FCC's Pole Attachment Order: Safety Impacts to Electric Utilities

UPSA
UTILITY PUBLIC SAFETY ALLIANCE

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August 3, 2018 FCC Order

Rule(s)	Effective Date
ILEC Complaints	March 2019
One-Touch Make Ready ("OTMR")	May 2019
Self-Help in Supply Space	May 2019
Overlashing	May 2019
Pre-Existing Violations	May 2019

Why is the FCC Involved *AT ALL*?

- The Pole Attachments Act (47 U.S.C. § 224)
- 1978 Act gave the FCC jurisdiction to ensure that "rates, terms and conditions" for pole attachments were "just and reasonable"
- 1996 Amendments made access *MANDATORY*
- Applies in any state that has not "certified" jurisdiction over pole attachments

“Certified” States

Arkansas	Massachusetts
Alaska	Michigan
California	New Hampshire
Connecticut	New Jersey
Delaware	New York
District of Columbia	Ohio
Idaho	Oregon
Illinois	Utah
Kentucky	Vermont
Louisiana	Washington
Maine	

*Pennsylvania and West Virginia in progress

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One-Touch Make-Ready

47 CFR § 1.1411(j)

OTMR: What is it and Why did the FCC Adopt it?

- OTMR is a process by which new attachers can perform **simple make-ready** within the communications space with “one touch”
- **Purpose** of the rule is to eliminate “gates” for simple make-ready projects
- **Motivated** by anti-competitive delays by existing communications attachers

OTMR: Key Concepts & Terms

- Available *only* to CATV and non-ILEC telecoms
- Applicable to "**simple make-ready**"—make-ready in the communications space where existing attachments can be rearranged without reasonable expectation of service outage or facility damage
- Process starts with a "**complete application**"—an application that provides the utility with the information necessary under its procedures to make an informed decision on the application

OTMR: High-Level Process/Steps

- Step 1: ***Survey***
- Step 2: Review Application for Completeness
- Step 3: Substantive Review of Application
- Step 4: Make-Ready (simple make-ready ONLY)
- Step 5: ***Post-Inspection***

OTMR: Approved Contractors

- Pole owner not required to maintain list of approved contractors for survey or simple make-ready work (but “encouraged” to do so)

- To designate or not to designate? That is the question.
  - Survey
  - Make-Ready Work

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Self-Help in Supply Space

47 CFR § 1.1411(i)

Supply Space Self-Help: What is it and What *isn't* it?

- Allows attachers to perform make-ready *above* the communications space through an approved contractor when utility fails to meet its deadline for completion

- Unlike simple make-ready in the OTMR rule, a utility *is* required to maintain list of approved contractors for make-ready work in the supply space

- **DOES NOT APPLY TO POLE CHANGE-OUTS**

Supply Space Self-Help: How did we get there?

- 2011 FCC Order first implemented make-ready deadlines
  - Allowed self-help only in the communications space
  - Remedy for failure to meet supply space deadline was to file a complaint

- 2018 FCC Order: "After further consideration and in light of the national importance of a speedy rollout of 5G services, we amend our rules to allow new attachers to invoke the self-help remedy for work above the communications space…."

Supply Space Self-Help: Risk Management

- Completion of make-ready work within the time limits required by the FCC's rule

- Exercise caution in designation of approved contractors (and maintain "reasonably sufficient" list)

- Post-Inspection Process

- Challenges to supply space self-help rule:
  - 9th Circuit appeal
  - Petition for reconsideration in FCC

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Overlashing

47 CFR § 1.1415

Overlashing: What is it and why is it a problem?

- Physically affixing an additional fiber or cable to the existing messenger strand
- …and then physically affixing another fiber or cable to the bundle
- …and then physically affixing yet another fiber or cable to the bundle
- Cumulative effect can create massive bundles with significant wind/ice loading implications

Overlashing: The History and the Rule

- For many years, there was conflict over whether a utility could even require advance notice of overlashing
- New rule **finally** makes clear that pole owner can require advance notice (up to 15 days)
- But new rule also hamstrings ability to engineer the proposed overlash through:
  - limitations on data requirements
  - restrictions on cost recovery

Overlashing: Risk Management

- Require the data you need to properly evaluate the overlash proposal
  - Some attachers may understand importance of proper engineering notwithstanding their perceived regulatory rights
- Where does pole loading analysis fit into the picture?
- Post-Inspection Process
- Challenges to overlashing rule:
  - 9th Circuit appeal
  - Petition for reconsideration in FCC

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Pre-Existing Violations

47 CFR § 1.1411(c)(2) & (h)(2)
47 CFR § 1.1415(b)

Pre-Existing Violations: The Rules and the Purpose

- Background: a three-way dilemna
- The rules generally prohibit:
  - Denying access based on pre-existing violations
  - Requiring the new attacher to pay cost of correcting pre-existing violations
- FCC's goal was to prevent pre-existing third-party violations from delaying the access process
- FCC stopped just short of forcing electric utilities to bear the cost of correcting existing violations

Pre-Existing Violations: Risk Management

- Section 224(f)(2) of the Pole Attachments Act allows an electric utility to deny access "where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes"

- Potential pathways to protecting system integrity with equitable cost allocation

- Challenges to pre-existing violations rules:
  - 9th Circuit appeal
  - Petition for reconsideration in FCC

QUESTIONS ?

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