

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

CASE 16-M-0330 - Petition of CTIA - The Wireless Association for the Commission to Update and Clarify Wireless Pole Attachment Protections.

NOTICE SEEKING COMMENTS

(Issued June 30, 2016)

On May 20, 2016, CTIA - The Wireless Association (CTIA), filed a petition requesting a determination that the Commission's existing pole attachment policies¹ apply to wireless communications providers. The petition recognizes that, in 2004, the Commission, adopted "a raft of procedures to streamline the attachment process, including accelerated timelines, standardized agreements and operating procedures, and a formal dispute resolution process." In this petition, CTIA specifically requests that the Commission determine that:

- Its regulation of pole attachments applies with equal force, in a non-discriminatory manner, to wireless facilities attached to utility poles;
- Detailed timelines, such as the 148-day Federal Communications Commission (FCC) mandated timeline, for entering into access agreements, completing the permitting and make-ready review processes, and granting final approval to attachers will be established and enforced;
- Disputes regarding the rates, terms, and conditions of pole attachments will be resolved by the Commission on an expedited, 45-day basis; and
- Rate principles for wireless attachments track those in place at other regulatory agencies, including the FCC, and assume that wireless attachers will occupy one-foot of pole space.

¹ Case 03-M-0432, Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues, Order Adopting Policy Statement on Pole Attachments (issued August 6, 2004).

The Commission has an overarching interest in ensuring access to essential telecommunications services, encouraging the deployment of advanced telecommunications capability, and supporting competition in the telecommunications industry. Access to utility poles and other facilities located in public rights-of-way, which are essential to providing competitive telecommunications services, including those provided over cellular and broadband networks, is uniformly and universally available at just and reasonable rates and terms, and is provided in a non-discriminatory manner. Accordingly, as recognized by CTIA in its petition, the Commission has asserted its jurisdiction over pole attachment issues pursuant to Public Service Law §119-a and consistent with 47 U.S.C. § 224(c), whereby a state is permitted to assert its authority to regulate pole attachments in place of the FCC.

The Commission is seeking comments on the petition filed by CTIA. In addition to the issues raised by CTIA, the Commission seeks specific comment on the following issues:

1. The applicability of existing make ready and attachment policies, procedures, and processes that pole owners currently apply to wireless facility attachment, including:
 - a. the attachment of pole-top antennas;
 - b. attachment of Distributed Antenna Systems (DAS) and small cell equipment in the electric space;
 - c. the use of "boxing", and/or extension arms to facilitate attachment of wireless equipment and facilities on poles; and
 - d. vertical connectivity.
2. Whether the Commission's existing pole attachment policies should be applied to wireless attachments without making special accommodations or significant changes in order to address the petitioner's request, and what aspects of existing policy should be applied or modified to accommodate wireless attachments, including:
 - a. facilitating attachment techniques and equipment listed in question 2;

- b. mechanisms to enforce timeline requirements for make ready and construction;
 - c. mechanisms to enforce timely dispute resolution; and,
 - d. under what conditions would new poles be required to satisfy either mid span or pole top attachment requests by wireless carriers?
3. What unique cost considerations are associated with wireless pole attachments, including:
- a. whether existing cost methodology for telecommunications attachments should be applied to wireless attachments, or what modifications are necessary to accommodate such;
 - b. should the presumptive minimum amount of space used by a wireless attachment be one foot;
 - c. should the 'usable space' component used in the formula for calculating wireless facility attachment include only uses which exclude use of that space by others; and,
 - d. should wireless attachments be charged incremental rent for non-exclusionary pole-space used by facilities located between points of attachment, such as risers, which do not prevent other attachments.
4. The likely impact on the deployment of advanced wireless services (i.e., mobile broadband, 5G) if the pole owners seek to significantly restrict the attachment of small cell, DAS (distributed antennae systems) and pole top equipment.

The full text of the petition may be viewed online at the Department of Public Service web page: www.dps.ny.gov by searching case 16-M-0330. The Commission seeks initial comments by August 1, 2016 and reply comments by August 15, 2016.

NOTICE is hereby given that comments may be submitted to the Secretary by e-filing through the Department's Document and Matter Management System (DMM),² or by e-mail to the Secretary at secretary@dps.ny.gov. Those unable to file electronically may mail or deliver their comments to the Hon.

² How to Register with DMM, <http://www.dps.ny.gov/e-file/registration.html>.

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

Information and instructions related to becoming a party, subscribing to the service list, or otherwise monitoring the status of this case can be found on the Department's website at:

<http://documents.dps.ny.gov/public/MatterManagement/RequestAPStatus.aspx>. All comments submitted to the Secretary will be posted on the Commission's Web site and become part of the official case record.

(SIGNED)

KATHLEEN H. BURGESS
Secretary