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 FLORIDA INTERNET AND TELEVISION ASSOCIATION, INC.

Pursuant to the Notice of Development of Rulemaking ("Notice") in this proceeding[1] and Section 120.54, Florida Statutes, the Florida Internet and Television Association, Inc. ("FIT") submits the following comments on the Commission's proposed adoption of Rule 25-18.010 ("Proposed Rule 25-18.010" or "Proposed Rule"), which addresses the requirements for filing and responding to pole attachment complaints. As the Notice explains, Proposed Rule 25-18.010 will administer and implement Florida Statutes Section 366.04(8) ("Section 366.04"), which authorizes the Commission to regulate pole attachments in the state.

I. INTRODUCTION AND SUMMARY

FIT appreciates the opportunity to address the Commission's adoption of rules governing attachments to utility poles. Prompt deployment of broadband is critical to the public interest, and FIT supports the adoption of rules that will promote the deployment of broadband networks in Florida. Indeed, the Florida Legislature has found that "there is a need for increased availability of broadband Internet access throughout this state" and "[t]he lack of Internet connectivity and widespread broadband availability is detrimental to the growth of the economy, access to telehealth, and educational opportunities."[2] Access to utility poles at just and reasonable rates, terms, and conditions is a key component of broadband deployment and is necessary to improve

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1 *See* Florida Public Service Commission, Notice of Development of Rulemaking, Docket No. 20210137-PU (Aug. 17, 2021) ("Notice").

2 Fla. Stat. Ann. § 288.9963(1).

widespread broadband availability for Floridians.[3] Consumers have benefited from the certainty and clarity of the Federal Communications Commission's ("FCC's") pole attachment rules, and the Commission should continue to support the deployment of broadband services.

As set forth below, FIT urges the Commission to clarify Proposed Rule 25-18.010 in the following specific ways. First, the Commission should add explicit language stating that the Commission will apply the FCC's substantive pole attachment rules when it addresses pole attachment complaints. Second, at a minimum, the Commission should add language recognizing that the FCC's rules for calculating just and reasonable cost-based pole attachment rental rates will govern as the default legal standard for complaints governing pole attachment rental rates, as set forth in Section 366.04(8)(e). Finally, the Commission should provide for a shorter, expedited timeframe of 90 days for resolution of pole attachment complaints that allege denial of access because, unlike a rate dispute that can be remedied with true-ups or refunds, a denial of pole access has immediate and irreparable harm not only to the broadband provider but to the consumers who rely on those services. All other pole attachment complaints should be resolved within 180 days. Accompanying these comments, FIT submits a redline of the Proposed Rule in which FIT sets forth specific recommended changes to the Proposed Rule, as discussed below.

II. THE COMMISSION SHOULD SPECIFY THAT THE FCC'S RULES AND ORDERS GOVERN FLORIDA POLE ATTACHMENT COMPLAINTS

FIT urges the Commission to make clear in the final rules that all of the FCC's substantive rules and orders will be applied by the Commission as the governing rules in its adjudication of

[3] *See, e.g., In re 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, ¶¶ 3-4 (2011) ("*2011 Pole Order*") ("lack of reliable, timely, and affordable access to physical infrastructure—particularly utility poles—is often a significant barrier to deploying wireline and wireless services").

pole attachment complaints. FIT believes Section 366.04(8)(e) requires the Commission to apply all of the FCC's substantive rules to pole attachment complaints. At a minimum, Section 366.04(8) requires that the Commission explicitly state that it will apply the FCC's pole attachment rental rate rules (47 C.F.R. §§ 1.1404(e)-(f), 1.1406(d)-(e), 1.1408, 1.1409, 1.1410) as the default applicable rules to govern the Commission's adjudication of complaints concerning pole attachment rental rates, unless a party demonstrates by competent substantial evidence that an alternative cost-based rate is just, reasonable, and in the public interest, as set forth in Section 366.04(8)(e).

As explained more fully below, in addition to complying with Section 366.04(8), specifically articulating that the FCC rules will be applied in adjudicating complaints will best support the deployment of broadband to consumers and ease administration of the Commission's rules.

