

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: September 1, 2021
TO: Adam J. Teitzman, Commission Clerk, Office of Commission Clerk
FROM: Adria Harper, Office of the General Counsel *ahp*
RE: Docket No. 20210137-PU

Please file the attached email as correspondence in the docket file listed above.

Thank you.

Attachment

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COMMISSION
CLERK

Adria Harper

From: John Herron <johnherron@me.com>
Sent: Wednesday, September 01, 2021 8:58 AM
To: Office of Chairman Clark; Adria Harper; Kathryn Cowdery
Subject: Docket No. 20210137-PU, Proposed Adoption of Rule 25-18.010, F.A.C., Pole Attachment Complaints

John Herron

1900 East La Rua Street

Pensacola, FL 32501

September 1, 2021

Florida Public Service Commission

Commissioner Chairman Gary F. Clark

2540 Shumard Oak Boulevard

Tallahassee, FL 32399-0850

Commissioner Chairman Gary F. Clark, at Commissioner.Clark@psc.state.fl.us

Adria Harper, at aharper@psc.state.fl.us

Kathryn G.W. Cowdery, at kcowdery@psc.state.fl.us

U.S. MAIL and EMAIL

Re: Docket No. 20210137-PU, Proposed Adoption of Rule 25-18.010, F.A.C., Pole Attachment Complaints

Dear Chairman Clark:

In Pensacola, many 5G and 4G/5G wireless facility attachments are being installed in front of residential homes without any notice to residents. Often, these installments are near homes potentially eligible for the National

Historic Registry of Places and near environmentally sensitive areas where migratory birds and other sensitive species nest.

In United Keetoowah Band of Cherokee Indians in Okla., et al. v. FCC, 933 F.3d 728 (D.C. Cir. 2019), the D.C. Circuit Court of appeals addressed ‘small cells’ like those being installed in Pensacola. The Court rejected representations that ‘small cells’ are “primarily pizza-box sized” antennas and radiate like “Wi-Fi routers”, and reasoned: “small cells are typically mounted on much bigger structures That makes them crucially different from the consumer signal boosters and Wi-Fi routers to which the FCC compares them.”

I respectfully ask the Florida Public Service Commission to include pole attachment complaint provisions that allow complaints from consumers, nearby property owners, Florida residents and/or consumers, and allow for environmental challenges including Environmental Assessments and all other appropriate environmental reviews, as prescribed by the National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321 et seq. (“NEPA”). Second, I ask the Florida Public Service Commission to allow for historic review and all other appropriate review challenges as prescribed by the National Historic Preservation Act of 1966, 54 U.S.C. §§ 300101 et seq. (“NHPA”). Third, I ask the Florida Public Service Commission to allow for challenges when municipal pole attachment applications are incomplete.

At today’s Workshop, please consider the following:

- Allow Florida residents and citizens to file complaints.
- Ensure collocation agreements are readily available to the public and conspicuously published on municipal websites where the poles are constructed in public rights-of-way.
- Establish and appropriate burden of proof for residents for environmental or historical complaints to be considered, a requirement to show substantial evidence of nature or wildlife sensitivities to warrant environmental impact analysis, or substantial evidence of potential eligibility for national historic registration eligibility.
- Establish proper threshold for what constitutes a “substantial change”, and minimize exceptions. Establish the meaning of the term in a way that exerts the full local authority available on behalf of local citizens and residents, and thwarts attempts to undermine local authority by re-interpreting the term and changing regulatory interpretations to further limit local government control. (*i.e.*, FCC Docket 19-250).
- Ensure early notice to citizens and residents who reside within 250 feet of proposed attachments when pole attachments are planned, at the earliest moment - when interests are expressed by to allow sufficient time for citizens to analyze planned attachments.
- Consider D.C. Circuit Court of Appeals Decision in Environmental Health Trust, et al. v. FCC, USCA Case No. 20-1025.
- Require WARNING, CAUTION or NOTICE signage for attachments, as appropriate, whenever FCC radiofrequency emissions standards at the emitters are exceeded at any distance from the emitters to warn those not trained in safety and mitigation measures. Provisions should favor warning signs, rather than caution or notice signs, and are justified under the precautionary principle. Signs should be conspicuously displayed.
- Require a certified non-interference statements – certifying antennas will not unnecessarily interfere with customary transmission or reception of radio, television and services enjoyed by nearby residences.

Thank you for considering my public input.

Sincerely,

John Herron

(858) 699-4903; johnherron@me.com