UTC & EEI Opposition to Proposals by the Broadband & Wireless Pole Attachment Coalition and Fibertech Networks & Kentucky Data Link

Main Points

1. Mandatory deadlines for pole attachment permits and make-ready are unnecessary to advance the goals of broadband deployment and contrary to maintaining safety and reliability.
2. Mandatory deadlines are contrary to the Pole Attachment Act and precedent.
3. Make-ready is complicated and the Commission should not impose penalties or allow attachers to do it themselves if deadlines are not met.
4. The Commission should not require utilities to publicly disclose sensitive critical infrastructure information.

1. Mandatory deadlines are unnecessary.

- Pole attachments are not delaying broadband deployment.
  - ✓ Claims are anecdotal and vague

- FCC deliberately decided <u>not</u> to prescribe specific requirements, such as those proposed by BWPA and Fibertech/KDL.
  - ✓ FCC should continue to rely on guidelines and general rules, and review terms and conditions on a case-by-case basis.

1. Mandatory deadlines are unnecessary (cont'd).

- Electric utilities have sufficient incentives to issue pole permits and complete make-ready as long as safety and reliability are not jeopardized.
- Electric utilities generally issue permits on a timely basis; however, to the extent delays occur, they most often are due to circumstances beyond the control of the utility (e.g. application errors, 3rd party delays and regulatory delays).

2. Mandatory deadlines are contrary to the Pole Attachment Act/precedent.

- Electric utilities must have discretion to conduct make-ready on a non-discriminatory basis.
  - ✓ 45-day deadline for application processing is appropriate and FCC should review issues on a case-by-case basis.
- States adopting deadlines for make-ready are the exception and these deadlines do <u>not</u> apply to wireless attachments.

3. Make-ready is complicated and the FCC should not impose penalties or allow attachers to do it themselves if deadlines are not met.

- Make-ready is complicated.
  - ✓ Project is subject to engineering review by the utility, approval of the estimate of the costs by the attacher, and modification of existing attachments among third parties.
- Penalties would invite abuse by attachers.
  - ✓ Would encourage gaming and speculative practices.
- Attaching entities should not be permitted to hire their own contractors to perform make-ready if electric utilities do not meet deadlines.
  - ✓ Would undermine utility control of power infrastructure.

4. The Commission should not require utilities to publicly disclose sensitive critical infrastructure information.

- The Commission should reject Fibertech's proposal to require utilities to post maps of their networks.
  - ✓ This would not expedite the negotiation of agreements and could disclose information protected under the USA Patriot Act.
  - ✓ Utilities will provide this information upon request by an authorized CATV or CLEC that is applying to make pole attachments.

Conclusion

- FCC has clear jurisdiction to ensure that rates, terms and conditions for pole attachments are just and reasonable, and it deliberately decided to adopt guidelines and general rules rather than a laundry list of detailed requirements.
- FCC recognized that pole attachment practices vary depending on the utility, the attachment, the pole and the geographic area – declining one-size-fits-all rules.
- The FCC should reject mandatory deadlines for make-ready and permits because:
  - ✓ It would arbitrarily require utilities to meet timeframes that are unreasonable or unsafe in many cases.
  - ✓ It would unjustly punish electric utilities, when in fact the attaching entities themselves are often the cause of delays.
- The FCC should continue to review the terms and conditions of access on a case-by-case basis and offer ADR where needed.

Questions?

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