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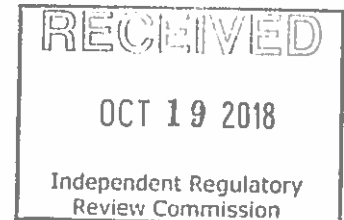
PA PUC
SECRETARY'S BUREAU

October 12, 2018



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



Re: Notice of Proposed Rulemaking in Docket L-2018-3002672

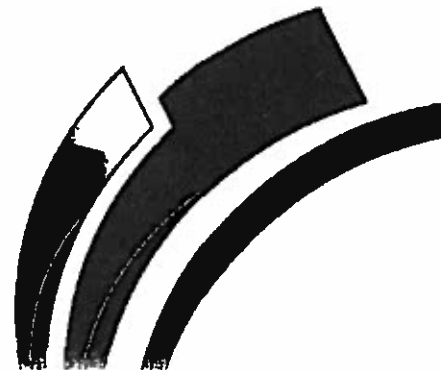
Dear Ms Chiavetta:

Please accept this letter as the comments of NetSpeed LLC regarding the Commission's Notice of Proposed Rulemaking relating to pole attachments.

Background of NetSpeed

NetSpeed builds and operates fiber-optic network in the Pittsburgh area. We target the residential marketplace but also provide service to small businesses in or near residential neighborhoods. We are currently serving the communities of Aliquippa, Ambridge, Baden, Beaver, Beaver Falls, Conway, Monaca, New Brighton, and Rochester. We offer 100 Megabit connections for \$50 per month, 500 Megabits for \$70 per month, and one Gigabit for \$90 per month. These speeds describe both the upstream and downstream connections. Each customer benefits from a lifetime price guarantee that applies as long as they remain a NetSpeed customer. NetSpeed intends to continue to expand its operations to other municipalities in the Pittsburgh area and beyond.

NetSpeed's senior officers previously led the companies Fibertech Networks, LLC, and Sunesys LLC, which built a combined total of over 20,000 route-miles of local-area fiber-optic network during the years 1999 through 2015. Petitions or complaints regarding pole access filed by Fibertech triggered the proceedings that resulted in the 2004 New York PSC pole attachment rule-making, the 2008 Connecticut DPUC pole attachment rule-making, and the 2011 FCC pole attachment rule-making. NetSpeed's senior officers were closely involved not only in triggering these proceedings but also in the proceedings themselves.



State-Level Regulation

NetSpeed applauds the Commission's decision to regulate pole attachments. We believe 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. State-level regulation also will allow Pennsylvania, should it so choose, to distinguish itself among states as a jurisdiction especially amenable to broadband deployment and availability.

Adoption of Federal Law

NetSpeed also supports, as an initial step, the Commission's adoption of the existing Federal statutory and regulatory regime relating to pole attachments. This approach permits the Commission to take on its regulatory role without waiting the potentially lengthy period that could be entailed in the formulation of brand new rules. However, we do not believe the Commission should include in its regulations a mechanism that would cause new developments in Federal law to automatically become part of Pennsylvania law (e.g., proposed § 77.4, adopting the federal statute and regulations, "inclusive of future changes as those regulations may be amended"). Such a mechanism would impose on companies doing business in Pennsylvania provisions of law whose appropriateness this Commission will not have weighed, thus forfeiting the Commission's ability to exercise its full discretion in performing its regulatory function. Moreover, it is not obvious that a regulatory agency has the legal authority to delegate to others the powers that have been legislatively delegated to it.

