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October 29, 2018



Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Commission – Docket No. L-2018-3002673

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Comments of Full Service Network, LP with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Colin W. Scott, Bureau of Technical Utility Services (colinsscott@pa.gov)
Shaun A. Sparks, Law Bureau(shsparks@pa.gov)

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

COMMENTS OF FULL SERVICE NETWORK, LP

I. INTRODUCTION

In its Notice of Proposed Rulemaking ("NOPR") published in the Pennsylvania Bulletin on September 29, 2018, the Commission announced its intent to exercise reverse-preemption of the pole attachment jurisdiction of the Federal Communications Commission ("FCC"). As an initial step of this process, the NOPR sets forth newly proposed regulations that: (1) adopt the FCC's pole attachment regulations as the regulatory framework upon which disputes would be adjudicated by the Commission;1 and, (2) authorize affected stakeholders to utilize the mediation, formal complaint and adjudicative procedures of 52 Pa. Code Chapters 1, 3 and 5 to resolve disputes or terminate controversies.2 The proposed regulations also propose to employ the procedural requirements of the federal rules except where silent or in conflict with the Commission's Chapter 1, 3 and 5 regulations in which case the Commission's procedural rules would control.3 Full Service Network, LP ("FSN") submits these comments in support of the Commission's NOPR and recommends that the Commission also make clear that Abbreviated

1 Annex A at 2 - Newly Proposed 52 Pa. Code § 77.5(a).
2 Annex A at 2 - Newly Proposed 52 Pa. Code § 77.5(b).
3 Annex A at 2 - Newly Proposed 52 Pa. Code § 77.5(c).

Dispute Resolution Process (“ADRP”) is an available avenue for affected stakeholders to pursue resolution of pole attachment issues.

The fair and timely resolution of pole attachment issues is important to ensure that consumers are permitted full access to the products and services that can be made available by competitive and alternative carriers through pole attachment agreements. Given their historical and current control over the pole infrastructure, utilities (including both telephone and electric) have the ability to delay resolution of disputes whether for competitive advantage or to extract unfair concessions from entities seeking to attach to the poles. ADRP is a timely, affordable, and effective use of the Commission’s authority to ensure and enforce a level playing field for all market participants which will ultimately enable competitive and alternative carriers to better and more timely bring their products and services to consumers.

II. COMMENTS

FSN is a Pennsylvania certificated competitive local exchange carrier (“CLEC”) and facilities-based interexchange carrier (“IXC”). FSN was created in Pittsburgh, Pennsylvania in 1988 as a long distance reseller serving only business accounts following the divestiture of AT&T. In 1999, FSN entered the local telecommunications market. Over time, FSN installed its own network facilities and expanded its corporate structure and today provides a complete range of services including long distance, toll-free service, internet and local telephone services. For some of its products and services, FSN is required to rely on pole attachments requiring it to negotiate pole attachment agreements with the utility owning the pole.

FSN fully supports the Commission’s initiative in this proceeding. Empowering the Commission to resolve disputes involving infrastructure and entities located in Pennsylvania brings a level of local knowledge to pole attachment issues that can add value in ensuring a timely and reasonable resolution of issues. Moreover, as in the case of FSN, the Commission

would likely be asked to resolve disputes between two Pennsylvania Commission regulated entities – a CLEC and/or an electric or telecommunications utility. The Commission’s experience with its Pennsylvania regulated utilities provides a solid foundation upon which the Commission can adjudicate these disputes. Moreover, the Commission’s specific experience with electric utility issues and concerns is one that the FCC is lacking when the FCC deals with pole attachments disputes since the FCC only regulates telecommunications carriers. Thus, while the FCC is well-versed in issues involving telecommunications carriers, the FCC does not share the Commission’s experience and knowledge of electric utility operations. This knowledge and experience – developed over years of regulating of these entities –will serve the Commission and the public interest well as these disputes are brought to the Commission for resolution.

