

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held September 26, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Dissenting
Kathryn L. Zerfuss
John F. Coleman, Jr.
Ralph V. Yanora

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

L-2018-3002672

ORDER

BY THE COMMISSION:

On July 29, 2024, the Pennsylvania Public Utility Commission (Commission) issued a Secretarial Letter,¹ at Docket No. L-2018-3002672, soliciting stakeholder comments on whether the Federal Communications Commission's (FCC) amendments to its federal pole attachment regulations that would provide pole attachers with more detailed information about the poles they plan to use as part of their broadband buildouts and allow for faster resolution of pole attachment disputes should become effective in Pennsylvania.² In particular, the *FCC Order* substantially revised 47 CFR 1.1411, redesignated existing 47 CFR 1.1415 as 47 CFR 1.1416, and added a new 47 CFR 1.1415. These federal rule changes became effective on July 25, 2024. In response to the Commission's Secretarial Letter, six entities filed comments. The instant order reflects the Commission's evaluation of these comments and the determination of how Pennsylvania will proceed regarding the FCC's regulatory changes.

¹ The Secretarial Letter was published in the *Pennsylvania Bulletin* on August 10, 2024, 54 Pa.B. 5202.

² *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking (December 15, 2023). (*FCC Order*).

In sum, the Commission adopts both the FCC’s cyclical pole inspection regulation as well as the FCC’s dispute resolution procedures for pole attachment disputes that impede or delay broadband deployment, which also identifies the functions of its Rapid Broadband Assessment Team (RBAT). These new FCC changes will help facilitate broadband deployment in Pennsylvania and we find no Pennsylvania-specific rationale that warrants rejection of these federal regulations.

BACKGROUND

On March 18, 2020, the Pennsylvania Public Utility Commission asserted jurisdiction over pole attachments under Section 224(c) of the Communications Act of 1934, as amended, which allows states to regulate pole attachments. 47 U.S.C. § 224(c). The Commission exercised this authority by promulgating regulations under 52 Pa. Code Chapter 77 to govern the rates, terms and conditions of access to and use of utility poles, ducts, conduits and rights-of way, ensuring that Pennsylvania maintains a framework for overseeing these issues.³

The FCC’s pole attachment regulations are codified at 47 C.F.R. Ch. 1, Subch. A, Pt 1, Subpt. J (relating to pole attachment complaint procedures), §§ 1.1401–1.1424. The *FCC Order*, which was released on December 15, 2023, and became effective on July 25, 2024, introduced two significant regulatory changes: (1) the requirement for utilities to provide cyclical pole inspection reports to attachers upon request,⁴ and (2) the creation of the RBAT to facilitate the resolution of pole attachment disputes that impede broadband deployment.⁵ In particular, the FCC’s cyclical pole inspection regulation requires public utility pole owners to share information from their most recent

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

⁴ 47 C.F.R. § 1.1411(c)(4) (relating to information from cyclical pole inspection reports).

⁵ 47 C.F.R. § 1.1415 (relating to dispute resolution procedures for pole attachment disputes that impede or delay broadband deployment; functions of the Rapid Broadband Assessment Team).

inspections with entities seeking to attach to poles upon request. 47 C.F.R. § 1.1411(c)(4). The RBAT process aims to provide a forum for expedited resolution of disputes between pole owners and attachers that slow down broadband deployment, potentially placing such disputes on the FCC’s Accelerated Docket for prompt resolution. 47 C.F.R. § 1.1415. Accelerated Docket procedures predate the *FCC Order* and permit parties to file formal complaints before the FCC that request expedited treatment of the case, to be concluded within 60 days. 47 C.F.R. § 1.736 (relating to accelerated docket proceedings). There is no analogue to the FCC’s Accelerated Docket in the Commission’s regulations.

