

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	WC Docket No. 07-245
Implementation of Section 224 of the Act:)	
Amendment of the Commission’s Rules and)	
Policies Governing Pole Attachments)	GN Docket No. 09-51
)	

OPPOSITION TO PETITION FOR RECONSIDERATION

CTIA – The Wireless Association® (“CTIA”) respectfully opposes the Petition for Reconsideration filed by The Coalition for Concerned Utilities (“Coalition”) in the above-captioned proceeding.¹ As described below, the Federal Communications Commission (“FCC” or “Commission”) should reject the Coalition’s Petition, which seeks to perpetuate the barriers to wireless broadband buildout by prohibiting access to some electric utility poles. Petitioners have not persuasively justified the need for reconsideration. First, the Commission retained electric utilities’ statutory rights to refuse certain access requests based on insufficient capacity, safety, reliability, and generally applicable engineering purposes, but the requested blanket prohibition on pole top access is without merit. Second, Petitioners’ factual arguments purportedly supporting a ban on pole top access are questionable and largely irrelevant. Third, Petitioners offer no new information or arguments for the Commission to reconsider its findings regarding make-ready deadlines, reducing the number of poles in applications, excluding the poles which require make-ready work by non-Section 224 parties, expanding the universe of circumstances that would give rise to restarting the access shot clock, or exempting pole replacements and new

¹ The Coalition is comprised of Consumers Energy, Detroit Edison, FirstEnergy Corp., Hawaiian Electric Co., NSTAR and Pepco Holdings, Inc.

pole installations from the deadlines. In light of the Commission’s previous consideration of all arguments and evidence that utility pole owners proffered and its Order accounting for the interests of all stakeholders, Petitioners’ reconsideration requests should be rejected.

I. THE COMMISSION SHOULD DENY THE COALITION’S PETITION

A. Reconsideration is Unwarranted Because the Commission’s Rule Preserves the Pole Owner’s Ability to Exclude Pole Top Attachments For Reasons of Safety, Reliability, and Generally Applicable Engineering Practices.

The Commission was correct to “clarify that a wireless carrier’s right to attach to pole tops is the same as it is to attach to any other part of a pole” and that “utilities may deny access” only “where there is insufficient capacity, and for reasons of safety, reliability, and generally applicable engineering purposes.”² This measure will facilitate wireless broadband deployment while still according utilities the right to exclude pole-top access on individual poles when there is a legitimate need. Petitioner utilities, however, seek the blanket right to prohibit pole-top access “if nondiscriminatory,” including when the utility itself claims not to use the pole top.³

In support of its request on this point, the Coalition argues that failure to reconsider this rule “would insert the Commission in a statutory area (‘safety, reliability and generally applicable engineering’) reserved solely for electric utilities.”⁴ The Commission’s determination and exercise of its regulatory responsibilities is entirely consistent with the statute, which creates a framework by which the Commission is to ensure that the rates, terms and conditions of access to poles are just and reasonable. The Petitioners’ argument, however, seeks to remove the Commission completely from the equation and leave to them the unchecked discretion to make

² *Implementation of Section 224 of the Act: A National Broadband Plan for Our Future, Report and Order and Order on Reconsideration*, 26 FCC Rcd 5240, ¶ 77 (rel. Apr. 7, 2011) (“*Order*”).

³ *Petition for Reconsideration of the Coalition of Concerned Utilities*, WC Docket No. 07-245, 18-19 (filed June 8, 2011) (“*Petition*”).

⁴ *Id.* at 19.

these access determinations – including the ability to impose blanket pole-top exclusions (now, tempered slightly with the proviso that the blanket exclusions be “nondiscriminatory”). Whatever its permutation, the Commission was correct to find that a blanket pole-top prohibition was not consistent with the statute.

