

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: Proposed Adoption of Rule 25-18.010,)
F.A.C., Pole Attachment Complaints.) Docket No. 20210137-PU
)
)

COMMENTS OF CTIA

CTIA¹ respectfully submits the following comments in response to the Florida Public Service Commission’s (“Commission’s”) August 17, 2021 Notice of Development of Rulemaking (“Notice”), as requested at the September 1, 2021 staff rule development workshop in this proceeding. The Proposed Rules included with the Notice² implement Session Law 2021-191, which requires the Commission to promulgate rules to exercise its option under 47 U.S.C. §224(c) to reverse-preempt the Federal Communications Commission’s (“FCC’s”) authority over the rates, terms, and conditions of pole attachments.

As the Commission implements its pole attachment regime, it should look for ways to encourage investment by streamlining and facilitating deployment. The wireless industry continues to invest in and deploy advanced networks to communities throughout America, and in 2020 invested nearly \$30 billion in networks, a five year high.³ Over the past two years alone, wireless providers have deployed over 67,000 cell sites, more than the previous seven years combined.⁴ Wireless carriers’ 5G deployment will bring major economic benefits to Floridians. A

¹ CTIA – The Wireless Association (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² Notice at 3-4, proposed Fla. Admin. Code. §25-18.010 (“Proposed Rules”).

³ See CTIA.org, “2021 Annual Survey Highlights” (July 27, 2021), available at <https://www.ctia.org/news/2021-annual-survey-highlights> (last accessed Sept. 15, 2021).

⁴ See *id.*

CTIA study completed in February 2021 estimated that 5G (which delivers broadband as well as voice and other wireless services) will contribute roughly \$1.5 trillion to U.S. GDP, and create approximately 4.5 million additional jobs over the next decade.⁵ In Florida alone, CTIA research estimates a \$72.9 billion growth in GDP and over 189,000 new jobs statewide.⁶

To further the goal of streamlining and encouraging broadband deployment, CTIA offers two revisions to the Proposed Rules for the Commission’s consideration. First, the Commission should codify the FCC’s rate formula as its default method of calculation for pole attachment rates, encouraging investment by helping to ensure a just and reasonable rate and therefore, greater economic certainty for attachers. Second, the Commission should also lower the maximum deadline for resolving pole attachment complaints to no more than 180 days (and potentially less, for access complaints), reducing the potential for lengthy delays in infrastructure deployment.

I. THE COMMISSION SHOULD CODIFY THE FCC’S RATE FORMULA AS ITS DEFAULT FOR POLE ATTACHMENT RATES

Session Law 2021-091 requires the Commission to implement “just and reasonable cost-based rates, terms, and conditions” for attachments.⁷ CTIA therefore recommends that the Commission codify the FCC’s rate formula as its default for pole attachment rates.

The FCC rate formula for pole attachments, which is cost-based,⁸ has been extensively reviewed and consistently held by courts and regulatory bodies to be compensatory and reasonable for pole owners.⁹ Codifying the FCC’s rate formula as a default for pole attachment rates would

⁵ See CTIA, “Building the 5G Economy: The Wireless Industry’s Plan to Invest and Innovate in the U.S.” (February 2021), available at https://api.ctia.org/wp-content/uploads/2021/01/2021-Wireless-Briefing-2_9.pdf (last accessed Sept. 15, 2021).

⁶ See CTIA.org, “5G Economy Map”, available at <https://www.ctia.org/the-wireless-industry/the-5g-economy/map/states/Florida/overall> (last accessed Sept. 15, 2021).

⁷ Session Law 2021-191 at (8)(e).

⁸ See *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, Order on Reconsideration, FCC 15-151 (Nov. 17, 2015).

