

July 5, 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 3, 2018, I spoke by phone with Lisa Griffin and Rosemary McEnery of the Enforcement Bureau to discuss the above-referenced proceeding.¹ I explained that it was important for the Commission's formal complaint rules to identify the cost-related information that must be included in a pole attachment complaint and to require utilities to provide such information to cable operators and telecommunications carriers upon request.² I distributed the attached document suggesting revisions to the rules proposed in the draft item.

Respectfully submitted,

/s/ Steven F. Morris

Steven F. Morris

Attachment
cc (via email): Lisa Griffin
Rosemary McEnery

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 Pursuant to the definitions in sections 1.1402(b) and (d) of the Commission's rules, a pole attachment complaint includes complaints regarding attachments to poles, ducts, conduits, or rights-of-way. 47 C.F.R. §§1.1402(b), (d).

§ 1.1404 Pole attachment complaint proceedings.

(a) Pole attachment complaint proceedings shall be governed by the formal complaint rules in subpart E of this part, §§ 1.720–1.738, except as otherwise provided in this subpart J.

(b) The complaint shall be accompanied by a certification of service on the named defendant, and each of the Federal, State, and local governmental agencies that regulate any aspect of the services provided by the complainant or defendant.

(c) In a case where it is claimed that a rate, term, or condition is unjust or unreasonable, the complaint shall contain a statement that the State has not certified to the Commission that it regulates the rates, terms and conditions for pole attachments. The complaint shall include a statement that the utility is not owned by any railroad, any person who is cooperatively organized or any person owned by the Federal Government or any State.

(d) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the cable system operator or telecommunications carrier and the utility. If there is no present pole attachment agreement, the complaint shall contain:

(1) A statement that the utility uses or controls poles, ducts, or conduits used or designated, in whole or in part, for wire communication; and

(2) A statement that the cable television system operator or telecommunications carrier currently has attachments on the poles, ducts, conduits, or rights-of-way.

(e) The complaint shall state with specificity the pole attachment rate, term or condition which is claimed to be unjust or unreasonable. Data and information supporting the complaint (including all information necessary for the Commission to apply the rate formulas in 47 C.F.R. § 1.1407) should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source).

(f) A utility must supply a cable television operator or telecommunications carrier the information required in paragraph (e) of this section, as applicable, along with the supporting pages from its ARMIS, FERC Form 1, or other report to a regulatory body, and calculations made in connection with these figures, within 30 days of the request by the cable television operator or telecommunications carrier.

(g) If any of the information and data required in paragraphs (e) and (f) of this section is not provided to the cable television operator or telecommunications carrier by the utility upon reasonable request, the cable television operator or telecommunications carrier shall include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by a cable television operator or telecommunications carrier shall be dismissed where the utility has failed to provide the information required under paragraphs (e) and (f) after such reasonable request.