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November 28, 2018

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Assumption of Commission Jurisdiction Over Pole Attachments  
from the Federal Communications Commission  
Docket No. L-2018-3002672

Dear Secretary Chiavetta:

Pursuant to the Commission's Order entered on July 13, 2018 in the above-captioned docket, the Notice of Proposed Rulemaking published in the *Pennsylvania Bulletin* and Secretarial Letter dated November 7, 2018, enclosed please find the Reply Comments of CenturyLink.

Please do not hesitate to call me with any questions or concerns. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Sue Benedek".

Sue Benedek

ZEB/jh

cc: Colin W. Scott (*via electronic mail*)  
Shaun A. Sparks (*via electronic mail*)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Assumption of Commission Jurisdiction :  
Over Pole Attachments from the Federal : L-2018-3002672  
Communications Commission :

**REPLY COMMENTS OF CENTURYLINK**

**I. INTRODUCTION**

On October 28, 2018, CenturyLink submitted Comments pursuant to the Pennsylvania Public Utility Commission (“Commission”) Notice of Proposed Rulemaking (“NOPR”) regarding proposed rules to assume jurisdiction over pole attachments.<sup>1</sup> CenturyLink submits these Reply Comments in response to certain Comments filed by other entities in this docket.<sup>2</sup>

CenturyLink applauds the Commission for undertaking the effort to examine changes in policy and its processes. CenturyLink thanks the Commission for the opportunity to provide further input in reply on the issue of pole attachments.

**II. REPLY COMMENTS TO COMMENTS SUBMITTED BY PARTIES**

Comments submitted in this docket overwhelmingly support the Commission’s proposal to assume jurisdiction over pole attachments. If the Commission adopts final regulations, it will join twenty other states that have already undertaken reverse preemption of pole attachments. The various Commentators however appear to differ as to: (1) the extent to which the Commission follows the FCC’s regulations as it exercises reverse preemption; and (2) the processes to be employed by the Commission to resolve disputes.

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<sup>1</sup> CenturyLink includes all regulated entities in Pennsylvania: Broadwing Communications, LLC; CenturyLink Communications, LLC; Global Crossing Local Services, Inc.; Global Crossing Telecommunications, Inc.; Level 3 Communications, LLC; Level 3 Telecom Data Services, LLC; The United Telephone Company of Pennsylvania LLC; TelCove Operations, LLC; and WilTel Communications, LLC.

<sup>2</sup> CenturyLink’s lack of a reply to specific comments and claims should not be construed to have any substantive import.

### **A. Scope of reverse preemption and the FCC's regulations.**

OCA suggests that the Commission follow the FCC's rules "for now" but implement state specific rates and regulations in the future.<sup>3</sup> Other Commentators recommend adding language to the Commission's proposed regulations to allow the Commission to deviate from the FCC's regulations.<sup>4</sup>

CenturyLink supports this Commission's assumption of jurisdiction over pole attachments and continues to maintain that the Commission should not assert jurisdiction in ways that go beyond the FCC's rules and regulations. The FCC's regulations have been fully vetted and new FCC regulations will be in place once legal processes are finalized. The proposed regulations are straight-forward and sufficiently flexible to allow the Commission to coordinate with the FCC.

Comments proposing language changes to require deviation from the FCC's regulations or to imply wide discretion to depart from the FCC's regulations should be rejected.<sup>5</sup> To reverse preempt in ways that go beyond the FCC merely invites further litigation of issues rather than provide an avenue for the prompt resolution so pole attachment issues.

The proposed regulations need not recognize that the "Commission, unlike the FCC, has the primary responsibility to ensure the safety and reliability of pole distribution systems."<sup>6</sup>

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<sup>3</sup> OCA Comments at p. 3.

<sup>4</sup> PECO Comments at pp. 2, 12. *See also*, ExteNet Comments at p. 8 (proposing language for a "party seeking a generally applicable deviation from those [FCC] rates, terms and conditions of access to and use...to the full extent provided...").