A. The FCC's Substantive Rules Should Apply To The Commission's Resolution of Pole Attachment Complaints

The Commission's final rule should make clear that the Commission will apply the FCC's substantive rules regarding the rates, terms, and conditions of pole attachments, and orders and the appellate decisions related thereto, to the adjudication of pole attachment complaints. The Commission, however, can and should exclude purely procedural FCC rules so that the Commission can follow its own procedures. FIT therefore proposes that the Commission adopt the specific substantive FCC rules (as well as the orders and decisions of the FCC and any appellate court decisions reviewing an order of the FCC implementing and enforcing those rules) that will govern the Commission's consideration and resolution of pole complaints.[4] Doing so not only

[4] Specifically, 47 C.F.R. §§ 1.1401-1.1404, 1.1406-1.1413, 1.1415, excluding 47 C.F.R. §§ 1.1404(a)-(c).

represents sound public policy, but ensures that the Commission properly implements Section 366.04(8) and Section 120.545(1)(c), Florida Statutes.

1. Applying The FCC's Substantive Rules Is Consistent With Florida Statutes

Applying the FCC's substantive rules is consistent with the direction of the Legislature. Under Section 366.04(8)(e), the Commission "shall apply the decisions and orders of the Federal Communications Commission and any appellate court decisions reviewing an order of the Federal Communications Commission" when acting on pole attachment complaints.[5] Likewise, Section 366.04(8)(d) provides that a party's right to nondiscriminatory access to a pole "is identical to the rights afforded under 47 U.S.C. § 224(f)(1)."[6] Indeed, as discussed below in the context of rules governing pole attachment rates, the statute and the implemented rules will only make sense if the FCC's substantive pole rules are the threshold applicable rules. Rule 25-18.010(1)(c) should, therefore, make clear that the Commission will apply the FCC's substantive pole attachment rules and FCC precedent when resolving pole attachment complaints.

Providing specificity and clarity by referencing FCC substantive rules is also necessary to bring the Proposed Rule into compliance with Section 120.545(1)(c), Florida Statutes. Under Section 120.545(1)(c), the Administrative Procedures Committee may object to a proposed rule if the rule merely "reiterates or paraphrases statutory material."[7] The Proposed Rule raises a significant risk of objection by the Committee because the Proposed Rule lacks sufficient specificity and paraphrases Section 366.04(8)(e). In particular, as discussed more below, Proposed Rule 25-18.010(4) provides that a complaint or response may include an "alternative cost-based

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5 Fla. Stat. Ann. § 366.04(8)(e).

6 Fla. Stat. Ann. § 366.04(8)(d).

7 Fla. Stat. Ann. § 120.545(1)(c).

pole attachment rate."[8] That language paraphrases, in part, Section 366.04(8)(e), but it omits the critical language in Section 366.04(8)(e) stating that the FCC's pole attachment rate rules and implementing orders are the applicable rules to which a pole owner may propose an "alternative."[9] By explicitly identifying the FCC's rules, by C.F.R. section, the Commission will satisfy the requirements of Section 120.545(1)(c) and avoid ambiguous paraphrases of the statute.

To the extent there may be questions about the potential administrative burden of referencing FCC regulations in light of the requirement that the Commission republish its rules adopting federal rules by reference whenever the federal rules change,[10] the Commission should not be concerned.[11] The FCC's pole attachment rules are generally stable and frequently go unchanged for many years. For example, Section 1.1409 of the FCC's rules, which addresses the allocation of unusable space on the pole in the "telecommunications" rate calculation, was adopted in March 1998, first amended in June 2001, but was not amended again until September 2018 (when it was renumbered).[12] Indeed, some of the FCC's rules, such as the presumptions regarding the amount of space occupied by an attachment, have existed unchanged since the original FCC

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8 Notice at 3-4.

9 Fla. Stat. Ann. § 366.04(8)(e).

10 Fla. Stat. Ann. § 120.54(6)(a).

11 Fla. Stat. Ann. § 120.54(6)(a).

12 *See* 47 C.F.R. § 1.1409; *Implementation of Section 703(e) of the Telecommunications Act of 1996*, *et al.*, Report and Order, 13 FCC Rcd. 6777 (1998); *Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd. 12103 (2001) ("*2001 Order*"); *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enf't Bureau*, Report and Order, 33 FCC Rcd. 7178, Appendix (July 18, 2018) (renumbering).

rules adopted in 1979.[13] Accordingly, the Commission need not be concerned about the stability of the FCC's rules or an undue burden on the Commission to frequently republish the rules.

