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November 12, 2018

RECEIVED

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Ms Chiavetta:

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

There are two comments submitted to the Commission by other parties to which NetSpeed will reply.

"Voluntarily Negotiated Agreement"

At pages 4 and 5 of its comments, PECO urges the Commission to "permit" and "encourage" "voluntarily negotiated agreements" and to provide in its rules that "nothing in these rules shall be interpreted to supersede or modify any lawful rate, term, or condition of a voluntarily negotiated written agreement". NetSpeed strongly opposes this proposal. First, "agreements" between pole owners and pole attachment license applicants are not the product of fair negotiations. The owners have all the bargaining power due their control over the essential facilities that are the poles. Rather, the "agreements" essentially are unilaterally imposed rules that benefit the owners to the detriment of the license applicants. Second, PECO's proposed rule would have an effect only if elements of the Commission's rules are inconsistent with the terms of an agreement; otherwise, there would be no need to protect against the Commission's rules' superseding or modifying the agreement. Such an effect, suppressing the impact of the Commission's rules in deference to a pole-owner-imposed document, however, would undercut the Commission's purposes in commencing this proceeding.

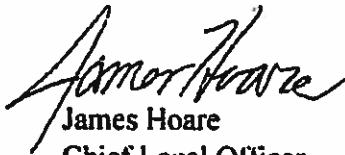
Treatment of Future Changes in FCC Rules

In its initial comments, NetSpeed questioned the idea that the Commission would automatically adopt future changes in the FCC's pole attachment rules, suggesting, instead, that the Commission should independently review and consider such changes. The Comments of Central Bradford Progress Authority and RuralNet, Inc., at page 4, go a step further by recommending a process to ensure such independent review and consideration:

[P]roposed Section 77.4 might be reconsidered, in favor of a situation whereby FCC laws concerning pole attachment (i.e., 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 et seq.) would undergo prompt review by the Commission (with public notice and comment allowed), starting within a matter of a few months after the potential rules become effective at the federal level.

NetSpeed supports this approach, which would ensure that potentially important changes in Federal policy at least receive consideration at the State level.

Very truly yours,


James Hoare
Chief Legal Officer

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