

FIVE EASY WAYS TO INCREASE BROADBAND DEPLOYMENT

1. Adopt Enforceable Deadlines: Pole access enables wired and wireless broadband deployment. Delayed pole access delays or prevents deployment, and we, as a nation, cannot afford to permit unreasonable barriers to broadband deployment to continue. Providers must be able to promise their customers that they will have service by a date certain, and must have a way to ensure they can deliver on their promises. States like Connecticut and New York demonstrate that pole owners can safely accommodate reasonable pole access deadlines. The Commission should adopt enforceable deadlines modeled on these states' successful approaches. Specifically:

- 45 days to complete the make-ready estimate, as the FCC already requires.
- 45 days to complete make-ready work and issue the requested license.
- Shorter time periods for smaller applications.
- Permit attachers to use utility-approved contractors to perform make-ready work or to use NESC-compliant temporary attachments when pole owners cannot meet the FCC's deadlines.¹

2. Codify Key Precedents: The Commission should increase transparency and discourage relitigation of settled issues by incorporating existing precedents into its rules.

- Codify the holding of *Salsgiver* and *Cavalier Telephone* that prohibitions on the use of techniques that have been used or allowed by the pole owner (including boxing, extension arms, pole improvement or replacement, where consistent with generally applicable safety standards) are unreasonable.²
- Codify the Supreme Court's holding that the protections of Section 224 extend to pole attachments used to provide wireless telecommunications service.³
- Codify the holding of *Knology* that it is an unjust and unreasonable condition of attachment for a utility pole owner to hold an attacher responsible for costs arising from the correction of other attachers' safety violations.⁴

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 ("Local Competition Order")*, First Report and Order, 11 FCC Rcd 15499, 16083 (1996) (holding that utilities must allow an attacher to use any trained workers who meet the utilities' requirements for training).

² *Salsgiver Communications, Inc. v. North Pittsburgh Telephone Co.*, Memorandum Opinion and Order, 22 FCC Rcd 20536, 20543-44 (2007); *Cavalier Telephone, LLC v. Virginia Electric and Power Company*, Order and Request for Information, 15 FCC Rcd 9563, 9572 (2000).

³ *Nat'l Cable & Telecomms. Ass'n v. Gulf Power Co.*, 534 U.S. 327 (2002).

⁴ *Knology Inc., v. Georgia Power Company*, Memorandum Opinion and Order, 18 FCC Rcd 24615, (2003).

3. Require Compliance with Objective Safety Standards: To ensure the safety of attachments and prevent pole owners from invoking subjective standards to unreasonably limit access to poles, the Commission should adopt a presumption that attachments are safe if they comply with the NESC, the Bellcore Bluebook, FCC and OSHA rules governing exposure to RF emissions, and any other objective and publicly available safety standards.

4. Require Pole Owners to Identify Pole Locations and to Post Agreements, Fee Schedules, and Lists of Approved Contractors: To reduce delays and make the negotiation process more transparent, the Commission should follow the example of several states and require pole owners to post on their Web sites a complete pole attachment application and standard agreement that complies with all applicable federal and state laws and contains all of the general terms, conditions, and procedures applicable to pole attachments. Pole owners should be required to include maps identifying the specific locations of all facilities allocated, in whole or in part, to local distribution. In addition, pole owners should be required to post fee-schedules and a list of approved contractors.

5. Prohibit States from Conditioning Access on State Certification: The Commission should affirm that states that have established their own pole attachment regimes are prohibited by section 332(c)(3) of the Act from requiring wireless carriers to submit to state certification requirements as a precondition for access to poles.