

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**ADOPTION OF FEDERAL
COMMUNICATIONS COMMISSION
REGULATIONS PURSUANT TO
52 Pa. CODE § 77.4**

**PUBLIC MEETING OF SEPT. 26, 2024
3002672-LAW
DOCKET NO. L-2018-3002672**

MOTION OF CHAIRMAN STEPHEN M. DeFRANK

In this matter, the Commission considers the adoption of two regulations recently promulgated by the Federal Communications Commission (FCC) regarding pole attachments as our own. The federal changes became effective on July 25, 2024. The Commission published in the *Pennsylvania Bulletin* a request for comments from interested stakeholders regarding whether the federal changes should become effective in Pennsylvania consistent with Section 77.4 of our regulations.¹ Six comments were received in response to the publication.

The first regulation, Section 1.1411(c)(4), requires public utility poles owners to share information regarding their most recent inspections with entities seeking to attach to those poles upon request.² I believe this requirement is in the public interest as it provides transparency to interested attachers that can lead to efficiencies and help avoid wasteful expenditures.

The second regulation, Section 1.1415, establishes a Rapid Broadband Assessment Team, or RBAT, to provide a forum for expedited resolution of disputes between pole owners and attachers that slow down broadband deployment.³ Such expedited treatment would be done through the FCC's accelerated docket.⁴

Under the FCC's accelerated docket, proceedings must be concluded within 60 days and are therefore subject to shorter pleading deadlines and other modifications to the procedural rules that govern formal complaint proceedings.⁵ A request to be included on the accelerated docket must be made prior to filing the complaint and the FCC staff has

¹ 52 Pa. Code § 77.4.

² 47 C.F.R. § 1.1411(c)(4).

³ 47 C.F.R. § 1.1415.

⁴ 47 C.F.R. § 1.736.

⁵ 47 C.F.R. § 1.736(a).

discretion to determine whether a complaint is suitable for the accelerated docket.⁶ In appropriate cases, Commission staff has the discretion to decide whether a complaint, or a portion of a complaint, is suitable for inclusion in the accelerated docket.⁷ A mini-trial, or trial-type hearing, shall take place between 40 and 45 days after the filing of the complaint, unless the parties agree to decide the matter on the written record.⁸ Any party to a proceeding that seeks modification of the recommended decision shall do so by filing comments within 15 days of its release with the opposing party having an opportunity to file reply comments 10 days thereafter.⁹ The FCC then acts on any disputed recommended decision within 30 days of the filing of reply comments.¹⁰

I believe that the Commission can incorporate this accelerated docket into our processes and procedures to support the necessary deployment of broadband across the Commonwealth. Currently, the Commission has a dispute resolution process in its existing pole attachment regulations that provides 180 days for the Commission to take final action on a formal complaint involving a pole attachment dispute, with the possibility of an additional 90 days added, for a total of 270 days, for good cause shown.¹¹ However, I believe that an accelerated procedural timeframe better accommodates the Commonwealth's current and future broadband deployment needs, especially given the federal money now available through the Infrastructure Investment and Jobs Act.¹² I also note that adopting or utilizing this accelerated schedule is consistent with other recent Commission initiatives to streamline our processes and procedures.

Broadband services throughout Pennsylvania and across the country are fundamentally important providing access to medical care, retail services, education and much more. Therefore, I believe that the Commission should adopt the FCC's regulations that could significantly reduce the amount of time it takes this Commission to address formal complaints involving pole attachments. Furthermore, I believe we can meet this shorter timeframe with our existing personnel and infrastructure.

I believe adoption of the FCC's two new regulations, including establishing the RBAT, still ensures and protects the due process rights of all affected parties while recognizing the need to provide essential telecommunications and internet service to the unserved and underserved areas of the Commonwealth as expeditiously as possible. As such, I submit that Commission adoption of the FCC's two new regulations is in the public interest.

⁶ 47 C.F.R. § 1.736(b), (c).

⁷ 47 C.F.R. § 1.736(d).

⁸ 47 C.F.R. § 1.736(h).

⁹ 47 C.F.R. § 1.736(i)(what the FCC refers to as Comments and Reply Comments are akin to what we refer to as Exceptions and Reply Exceptions).

¹⁰ 47 C.F.R. § 1.736(j).

¹¹ 52 Pa. Code § 77.5(d).

¹² Pub. L. No. 117-58, 135 Stat. 429 (2021).

Furthermore, in light of the comments received from interested stakeholders that more time is needed to examine how the RBAT regulations fit within the Commission's existing framework, including how to address conflicts among parties regarding the application of accelerated litigation schedules, the Commission's Law Bureau will be directed to prepare an implementation order to be submitted to the Commission for consideration within 45 days of the entry of the Opinion and Order prepared in response to this motion.

Finally, noting my support to adopt these new procedural rules for complaints involving pole attachments, I encourage parties to consider using the services of the Commission's mediation unit to resolve any applicable disputes.

THEREFORE, I MOVE:

1. That the FCC amendment codified at 47 C.F.R. § 1.1411(c)(4), requiring utility companies to provide inspection reports to attachers upon request, is hereby adopted and shall become effective in Pennsylvania on October 9, 2024.
2. That the FCC amendment at 47 C.F.R. § 1.1415, requiring the development of a Rapid Broadband Assessment Team to facilitate expedited dispute resolution procedures for disputes between pole owners and attachers, is hereby adopted and shall become effective in Pennsylvania pending the issuance of an implementation order.
3. That the Law Bureau prepare an Opinion and Order consistent with this motion.
4. That a copy of this Order shall be served upon the members of the Commission's Pole Attachment Working Group as well as posted on the Commission's website at its pole attachments page.
5. That the Law Bureau prepare an implementation order to be submitted to the Commission for consideration within 45 days of the entry of the Opinion and Order prepared in response to this motion.
6. That this Order shall be published in the *Pennsylvania Bulletin*.

September 26, 2024
Date



Stephen M. DeFrank
Chairman