

July 3, 2018

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
455 12th Street SW
Washington, DC 20554

Re: Formal Complaints, EB Docket No. 17-245

Dear Ms. Dortch,

On July 2, 2018, Steve Morris of NCTA – The Internet & Television Association (NCTA) and Ross Lieberman of the American Cable Association (ACA) met with Jay Schwarz, Wireline Advisor to Chairman Pai, and Travis Litman, Chief of Staff to Commissioner Rosenworcel, to discuss the *Draft Report and Order* under consideration in the above-referenced proceeding.¹ On that same day, Mr. Morris met with Brooke Ericson, Chief of Staff to Commissioner O’Rielly. On July 3, 2018, Mr. Morris and Mr. Lieberman spoke by phone with Jamie Susskind, Chief of Staff to Commissioner Carr, and Mr. Morris spoke by phone with Lisa Griffin and Michael Engel of the Enforcement Bureau.

In all of these meetings, NCTA and ACA expressed concern regarding the proposal in the *Draft Report and Order* to eliminate key portions of the pole attachment complaint procedures found in Section 1.1404 of the Commission’s rules. As both associations explained in earlier pleadings,² these provisions are critical because they identify the cost-related information that must be included in a complaint and require pole owners to provide such information to cable operators and telecommunications carriers upon request. We further explained that there is no record evidence supporting the proposed elimination of these rules or contradicting the views expressed by NCTA and ACA.

¹ *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, EB Docket No. 17-245, Report and Order, FCC 18-XXX (rel. June 21, 2018) (*Draft Report and Order*).

² *See* Comments of NCTA – The Internet & Television Association, EB Docket No. 17-245 at 2-3 (filed Oct. 26, 2017); Reply Comments of the American Cable Association, EB Docket No. 17-245 at 9 n.38 (filed Nov. 13, 2017).

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Accordingly, in each meeting we distributed the attached document with proposed language to be added to the draft item.

Respectfully submitted,

/s/ Steven Morris

Steven Morris

cc: Jay Schwarz
Brooke Ericson
Jamie Susskind
Travis Litman
Lisa Griffin
Michael Engel

Add the following:

L. Pole Attachment Complaints

23. As noted above, we conclude that it is important to retain certain pole attachment rules necessary to resolve that type of complaint. Current pole attachment rules require complainants to include critical information regarding pole costs in a complaint and require utility pole owners to provide such information upon request by a cable television operator or telecommunications carrier before a complaint is filed.¹ The *Formal Complaint Rules NPRM* proposed to significantly streamline the rules in section 1.1404 governing pole attachment complaints, including elimination of many of these provisions.² NCTA opposed eliminating these provisions, explaining “this information is integral to the resolution of pole attachments complaints and promotes settlement, and...is largely within the knowledge and control of the utility pole owner.”³ No comments were filed contesting NCTA’s explanation or supporting the elimination of these requirements. Upon re-examination of the issue, we now find that we should retain the requirement that pole owners, upon request of a cable operator or telecommunications carrier, provide the information they have relied on in calculating rates. Having access to this essential information will facilitate the resolution of disputes without Commission involvement. Indeed, it is critical that attaching entities have this information well in advance of executive level discussions to ensure that those pre-complaint negotiations have a chance of success. To assure that attachers still enjoy the same pre-complaint discovery rights that exist under the current pole attachment rules, we will not adopt the proposal to eliminate these provisions of section 1.1404.

¹ See 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 regulatory body, within 30 days of the request by the cable television operator or telecommunications carrier.”); § 1.1404(h)(2) (calculations made in connection with these figures should be provided to the complainant); § 1.1406(b) (“[t]he complaint shall not be dismissed if the information is not available from public records or from the respondent utility after reasonable request.”) See also *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, CC Docket No. 86-212, Report and Order, 2 FCC Rcd 4387 (1987).

² See *Formal Complaints NPRM*, Appendix (proposing new rules that would eliminate 47 CFR §§ 1.1404(g) – (m)).

³ NCTA Comments at 2-3. See also Reply Comments of the American Cable Association at 9 n.38 (“ACA agrees with NCTA that the Commission should retain the current obligation on pole owners to provide data relevant to a dispute to the complainant upon request.”).