<sup>5</sup> PECO Comments at pp. 2, 3 (proposing language to Section 77.5(c) for the Commission "to deviate from those [FCC] rulings to make its own determinations or whether rates, terms, and conditions of pole attachments are just and reasonable."). *See also*, Central Bradford Progress Authority at p. 4 (Initial adoption of the FCC's rules is an appropriate starting point. However, CBPA goes on to recommend language changes to proposed Section 77.5 to allow the Commission to go beyond the FCC to "adequately address the technical aspects and regulatory framework of pole attachment in Pennsylvania.").

<sup>6</sup> *Id.*, at pp. 2, 12, and 4 (proposing language requiring the Commission "to consider compliance with applicable safety standards and maintenance and reliability of electric distribution, telecommunications, and cable services.").



Pole safety issues certainly should not be taken out of consideration or readily dismissed. It goes without saying that issues of public safety and local right-of-way also are matters within the areas of interest for state and local governments, regardless of the FCC regulations. To the extent any pole owner has a pole safety concern, through reverse preemption as proposed by the Commission, that pole owner would have an avenue for resolution of its concern and thereby could quickly get resolution of its concern through the Commission's pole process. The Commission's proposed pole regulations are flexible to allow an entity seeking relief of a real-time pole safety concern to include that issue in the dispute resolution process.

The most important aspect of the proposed regulation is that the Commission will be providing an expeditious avenue for dispute resolution for both pole owners and pole attachers. Such an exercise of reverse preemption by the Commission should benefit and encourage broadband development in Pennsylvania.

There is no need to expend valuable Commission resources to develop state-specific regulations or to deviate from the FCC's regulations for doing so could compromise the expeditious resolution of pole attachment disputes. CenturyLink maintains that the Commission should assume jurisdiction over poles and pole attachments and do so based upon the FCC's regulations.

#### **B. Processes to be undertaken by the Commission.**

Several Commentators have suggested workshops, collaboratives or working groups.<sup>7</sup> While CenturyLink does not believe that adoption of the FCC requirements requires workshops, if the Commission desires to undertake a workshop, it should do so only if the workshop is limited in scope, specifically: (1) how best to implement the FCC requirements;

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<sup>7</sup> See, e.g., MAW Communications Comments at p. 2; First Energy Comments at p. 13; PECO Comments at p. 16.

and (2) how best to implement a process by this Commission for handling of disputes – whether that be Alternative Dispute Resolution as suggested by Full Service Networks, or formal proceedings, or New York type collaboratives. Workshops that aim to go beyond the FCC’s framework should be rejected.

CBPA further suggests a “state-specific advisory Committee” which could provide recommendations to the Commission along with annual reports.<sup>8</sup> CenturyLink does not believe that pole attachment issues in Pennsylvania are significantly different than nationwide. Thus, CenturyLink does not see value in the proposal.

From CenturyLink’s standpoint, the concern with any state specific collaborative, workshop, or dispute resolution or mediation process is whether the process includes all pole owners. Municipalities and cooperative pole owners are exempt from the FCC’s pole attachment rules. PTA suggests that the municipals and cooperatives should be included in any working group that the Commission convenes.<sup>9</sup> CenturyLink concurs with PTA. CenturyLink on occasion has experienced difficulties working with certain electric cooperatives regarding pole issues. If the member companies of the Pennsylvania Rural Electric Association (“PREA”) are indeed “committed to working with interested stakeholders,”<sup>10</sup> then PTA’s proposal could be a meaningful effort for more comprehensive resolution of pole attachment issues across the Commonwealth.

PREA also states “that no telecommunications providers have proposed any viable options or plans to provide broadband service in cooperative service areas.”<sup>11</sup> CenturyLink disagrees. CenturyLink also disagrees with OCA’s view that broadband speed definitions

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<sup>8</sup> Central Bradford Progress Authority at p. 4.