Explicitly adopting the FCC's substantive rules also would help further the legislature's goal to "encourage parties to enter voluntary pole attachment agreements."[14] A clear statement of the substantive rules that will govern pole attachment complaints will allow parties to negotiate pole attachment agreements with greater understanding of their baseline rights, diminishing the likelihood of a dispute. As the FCC emphasized in its *2001 Order*, "[t]here would be no reasonable negotiation without a benchmark rate against which to compare the utility's proposed rate."[15] Furthermore, if a dispute does arise, a clearer rule will help streamline the complaint process before the Commission, by eliminating disputes regarding the applicable standard, for example.

2. Applying The FCC's Rules Is Supported By Sound Public Policy

Applying the FCC's pole rules as the as the rules that will apply in complaint proceedings is also supported by sound policy. Since 1978, federal law has required that the rates, terms, and conditions of a cable operator's attachment to utility poles be just and reasonable.[16] And in 1996, to facilitate the opening of competitive telecommunications markets, Congress extended federal regulation of pole attachments to include attachments by telecommunications service providers. The "Pole Attachment Act" (codified at 47 U.S.C. § 224, as amended), embodies Congressional recognition that the networks used to provide services such as cable television, telecommunications, and co-mingled broadband services require access to existing utility poles to

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13 *See* 47 C.F.R. § 1.1410; *2001 Order* 16 FCC Rcd. 12103 ¶ 47 (discussing history of presumptions in FCC rate calculation rules).

14 Fla. Stat. Ann. § 366.04(8)(c).

15 *See 2001 Order*, 16 FCC Rcd. 12103 ¶ 13.

16 47 U.S.C. § 224.

deploy competitive networks and provide the full scope of services that modern consumers need and demand.[17] Congress also acknowledged, based on historic behavior that pre-dated even the original 1978 Pole Attachment Act, that utility pole owners can and have abused their unique monopoly control over essential facilities in the public rights of way.[18]

Thus, Section 224 directs the FCC to regulate the rates, terms, and conditions utility pole owners impose on attaching entities, unless a state satisfies certain requirements to "reverse preempt" regulation of pole attachments.[19] Based on four decades of experience, the FCC has well-established rules and precedents governing the maximum just and reasonable annual rental rates that utilities may lawfully charge attaching entities, such as FIT's members.

The FCC's pole attachment rules are the gold standard, providing regulatory clarity to both attaching parties and pole owners. The FCC's rules have also withstood repeated appellate review.[20] The Commission should, therefore, leverage the FCC's work and expertise. There is no need for the Commission to re-invent the regulatory landscape. As the Pennsylvania PUC recently concluded when it adopted the FCC's rules: "the Commission is resolute in the necessity,

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17 *See, e.g., 2011 Pole Order* ¶¶ 3-4.

18 *Id.* ¶ 4 (explaining that "Congress recognized further that there is a 'local monopoly in ownership or control of poles,' observing that, as found by a Commission staff report, "'public utilities by virtue of their size and exclusive control over access to pole lines, are unquestionably in a position to extract monopoly rents . . . in the form of unreasonably high pole attachment rates.'").

19 47 U.S.C. § 224(c).

20 *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"); *City of Portland v. FCC*, 969 F.3d 1020 (9th Cir. 2020), *cert. denied*, 2021 WL 2637868 (S. Ct. June 28, 2021); *Ameren Corp., et al. v. FCC*, 865 F.3d 1009 (8th Cir. 2017); *American Elec. Power Service Corp. v. FCC,* 708 F.3d 183 (D.C. Cir. 2013). *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002) ("[A]ny implementation of the [Commission's cable pole attachment rate] (which provides for much more than marginal cost) necessarily provides just compensation"), *cert. denied*, *Alabama Power Co. v. FCC*, 540 U.S. 937 (2003).

especially at first and going forward, to proceed with a turn-key adoption of the FCC's pole attachment regulations. As noted in our NPRM, Pennsylvania-specific regulations would be unlikely to provide anything more than incremental improvement above what are well-established installation practices."[21]

Indeed, reinventing pole attachment rules from whole cloth would cause uncertainty and disruption to all parties involved. By clarifying the application of FCC substantive rules, the Commission will provide clarity and maintain certainty, while also supporting the deployment of broadband. For example, cable operators and pole owners have benefited from the pole attachment timeline under the FCC's rules, which imposes deadlines within which the utility must act on applications and complete make-ready.[22] Specifically, the FCC requires utilities to act on a new attacher's attachment application within 10 days of receipt, and to grant or deny access to the pole within 45 days.[23] In addition, utilities are required to complete make-ready work in the communications space within 30 days and complete make-ready work above the communications space within 90 days.[24] Similarly, the FCC's rules provide clear guidance on attaching parties' rights regarding deployment and cost allocation issues, such as using overlashing to safely and

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21 *Assumption of Commission Jurisdiction Over Pole Attachments from the Federal Communications Comm'n*, Final Rulemaking Order, L-2018-3002672 at 37 (Aug. 29, 2019) ("*Pennsylvania Pole Rulemaking Order*").

