

## FCC SEEKS COMMENT ON PETITIONS FOR RECONSIDERATION OF POLE ATTACHMENTS ORDER

Various cable providers and electric utilities have filed petitions for reconsideration of the Federal Communications Commission's May 20, 2010 *Pole Attachments Order*. The Commission seeks comment on the issues raised by the petitioners, including: whether permitting utilities to refuse to change-out utility poles would be considered a discriminatory practice, whether the Commission's non-discrimination requirement with regard to space-saving techniques only applies to communications wires, and clarification of the rights of individual owners of jointly-owned poles to limit certain attachment techniques.

The *Pole Attachments Order*, issued as part of the National Broadband Plan, addressed the Commission's just and reasonable standard for the rates, terms, and conditions of pole attachments. The *Order* (1) clarified that communications service providers may use space and cost-saving techniques for pole attachments, so long as they are consistent with techniques used by the pole owners; (2) addressed better utilization of existing physical space on poles in lieu of requiring full pole replacement; and (3) held that pole owners must grant access to poles and perform "make-ready" work in a timely manner.

Four petitions were filed for reconsideration of the *Order*. A group of cable operators addressed the replacement of existing poles. They explained that pole owners might rely on the Commission's *Order* to refuse to replace an existing pole where replacement is necessary for existing and prospective attachers. They further contended that the Commission's description of pole replacement as an "extreme" practice was inaccurate, as the procedure is routine, necessary and well-supported as a matter of policy and law.

A second petition filed by the Coalition of Concerned Utilities requested that the Commission clarify its position with regard to "nondiscriminatory" use of attachment techniques, *i.e.*, that an attacher may use space-saving techniques previously employed by the pole owner. In particular, the Coalition requested that the Commission clarify its rules to state that: (1) the nondiscrimination requirement only applies where the pole owner has itself used, or has permitted others to use, boxing, bracketing and other attachment techniques for *communications* wires in the communications space; (2) the pole owner should be permitted to enforce new boxing or arm installation requirements, regardless of whether the owner required them in the past; and (3) for jointly-owned poles, each owner should be permitted to limit the extent to which boxing, bracketing or other attachment techniques are allowed.

A separate petition was filed by the Florida Investor-Owned Electric Utilities requesting that the Commission clarify that it does not intend that common electric distribution construction configurations in the electric supply space trigger an attacher's right to use techniques such as boxing and bracketing. Similar to the Coalition's petition, the Utilities also requested that the nondiscrimination requirement only apply to space-saving techniques for communications wires

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in the communication space. Oncor Delivery Company LLC filed a supporting petition and further argued that the Commission does not have the authority to adopt any of the rules set forth in the *Pole Attachments Order*.

Oppositions to the petitions should be filed 15 days after publication of the Public Notice in the Federal Register, and replies should be filed 25 days after publication in the Federal Register.

If you have any questions, please contact [Rebecca Jacobs](#), [Mark Palchick](#) or any member of the firm's [Communications Law Group](#).

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