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October 29, 2018

VIA ELECTRONIC FILING

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



Re: Assumption of Commission Jurisdiction Over Pole
Attachments from the Federal Communications Commission
Docket No. L-2018-3002672

Dear Secretary Chiavetta:

Pursuant to the Commission's Order entered on July 13, 2018 in the above-captioned docket and the Notice of Proposed Rulemaking published in the *Pennsylvania Bulletin*, enclosed please find the Comments of CenturyLink.

Do not hesitate to call me with any questions or concerns. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Sue Benedek".

Sue Benedek

ZEB/jh

cc: Colin W. Scott (*via electronic mail*)
Shaun A. Sparks (*via electronic mail*)

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Assumption of Commission Jurisdiction :
Over Pole Attachments from the Federal : L-2018-3002672
Communications Commission :

COMMENTS OF CENTURYLINK

I. INTRODUCTION

Pursuant to a Notice of Proposed Rulemaking ("NOPR") appearing in the Pennsylvania Bulletin, the Pennsylvania Public Utility Commission ("Commission") requests comments regarding proposed rules designed to assume jurisdiction from the Federal Communications Commission ("FCC") - referred to as "reverse preemption" - over pole attachments. See also, NOPR, Order entered July 12, 2018, Docket Number L-2018-3002672. CenturyLink submits these Comments in response to the Commission's proposed rules. CenturyLink also responds to questions raised by the Commissioners regarding this rulemaking.

CenturyLink thanks the Commission for the opportunity to provide comment and input on the important issue of pole attachments. CenturyLink is a combined company with ILEC and CLEC facilities. In Pennsylvania, CenturyLink is both a pole owner and an attacher to poles owned by other utilities, entities, and municipalities/cooperatives. CenturyLink therefore presents a balanced position on this issue.

1 See, Pennsylvania Bulletin 48 Pa.B. 6273(Dated September 29, 2018).
2 CenturyLink includes all CLEC/ILEC in operations in Pennsylvania including: Broadwing Communications, LLC; CenturyLink Communications, LLC; Global Crossing Local Services, Inc.; Global Crossing Telecommunications, Inc.; Level 3 Communications, LLC; Level 3 Telecom Data Services, LLC; The United Telephone Company of Pennsylvania LLC; TelCove Operations, LLC and WilTel Communications, LLC.

II. COMMENTS TO PROPOSED RULES

The proposed rulemaking would amend Title 52 of the Commission's regulations by adding a new Chapter 77 governing "Pole Attachments." As the proposed rulemaking provides, the Commission adopts the "rates, terms and conditions of access to and use of poles, ducts, conduits and rights-of-way to the full extent provided for in 47 U.S.C. § 224 for pole attachments..."³

Approximately 20 states and the District of Columbia have chosen to exercise their authority over poles, i.e., asserted reverse preemption. Thirty states follow the FCC's pole attachment rules promulgated under 47 USC Section 224, however municipalities and co-op pole owners are exempt from the federal rules.

CenturyLink supports the Commission's proposed regulations to adopt the FCC's regulations and assert reverse preemption. The FCC's regulations have been fully vetted and already consider diverse inputs. The Commission's proposed rules take the benefits of the FCC's vetted regulations.

Furthermore, CenturyLink fully supports proposed Section 77.5 regarding the prompt resolution of pole attachment disputes by this Commission. In this regard, CenturyLink also fully supports the specific dispute resolution provisions at Section 77.5(c) to utilize FCC requirements as "persuasive authority" in construing the provision of federal law and FCC regulations. A Commission dispute process to reach prompt resolution of pole attachment issues will benefit the broadband initiatives throughout Pennsylvania.

³ See, Proposed Rules, §§ Section 77.3 and 77.4.

III. COMMENTS TO COMMISSIONER QUESTIONS

Chairperson Gladys M. Brown:

The FCC in 2018 adopted a Third Report and Order and Declaratory Ruling (WC Docket No. 17-85; WT Docket No. 17-79).⁴ At this juncture, the FCC's order has not been implemented and is subject to additional legal process. Pole attachers and pole owners likely will continue to address their respective issues at the FCC and possibly on appeal. However, the evolution of issues at the federal level does not create any downside impact or impediment to implementation of this Commission's proposed rules. This is because the Commission's proposed regulation at Section 77.5(c) would consider as "persuasive authority" any FCC orders promulgating and interpreting Federal pole attachment rules and Federal court decisions reviewing those rules and interpretations. Finally, as to any pending Broadband Deployment Advisory Committee ("BDAC") deliberations and recommendations, the FCC appears to have considered BDAC input in its above-referenced Third Report and Order and Declaratory Ruling at WC Docket No. 17-85 and WT Docket No. 17-79.⁵

Vice Chairperson Andrew G. Place:

1. The legal and technical interactions and ramifications of any future Pennsylvania statutes that may address pole attachments with any potentially adopted Commission rules on pole attachments that are based on the FCC regulatory framework.

CTL Response: As addressed above, the Commission's proposed regulation at Section 77.5(c) would consider as persuasive authority any FCC orders promulgating and

⁴ See, *In the Matter of Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84 and *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, *Third Report and Order and Declaratory Ruling* (Released August 3, 2018) ("*FCC Accelerating Broadband Deployment Order*"). A copy of the FCC's August 3, 2018 Order can be accessed from the following link: <https://docs.fcc.gov/public/attachments/FCC-18-111A1.pdf>.