Given the value to be gained by enabling the Commission to adjudicate pole attachment issues, FSN’s only concern with the Commission’s proposed approach is that it does not make clear that parties can use the Commission’s ADRP process. Without such clarification, entities seeking to attach their equipment to utility poles will be disadvantaged in their ability to receive a timely and binding resolution from the Commission. Generally, incumbent utilities have more extensive legal, financial and time resources than entities seeking to attach to the utility poles. These resources can be utilized to delay Commission resolution of disputes. The practical reality of the Commission’s formal complaint process is that it is lengthy and resource draining. The parties must allocate resources and time to all of the following tasks prior to getting a final Commission decision on the initial complaint: (1) preparation of various pleadings; (2) participation in discovery; (3) preparation of written testimony; (4) participation in evidentiary hearings; (5) preparation of briefs (initial and reply); (6) preparation of exceptions; and, (7)

engaging in settlement and/or mediation. Utilities generally have better access to the resources involved in this process and may have the ability to seek cost recovery from ratepayers. In addition, to the extent they are not amenable to having attachments on their poles or are attempting to leverage an uneven agreement, these utilities may also have an incentive to use their resources to delay even further the Commission's resolution of a dispute.

The Commission's ADRP was specifically developed with the intent of creating a more level playing field for competitors to avail themselves of the Commission's dispute process and to receive a more timely resolution of disputes with incumbent utilities. The Commission's Global Order established ADRP to address, in an expedited fashion, those disputes arising between interconnecting carriers that would have an adverse impact on customers. The Commission agreed that an effective ADRP mechanism would be of substantial benefit to all carriers as it would provide for the prompt resolution of carrier disputes and would help to facilitate the Commission's mission to create a pro-competitive market for the provision of local telephone services in Pennsylvania.⁴ The initially proposed guidelines⁵ were revised by Order entered July 13, 2000 to make the process more efficient and to better fulfill its purpose.⁶ The Commission subsequently reviewed the ADRP guidelines in 2005. At that time, the Commission noted that it has encouraged the use of the ADRP process and concluded that there is interest in and a need for continuing to make the ADRP process available to resolve disputes.⁷

⁴ *Joint Petition of Nextlink, et al. and Joint Petition of Bell Atlantic, et al.*, Docket Nos. P-00991648 and P-00991649 (September 30, 1999), Appendix E (Global Order).

⁵ 30 Pa.B. 1764 (April 1, 2000)

⁶ 30 Pa.B. 3808 (July 29, 2000)

⁷ *Interim Guidelines for Abbreviated Dispute Resolution Process*, Docket No. M-00021685, Final Order entered August 31, 2005.

Pole attachment disputes fit squarely with the intent and purpose of ADRP. The ability of competitive carriers to deliver innovative services and products to consumers can be significantly impeded by their lack of access to pole attachment rights. Pole attachment agreements with unfair terms that competitors must agree to as a condition of being able to attach to the pole because they cannot expend the resources necessary to get a binding Commission resolution can negatively impact the products and services that competitors can make available in the market. Any ability of incumbent carriers to utilize their resources to delay resolution of these disputes through the Commission processes further exacerbates the negative impact to consumers who are deprived of the products and services that could be developed by the competitive market. Importantly, ADRP provides a final and binding decision of the Commission – a result that cannot be achieved through mediation, arbitration, emergency relief or informal complaint resolution. Enabling competitors to utilize the ADRP process gives the Commission an appropriate avenue to quickly and reasonably provide a binding decision on the merits of a dispute without requiring competitors to drain valuable resources or utilities to expend ratepayer dollars on litigation. The end result advantages the public interest by enabling the marketplace to focus on product development and giving Pennsylvania consumers access to all the competitive products and services that they desire.

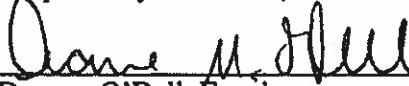
FSN is concerned that not adding language to the proposed regulations that ADRP is available to adjudicate pole attachment disputes, competitors seeking to avail themselves of ADRP will be required to expend resources justifying their desire to use ADRP. The Commission has not yet formalized ADRP into its regulations and the Interim Guidelines setting forth the ADRP process are contained in an appendix to an order from 2005. For these reasons, a specific reference to ADRP in the Commission's proposed regulation would create transparency

for all involved and diminish the need for stakeholders (and Commission staff) to expend valuable resources on the threshold question of whether or not the process can be used to adjudicate pole attachment disputes.

III. CONCLUSION

FSN appreciates this opportunity to provide its viewpoint regarding this important proceeding and respectfully recommends that the Commission make clear that its ADRP processes are also available to stakeholders turning to the Commission to adjudicate disputes involving pole attachment agreements.

Respectfully submitted,



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