⁹ See, e.g., *FCC v. Florida Power Corp.*, 480 U.S. 245, 253–54 (1987) (finding that it could not “seriously be argued, that a rate providing for the recovery of fully allocated cost, including the actual cost of capital, is confiscatory”);

also be consistent with the rest of Session Law 2021-191, which states that although “[FCC] precedent is not binding upon the commission in the exercise of its authority under this subsection,” the Commission “shall apply the decisions and orders of the [FCC] and any appellate court decisions reviewing an order of the [FCC] regarding pole attachment rates, terms, or conditions in determining just and reasonable pole attachment rates, terms, and conditions” unless a party establishes “an alternative cost-based pole attachment rate is just and reasonable and in the public interest.”¹⁰ Setting the FCC’s rate formula as the Commission’s default would provide a presumptive baseline for parties that is just and reasonable and will not require Commission resources to adjudicate. In turn, this would create certainty for attachers, providing greater economic incentive for investment in Florida deployment. It would also be fully consistent with the rest of the guidance from the Legislature in Session Law 2021-191, while still allowing for parties to negotiate alternative rates under the provisions of the statute. Accordingly, CTIA recommends the Commission amend the Proposed Rules to set the FCC rate formula as its default method of calculation for pole attachment rates.

Alabama Power Co. v. FCC, 311 F.3d 1357, 1370-71 (11th Cir. 2002), *cert. denied*, 540 U.S. 937 (2003) (“[A]ny implementation of the [FCC’s cable pole attachment rate] (which provides for much more than marginal cost) necessarily provides just compensation.”); *Cablevision of Boston Co., et al. v. Boston Edison*, Docket No. D.T.E. 97-82, 1998 WL 35235111, 18-19 (Mass. D.T.E. Apr. 15, 1998) (finding that FCC formula “meets Massachusetts statutory standards as it adequately assures that [the utility] recovers any additional costs caused by the attachment of [] cables . . . while assuring that the [attachers] are required to pay no more than the fully allocated costs for the pole space occupied by them.”); *California Competition Decision*, 1998 Cal. PUC LEXIS 879 at 87-89 (“We conclude that the adoption of attachment rates based on the formula provides reasonable compensation to the utility owner . . . [T]he formula does not result in a subsidy since the formula is based upon the costs of the utility. A subsidy would require that the rate be set below cost. The fact that the rate is below the maximum amount that the utility could extract for its pole attachment through market power absent Commission intervention does not constitute a subsidy.”)

¹⁰ Session Law 2021-191 at (8)(e).

II. THE COMMISSION SHOULD CONSIDER A SHORTER MAXIMUM TIMELINE FOR FINAL ACTION ON POLE ATTACHMENT COMPLAINTS, ESPECIALLY ACCESS COMPLAINTS

The Proposed Rules also require the Commission to take final action on a complaint “no less than 360 days after the complaint’s filing date.”¹¹ This tracks the absolute maximum time allowable by the FCC for a state to take final action on a complaint before jurisdiction over the complaint reverts to the FCC.¹² While 360 days is the absolute maximum, 180 days represents the FCC’s “default” period of time for state jurisdiction over a complaint to revert to the FCC, in situations where a state’s rules do not specify a longer deadline.¹³ And the FCC itself has implemented a 60-day accelerated docket for pole attachment complaints under its jurisdiction.¹⁴ Further, other states have implemented shorter timelines for pole attachment complaints: Maine, for example, requires a final order from its Public Utilities Commission resolving a dispute within seven business days of a complaint being filed.¹⁵ It seems likely that the Commission would be able to dispose of complaints prior to 360 days, a length that would significantly delay the siting process if a dispute takes that long to settle. Accordingly, the Commission should consider shortening the deadline for complaints to no more than 180 days, perhaps less, particularly for complaints regarding access to poles for attachers. These types of complaints, in general, are significantly easier to adjudicate than rate-based complaints, and can be disposed of by the Commission more quickly.

A shorter maximum deadline for the Commission to take final action on a complaint will help limit potential delays in the attachment process, thus accelerating the pace of broadband

¹¹ Proposed Rules at (5).

¹² See 47 C.F.R. § 1.1405(f).

¹³ See *id.*

¹⁴ See 47 C.F.R. § 1.736(a); *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178 (2018).

¹⁵ See 65-407-880 Me. Code §11.

deployment in Florida. CTIA encourages the Commission to consider if its expertise in resolving disputes and available resources will situate it to adopt swifter dispute resolution timelines than the FCC's, which will ultimately reduce delays and promote rapid broadband deployment.

III. CONCLUSION

CTIA appreciates the Commission's careful consideration of its pole attachment policy as it implements reverse-preemption of the FCC's jurisdiction over pole attachments. CTIA looks forward to working with the Commission to continue to accelerate broadband deployment for the benefit of Floridians.

Dated September 15, 2021.

Respectfully submitted,

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