<sup>9</sup> PTA Comments at p. 4.

<sup>10</sup> PREA Letter Comments at p. 2.

<sup>11</sup> *Id.*

under the FCC's CAF II program or under Pennsylvania Act 183 are implicated by the proposed rulemaking.<sup>12</sup>

First, CenturyLink is fully participating in the FCC's Connect America Fund ("CAF") Phase II program. The FCC's target at the end of 2017 was deployment of 40% of the committed units. CenturyLink far exceeded that target with broadband enablement to over 27,000 households or 90% of the CAF II units for the Company in Pennsylvania. Second, broadband speeds are a function of the electronics, logistics, and type of facilities utilized and have nothing to do with poles and pole attachments. The assumption of jurisdiction over pole attachments and the expedited resolution of pole attachment disputes among all pole owners does not involve broadband speeds, as OCA notes.<sup>13</sup> The Commission need not overcomplicate reverse preemption as envisioned in the proposed regulations.

CenturyLink fully supports meaningful facilitation of broadband access across Pennsylvania through prompt dispute resolution processes. Those dispute resolution processes, in CenturyLink's view, should include poles owned by non-Commission regulated entities such as municipalities and electric cooperatives. CenturyLink thus supports Duquesne's Comments suggesting that the Commission should consider how to handle disputes where it has jurisdiction over only one party to a pole attachment agreement.<sup>14</sup>

The Central Bradford Progress Authority ("CBPA") also suggests imposition of a "modest fee" upon complainants, such as a flat filing fee of \$500.00, plus an additional fee for each implicated pole subject of the dispute (e.g., \$1.00 per pole).<sup>15</sup> CenturyLink disagrees. The proposal effectively creates a disincentive to come to the Commission to resolve a dispute.

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<sup>12</sup> OCA Comments at p. 6.

<sup>13</sup> *Id.*

<sup>14</sup> Duquesne Comments at p. 5.

<sup>15</sup> CBPA at p. 5.



For example, the proposed fee could be significant portion of what a company with a dispute pays per pole attachment. The proposal seems contrary to the Commission's stated purpose of undertaking reverse preemption and should be rejected.

Finally, Comments request that the Commission establish a data base or registry for pole attachments and investment.<sup>16</sup> As CenturyLink previously addressed, these proposals should be rejected.<sup>17</sup> Creation and maintenance of a database is exceedingly time intensive, costly and therefore outweighs any perceived meaningful benefit.

Other Comments seek standard pole attachment agreements or tariffs.<sup>18</sup> The process of developing standard agreements and tariffs could delay the Commission's implementation of providing an avenue for the prompt resolution of pole attachment disputes.<sup>19</sup> The Commission's time and effort will be better spent on the expeditious resolution of actual disputes.

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<sup>16</sup> OCA Comments at p.7. *See also*, Central Bradford Progress Authority at p. 6.

<sup>17</sup> CTL Comments at p. 6.

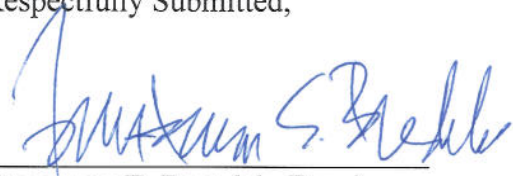
<sup>18</sup> MAW Communications at p. 2; NetSpeed LLC at p. 4. *See also*, Crown Castle at p. 10.

<sup>19</sup> Standardizing arrangements between pole owners and attachers raises timing issues. Notably, existing agreements would have to be coordinated with the new standard agreement or tariff so as to avoid creating new disputes.

### III. CONCLUSION

CenturyLink appreciates the opportunity to submit these Reply Comments. CenturyLink supports the Commission's proposed regulations to adopt the FCC's pole attachment rules to assert reverse preemption by adopting the FCC's regulations.

Respectfully Submitted,



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