22 *See generally* 47 C.F.R. §§ 1.1411 (providing the rule for timeline for access to utility poles). "Make-ready" is the process of making changes or rearrangements necessary to allow the new attachment to the pole.

23 *See* 47 C.F.R. §§ 1.1411(c)(1)(i), 1.1411(c)(2).

24 *See* 47 C.F.R. §§ 1.1411(e)(1)(ii), 1.1411(e)(2)(ii). Indeed, the FCC recently streamlined the timelines in an effort to accelerate broadband deployment. *See Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, *et al.*, Third Report and Order and Declaratory Ruling, 33 FCC Rcd. 7705 (2018).

promptly deploy new facilities.[25] Adopting a rule that provides only a procedure for filing complaints with no guidance regarding the applicable substantive rules will place at risk the deployment of broadband that it is the State's policy to support due to the lack of certainty and likelihood of disputes. Indeed, consumers, too, have benefited from the clarity and certainty provided by the FCC's rules because reasonable rates, terms, and conditions allow providers to quickly and cost effectively deploy services to consumers.

For these reasons, the FCC's rules have overwhelmingly been adopted, in whole or with minor variation, by nearly all certified states. For example, Pennsylvania and West Virginia – the two most recent states to certify to the FCC that they have issued rules and regulations implementing their regulatory authority over pole attachments[26] – adopted the FCC's substantive rules in their entirety.[27]

The Proposed Rules, in contrast, risk creating uncertainty. Proposed Rule 25-18.010(1)(c) requires the complainant to identify the "rules and laws governing the complaint."[28] FIT urges the Commission to remove this provision from the proposed rule to minimize confusion. Indeed, the

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25 *See* 47 C.F.R. §§ 1.1409 (providing the rule for allocation of unusable space costs); 1.1415 (providing the rule for overlashing). "Overlashing" is a well-established technique that facilitates deployment of broadband by lashing new lines or facilities to existing lines rather than involving the installation of a new attachment to the pole. As such, overlashing is both cost-effective and avoids potentially time-consuming and expensive make-ready.

26 *See* 47 U.S.C. § 224; *States That Have Certified That They Regulate Pole Attachments*, Public Notice, 35 FCC Rcd. 2784 (2020) (stating that Pennsylvania "certifies that it has issued and made effective rules and regulations implementing its regulatory authority over pole attachments in the state"); *States That Have Certified That They Regulate Pole Attachments*, Public Notice, 35 FCC Rcd. 166 (2020) (stating that West Virginia "certifies that it has issued and made effective rules and regulations implementing its regulatory authority over pole attachments in the state").

27 *See* 52 Pa. Code §§ 77.1–77.7; *Pennsylvania Pole Rulemaking Order* at 36; W. Va. Code R. §§ 150-38-1–150-38-29. Ohio, similarly, adopted rules largely modeled after the FCC's rules, including explicitly incorporating by reference the FCC's "cable formula" for calculating pole attachments. Ohio Admin. Code 4901:1-3-04(D).

28 Notice at 3.

proposed language suggests that there is no clarity in what law and regulations govern pole attachments. Such a situation does not help either attaching parties or pole owners, and the Legislature could not have intended to thrust all parties into a period of regulatory uncertainty and potentially unnecessary disputes before the Commission. Instead of an apparently open invitation to dispute even the most fundamental ground rules in every case, the Commission's rules should provide all parties with clarity regarding the governing law.

B. At A Minimum, The Commission Should Explicitly State That The FCC's Pole Rental Rate Rules Apply To Complaints Before The Commission

At a minimum, even if the Commission declines to clarify that the FCC's substantive rules provide the applicable standard governing all pole attachment complaints, the Commission should explicitly clarify that the Commission will apply and follow the FCC's rules setting forth the formulas and principles for calculating pole attachment rental rates,[29] unless and until a party makes the "alternative" showing in a particular case contemplated by Section 366.04(8)(e). Adopting the FCC's rate rules is consistent with the statute, represents sound public policy, and is easily administrated.

