

**CHAPTER 77. POLE ATTACHMENTS**

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**Authority**

The provisions of this Chapter 77 issued under the Public Utility Code, 66 Pa.C.S. §§ 313, 314, 501, 701, 1301 and 1501, unless otherwise noted.

**Source**

The provisions of this Chapter 77 adopted January 17, 2020, effective January 18, 2020, 50 Pa.B. 469, unless otherwise noted.

**§ 77.1. Statement of purpose and preemption.**

This chapter exercises reverse preemption of the jurisdiction of the Federal Communications Commission over pole attachments under section 224(c) of the Pole Attachments Act (47 U.S.C. § 224(c)) to improve the ability of persons and entities to utilize pole attachments within this Commonwealth and subject to regulation under 47 U.S.C. § 224 and the regulations promulgated thereunder at 47 CFR Chapter I, Subchapter A, Part 1, Subpart J (relating to pole attachment complaint procedures).

**§ 77.2. Applicability.**

(a) This chapter applies to all utility poles, ducts, conduits and rights-of-way under this Commission's jurisdiction and subject to 47 U.S.C. § 224 and 47 CFR Chapter I, Subchapter A, Part 1, Subpart J (relating to pole attachment complaint procedures) as those regulations may be amended, but excluding any person or entity expressly exempted by 47 U.S.C. § 224(a)(1) and 47 CFR 1.1402(a) (relating to definitions).

(b) For the purposes of this chapter, the Commission will apply the definition of "pole attachments" as codified in section 224(a)(4) of the Pole Attachments Act (47 U.S.C. § 224(a)(4)), the definition of "utility" as codified in 47 U.S.C. § 224(a)(1), and the definition of "telecommunications carrier" as codified in 47 CFR 1.1402(h).

**§ 77.3. Commission oversight.**

(a) This chapter establishes the Commission's regulatory authority over the rates, terms and conditions of access to and use of utility poles, ducts, conduits and rights-of-way to the full extent of this Commission's jurisdiction and author-

ity and as provided for in 47 U.S.C. § 224 for pole attachments but excluding any person or entity expressly exempted by 47 U.S.C. § 224(a)(1) and 47 CFR 1.1402(a) (relating to definitions) as of 60 days after the effective date of this chapter.

(b) The Commission has the authority to consider the interests of the subscribers of the services offered by means of pole attachments, as well as the interests of the consumers of the utility services.

**§ 77.4. Adoption of Federal Communications Commission regulations.**

(a) This chapter adopts the rates, terms and conditions of access to and use of utility poles, ducts, conduits and rights-of-way to the full extent provided for in 47 U.S.C. § 224 and 47 CFR Chapter I, Subchapter A, Part 1, Subpart J (relating to pole attachment complaint procedures), inclusive of future changes as those regulations may be amended.

(b) For an amendment or modification under paragraph (a) that takes effect in Pennsylvania by operation of law under paragraph (c) or (e), the Commission will publish notice of the effective date in Pennsylvania in the *Pennsylvania Bulletin*.

(c) Notwithstanding paragraph (b), an amendment or modification under paragraph (a) shall take effect 60 days after the effective date of the Federal change unless the Commission publishes a notice in the *Pennsylvania Bulletin* stating that the amendment or modification may not take effect.

(d) A Commission notice issued under paragraph (c) will provide an opportunity for public comment on the Federal change. Comments may be filed with the Commission no later than 15 days following publication of the Commission notice in the *Pennsylvania Bulletin*.

(e) An amendment or modification under paragraph (a) that is the subject of a Commission notice pursuant to paragraph (c) shall become effective 60 days after publication of the notice in the *Pennsylvania Bulletin* unless the Commission determines otherwise for good cause shown.

**§ 77.5. Resolution of disputes.**

(a) Persons and entities subject to this chapter may utilize the mediation, formal complaint and adjudicative procedures under 52 Pa. Code Chapters 1, 3 and 5 (relating to rules of administrative practice and procedure; special provisions; and formal proceedings) of the Commission's regulations to resolve disputes or terminate controversies.

(b) Parties before the Commission under this chapter shall employ the procedural requirements in 52 Pa. Code Chapters 1, 3 and 5, Title 66 Pa.C.S. (relating to the public utility code), and related Commission precedent except where silent, in which case 47 U.S.C. § 224 or 47 CFR Chapter I, Subchapter A, Part 1, Subpart J (relating to pole attachment complaint procedures) will control.

(c) When exercising authority under this chapter the Commission will consider Federal Communications Commission orders promulgating and interpreting Federal pole attachment rules and Federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions of 47 U.S.C. § 224 and 47 CFR Chapter I, Subchapter A, Part 1, Subpart J.

(d) The Commission will take final action consisting of an order that will issue within 180 days of the filing of a formal complaint initiating a pole attachment dispute as required by 47 U.S.C. § 224(c)(3)(B)(i) except for good cause shown. If the Commission determines that a final action will not issue within 180 days, the Commission will issue a final action consisting of an order no later than 270 days from the filing of the formal complaint as permitted by 47 U.S.C. § 224(c)(3)(B)(ii).

#### **§ 77.6. Voluntarily negotiated agreements.**

(a) This chapter does not prevent or limit the ability of a pole owner and an attaching entity to enter into a voluntarily negotiated written agreement regarding the rates, terms and conditions for pole attachment access.

(b) Voluntarily negotiated agreements are preferred and encouraged by the Commission.

(c) This chapter does not supersede or modify any lawful rate, term or condition of a voluntarily negotiated written agreement.

#### **§ 77.7. Working Group.**

(a) *Purpose.* The Commission will establish a pole attachment working group to ensure that the Commission remains apprised of industry concerns, that Federal amendments are properly vetted before becoming effective in this Commonwealth and that dispute resolution processes are efficient and effective.

(b) *Creation of Working Group.* The Commission's Law Bureau will establish the Working Group, in coordination with the Commission's Bureau of Technical Utility Services and the Office of Special Assistants, no later than 30 days from the effective date of this chapter.

(c) *Membership.* The Commission will invite persons and entities that it determines to be in the public interest to participate in the Working Group including, but not limited to, the following:

- (1) Commission staff from the Law Bureau, Technical Utility Services, and the Office of Special Assistants.
- (2) Pole owners.
- (3) Pole attachers.
- (4) The statutory advocates.
- (5) Interest groups, including the Pennsylvania Telephone Association, the Broadband Cable Association of Pennsylvania, and the Pennsylvania Office of Broadband Initiatives or their respective successor persons or entities.

(d) *Meeting Frequency.* The Working Group shall convene at least once annually but may convene at other times, as the Working Group deems necessary or at the direction of the Commission.

(e) *Duties.* The Working Group shall:

(1) Monitor and advise the Commission on Federal and State pole attachment issues, including advising the Commission on whether to adopt any future change to the FCC's pole attachment rules.

(2) Provide an ongoing forum for stakeholders, pole owners and pole attachers to discuss issues and ideas regarding effective pole attachment regulations.

(3) Evaluate the effectiveness and efficiency of Commission complaint, mediation and dispute resolution processes.

(f) *Reporting.* The Law Bureau will annually report its findings on issues developed in the pole attachment Working Group along with any recommended Commission action as appropriate.

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