⁵ *FCC Accelerating Broadband Deployment Order*, at p. 2, at FN5 and p. 6 at FN41. See also, p. 115.

interpreting Federal pole attachment rules and Federal court decisions reviewing those rules and interpretations. Accordingly, the Commission's proposed rules are broad and flexible to handle future changes in regulations flowing from the FCC or a court.

2. The technical and legal ramifications of adopting the FCC regulatory framework for pole attachments in Pennsylvania while the FCC may proceed with future changes to its own regulations on pole attachments at the federal level. Would the Pennsylvania pole attachment regulations be automatically linked with the corresponding FCC regulatory framework changes at the federal level? Or, will the Commission be obliged to institute a new rulemaking or other proceedings with appropriate due process notice and comment under applicable Pennsylvania law in order to consider such future changes in the FCC's own regulatory framework for pole attachments?

CTL Response: CenturyLink at this juncture supports the Commission's effort when exercising reverse preemption to stay within ambit of the FCC requirements. The development and promulgation of new state rules outside the FCC's regulations could involve significant resources to create and eventually to implement.

3. Whether the Commission's existing exercise of jurisdiction, including ratemaking mandates, over public utility entities that are and will be subject to pole attachment regulations, will present any unique issues that may require Pennsylvania-specific changes to the FCC's applicable regulatory framework.

CTL Response: Deviating from the FCC's regulations would not be advisable or prudent. CenturyLink does not believe there are "unique issues" requiring Pennsylvania-specific changes to the FCC's regulations. There may be statutory changes needed for Commission authority over entities that own poles but currently are not subject to the Commission's jurisdiction, namely municipalities, cooperatives, railroads, or federal utilities. CenturyLink, for example, is attached in Pennsylvania to twice as many municipal/co-op poles as it is attached to all other poles (power, CLEC, cable, etc.). Any potential statutory changes however should not delay the

Commission's implementation of reverse preemption and adoption of the FCC's regulations.

Commissioner David W. Sweet:

The Commissioner raises a very fair question regarding Commission resources. Forecasting with precision is somewhat difficult at this point. Based upon information and belief, in other states adopting reverse preemption based upon the FCC's rules, the attachers and pole owners try to address disputes on a business-to-business basis and thus escalation of disputes has been limited.

Commissioner Norman J. Kennard:

1. If possible, estimate the forecasted number of disputes that might be brought to the Commission for resolution under the proposed adoption of existing FCC regulations on pole attachments.

CTL Response: See response above.

2. Comment on whether the FCC regulations provide a means for pole owners to address unauthorized attachment or whether some addition mechanism(s) is necessary.

CTL Response: While there are FCC processes, inclusive of a shot clock, for addressing unauthorized attachments, this Commission can provide an expedited process for addressing disputes regarding unauthorized attachments. CenturyLink would support a process in Pennsylvania similar to New York to address unauthorized attachment issues. If a more formal approach is required, the Commission could use the adjudicatory process to address liability and, if needed, exercise fining authority.

3. Request the parties to provide any suggestions to streamline or otherwise improve the Commission's existing adjudicatory and dispute resolution processes.

CTL Response: See, Response to Item (4) below.

4. Comment on the value of adopting an expedited dispute resolution process similar to that used in New York, pursuant to the NY Public Service Commission's Order Adopting Policy Statement on Pole Attachment, issued on August 6, 2004.

CTL Response: CTL would support a similar process in Pennsylvania to that which exists in New York.

5. Provide comment and suggestions on the creation of a comprehensive registry of poles and attachments maintained by the pole owner accessible by for current and future pole attachers.

CTL Response: Comprehensive registry of poles and attachments is very problematic from a maintenance and expense standpoint. A dedicated person(s) would be needed not just for the initial registration of pole attachments, but for all future changes to pole attachments. Further, pole owners often consider such information to be proprietary, and disclosing such information may raise national security concerns to the extent it constitutes "critical infrastructure," and/or reveals crucial access points. The collection and disclosure of this information could also create new cybersecurity vulnerabilities.

6. Provide comment on whether standardized agreements or tariffs for pole attachments should be developed.

CTL Response: Pole attachment agreements should be negotiated to best capture each individual company's processes and procedures. Pole owners in general have standardized agreements to begin negotiations. Any Commission involvement should ensue only if negotiations fail.

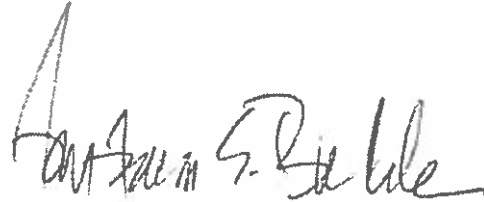
7. Comments on the value of establishing an ongoing working group across public and private entities discuss pole attachment issues and ideas.

CTL Response: Adopting the FCC requirements, even as those requirements change, does not necessarily require workshops. If the Commission wants to undertake a

workshop, it should be limited in scope – i.e., limited to how best to implement the FCC requirements and this Commission’s process for handling of disputes. Workshops that go beyond the FCC’s framework should be rejected as wasteful of Commission resources and the time/expense of interested parties.

IV. CONCLUSION

CenturyLink appreciates the opportunity to submit these Comments. CenturyLink supports the Commission’s proposed regulations to adopt the FCC’s pole attachment rules to assert reverse preemption. CenturyLink also supports the Commission’s proposed rules at Section 77.5 regarding the prompt resolution of disputes. .



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