Proposed Rule 25-18.010(4) provides that a complaint or response may include an "alternative cost-based pole attachment rate."[30] That language paraphrases, in part, Section 366.04(8)(e), but it omits the critical language in Section 366.05(8)(e), noted above, stating that the FCC's pole attachment formula and implementing orders are the applicable rules to which a party may propose an "alternative."[31] Therefore, the Commission should expressly reference the FCC rate rules in the adopted rules so that it is clear that the "alternative" specified in the rules is

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29 47 C.F.R. §§ 1.1404(e)-(f), 1.1406(d)-(e), 1.1408, 1.1409, 1.1410.

30 Notice at 3-4.

31 Fla. Stat. Ann. § 366.04(8)(e).

an alternative to the FCC formula and rules, and any rate that deviates from the FCC's rules must be supported by "competent substantial evidence," including evidence that such alternative formula is "cost-based."[32] Specifically, FIT suggests that the Commission expressly state that the FCC's pole attachment rules, along with the FCC's implementing orders and decisions, "shall apply to and govern Commission consideration and resolution" of pole attachment rental rate complaints, as contemplated by Section 355.04(8)(e). Without the language explaining that the FCC rules are the default to be applied, the "alternative" language in the statute and the proposed rule is unclear.

In addition to being consistent with Section 366.04(8)(e), explicit adoption of the FCC rental rate rules is sound public policy. The FCC's pole attachment rate rules have been adjudicated numerous times over the last several decades,[33] including by the U.S. Supreme Court,[34] to be fully compensatory and the touchstone of cost-based reasonableness. Indeed, in 1987, the U.S. Supreme Court found that the cable rate formula adopted by the Commission provides pole owners with adequate compensation, and thus did not result in an unconstitutional taking.[35] That

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32 *Id.*

33 *See, e.g.*, *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, First Report and Order, 68 FCC 2d 1585 (1978); *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Memorandum Opinion and Order, 77 FCC 2d 187 (1980); *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, 2 FCC Rcd. 4387 (1987); *Implementation of Section 224 of the Act*, et al., Report and Order and Order on Reconsideration, 26 FCC Rcd. 5240 (2011); *Implementation of Section 224 of the Act*, *et al.*, Order on Reconsideration, 30 FCC Rcd. 13731 (2015); *see also* 47 C.F.R. § 1.1406(d).

34 *See FCC v. Florida Power Corporation*, 480 U.S. 245 (1987).

35 *Id.* at 253-54.

is why almost every certified state follows the FCC cable formula[36] for pole attachments and has rejected alternatives.[37]

The FCC pole rate rules are also transparent and easy to administer. The FCC designed the formulas and its rules to rely on publicly available data, such as FERC Form 1, to allow the parties to administer and calculate the rates without having to resort to time-consuming and expensive rate cases for every rental rate change.[38] That transparency and ease of administration has helped attaching parties and pole owners avoid formal disputes many times over the course of decades.

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[36] The FCC's rules provide slightly different formulas for attachments by cable operators and telecommunications providers. *Compare* 47 C.F.R. § 1.1406(d)(1) (cable attachments) *with* 47 C.F.R. § 1.1406(d)(2) (telecommunications attachments). In a series of orders, the FCC implemented a formula that cable television system attachers and utilities could use to determine a maximum allowable just and reasonable pole attachment rate – referred to as the cable rate formula – and procedures for resolving rate complaints. *See*, *e.g.*, *Adoption of Rules for the Regulation of Cable Television Pole Attachments,* First Report and Order, 68 FCC 2d 1585 (1978) (adopting complaint procedures); *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Memorandum Opinion and Order, 77 FCC 2d 187 (1980); *Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, Report and Order, 2 FCC Rcd. 4387 (1987). The cable rate formula was originally codified at 47 C.F.R. § 1.1409(e)(1) by the *1998 Implementation Order*. *Implementation of Section 703(e) of the Telecommunications Act, Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd. 6777 (1998) ("*1998 Implementation Order*"), *aff'd in part*, *rev'd in part*, *Gulf Power v. FCC*, 208 F.3d 1263 (11th Cir. 2000), *rev'd, Nat'l Cable & Telecommunications Ass'n v. Gulf Power*, 534 U.S. 327 (2002).

