

APPA urges FCC to reconsider directives on pole attachments

The Federal Communications Commission should either reconsider or clarify its rules with respect to the conditions under which utilities are required to allow the use of bracketing, boxing, or other pole attachment techniques, APPA told the commission Nov. 1.

APPA supports a petition filed by the Coalition of Concerned Utilities for reconsideration of an order adopted by the FCC in May (WC Docket No. 07-245). APPA said it agrees with the coalition that the commission "should clarify that an electric utility's use of boxing, brackets or any other attachment technique for placing electric facilities in the electric space on their poles does not obligate the utility pole owner to allow the same attachment technique to be used for communications attachments."

The proposed clarification "will better reflect the actual practices of utilities, ensure safe pole use, and avoid or minimize disputes," APPA said.

In its May 20 order, the commission said a nondiscriminatory access obligation established by Section 224 of the Pole Attachment Act of 1978 requires a utility to allow cable operators and telecommunications carriers to use the same pole attachment techniques that the utility itself uses. The FCC adopted a rule that "any attachment technique that a utility uses or allows to be used will henceforth be presumed appropriate for use by attachers on that utility's poles under comparable circumstances." The commission indicated that "if a utility chooses to allow boxing and bracketing in some circumstances but not others, the limiting circumstances must be clear, objective, and applied equally to the utility and attaching entity."

In its petition for reconsideration, the Coalition of Concerned Utilities asks the FCC "to make clear that the nondiscrimination requirement applies only to the extent the pole owner has itself used, or allowed others to use, boxing, bracketing and other attachment techniques for communications wires in the communications space."

APPA said it supports this clarification "as striking the proper balance between the need of attaching entities to access poles in a nondiscriminatory manner and the ability of utilities to manage the safety and operational integrity of their own poles."

The use of boxing, bracketing and other attachment techniques in the electric space for electric attachments is not "comparable" to the use of such techniques to place communications attachments in the communications space, APPA told the FCC.

"One of the principal concerns that electric utilities have with the use of boxing and bracketing in the communication space is that such structures can, and often do, impede access to the electric space at the top of the pole, raising significant safety and operational concerns," APPA said. "This is particularly true where utility crews climb the poles rather than use bucket trucks, as is often the case with smaller and more rural utilities."

In contrast, using crossarms and fiberglass brackets to support electric conductors at or near the tops of poles "does not raise safety or operational issues because neither communications workers nor electric utility crews need to pass or get above the cross arms and fiberglass brackets."

Boxing a pole also can have an effect on how easily it can be replaced, APPA said. "While facilities at the top of a pole can readily be moved to either side of the pole and not impede pole change outs, wires that box a pole in the communication space typically have insufficient slack to be moved over the top of the pole to the other side." Thus, when a pole is boxed in the communications space, "the new pole must be inserted between the wires on both sides of the existing pole" — a procedure that is significantly more costly and time-consuming, and that creates additional safety hazards, APPA said.

APPA also told the FCC it opposes a petition for reconsideration filed by a group of state cable television associations that asks the commission to require electric utility pole owners to replace existing poles with larger poles when the existing poles do not have sufficient capacity to accommodate proposed attachments.

In *Southern Co. v. FCC*, the U.S. Court of Appeals for the 11th Circuit held that utilities are not obligated to provide access to a pole when it is agreed that the pole's capacity is insufficient to accommodate a proposed attachment, APPA said. Despite the clear finding by that court that the FCC cannot force a utility to replace an existing pole with a new pole in order to accommodate a new attachment, the state cable associations have asked the commission to do precisely that, APPA said.

"As the 11th Circuit explained in *Southern Co.*, the commission cannot compel a utility to replace an existing pole in order to accommodate an additional attachment that could not be made on the existing pole," APPA said.

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