

STATE OF ILLINOIS



ILLINOIS COMMERCE COMMISSION

OFFICE OF GENERAL COUNSEL

December 12, 2018

Via ECFS

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: WC Docket No. 10-101
States That Have Certified That They Regulate Pole Attachments

Dear Secretary Dortch:

Federal law reserves to each State exclusive authority to regulate pole attachments if the State certifies to the Federal Communications Commission ("FCC") that it satisfies certain conditions. The Illinois Commerce Commission approved the attached letter, dated October 25, 2018, and directed that it be sent to the FCC.

Should you or other FCC officials have questions or concerns, or should you require additional information, I can be reached at (312) 793-2846 or at Phillip.Kosanovich@illinois.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Phillip Kosanovich".

Phillip Kosanovich
General Counsel, Illinois Commerce Commission

Enclosure



State of Illinois

Illinois Commerce Commission

Brien J. Sheahan
Chairman

160 North LaSalle Street
Chicago, Illinois 60601

October 25, 2018

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **ICC Lack of Authority Over Telecommunications Attachments**

To Whom It May Concern:

The purpose of this letter is to clarify that the Illinois Commerce Commission ("ICC") has not adopted any rules or regulations specifically governing rates, terms, or conditions for attachments by *telecommunications* companies to poles owned by electric utilities and therefore lacks regulatory authority over attachments by *telecommunications* companies to poles owned by electric utilities.

Section 224(c)(1) of the federal Communications Act (the "Act") provides that the Federal Communications Commission ("FCC") does not have jurisdiction over rates, terms, and conditions of pole attachments "where such matters *are regulated* by a [s]tate."¹ According to Section 224(c)(3) of the Act and Section 1.1414(a) of the FCC's Rules, a state will not "be considered to regulate the rates, terms, and conditions for pole attachments unless the [s]tate *has issued and made effective* rules and regulations implementing the [s]tate's regulatory authority over pole attachments," including a specific methodology for such regulation.² As the FCC has previously noted on multiple occasions, Section 224(c)(3) directs that jurisdiction for pole attachments reverts to the FCC if a state has not implemented such rules and regulations.³

The ICC issued certification to the FCC on April 5, 1978, stating that it has met the criteria specified under Section 224(c) to reverse preempt regulation of pole attachments. The ICC's pole attachment rules were adopted in 1985 and subsequently amended in 1994. These rules, which are set forth in Section 315.10 through 315.70 of Title 83 of the Illinois Administrative Code, apply to attachments by "cable television ("CATV") companies" to electric utilities and local exchange

¹ 47 U.S.C. § 224(c)(1) (emphasis added).

² 47 U.S.C. § 224(c)(3) (emphasis added); 47 C.F.R. § 1.1414(a).

³ See e.g., *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Report and Order, CS Docket No. 97-151, 13 FCC Rcd 6777, 6781 n. 20 (Feb. 6, 1998); see also *Implementation of Section 703(e) of the Telecommunications Act of 1996*, Notice of Proposed Rulemaking, CS Docket No. 97-151, 12 FCC Rcd 11725, 11727 n. 13 (Aug. 12, 1997).

telecommunications carriers and omit any mention of attachments by *telecommunications* companies.⁴

As noted, the ICC's rules do not specifically govern telecommunications companies' attachments to poles owned by electric utilities therefore the ICC is unable to comply with the requirements of Section 224(c)(2) and (c)(3) with respect to these specific transactions or entities.

While the ICC has not promulgated rules specifically governing telecommunications companies' attachments to poles owned by electric utilities, the ICC has established rates, terms and conditions for access by telecommunications carriers to the poles of incumbent local exchange carriers.⁵ Moreover, Section 13-514 of the Illinois Public Utilities Act ("IPUA") serves as a basis for a finding of unreasonable access by telecommunications carriers to the poles of both incumbent and competitive local exchange carriers and Section 13-514 of the IPUA provides for prompt resolution, within 60 days of filing, of a complaint alleging a violation of Section 13-514. Thus, Illinois has procedures in place for resolving on a prompt basis access complaints by telecommunications providers seeking access to poles owned by both incumbent and competitive local exchange carriers.

Note, however, while the ICC has not promulgated rules specifically governing telecommunications providers' attachments to poles owned by electric utilities, it reserves the right to promulgate effective rules and regulations over telecommunications companies' attachments to poles owned by electric utilities in the future.

Sincerely,



Brien Sheahan
Chairman, Illinois Commerce Commission

cc: Adam Copeland (via email)

⁴ See 83 Ill. Admin. Code 315.10 (a) ("The purpose of this Part is to designate a presumptive methodology for computation of annual rental rates to be paid by cable television ('CATV') companies to electric utilities and local exchange telecommunications carriers (collectively 'regulated entities') . . . for the use of space on distribution poles for attachment of CATV cables and associated facilities.").

⁵ See, e.g., Order, Illinois Commerce Commission On Its Own Motion: Investigation into the compliance of Illinois Bell Telephone Company with the order in Docket 96-0486/0569 Consolidated regarding the filing of tariffs and the accompanying cost studies for interconnection, unbundled network elements and local transport and termination and regarding end to end bundling issues, ICC Docket No. 98-0397, 2001 Ill. PUC Lexis 855 (August 14, 2001)