In the Telecommunications Act of 1996, Congress adopted a separate statutory formula for attachments by providers of telecommunications services, which the FCC further amended in a series of orders in order to bring the rate for telecommunications attachments more in line with the rate for cable attachments. *See, e.g.*, *1998 Implementation Order*, 13 FCC Rcd. at 6796, ¶ 34; *FCC 2011 Order*, 26 FCC Rcd. 5240, ¶¶ 135-54.

[37] *See, e.g.*, Ohio Admin. Code 4901:1-3-04(D); Wash. Admin. Code 480-54-010; N.H. Code Admin. R. PUC 1304.06; Vt. Admin. Code 18-1-8:3.706.

[38] *See, e.g.*, *2011 Pole Order* ¶ 172 n.553 (describing how the formula "uses publicly filed cost data, such as FERC 1 data, that are verifiable and comply with the uniform system of accounts of the Commission and FERC.").

III. THE COMMISSION SHOULD RESOLVE COMPLAINTS IN AN EXPEDITED MANNER

Under the Proposed Rule, responses to complaints are due in 30 days, but a Commission decision is not due until 360 days after the complaint is filed.[39] FIT recognizes that the 360-day deadline is likely intended to provide the Commission the maximum amount of time to act on a complaint set forth in 47 U.S.C. § 224(c)(3)(B)(ii)[40] and still retain jurisdiction. However, that outer limit for action should not become the default length of all pole attachment complaints, particularly for complaints involving access to poles. Specifically, for the reasons set forth below, FIT recommends that the Commission modify Proposed Rule 25-18.010(5) to provide that pole attachment complaints involving access to poles will be addressed within 90 days and all other pole attachment complaints will be addressed within 180 days.

While the 360-day dispute resolution process is the outer limit in which the Commission must act on individual complaints without losing jurisdiction under 47 U.S.C. § 224(c), it is not practical or commercially viable for complaints that involve denial of access to poles, or other types of disputes where timely deployment of facilities is impacted. Indeed, the threshold requirement under 47 U.S.C. § 224(c)(3)(B) is for the state to act on a complaint within 180 days.[41] The 360-day timeframe, on the other hand, is an absolute outer limit beyond which a state will lose its authority to regulate pole attachments and should not be used as guidance for what constitutes

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39 Notice at 4.

40 47 U.S.C. § 224(c)(3)(B) provides that the state must take final action on a pole attachment complaint "(i) within 180 days after the complaint is filed with the State, or (ii) within the applicable period prescribed for such final action in such rules and regulations of the State, if the prescribed period does not extend beyond 360 days after the filing of such complaint."

41 47 U.S.C. § 224(c)(3)(B)(i).

an appropriate time period for resolving pole attachment complaints.[42] Prompt resolution of pole attachment complaints is critical to broadband deployment.

A decision on a dispute where the broadband provider is being denied the ability to attach its facilities that takes 360 days is unreasonable for all parties involved. To provide the broadband services that are critical to modern life, FIT's members need to build plant and roll out services on a predictable, timely, and cost-effective basis. Requiring a company who has encountered a roadblock to deployment imposed by a pole owner to wait 360 days would unnecessarily prolong deployment plans, putting cable operators at risk for losing customers and funding, and missing contract deadlines. Indeed, the risk that a complaint to the Commission might take a year to be resolved creates inappropriate leverage for the pole owner, who has no reason to move promptly and who can use the threat of a long delay at the Commission to force concessions from the attaching party, who has no leverage if there is no threat of meaningful and timely rule enforcement.

That said, in complaint proceedings where there is a denial of access to a pole, either explicit or effective, the Commission should resolve the complaint on an even more expedited process – in no more than 90 days. In matters of access, an expedited timeframe is critical to ensuring that providers are able to quickly deploy facilities to provide broadband services, and, at the same time, prevent pole owners from taking advantage of protracted litigation timelines at the Commission.

In the alternative, if the Commission is concerned that 90 days will not provide it enough time, it should adopt a procedure that resolves denial of access cases in 120 days, maximum. The Commission has adopted a 120-day timeframe for telecommunications providers in a different

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[42] 47 U.S.C. § 224(c)(3)(B)(ii).

context – the expedited dispute resolution process for telecommunications companies.[43] The Commission could use this rule as a guide.

