

FCC Plans to Speed Broadband Deployment Through One-Touch Make-Ready Fastlane for Pole Attachments

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After a year of [heated debate](#) between pole owners and service providers, the FCC is poised to adopt a one-touch make-ready ("OTMR") process for the "vast majority" of pole attachments at its meeting on August 2, 2018. Late last week, the FCC released a draft [Order and Declaratory Ruling](#) that would implement a streamlined process for service providers to bypass certain pole owner requirements in order to gain access to poles to attach new facilities. Chairman Pai has touted the new procedure as hastening broadband deployment by allowing for faster, cheaper pole attachments. The FCC expects significant growth in pole attachments as service providers install the small cells necessary to support 5G technologies.

Specifically, under the new OTMR regime, new attachers with "simple" wireline attachments (i.e., do not require relocation of existing equipment or service outages) would be allowed to perform and control most of the work to prepare a pole to hold new facilities without relying on the pole owner. The rule will apply to pole attachments governed by federal law, which applies in thirty states that do not regulate pole attachments themselves. The draft emphasizes that its new OTMR process is not a requirement and that parties are welcome to negotiate alternative solutions. The FCC also plans to codify its existing precedent that utilities cannot require an attacher to seek utility approval before "overlashing" new facilities to current attachments, but utilities can require prior notice before the attacher does such work. The FCC also plans to eliminate disparities between the pole attachment rates paid by incumbent telecommunications carriers versus cable and other telecommunications attachers. In particular, the agency intends to establish a presumption for newly-negotiated pole attachment agreements between incumbent carriers and utilities that an incumbent carrier will receive comparable pole attachment rates, terms, and conditions as a similarly-situated non-incumbent carrier or a cable television system providing telecommunications services.

The Declaratory Ruling portion of the draft item clarifies the FCC's interpretation of [Section 253\(a\)](#) of the Communications Act as prohibiting a state or locality from adopting any moratoria on telecommunications infrastructure deployment. This federal preemption would apply not only to express moratoria, such as laws or regulations prohibiting deployments, but also *de facto* moratoria that can "effectively halt or suspend" consideration of telecommunications service permits or applications without explicitly banning them. The FCC explained that actions on the part of a state or locality that merely involve some delay do not represent preempted moratoria; instead the action would need to result in a significant or unreasonably long wait.

Rulemakings directed at accelerating broadband deployment generally have drawn bipartisan support and have been a hallmark of the Pai FCC [from the beginning](#). The Chairman clearly sees reducing barriers to pole access for new attachments as critical to densifying networks in advance of

5G deployments. However, utilities and other pole owners likely will continue their pushback against the FCC OTMR proposals, seeking additional checks to ensure pole attachments conform to safety standards.