

JOINT USE ALERT

FCC POLE ATTACHMENT ORDER

Big news out of Washington D.C. and the Federal Communications Commission. Yesterday, the FCC released its Order in the 2017 Pole Attachment Rulemaking Proceeding. On the whole, electric utilities came out better than expected.

Three Key Takeaways:

(1) The FCC codified a rule which excludes capital expenses allegedly already recovered via non-recurring make-ready fees, from recurring pole attachment rental rates.

- Many utilities already comply with this so the effect of the new rule should be minimal.

(2) The FCC established a 180 day "shot clock" for resolution of access-related pole attachment complaints.

- The goal is designed to speed up the Enforcement Bureau's decision timeline when an attaching entity complains that a pole owner is denying access.
- Notably, this shot clock does not yet apply to resolution of pole attachment complaints alleging unjust or unreasonable rates, terms and conditions.

(3) The FCC granted ILECs access rights to CLEC-owned infrastructure.

- ILECs had commented that discrepancy in access rights afforded to CLECs discouraged ILEC broadband deployment because they lack reciprocal rights to CLEC poles. This rule harmonized those rights.

The numerous other issues raised in the initial Notice of Proposed Rulemaking, along with the many other issues raised in the various comments, (including ILEC rates, application timelines, make-ready costs, etc.) went unaddressed in the Order. Though the FCC did not address these in the Order, it indicated intent to take up those issues in the future.

Finally, the FCC issued a Further Notice of Proposed Rulemaking on a number of other issues. The key issue for utilities is overfishing. The FCC seeks comment on a proposed rule subjecting overfishing to notice-and-attach procedures. Currently, pre-approval for overfishing is prohibited under FCC precedent. However, many pole owners require pre-overfishing notice.

We are continuing to digest the Order in full and will provide a more thorough summary in the near future.

[View the Order](#)

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