IV. CONCLUSION

FIT appreciates the Commission's efforts to facilitate broadband deployment throughout Florida. As discussed above, and as set forth in the accompanying redlines to the Proposed Rule, the Commission should provide greater clarity to Proposed Rule 25-18.010 by explicitly providing that the Commission will apply FCC substantive pole attachment rules and FCC precedent, in particular governing pole attachment rates, as the default substantive rules in pole attachment disputes. The Commission should also adopt an expedited process for resolution of denial of access disputes, resolving such complaints in no more than 90 days, and resolving all other complaints within 180 days.

Respectfully submitted, this 15th day of September, 2021.

/s/ Floyd R. Self
Floyd R. Self, B.C.S.
Fla. Bar No. 608025
Berger Singerman LLP
313 North Monroe Street, Suite 301
Tallahassee, Florida 32301
Direct Telephone: (850) 521-6727
Email: fself@bergersingerman.com

Charles F. Dudley, Esq.
Fla. Bar. No. 001996
Charles Dudley, PA
108 South Monroe Street, Suite 200
Tallahassee, FL 32301
Telephone: (850) 681-0024
Email: cdudley@flapartners.com

Counsel for Florida Internet and Television Association

[43] *See* Fla. Admin. Code Rule 25-22.0365(12) (requiring the Commission to resolve a dispute between telecommunications companies within 120 days of receiving a request for expedited processing).

25-18.010 Pole Attachment Complaints

(1) A complaint filed with the Commission by a pole owner or attaching entity pursuant to Section 366.04(8), Florida Statutes, must contain:

(a) The name, address, email address, and telephone number of the complainant or complainant's attorney or qualified representative;

(b) A statement describing the facts that give rise to the complaint;

~~(c) A statement of the rules and laws governing the complaint;~~

(c~~d~~) Names of the party or parties against whom the complaint is filed;

(d~~e~~) An explanation of previous steps taken to reach an agreement on the issue;

(e~~f~~) A copy of the pole attachment agreement, if applicable, and identification of the pole attachment rates, charges, terms, conditions, voluntary agreements, or any denial of access relative to pole attachments that is the subject matter of the complaint;

(f~~g~~) A statement of the issues to be resolved;

(g~~h~~) If applicable, the dollar amount in dispute;

(h~~i~~) A statement of the relief requested, including whether a Section 120.569 and 120.57, Florida Statutes, evidentiary hearing is being requested to resolve the complaint; and

(i~~j~~) A certificate of service that copies of the complaint have been furnished by email to the party or parties identified in paragraph (1)(d) of this rule.

(2) The filing date for the complaint is the date that a complaint is filed with the Commission Clerk containing all required information set forth in subsection (1) of this rule.

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(3) The pole owner or attaching entity that is the subject of the complaint must file its response with the Commission within 30 calendar days of the date the complaint was served on that party.

(4) The regulations of the Federal Communications Commission set forth in 47 C.F.R. §§ 1.1401-1.1404, 1.1406-1.1413, 1.1415, excluding 47 C.F.R. §§ 1.1404(a)-(c), and the orders and decisions of the Federal Communications Commission and any appellate court decisions reviewing an order of the Federal Communications Commission implementing and enforcing those regulations shall apply to and govern the Commission's consideration and resolution of the allegations in the complaint.

(54) The pole rate rules set forth in 47 C.F.R. §§ 1.1406, 1.1409, and 1.1410 and the orders of the Federal Communications Commission implementing those rules shall govern the Commission's consideration and resolution of pole rate disputes. If the pole owner or attaching entity intends to ask the Commission to establish an alternative cost-based pole attachment rate in a Section 120.569 and 120.57, Florida Statutes, evidentiary proceeding, it must provide the methodology with the complaint or with the response along with supporting documentation and an explanation as to how such alternative methodology is just, reasonable, and in the public interest.

(5) The Commission will take final action on a complaint that alleges that the pole owner has denied access to a pole or poles at a Commission Conference no later than 90 days after the complaint's file date as set forth in subsection (2) of this rule, and for all other complaints at a Commission Conference within 180 days after the complaint's filing and in no

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case later than 360 days after the complaint's filing date as set forth in subsection (2) of this rule.

Rulemaking Authority 350.127(2), 366.04(8)(g) FS. Law Implemented 366.04(8) FS. History-

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