



TOWN OF HEMPSTEAD  
DEPARTMENT OF BUILDINGS

One Washington Street, Hempstead, NY 11550  
Office: 516.489.5000 Fax: 516.483.1573

JOHN E. ROTTKAMP  
Commissioner

RITA A. FISHER  
Deputy Commissioner

JOHN NOVELLO  
Deputy Commissioner

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August 12, 2016

Honorable Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Three Empire State Plaza  
Albany, New York 12223-1350

Re: Case 16-M-0330 – Petition of CTIA-The Wireless Association for the Commission to Update and Clarify Wireless Pole Attachment Protections

Dear Secretary Burgess,

The Town of Hempstead respectfully submits the following comments in response to the CTIA petition, the Commission's additional questions in its Notice, and the comments of various other wireless and utility industry organizations and local governments.

The Town agrees with New York City and the Joint Utilities and others that the Commission can best continue the enhancement and deployment of broadband and wireless services in New York through its longstanding policy of facilitating local initiatives and agreements tailored to specific local circumstances.

The commenters generally acknowledge that pole attachments remain subject to traditional local law such as building and zoning codes. New York City explains how its extensive framework of local law has been developed to encourage rapid deployment of the latest and best technologies in harmony with a complex and crowded environment with many competing public and private interests. In rural counties upstate, the priority may still be extending basic coverage to people in sparsely populated areas. There is no reason to expect that one uniform state-wide rule for pole attachment costs, requirements and procedures would work well in such different local circumstances with different needs.

The Joint Utilities correctly point out that the Commission's longstanding rules and policies require the terms of pole attachment agreements to be negotiated locally between companies familiar with local needs and circumstances to conform with local laws. That approach has put New York in the forefront of expansion of broadband and wireless services and should not be abandoned unless the petition demonstrated that it was no longer working as intended.

The CTIA petition and supporting comments do not offer any concrete data or evidence of actual widespread obstruction of wireless pole attachments. They claim that local pole owners (typically utilities and sometimes local governments) "often" delay and obstruct wireless pole attachments on unreasonable pretexts because they want to "exclude wireless facilities outright." CTIA comments at 10. Most damning of all, they claim that the pole owners are even worse obstructionists than local building and zoning officials!

As one of those local officials, I believe I can help the Commission with what is really going on at the local level. I have been responsible for the Town's handling of wireless applications since 2007. Three wireless carriers made the same charges against the Town of Hempstead when it adopted a new wireless facilities ordinance in 2010: that the Town would use the ordinance to delay and obstruct wireless applications and deny them on pretexts in an effort to effectively prohibit wireless services. In fact, the Town has granted over 200 applications for wireless facilities without prohibiting any request since 2010, allowing the timely deployment of new 4G technology. When Town investigations of existing wireless facilities disclosed widespread violations of local permitting requirements, unsafe conditions, and violations of local, state and federal safety requirements, it successfully resolved them and has worked with the local wireless industry representatives within the framework of our ordinances to obtain code compliance. I believe that the Town ordinance and my efforts to work cooperatively with local wireless representatives has been an important factor in greatly reducing what was once intense opposition of some groups in the community to wireless facilities.

Despite this record, the wireless carriers at the national level are still pursuing their federal lawsuit against the Town on grounds that the ordinance effectively prohibits wireless services in the Town, a claim I'm confident that the courts will reject given the Town's record granting wireless applications and the full wireless coverage provided by the carriers in the Town.

From my perspective, the national CTIA and WIA are pursuing the same misguided adversarial attacks on local pole owners and officials here. The utility industry is right that these matters can best be addressed fairly to all concerned at the local level. If there is in fact an instance of pretextual delay and obstruction, it is my understanding that it can be resolved through the Commission's dispute resolution procedure. And if a pattern of such improper action emerges, I am confident that the Commission could recognize it and take appropriate corrective action. The Commission's current local approach, rather than the CTIA proposal to apply rigid uniform standards and procedures to localities as different as major metropolitan areas and rural upstate farming country, seems the right way to encourage deployment of next generation wireless services.

Respectfully submitted,

Mark Schwarz,  
Plans Examiner III  
Town of Hempstead  
Department of Buildings