Future Deviation from Federal Standards

It also makes sense, in NetSpeed's opinion, for the Commission to look favorably on the FCC's orders promulgating and interpreting the existing regulations as well as federal court decisions reviewing such orders and regulations. It makes equal sense for the Commission to look favorably on FCC and court interpretations of future FCC regulations that the Commission may consider and adopt as its own. Much of the federal law on pole attachments is found in FCC orders, including orders resolving particular disputes between parties. Nevertheless, we are not entirely comfortable, without more, with the formulation adopted in proposed rule § 77.5(c) that provides that the Commission "will consider [such orders] ... persuasive authority in construing the provisions of 47 U.S.C. § 224 and 47 C.F.R. 1.1401 – 1.1425". We are not certain we understand the effect of that language. Will the Commission be open to hearing other proposed interpretations of federal regulations? NetSpeed believes that certain FCC interpretations are not ideal and are potentially subject to improvement. Therefore, we would

support the Commission's adoption of additional language similar to that used by the New York Public Service Commission when it adopted the federal law as its model for regulation in 1997:

"[O]ur new approach to pole attachments will adhere to the FCC's methods and practices unless we find a compelling reason to depart from them." (Opinion No. 97-10, NYS PSC Case 95-C-0341, *In the Matter of Certain Pole Attachment Issues which Arose in Case 94-C-0095*, Issued June 17, 1997, at p. 5.)

Although the adoption of the federal regulatory regime makes sense at this stage of the Commission's involvement with pole attachments, NetSpeed encourages the Commission to remain open to the idea of deviating from the federal standards as it encounters real-life disputes between pole owners and companies seeking to bring wired broadband facilities to Pennsylvania. Not only is the Commission positioned to render improved decisions regarding pole access due to its expertise in electric utility regulation, but it also may be among the first agencies to face issues particular to residential broadband deployment, which differ in significant ways from the issues faced when companies seek to extend network to serve large customers. At some point in the future this Commission may elect, as New York, Connecticut, New Jersey, Ohio, and numerous other states have done, to adopt its own regulations to promote broadband deployment beyond the level supported by federal law. Such an endeavor would be substantially eased by the ability to rely on the experiences of these other states to stitch together a set of regulations that would best serve the interests of the people of Pennsylvania.

Expedited Dispute Resolution

In its 2004 Order Adopting Policy Statement on Pole Attachments, the New York Public Service Commission adopted an expedited dispute resolution process. It provided that, after a pole attachment dispute is discussed at the intermediate level at a company for 10 days and then appealed to a "Company Ombudsman" for consideration for an additional 12 days, the dispute may be taken to the Commission for expedited resolution. NetSpeed believes that such an arrangement can be extremely valuable. We envision the expedited resolution at the Commission level as a substantive decision rendered by a staff member with significant knowledge of outside plant as well as the legal provisions that pertain to pole access. We also envision the expedited decision as appealable to the full Commission through a formal complaint. Despite the appealable nature of an expedited staff decision, such an expedited resolution would provide a strong indication of how the Commission would likely decide the dispute and would therefore tend to serve as the final resolution.

One of the drawbacks of the FCC's pole attachment complaint process is that it typically does not result in a decision for many months. Such a lengthy delay means that whatever relief may be forthcoming is often not timely for a third party attacher, who can be under significant

financial stress to complete its planned network installation and begin receiving revenue. Providing a procedural short-cut to an informed decision rendered by a knowledgeable arbitrator will make Pennsylvania a more appealing target for competitive investments in fiber-optic network facilities.

Standardized Pole Attachment Agreements or Tariffs

NetSpeed believes that, at least during the first several years after certifying to the FCC that it regulates pole attachment matters, the time and talents of this Commission would be better spent developing and refining rules and case law relating to pole access than creating standardized pole attachment agreements or tariffs. Such standard agreements or tariffs should reflect the rules and policies adopted by the Commission. It therefore makes sense, in NetSpeed's opinion, that any effort to craft standardized agreements or tariffs await a time when the Commission has achieved significant experience in enforcing its rules and has thereby learned what issues are most critical and how those issues can best be addressed through standardized agreements or tariffs.

NetSpeed appreciates the opportunity to have submitted these comments and looks forward to operating under this Commission's regulatory authority.

Very truly yours,



Charles B. Stockdale
V.P. of Operations and Regulatory Affairs

Cc: Shaun A. Sparks (by email)
Colin W. Scott (by email)