

**BDAC COMPETITIVE ACCESS TO  
BROADBAND INFRASTRUCTURE WORKING GROUP**

**VOTE RECOMMENDATIONS**

**November 9, 2017**

**POLE ATTACHMENTS FCC ENFORCEMENT: COMPLAINT SHOT CLOCK**

**Issue:**

Attachers and pole owners have expressed concern about the length of time taken in certain circumstances to resolve pole attachment complaints, which produces uncertainty that might impact deployment of broadband facilities.

- The objective of the federal “pole attachment” statute, Section 224 of the Communications Act, is to facilitate access to poles, ducts and conduit, consistent with safety and reliability requirements, to enable the expeditious deployment of cable, telecommunications and broadband infrastructure.
- When pole owners and pole attachers dispute access, as well as the rates, terms and conditions for such access, to such critical facilities, it is important to achieve the objective of Section 224 and to obtain prompt resolution of pole attachment complaints.
- In the *2011 Pole Attachment Order*, the Commission acknowledged concerns about the length of time required to resolve pole attachment complaints but did not adopt a shot clock, finding that the record was not sufficient and that other processes it adopted could address these concerns.

**Proposal:**

Proposed Rule Change to § 1.1425, Review Period for Pole Access Complaints, re WC Docket No. 17-84 entitled “Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment”, specifically:

- Except in extraordinary circumstances, final action on a complaint filed by a cable television system operator or telecommunications carrier regarding claims involving access to a pole, duct, conduit or right-of-way owned or controlled by a

utility should be expected no later than 180 days from the date the complaint is filed with the Commission.

- The Commission shall have the discretion to pause the 180-day review period in situations where actions outside the Commission's control are responsible for delaying Commission review of an access complaint.

Working Group Vote: **PASS** (17 Yes, 0 No, 0 Abstain)

## **FEES AND RATES: COMPLAINT PROCESS**

### **Issue:**

Adopt a reasonable shot clock process for all pole attachment complaints between pole attachers and pole owners.

- Pole attachers and pole owners do not have an expedited process for resolving complaints about rates or fees related to the attachment process.
- Such issues can languish for a protracted amount of time at the FCC, which impedes broadband deployment.

### **Proposal:**

A reasonable shot clock process of 180 days should be applied to complaints filed by pole owners and pole attachers.

[Please refer to a similar proposal by this Working Group's Timing and Process Committee above.]

Working Group Vote: **PASS** (20 Yes, 0 No, 0 Abstain)

## **FEES AND RATES: DOUBLE RECOVERY OF CAPITAL COSTS**

### **Issue:**

The FCC should provide clarification that recovery by a pole owner for capital costs previously recovered through the make-ready process is not acceptable.

- In rare instances, in calculating attachment rates, some pole owners have included capital costs that have been previously recovered in the calculation of make-ready fees.

- The FCC should clarify that pole owners must subscribe to appropriate and accurate accounting principles and rules, mandating that pole owners cannot use an increase in rates to recover capital costs already addressed in make-ready fees.

**Proposal:**

Pole owners should not be able to recover capital costs through the make ready process more than once.

Working Group Vote: **PASS** (20 Yes, 0 No, 0 Abstain)