

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Procedural Rules Governing	)	EB Docket No. 17-245
Formal Complaint Proceedings Delegated	)	
to the Enforcement Bureau	)	

**COMMENTS OF NCTA – THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (NCTA) submits these comments in response to the Commission’s notice of proposed rulemaking seeking comment on streamlining formal complaints.<sup>1</sup> Specifically, the Commission proposes to harmonize the procedures for formal complaints filed under section 208 of the Communications Act, as amended (the Act),<sup>2</sup> disability access complaints filed under sections 255, 716, and 718 of the Act,<sup>3</sup> and pole attachment complaints filed under section 224 of the Act.<sup>4</sup> It is a laudable goal for the Commission to eliminate confusing and unnecessary discrepancies in its formal complaint procedures, however, in some cases, different treatment may be warranted based on the subject matter of the complaint. The Commission should ensure that any changes provide adequate due process and do not hinder parties’ ability to fully and effectively participate in formal complaint proceedings. To that end, NCTA urges the Commission to refrain from harmonizing certain

---

<sup>1</sup> *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, EB Docket No. 17-245, Notice of Proposed Rulemaking, 32 FCC Rcd 7155 (2017) (*NPRM*).

<sup>2</sup> 47 U.S.C. §208; 47 C.F.R. §§1.720-1.726.

<sup>3</sup> 47 U.S.C. §§255, 717, 718; 47 C.F.R. §§14.38-14.52.

<sup>4</sup> 47 U.S.C. §224; 47 C.F.R. §§1.1401-1.1424.

limited aspects of the pole attachment complaint procedures, and to adopt NCTA's recommendations regarding discovery and shot clocks.

## **I. POLE ATTACHMENT COMPLAINT RULE CHANGES**

*Retention of Specific Pole Attachment Rules:* The Commission correctly proposes to retain “specific pole attachment rules that are unique and necessary to resolving those particular types of complaints.”<sup>5</sup> However, the Commission also proposes to simplify the pole attachment complaint rule by “eliminating provisions that specify in detail the factual support that must be included with a pole attachment complaint.”<sup>6</sup> In addition to eliminating the detailed list of potentially relevant evidence, the Commission's proposed rules also eliminate the requirement that utility pole owners provide this evidence to pole attachment complainants upon request.<sup>7</sup> This information is integral to the resolution of pole attachment complaints and promotes settlement, and, as the current rules recognize, is largely within the knowledge and control of the utility pole owner. Indeed, section 1.1404 is widely interpreted to require pole owners to provide the specified information in the pre-complaint stage and often allows parties to resolve disputes without Commission involvement. If the ability of attachers to acquire this supporting information is either restricted or removed, it is likely that the Commission will need to deal with an increase in formal complaint filings. For these reasons, it is essential that the Commission continue to require utility pole owners to mandatorily produce specific disaggregated pole cost

---

<sup>5</sup> *NPRM*, 32 FCC Rcd at 7157, ¶7.

<sup>6</sup> *Id.* at 7157, ¶7 n.19.

<sup>7</sup> *Compare* 47 C.F.R. 1.1404(j) (“A utility must supply a cable television operator or telecommunications carrier the information required in paragraph (g), (h) or (i) of this section, as applicable, along with the supporting pages from its ARMIS, FERC Form 1, or other report to a regulatory body, within 30 days of the request by the cable television operator or telecommunications carrier”), *with NPRM*, 32 FCC Rcd at 7180, App., (proposed rule 1.1405).

data, including any underlying allocations of this cost data and calculations for pole attachment rates that are necessary to support complaints, as currently required in section 1.1404 of the rules.<sup>8</sup>

