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## **FCC Runs Attachment Rule Proposals Up the Pole**

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The National Broadband Plan (NBP) strikes again, this time by prompting revision of the Commission's pole attachment rules. The NBP recommended that the pole attachment rules be revised to lower the cost of telecommunications, cable and broadband deployment and to promote competition. So, as is the case these days, if the NBP recommends it, it must be done.

The FCC issued an Order and Further Notice of Proposed Rulemaking to implement the NBP recommendations. The Order clarifies that communications providers have a statutory right to use space- and cost-saving techniques that are consistent with pole owners' use of those techniques. Providers also have a statutory right to timely access to poles. In the Further Notice, the FCC seeks comment on additional reforms to promote deployment and competition.

Congress adopted the Pole Attachment Act of 1978 to ensure that the rates, terms and conditions for pole attachments by cable television systems are just and reasonable. Section 224 of the Telecommunications Act of 1996 (1996 Act) expanded the definition of pole attachments to include attachments by providers of telecommunications services and granted both cable systems and telecommunications carriers an affirmative right of nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by a utility. However, the 1996 Act permits utilities to deny access in cases of insufficient capacity and for reasons of safety, reliability or generally applicable engineering purposes. The 1996 Act also establishes a rate formula for telecommunications carriers that differs from the rate formula for attachments used solely to provide cable service.

The NBP identified access to rights-of-way – including access to poles – as having a significant impact on the deployment of broadband networks. The NBP included several recommendations regarding pole attachments such as:

- establishing rental rates for pole attachments that are as low and close to uniform as possible;

- implementing rules that will lower the cost of the pole attachment “make-ready” process;
- establishing a comprehensive timeline for each step of the access process and reform the process for resolving disputes regarding infrastructure access;
- improving the collection and availability of information regarding the location and availability of poles, ducts, conduits and rights-of-way.

The Order adopted immediately some of the recommendations to clarify the rules governing pole attachments and to streamline the pole attachment process and also seeks comment on possible changes to the FCC’s regulatory framework governing pole access.

The FCC concluded that the nondiscriminatory access obligation requires a utility to allow cable operators and telecommunications to use the same pole attachment techniques that the utility itself uses, although utilities retain the right to limit their use when necessary to ensure safety, reliability, and sound engineering. For example, if a utility uses techniques such as boxing (the installation of communications on both sides of the same pole at approximately the same height) and bracketing (the installation of “extension arms” which extend from the pole to support communications lines at the same level as existing lines attached to the pole), then the use of these techniques will be presumed appropriate for use by other users of that utility’s poles under comparable circumstances.

Furthermore, where a pole can accommodate new attachments through boxing, bracketing, or similar attachment techniques, there is not “insufficient capacity” (and thus access may not be denied under section 224(f)(2) ) within the meaning of the pole attachment requirements. Because there have been instances of foot-dragging by utilities in preparing their poles for third party attachments (a process known as “make-ready”), the FCC also held that this process must be timely in order to constitute just and reasonable access.

The FCC seeks comment in the Further Notice section of a proposed comprehensive timeline for each step of the pole access process. Specifically, the FCC seeks comment on how to improve access to essential infrastructure and expedite the build-out of affordable broadband services as well as telecommunications and cable services. The FCC proposes a specific timeline for all wired pole attachment requests (including fiber or other wired attachments by wireless carriers) and seeks comment on the timeline. The FCC also proposes rules allowing for use of contract workers in certain circumstances and reforming its access dispute-resolution process. Finally, and importantly, it seeks to establish rental rates for pole attachments that are as low and close to uniform as possible.

Under the umbrella of the NBP and the stated goals of speeding the availability of

broadband by making it easier and less expensive for telecommunications and cable companies to use existing infrastructure, the FCC proposes far-ranging reforms to its current rules. Comment is requested on all these proposed reforms and the all important details such as the timelines for each stage of the pole attachment process and the formulas for establishing the rental rates. Comments will be due 30 days after publication in the Federal Register and reply comments will be due 60 days after publication in the Federal Register. We will keep you informed as to when those deadlines are established.