Petitioners also make new factual arguments that are equally without merit – and that appear for the first time without affidavit or other support and without the required explanations as to why they were not offered previously.⁵ Among these are assertions that “[s]ome utilities like Consumers Energy and FirstEnergy do not allow *any* entity, including the electric pole owner itself, to install wireless antennas on pole tops.”⁶ Petitioners continue: “NSTAR, in fact, is in the process of taking its antennas down from the tops of utility poles with high voltage primary electric conductors attached because they have become a safety issue.”⁷ In addition to the other deficiencies, the relevance and applicability of the policies of many of the cited utilities are questionable. For example, and as set forth in the attached Declaration of Michelle Sanders, Senior Manager for Development and Construction for T-Mobile in Detroit, T-Mobile has a pole attachment agreement with Detroit Edison (“which is in use and vital today”).⁸ T-Mobile attaches wireless facilities to Detroit Edison Poles, including to the pole tops of those Detroit Edison poles. An example of T-Mobile facilities attached to the top of a Detroit Edison pole appears at Figure 1, below.

⁵ See 47 C.F.R. § 1.429(b).

⁶ *Petition* at 19.

⁷ *Id.*

⁸ Declaration of Michelle Sanders ¶ 7.



Figure 1

T-Mobile pole-top panel array attached to Detroit Edison pole in greater Detroit, Michigan metropolitan area. Photo taken July 2011.

In addition, the relevance of the Coalition’s examples is questionable, given that the majority of Petitioners’ operations are in states that “certified” under Section 224(c) of the Act and asserted regulatory authority over pole attachments. Thus, utility poles in these states are not directly regulated by the FCC. Consumers Electric and Detroit Edison operate within the certified state of Michigan, and NSTAR operates within the certified state of Massachusetts. Although FirstEnergy has some operations in states subject to the FCC’s jurisdiction (such as Maryland, Pennsylvania and West Virginia), the bulk of its operations appear to be in the certified state of Ohio.

Moreover, Petitioners' arguments that safety considerations underlie these blanket utility prohibitions appear suspect. Petitioners argue that "safety concerns" warrant an across-the-board prohibition for *distribution* poles, where regulation would cap rental of these assets in the \$5.00 to \$15.00 range, when these same utilities routinely lease out the top of their (interstate) transmission structures that are not subject to Commission regulation, fetching many thousands of dollars per month in rental *and* carrying hundreds of times the voltage loads of the distribution poles to which Petitioners are seeking to exclude access. Perhaps Petitioners' concerns have less to do with safety and more to do with preventing wireless network proliferation on their lower-cost rate-regulated assets while preserving monopoly rent levels on their unregulated transmission support structures. Whatever the case, Petitioners' request for "nondiscriminatory" blanket pole-top prohibitions should be denied.

The Commission thoroughly considered the voluminous record in this proceeding on this issue, including the precedent of certified state jurisdictions that have cleared the way for wireless attachments and submissions from wireless attachers with real experience in the field. And based on that record, the Commission has properly concluded that the pole top should be made available for access just like every other part of the pole, and subject to the same reliability, safety, capacity and engineering guidelines. Sufficient safeguards are in place to protect workers, the public, the utilities, the distribution grid and individual poles, and Petitioners offer no valid reason to revisit here the sound conclusions the Commission reached.

B. CTIA Opposes Other Aspects of the Coalition's Petition.

Petitioners seek reconsideration of other aspects of the Commission's *Order* that should be denied as well. In particular, the Commission should not reconsider its make-ready deadlines, reduce the number of poles in applications, exclude the poles which require make-ready work by

non-Section 224 parties, expand the universe of circumstances that would give rise to restarting the access shot clock, or exempt pole replacements and new pole installations from the deadlines. Without exception, the Commission thoroughly considered all arguments and evidence that utility pole owners proffered and produced a nuanced and balanced framework that accounted for the interests of all stakeholders. Petitioners offer nothing new here and seek to create a series of exceptions with the purpose and intent of subverting the well-founded access process. The Commission previously rejected these arguments, and should do so again now. In fact, many of the occurrences that Petitioners argue require longer time periods, smaller numbers of poles, or suspension of the shot clock are routine and can be managed well within the timeframes that the Commission has established, as has been the case for years.

II. CONCLUSION

For the foregoing reasons, CTIA respectfully requests that the Commission deny Petitioners' Petition for Reconsideration.

Respectfully submitted,

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