Pursuant to 52 Pa. Code § 77.4(c), any amendments made by the FCC to the federal pole attachment regulations automatically take effect in Pennsylvania 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. The Commission published a Secretarial Letter in the *Pennsylvania Bulletin* on August 10, 2024, stating that the FCC’s amendments may not automatically take effect in Pennsylvania and inviting comments from stakeholders as to whether the FCC’s amendments should be permitted to become effective in Pennsylvania. Pursuant to 52 Pa. Code § 77.4(e), the FCC’s amendments shall become effective 60 days after publication of the notice for comment in the *Pennsylvania Bulletin* (i.e., on October 9, 2024) unless the Commission determines otherwise for good cause shown. Comments in response to the Secretarial Letter were timely filed by the Broadband Cable Association of Pennsylvania (BCAP), CTIA – The Wireless Association (CTIA), Crown Castle Fiber (Crown Castle), Energy Association of Pennsylvania (EAP), FirstEnergy Pennsylvania Electric Company (FirstEnergy); and Verizon.⁶

⁶ The Verizon comments were filed collectively 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.

These comments are summarized and discussed below in this Order, which reflects the Commission's determination regarding the adoption of the FCC amendments in Pennsylvania.

DISCUSSION

I. Adoption Of 47 C.F.R. § 1.1411(c)(4) Regarding Cyclical Pole Inspection Reports

The first federal rule change for our consideration concerns the adoption of the FCC's cyclical pole inspection regulation, codified at 47 C.F.R. § 1.1411(c)(4). This rule mandates that utilities provide cyclical pole inspection reports to attachers upon request.

Comments

Several stakeholders support the automatic adoption of this regulation. BCAP, Crown Castle, CTIA, and Verizon express strong support for the adoption, stating that the rule is straightforward, aligns with existing FCC regulations, and poses no Pennsylvania-specific issues. BCAP Comments at 2; Crown Castle Comments at 1; CTIA Comments at 2; Verizon Comments at 5. BCAP argues that the regulation will provide much-needed regulatory certainty and predictability, which is essential for broadband deployment across the Commonwealth. BCAP Comments at 2-3. BCAP adds that failure to adopt the rule could create significant regulatory gaps, undermining Pennsylvania's broadband deployment efforts. BCAP Comments at 3. Both Crown Castle and CTIA assert that this rule, having undergone extensive review before the FCC, should be adopted without further debate. Crown Castle Comments at 1; CTIA Comments at 3. Both of these stakeholders emphasize that allowing additional comment on the matter would be redundant, as the FCC has already addressed relevant concerns through its own comment period. Crown Castle Comments at 1; CTIA Comments at 3. Verizon highlights the need for regulatory consistency, noting that

many Pennsylvania utilities and attachers operate in states that have already adopted the FCC rule. Verizon Comments at 6.

On the other hand, EAP and FirstEnergy raise concerns about the usefulness of the cyclical pole inspection reports. EAP Comments at 2; FirstEnergy Comments at 2. EAP argues that the information in these reports may not be relevant or timely for third-party pole attachers, particularly given that pole inspection cycles for electric distribution companies may extend up to 12 years. EAP Comments at 2. EAP also expresses concern that the variation in inspection standards across companies could lead to confusion and increased disputes. EAP Comments at 2. FirstEnergy echoes these concerns, arguing that pole attachers typically conduct their own inspections and may misinterpret the public utility's reports, leading to disputes and delays. FirstEnergy Comments at 3-4. FirstEnergy also contends that the collection and provision of these reports could divert resources from core processing functions, thus hindering the pole attachment process. FirstEnergy Comments at 4.

Disposition

After reviewing the comments, the Commission finds that adopting the FCC's cyclical pole inspection regulation, 47 C.F.R. § 1.1411(c)(4), is in Pennsylvania's best interest. The regulation provides necessary transparency, aligns with other federal and state rules, and is widely supported by stakeholders in the telecommunications industry. While the Commission acknowledges the concerns raised by EAP and FirstEnergy, we deem that these issues can be addressed through proper implementation and conclude that the benefits of adopting the federal amendment outweigh the risks of increased disputes or resource diversion. The FCC's justifications for this rule are extensive and

reasonable⁷ and we have no reason to second-guess the FCC’s judgment in this instance.⁸ Moreover, no party raised any concerns about this regulation that are specific to Pennsylvania.⁹ Accordingly, the Commission adopts the FCC’s cyclical pole inspection regulation in Pennsylvania.