*Reply Filing Deadlines:* The Commission proposes to require replies to be filed within 10 days of service of the complaint answer.<sup>9</sup> Although this would be an extension of the current 3-day reply period provided in section 208 and disability access complaints, it would reduce by half the current 20-day timeframe for filing pole attachment replies.<sup>10</sup> As justification for this change, the Commission cites the fact that staff has found a 10-day reply period to be sufficient in non-deadline section 208 complaint proceedings.<sup>11</sup> Pole attachment complaints, on the other hand, often are extremely fact-intensive, and complainants require 20 days to review and respond to detailed evidence submitted in answer to such complaints. Unlike section 208 complaints, where the Commission acknowledges that extensions of the reply period to 10 days were “often” granted and “experience has shown that the [resulting] 10-day reply period provides parties with a full opportunity to address the answer,” the Commission has no such experience in the case of pole attachment replies because such replies have rarely, if ever, been filed in less than 20 days. Contrary to the Commission’s preliminary conclusion, based on the experience of NCTA

---

<sup>8</sup> In the recent order allowing price cap carriers to use generally accepted accounting principles (GAAP) rather than the Commission’s Part 32 Uniform System of Accounts to set their pole attachment rates, the Commission did not change the pole attachment complaint information production requirements in section 1.1404. *Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No. 14-130, CC Docket No. 80-286, Report and Order, 32 FCC Rcd 1735, 1753, App. B (2017); *see also* NCTA Petition for Reconsideration, WC Docket No. 14-130, CC Docket No. 80-286, at 9-10 (June 5, 2017) (asking the Commission to reaffirm that the change in accounting methods does not alter the pre-complaint discovery rights available to complainants under the pole attachment complaint rules).

<sup>9</sup> *NPRM*, 32 FCC Rcd at 7157-58, ¶9.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

members, reducing by half the amount of time for a pole attachment complainant to reply to an answer (as opposed to more than tripling the amount of time section 208 and disability access complainants have to reply), including assembling the evidence necessary to rebut arguments raised in the answer, “will materially impact complainants’ ability to prepare their [reply,].”<sup>12</sup> Accordingly, the Commission should retain the 20-day reply period for pole attachment complaints.

## **II. GENERALLY APPLICABLE COMPLAINT RULE CHANGES**

*Discovery:* For all three types of formal complaints, the Commission proposes to allow a complainant to file up to 10 written interrogatories with its complaint, a defendant to file up to 10 written interrogatories with its answer, and a complainant to file up to five additional written interrogatories with its reply.<sup>13</sup> To ensure parties have adequate discovery consistent with due process, the Commission should conform its written interrogatory rule with Federal Rule of Civil Procedure 33(a)(1), which allows parties to file up to 25 written interrogatories.<sup>14</sup>

*Shot Clocks on Agency Action:* The Commission seeks comment on adopting time limits by which the Commission must act on formal complaints. NCTA urges the Commission to adopt a 180-day shot clock starting from the day the complaint is filed in which the agency must rule on a formal complaint. This shot clock should be codified in the Commission’s rules and should apply to all three types of formal complaints uniformly, to the extent possible.<sup>15</sup>

---

<sup>12</sup> *Id.* at 7158, ¶9 n.26.

<sup>13</sup> *Id.* at 7158, ¶12.

<sup>14</sup> Fed. R. Civ. P. 33(a)(1).

<sup>15</sup> The Commission acknowledges in the *NPRM* that some section 208 investigations must be completed within 5 months pursuant to the Act. *NPRM*, 32 FCC Rcd at 7160, ¶19 (citing 47 U.S.C. §208(b)(1)).

## **CONCLUSION**

As discussed above, NCTA supports the Commission's proposal to harmonize its formal complaint procedures. With respect to pole attachment complaints, however, the Commission should continue to require pole owners mandatorily to disclose relevant and necessary cost and accounting data, and retain a 20-day reply period. The Commission also should consider harmonizing the number of allowable written interrogatories with the Federal Rules of Civil Procedure, and should adopt and codify a complaint shot clock of 180 days.

Respectfully submitted,

**/s/ Steven F. Morris**

Steven F. Morris  
Jennifer K. McKee  
NCTA – The Internet & Television  
Association  
25 Massachusetts Avenue, NW – Suite 100  
Washington, D.C. 20001-1431

October 26, 2017