe (if any).

If the Commission does not allow the addition to become effective, the PUC risks creating unintended but significant gaps in the regulatory framework and would erode the certainty and predictability stakeholders need to continue advancing broadband deployment in the Commonwealth.

2. The Commission should allow the FCC's new section 1.1415 (Dispute Resolution Procedures for Pole Attachment Disputes that Impede or Delay Broadband Deployment; Functions of the Rapid Broadband Assessment Team) to become effective in Pennsylvania with minor modifications the Commission determines are needed to facilitate implementation.

BCAP fully supports allowing this addition – or perhaps more accurately, the principles embodied in the FCC rule – to become effective in Pennsylvania by operation of law. Through the new section 1.1415, the FCC established an agency-wide rapid response team to provide coordinated review and assessment of pole attachment disputes that impede or delay broadband deployment and recommend effective dispute resolution procedures and adopted specific criteria to guide that team when considering whether a complaint (or portion thereof) should be included on an accelerated docket:

Today, we amend our rules to create the [Rapid Broadband Assessment Team (RBAT)] in an effort to make the Commission's pole attachment dispute resolution process more responsive and adaptable with the goal of facilitating deployment.The RBAT will be charged with expediting the resolution of these disputes by swiftly engaging key stakeholders, gathering relevant information, distilling issues in dispute, and recommending to the parties, where appropriate, an abbreviated mediation process, placement of a complaint (or portion of a complaint) on the Accelerated Docket based on consideration

of specified criteria, and/or any other action that the RBAT determines will help the parties resolve their dispute.⁴

The precise structure of the rules establishing a rapid response team and expediting pole attachment cases that impact broadband deployment may need to be adjusted slightly to match the Commission’s organization and procedural rules, but BCAP supports incorporating the FCC rule as a rule here in Pennsylvania with minor modifications necessary for the Commission to effectively implement the FCC rule.

Adopting the FCC’s RBAT principles not only implements a helpful FCC policy, it furthers the public interests underlying this proceeding. This docket began as a “natural outgrowth of the goals of Chapter 30 of the Public Utility Code, which is intended to promote and encourage the provision of advanced telecommunications services and broadband deployment in the Commonwealth.”⁵ The Commission asserted jurisdiction over pole attachments “to provide a local forum in Pennsylvania for the timely resolution of pole attachment disputes.”⁶ Additionally, the Commission’s objective is to “assist in spurring investment in, and access to, physical infrastructure used to deliver essential broadband access service to end-user customers **by reducing the time and resources spent on disputes** by resolving Pennsylvania-specific disputes in **Pennsylvania as compared to the FCC.**”⁷

Consistent with these principles, the Commission should allow the rapid broadband assessment team to go into effect and identify the appropriate structure and organization to

⁴ FCC December 2023 Order at ¶ 8.

⁵ 2019 Final Rulemaking Order at 2.

⁶ *Id.* at 9.

⁷ *Id.* at 9 (emphasis added).

implement this coordinated review of complaints to expedite deployment of broadband in the Commonwealth.

3. The Commission Should Acknowledge and Adopt the Declaratory Rulings from the FCC's December 2023 Order.

Finally, BCAP urges the Commission to affirmatively acknowledge and adopt the Declaratory Rulings from the FCC's December 2023 Order found in Section IV, para. 39. The Commission has explicitly determined that it will consider FCC orders promulgating and interpreting Federal pole attachment rules and Federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions.⁸ The FCC issued several declaratory rulings in its order that this Commission should affirm in its order to provide regulatory certainty. The Commission should adopt the following FCC declaratory findings:

Red Tagged Poles. The FCC declared that “for purposes of pole replacement policies, a ‘red tagged’ pole is one that the utility has identified as needing replacement for any reason other than the pole’s lack of capacity to accommodate a new attachment (*e.g.*, the pole is on the utility’s replacement schedule or there are safety and/or engineering concerns);⁹

“**Necessitated Solely.**” The FCC clarified through additional examples the meaning of “necessitated solely” in situations where a pole replacement is not “a result of a third party’s attachment or modification request when a pole already requires replacement at the time that the new attacher’s request is made;”¹⁰

⁸ See 52 Pa. Code § 77.5(c).

⁹ FCC December 2023 Order, ¶ 39; *see also id.* at ¶¶ 40-44.

¹⁰ *Id.* at ¶ 39; *see also* ¶¶ 45-48. In ¶ 46, the FCC identified a few examples of when attachments are not “necessitated solely” by an attachment request: “(1) a pole replacement is required pursuant to applicable law; (2) the current pole fails applicable engineering standards, such as those contained in the NESC; (3) a utility’s previous or contemporaneous change to its internal construction standards necessitates replacement of an existing pole; (4) the pole is required to be replaced due to road expansion or moves, property development, in connection with storm hardening, or similar government-imposed requirements; or (5) the current pole already is on the utility’s internal replacement schedule, regardless of when the replacement is scheduled to take place.”

Right of Way and Easement Information. The FCC clarified “attachers’ right to access documentation regarding utility easements;”¹¹ and

Large Orders. The FCC clarified “that the first 3,000 poles in an attachment application are subject to the processing timeline set forth in section 1.1411(g)(3).”¹² This clarification means that when parties “negotiate in good faith” as required by FCC rules for large orders, the pole owners cannot stall processing all of the poles involved in the large order pending negotiation, but must process the first 3,000 poles in an order pursuant to the deadlines set forth in section 1.411(g)(3).

Much like the two rules the FCC adopted, these declarations facilitate efficient broadband deployment on reasonable terms, and provide helpful regulatory certainty that should enable both pole owners and attachers to reduce time disputing claims and focus more resources on efficiently deploying broadband.

BCAP appreciates the Commission’s continued commitment to an efficient application of pole attachment rules, predictable regulatory framework, to support ongoing efforts to expand and enhance broadband networks in the Commonwealth and to maintain parity with the FCC’s rules.

CONCLUSION

BCAP requests the Commission to undertake actions consistent with the above comments, including the following:

- 1) Allowing the FCC’s addition of new subsection (c)(4) to existing regulation 47 C.F.R. § 1.1411(information from cyclical pole inspection reports) to become effective in Pennsylvania by operation of law;

¹¹ *Id.* at ¶ 39; *see also* ¶ 49.

¹² *Id.* at ¶ 39; *see also* ¶ ¶ 50-51.

- 2) Allowing the FCC's new section 1.1415 (Dispute Resolution Procedures for Pole Attachment Disputes that Impede or Delay Broadband Deployment; Functions of the Rapid Broadband Assessment Team) to become effective in Pennsylvania with minor modifications the Commission determines are needed to facilitate implementation; and
- 3) Adopting the FCC's declaratory findings from the December 2023 Order on *red tagged* poles, the meaning of 'necessitated solely,' right of way and easement information, and large orders in pole attachment negotiations.

Respectfully submitted,

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By 

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Dated: August 26, 2024

Corrected: August 27, 2024