II. Adoption Of 47 C.F.R. § 1.1415 Regarding The Dispute Resolution Procedures For Pole Attachment Disputes That Impede Or Delay Broadband Deployment And The Functions Of The Rapid Broadband Assessment Team

The second federal amendment concerns the adoption of the FCC’s RBAT, codified at 47 C.F.R. § 1.1415, and the availability of the FCC’s Accelerated Docket, codified at 47 C.F.R. § 1.736, for pole attachment disputes that impede or delay broadband deployment. The RBAT is designed to prioritize and expedite the resolution of pole attachment disputes that may impede broadband deployment by coordinating review through a rapid response team made up of staff from the Enforcement Bureau and Wireline Competition Bureau that have expertise in the FCC’s pole attachment rules and orders.¹⁰

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. 47 CFR § 1.736(a). A request to be included on the FCC’s accelerated docket must be made by the complainant prior to filing the complaint, or by the defendant within five days of receiving service of the complaint. 47 CFR § 1.736(b)-(c). In appropriate cases, FCC

⁷ See, *FCC Order* at ¶¶ 23–28.

⁸ See, *2019 Final Rulemaking Order* at 29-30 (“[T]he Commission should not be required, as a matter of course, to expend additional resources that duplicate the efforts undertaken by the FCC. The FCC takes care to explore amendments, review comments from interested parties, and establish regulations.”).

⁹ *Id.* at 24-25 (“[T]he 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.”).

¹⁰ *FCC Order* at ¶ 14.

staff has discretion to decide whether a complaint, or portion of a complaint, is suitable for inclusion in the accelerated docket. 47 CFR § 1.736(d). A mini-trial, or trial-type hearing, then takes place between 40 and 45 days after the complaint is filed, as an alternative to deciding a case on a written record. 47 CFR § 1.736(h). Any party to a proceeding that seeks modification of the recommended decision must file comments within 15 days of the decision, the opposing party then has 15 days to file comments and then reply comments may be filed 10 days thereafter. 47 CFR § 1.736(i). After these comment periods, the FCC must act on the disputed recommended decision within 30 days. 47 CFR § 1.736(j).

Stakeholders are more divided on the adoption of these federal dispute resolution procedures in Pennsylvania. BCAP strongly supports its adoption, asserting that the federal procedures will streamline dispute resolution and expedite broadband deployment across the Commonwealth. BCAP Comments at 3. BCAP does, however, suggest that the Commission may need to make minor procedural adjustments to align the RBAT with existing state rules, but argues that the benefits of faster broadband expansion justify the implementation of the FCC’s adopted procedures. BCAP Comments at 4-5. BCAP requests that the Commission adopt a modified version of the RBAT and, relatedly, that the Commission adopt the FCC’s declaratory findings on pole attachments. Specifically, BCAP argues that the Commission should adopt the FCC’s declaratory clarifications regarding “red-tagged poles,” pole replacements “necessitated solely” by an attacher, easement information, and large pole attachment orders.¹¹ BCAP Comments at 5.

¹¹ The FCC declared that a red-tagged pole is one the utility has identified as needing replacement for any reason other than a lack of capacity to accommodate new attachments. These declaratory findings also provided additional examples of when attachments are not “necessitated solely” by an attachment request, specifically: (1) a pole replacement is required pursuant to applicable law, (2) the current pole fails applicable engineering standards, (3) a utility’s previous 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 (5) the current pole is already on the utility’s internal replacement schedule. The FCC also clarified attachers’ right to access documentation regarding utility easements and that the first 3,000 poles in an attachment application are subject to the processing timeline set forth in 47 C.F.R. § 1.411(g)(3). *FCC Order* at ¶ 39–44.

