



July 25, 2019

Honorable Kathleen H. Burgess
Secretary
New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223

Re: Petition of CTIA – The Wireless Association to Initiate a Proceeding to Update
and Clarify Wireless Pole Attachment Protections; Case 16-M-0330

Dear Secretary Burgess:

Enclosed please find CTIA's motion requesting that the New York Public Service Commission set temporary wireless pole attachment rates. Please contact the undersigned should you have any questions about the foregoing.

Sincerely,

A handwritten signature in blue ink, appearing to be "BJA", with a long horizontal flourish extending to the right.

Benjamin J. Aron

cc: Service List, Case 16-M-0330

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Petition of CTIA – The Wireless
Association to Initiate a Proceeding to
Update and Clarify Wireless Pole
Attachment Protections**

Case 16-M-0330

**MOTION OF CTIA TO SET TEMPORARY
WIRELESS POLE ATTACHMENT RATES**

Pursuant to Commission Rule 3.6, Petitioner CTIA¹ respectfully moves for an order setting temporary wireless pole attachment rates for the five electric utilities² whose tariff filings were suspended by the Commission in its order of July 16, 2019 (the “*Suspension Order*”).³

In compliance with the Commission’s order of March 14, 2019 (the “*Rate Order*”),⁴ each of the five utilities filed tariff amendments, originally scheduled to take effect on August 1, 2019, establishing rates for pole attachments by wireless providers. The *Suspension Order* states that each of the five utilities also changed its rates for pole attachments by *wireline* providers to conform to its new wireless attachment rates. In the *Suspension Order*, the Commission suspended the tariff filings through and including November 28, 2019, because “modifications to

¹ CTIA – The Wireless Association (“CTIA”) (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association’s members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² The five utilities are Consolidated Edison Company of New York, Inc., New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation d/b/a National Grid, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.

³ Case 16-M-0330, “Order Suspending Wireless Pole Attachment Rate Tariff Filings and Granting a Filing Extension to the New York Municipal Power Agency” (issued and effective July 16, 2019).

⁴ Case 16-M-0330, “Order Approving Petition in Part and Continuing Proceeding” (issued and effective March 14, 2019).

the wireline attachment rates [had] not been published in the State Register, and some of the wireline attachment rates [had] not been updated in over a decade.” Thus, the suspension was intended to “provide time for public comment and further review by the Commission.”⁵ The Commission also ordered that “[t]he rates, charges, rules and regulations sought to be altered by the suspended amendments shall continue in effect until this proceeding has been disposed of or until the period of suspension and any extension has expired, unless otherwise ordered by the Commission.”⁶

CTIA does not disagree with the Commission’s decision to suspend the filings. The action was appropriate under the State Administrative Procedure Act (“SAPA”), since no notice had been provided to the public of any proposal to revise of the wireline attachment rates of the five utilities.⁷ Moreover, close scrutiny of the proposed wireline rates (and thus, indirectly, of the corresponding wireless attachment rates) makes sense in view of the fact that some of the rates, such as Con Edison’s, represent a substantial increase over the wireline rates previously in effect.

Nevertheless, as an unfortunate side effect of the Commission’s action, no *wireless* attachment rates will be put into effect by the five utilities on August 1, or indeed, at any time until the current suspension period ends some four months later. Because at least some of the companies have no rates in their current tariffs that are specifically applicable to wireless

⁵ *Suspension Order* at 3.

⁶ *Id.* at 4.

⁷ We note that no such problem was posed by telephone corporation filings made pursuant to the *Rate Order*, even those that changed wireline attachment rates to conform to the filers’ new wireless attachment rates. That is because § 102(2)(b)(xii) of SAPA excludes from the definition of a “rule” subject to the SAPA’s public notice requirements, “changes in a schedule [i.e., tariff] filed by a telephone corporation subject to the jurisdiction of the public service commission.”

attachments, wireless companies will remain subject for at least four additional months to the unjustified charges, delays, obstructive conduct, and other problems detailed in the petition that initiated this proceeding and in the parties' subsequent comments, and acknowledged by the adoption of the Commission's *Rate Order*.

There is no legal or policy reason why wireless attachment rates could *not* be put into effect for these five utilities on August 1. The basis for the Commission's concern about a change in wireline pole attachment rates — the fact that the public had not been notified pursuant to SAPA that the Commission was considering such action — does not apply to wireless attachment rates. A notice of proposed rulemaking under SAPA was published in the State Register in 2016, indicating the Commission's intention to review the application of its pole attachment rules to wireless communications providers.⁸ Moreover, putting wireless attachment rates into effect while its investigation of the wireline rates is ongoing will advance the purposes of the *Rate Order*, among which was establishing “[t]imely and affordable access to ubiquitous utility poles” in order to “facilitate investment and expansion in 5G networks in New York” and thus to “keep New York from lagging behind other states that have taken steps to improve the pole attachment process for wireless providers.”⁹

Fortunately, there is a remedy available that will enable the Commission to enforce the requirements of SAPA with respect to wireline attachment rates, while enabling wireless providers to attach to the poles of the five utilities starting on August 1, and “establish[ing] a standard and non-discriminatory approach for calculating wireless attachment rates in New

⁸ “Pole Attachment Rules,” I.D. No. PSC-25-16-00024-P, State Register (June 22, 2016). The notice set forth the fact that the Commission was considering, among other things, “[r]ate principles” for wireless pole attachments and, more generally, whether “the Commission’s existing pole attachment rules [should] apply to wireless communications providers.”

⁹ *Rate Order* at 22.

York.”¹⁰ That remedy consists of putting wireless attachment rates into effect on a temporary basis as of August 1, subject to true-up once permanent rates are set at the conclusion of the suspension period. The Commission has ample authority to take such action,¹¹ and CTIA requests that it do so. In order to ensure wireless/wireline parity, the wireless attachment rates should be set at the level of the five utilities’ current wireline attachment rates, supplemented by the rate application rules set forth in the *Rate Order* for wireless attachments. Additionally, the Commission should clarify the fact that the five utilities are required as of August 1 to comply with the provisions of the *Rate Order* related to dispute resolution and pole attachment/make-ready timeframes.

Respectfully submitted,

CTIA – THE WIRELESS ASSOCIATION

By: 

Benjamin Aron
Matthew DeTura

CTIA
1400 16th Street NW, Suite 600
Washington, D.C. 20036
(202) 736-3683
BAron@ctia.org
MDeTura@ctia.org

William M. Flynn
Harris Beach
677 Broadway
Albany, NY 12207
518.701.2711 Direct
WFlynn@HarrisBeach.com

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¹⁰ *Suspension Order* at 2.

¹¹ *See, e.g.*, Publ. Serv. L. §§ 92(e), 92(g), 97(1), 114.