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July 25, 2019

VIA HAND DELIVERY

Connie Graley
Executive Secretary
Public Service Commission
201 Brooks Street
Charleston, WV 25301

04:13 PM JUL 25 2019 EXEC SE

Re: Case No. 19-0551-T-GI
General Investigation into Adopting and
Implementing Rules Governing Pole Attachments
and Assumption of Commission Jurisdiction
Over Pole Attachments.

Dear Ms. Graley:

On behalf of CTIA, enclosed are an original and twelve (12) copies of the **Reply Comments of CTIA**.

Sincerely,

David B. Hanna
WV State Bar # 8813
dhanna@hannalawpllc.com

DBH/dh
Enclosures

cc: C. Howard, Esq.
L. Bouvette, Esq.
J. Roberts, Esq.

**Before the
PUBLIC SERVICE COMMISSION OF WEST VIRGINIA**

General Investigation into Adopting and)	
Implementing Rules Governing Pole)	Case No. 19-0551-T-GI
Attachments and Assumption of Commission)	
Jurisdiction over Pole Attachments)	
)	

REPLY COMMENTS OF CTIA

CTIA respectfully submits its reply comments in response to the Public Service Commission of West Virginia's ("Commission's") Commission Order ("Order") entered June 4th, 2019 in the above-captioned docket.

The overarching theme amongst nearly all the initial comments in this proceeding is that while Senate Bill 3 ("SB3") instructed the Commission to adopt the Federal Communications Commission's ("FCC's") pole attachment rules in their entirety,¹ the plain language of the bill, apparent legislative intent, and canons of statutory construction all strongly suggest that where adoption of certain sections would lead to illogical or unworkable results, it is the *substance* of those rules, rather than the *procedure*, that the Commission should focus on.

As demonstrated by Frontier in its initial comments, the FCC rules can be adopted almost completely by the Commission, with only minor procedural deletions to prevent conflicts and absurd results.² CTIA therefore reiterates its belief, as stated in its initial comments, that the Commission should adopt the FCC's rules and associated interpretations, as well as future FCC

¹ See West Virginia Code § 31G-4-4.

² See, e.g., Initial Comments of Frontier West Virginia Inc. and Citizens Telecommunications Company of West Virginia, d/b/a Frontier Communications of West Virginia, Case No. 19-0551-T-GI (July 15, 2019) at Appendix A.

amendments to its rules, to the extent they do not conflict with existing West Virginia statute, and use its discretion as the expert agency to resolve any conflicts.³

In that vein, the Commission should reject interpretations, such as that of Appalachian Power Company *et al.* (the “Electric Companies”),⁴ which go beyond the Commission’s authority by straying from the key points of the FCC’s rules the Legislature specifically mandated: *i.e.*, their rates, terms, and conditions.

As discussed in Commission Staff’s comments, SB3 clearly requires the Commission to “adopt the rates, terms and conditions of access to and use of poles, ducts, conduits, and rights-of-way as provided in 47 U.S. Code §224 and 47 C.F.R. §§1.1401-1.1415...” and the “dispute resolution process incorporated by reference in those regulations.”⁵ Further, Staff makes it clear that the Commission’s authority is limited to that granted to it by the Legislature, and “SB 3 ... limits the Commission’s authority” over the substantive portions of the FCC’s rules – namely, the “rates, terms, and conditions” of pole attachments.⁶

In spite of SB3’s very plain language, the Electric Companies suggest that the Commission somehow has the authority to pick and choose which FCC rules to implement. For example, apparently the Electric Companies believe that the Commission should consider re-allocation of pole attachment costs,⁷ ignoring the plain language of SB3 which explicitly ordered the Commission to adopt the FCC’s pole attachment rate methodologies.

³ See Comments of CTIA, Case No. 19-0551-T-GI (July 15, 2019) at 1.

⁴ See Joint Comments of Appalachian Power Company, Wheeling Power Company, Monongahela Power Company, and the Potomac Edison Company, Case No. 19-0551-T-GI (July 15, 2019) (“Electric Companies Comments”).

⁵ See Staff Initial Comments, Case No. 19-0551-T-GI (July 15, 2019) (“Staff Comments”) at 2.

⁶ See *Id.* at 3.

⁷ See Electric Companies Comments at 11.

The Electric Companies are flatly incorrect when they state that “it would not have made sense for the West Virginia Legislature to direct the Commission to regulate pole attachments, but at the same time limit that jurisdiction in a way that would merely duplicate the existing federal regulations.”⁸ SB3 clearly does just that on its face. Because the Commission is a creature of the Legislature, as discussed by Staff,⁹ the Legislature can limit the Commission’s jurisdiction in any way it pleases. The Legislature’s desire that the Commission, and not the FCC, should have jurisdiction over pole attachment complaints in West Virginia is in no way inconsistent with the Legislature’s acknowledgement that the FCC’s rates, terms and conditions for pole attachments have proven fair and efficient and, as dictated by SB3, must be adopted by the Commission.

Even if, as the Electric Companies note, some of the FCC orders and regulations are under review,¹⁰ the FCC rules as they are today must be the foundation on which the Commission builds its rules in conformance with statute. Furthermore, the vast majority of FCC pole attachment rules have already passed muster before courts of competent jurisdiction, up to and including the Supreme Court.¹¹ CTIA opposes any gutting and relitigation of the FCC’s wholly appropriate regime addressing the rates, terms, and conditions of attachment, which – in addition to being flatly against the Legislature’s instructions – is only likely to produce the same results while wasting all parties’ time and resources.

In the interest of encouraging deployment by keeping the Commission’s jurisdictional transition to as short a time as possible, CTIA recommends that the Commission open a formal

⁸ *Id.* at 5.

⁹ See Staff Comments at 3, citing Wilhite et al. v. Public Service Commission, et al., 149 S.E.2d 273, 150 W.Va. 747 (1966).

¹⁰ See Electric Companies Comments at 8-10.

¹¹ See, e.g., Arlington v. Fed. Comm’n Comm’n, 569 U.S. 290 (2013), Am. Electric Power Serv. Corp v. Fed. Comm’n Comm’n, 708 F. 3d 183 (D.C. Cir. 2013), *cert. denied*, 134 S. Ct. 118 (2013).

rulemaking as soon as reasonably practical, preferably with preliminary draft rules for consideration, so that interested parties can offer concrete, specific suggestions for consideration and Commission adoption.

CTIA
By Counsel

A handwritten signature in black ink, appearing to read 'D. Hanna', is written over a horizontal line.

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July 25, 2019

CERTIFICATE OF SERVICE

I, David B. Hanna, counsel for CTIA hereby certify that copies of the foregoing


Reply Comments of CTIA, have been served upon the following, by first class United

States mail, postage prepaid, this 25th day of July 2019:

Jacqueline Lake Roberts, Director
Consumer Advocate Division
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723 Kanawha Boulevard, East
Charleston, WV 25301

VIA HAND DELIVERY

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