In contrast to BCAP's support of the RBAT, Crown Castle, CTIA, and Verizon express reservations about the adoption of the federal dispute resolution procedures. Crown Castle and CTIA both recognize the need for efficient dispute resolution processes but recommend delaying or rejecting the RBAT until further examination of how it fits within the Commission's existing framework. Crown Castle Comments at 2; CTIA Comments at 2-3. Crown Castle suggests that adopting the RBAT without this examination could create overlap or confusion with Pennsylvania's current dispute resolution procedures. Crown Castle Comments at 2. Similarly, CTIA notes that deviating from federal rules to tailor an RBAT to Pennsylvania's specific needs may be appropriate due to the importance of expediting dispute resolution. CTIA Comments at 3. Meanwhile, Verizon acknowledges the potential benefits of the RBAT and accelerated dispute resolution procedures but suggests that the Commission clarify how the process will interact with existing procedures before adopting this change. Verizon Comments at 7. Verizon further recommends exploring how the objectives of the RBAT could be achieved through Pennsylvania's current structures, rather than adopting the FCC's structure. Verizon Comments at 7.

EAP and FirstEnergy are more critical of the federal dispute resolution procedures for pole attachment disputes, both recommending that the Commission outright reject this federal regulation. EAP Comments at 2; FirstEnergy Comments at 5. FirstEnergy argues that Pennsylvania's existing complaint procedures already provide sufficient avenues for dispute resolution and that adding the RBAT would introduce unnecessary complexity and costs. FirstEnergy Comments at 6. EAP expresses a similar view, contending that the RBAT process would delay rather than expedite the resolutions by adding a preliminary evaluation, and place additional financial burdens on electric distribution companies and ratepayers. EAP Comments at 3.

Disposition

After careful consideration, the Commission agrees with BCAP's Comments that the federal procedures will streamline the resolution of pole attachment disputes and finds that adopting the FCC's dispute resolution processes for pole attachment disputes that impede or delay broadband deployment, 47 CFR § 1.1415, will support necessary deployment of broadband across the Commonwealth. The FCC's accelerated procedural timeframe better accommodates Pennsylvania's current and future broadband deployment needs, especially given the federal funding now available through the Infrastructure Investment and Jobs Act.¹² Moreover, we find that the Commission can meet the shorter timeframe prescribed in 47 CFR § 1.736, in appropriate circumstances, with our existing personnel and infrastructure.

While the Commission appreciates the reservations raised by Crown Castle, CTIA, and Verizon related to adopting these federal rule changes prior to examining how an RBAT or accelerated docket fits within our existing dispute resolution framework, these concerns will be addressed by an implementation order prepared by our Law Bureau that will be submitted for our consideration within 45 days of the entry of this Opinion and Order. The implementation order will address a Commission-specific RBAT that fits the Commission's internal staffing and structures, will address any conflicts between parties regarding the application of accelerated litigation schedules, and will address how the Commission's existing mediation processes may be used to resolve applicable pole attachment disputes.

Additionally, we disagree with the concerns raised by FirstEnergy and EAP that cost, complexity, and potential procedural overlap should lead the Commission to reject the FCC's newly-adopted dispute resolution procedures for pole attachment disputes. Broadband services throughout Pennsylvania, and across the country, are fundamentally

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

important to providing access to medical care, retail services, education, and more. Thus, we find it in the public interest to adopt these federal regulations that aim to significantly reduce the amount of time it takes this Commission to address formal complaints involving pole attachments.

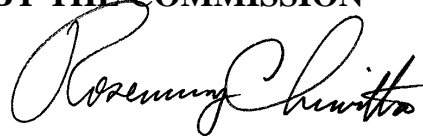
Finally, BCAP's request to adopt the FCC's declaratory findings is not appropriate because those findings appear only in the *FCC Order* (not in any amendment to any regulation) and therefore do not constitute "future changes as those [FCC] regulations may be amended" under 52 Pa. Code § 77.4(a). Rather, the FCC's declaratory findings may be more appropriately considered as "persuasive authority" pursuant to 52 Pa. Code § 77.5(c). Accordingly, the Commission adopts the FCC's new dispute resolution procedures for pole attachment disputes that impede or delay broadband deployment and that requires the establishment of a Rapid Broadband Assessment Team to facilitate expedited dispute resolution procedures; **THEREFORE,**

IT IS ORDERED:

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 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 the Pole Attachments page.

4. That the Law Bureau prepare an implementation order to be submitted to the Commission for consideration within 45 days of the entry of this Opinion and Order.
5. That this Order shall be published in the *Pennsylvania Bulletin*.

BY THE COMMISSION



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: September 26, 2024

ORDER ENTERED: October 8, 2024