

Joint Use & Pole Attachments News Flash

National Broadband Plan Recommends Significant Changes to Pole Attachment Policy

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For Further Information Contact:

Russ Campbell
(205) 226-3438

rcampbell@balch.com

Eric Langley
(205) 226-8772

elangley@balch.com

Allen Estes
(205) 226-8717

aestes@balch.com

Visit our Website

www.balch.com
www.balch.com/jointuse
www.jointuselaw.com

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The FCC released its National Broadband Plan (“Plan”) on Tuesday, March 16, 2010. The 340-page Plan, which addresses issues ranging from spectrum availability to the impact of broadband on healthcare and education, foretells dramatic changes in federal pole attachment policy. The Plan makes a handful of “recommendations” to the FCC and Congress related to pole attachments under the auspices of “improving utilization of infrastructure,” all of which are within Chapter 6 of the Plan (specifically, pp. 109-113). Click on the following links for a copy of the full [Plan](#) and other [related documents](#).

If the Plan’s recommendations become reality, electric utility pole owners (perhaps even cooperatives, municipalities and those in state-regulated states) can expect: (1) less rental revenue; (2) higher operating costs; and (3) less control over the make-ready process.

Plan Recommendations

- **Establish “low” and “uniform” pole attachment rental rates “as close as possible to the cable rate.”** (Plan, p.110). No further explanation needed.

- **Implement rules that will expedite and “lower the cost of the pole attachment make-ready process.”** Among the specific “rules” contemplated are: (1) establishing a charge schedule for common make-ready cost items; (2) allowing “cost-saving” construction techniques such as boxing and extension arms; (3) allowing prospective attachers to use third-party contractors for engineering and make-ready work; (4) requiring existing attachers to rearrange or transfer within a specified time period to accommodate a new attacher; and (5) eliminating up-front make-ready payments. (Plan, p. 111)

- **Establish timelines for each step of the access process (applications, make-ready, etc.) and reform process for access dispute resolution,** including amending the existing complaint rules to allow recovery of damages from the date of access denial (versus the date of filing the complaint) to “stimulate swifter resolution of disputes.” (Plan, p. 112).

- **Improve “collection and availability of information regarding the location and availability of poles, ducts, conduits and rights-of-way.”** The Plan states: “the FCC should ensure that information about utility poles and conduits is up-to-date, readily accessible and secure, and that the costs and responsibility of collecting and maintaining data are shared equitably by owners and users of these vital resources” and that “[t]hese databases should be easily searchable, identify the owner of each pole and should contain up-to-date records of attachments and make-ready work that has been performed.” (Plan, p. 112).

- **Amend the Pole Attachment Act “to establish a harmonized access policy for all poles, ducts, conduits and rights-of-way.”** This recommendation touches three issues: (1) the reverse preemption provision which allows a state to regulate pole attachments; (2) the current exemption of cooperatives and municipalities; and (3) ILEC exclusion from the protections of the Act. (Plan, pp. 112-13).

Implementation of Recommendations

Because the Plan contemplates accomplishing many of these objectives through FCC rulemakings, the Plan states that the FCC “should quickly publish a timetable of proceedings for implementing broadband plan recommendations.” (Plan, p. 334). The FCC has not yet released this timetable.

FCC's Goals

The Plan's overall goal stated is ubiquitous broadband deployment: "It ought to be found in every village, in every home and on every farm in every part of the United States." (Plan, p. 338). In working towards this goal, the Plan fails to even pay lip service to the serious safety and reliability issues raised by numerous electric utility commenters. The Plan does not cite (let alone mention) any of the comments or evidence submitted by electric utilities in the various proceedings leading-up to the Plan.

Stay tuned for further developments. In the interim, please do not hesitate to contact us should you have any questions.