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APPEARANCES

Charles Dudley & Floyd Self - Florida Internet & TV  
Van Buys & Rebecca Hussey - CrownCastle, LLC  
Scott Thompson - Comcast  
Jeffrey Wahlen & Georgo Cox - TECO  
Matt Dituro - CTIA  
Maria Moncada & Ken Rubin - FPL  
Diane Triplett - DEF  
Tracy Hatch - AT&T  
  
PSC STAFF:  
Adria Harper  
Kathryn Cowdery  
Ashley Weisenfeld  
Cayce Hinton  
Brandon Wendel  
Samantha Cibula  
Mary Anne Helton  
Keith Hetrick

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PROCEEDINGS

MS. HARPER: Good morning, everybody. I'm going to go ahead and start. My name is Adria Harper. I'm in the General Counsel's Office with the PSC. We're here today pursuant to a Notice of Development of Rulemaking on Docket No. 20210137-PU. This is our proposed adoption of Rule 25-18.010. It is a pole attachment complaint rule.

Before we get started, I wanted to do just some -- just some basic housekeeping and let everybody know that due to some technical issues we found out that our live streaming is not working today. So everybody -- we did post a audio call-in number for anybody that was trying to watch it. They can still call in and listen. And that is available on our website. So, I just wanted to let everybody know that happened this morning. Also, we have court reporter here, so we will be transcribing everything today. So if anybody needs that after the workshop, feel free to contact me.

Again, I'm Adria Harper with the General Counsel's Office, and I also have some staff here present, and I'm going to introduce Brandon Wendel from our IBM Telecom Section. He's going to be providing an overview of rule today before we open

1           it up for conversation. I also have my bosses over  
2           here, my General Counsel, Keith Hetrick, and Mary  
3           Anne Helton, and my supervisors, Samantha Cibula,  
4           is calling in. We also have Ashley Weisenfeld and  
5           Kathryn Cowdery and Cayce Hinton on the phone that  
6           will be able to participate that way with our  
7           conversation today.

8                       Now what I'd like to do is go through who I  
9           think we have on the phone and let everybody know  
10          those folks that have called in who want to  
11          participate that way, and then I'm going to, after  
12          that, ask if there's anybody else on there that was  
13          not perhaps on my list that had notified me that  
14          they were going to call in. So -- and I understand  
15          that some of these people have representatives in  
16          person here, as well, but I'm just going to go  
17          through the list of those that are calling in so  
18          that way we hopefully can avoid talking over each  
19          other during this conversation today for those on  
20          the phone.

21                      So, my understanding is we have Charles Dudley  
22          with the Florida Internet and TV on the phone.  
23          And -- oh, no, he's here, and Mr. Self, Floyd Self  
24          is here. We have Rebecca Hussey and Van Buys from  
25          Crown Castle on the phone. We have Scott Thompson

1 from Comcast. And we have Mr. George Cox and  
2 Jeffrey Wahlen from TECO and Matt Dituro from CTIA,  
3 the cellular association. Is there anybody else on  
4 the phone that is from a telecom company  
5 specifically that I did not list or call out? Is  
6 there anybody from any of the utilities that are on  
7 the phone that I did not mention your name?

8 MS. MONCADA: Adria, this is Maria Moncada  
9 from FPL.

10 MS. HARPER: Hi, Maria. I'm sorry. You're  
11 actually right here on my list. I can't read my  
12 own handwriting. And Ken Rubin is with you?

13 MS. MONCADA: That's quite all right. That's  
14 right. He's also on the phone.

15 MR. RUBIN: Yes, I'm -- good morning.

16 MS. HARPER: Good morning. And let's see --  
17 and then we have a couple folks here from FPL and  
18 Gulf here present, I see. And if anybody here in  
19 person who wants to speak, you can feel free to  
20 come up to one of these microphones and press the  
21 button until the light flashes green and then  
22 you'll be able to speak if you'd like to --  
23 everybody to hear you better. Is there anybody  
24 else on the phone that I did not list?

25 MS. TRIPLETT: Good morning, Adria. This is

1 Diane Triplett, Duke Energy Florida.

2 MS. HARPER: Okay. Hi. Is there anyone else?

3 Okay. I think that -- we know everybody  
4 that's here. I'm going to turn this over to Mr.  
5 Wendel over here, my colleague, and what we're  
6 going to be using is the rule draft that we have on  
7 our notice of development of rulemaking, so that  
8 starts on page three if anybody wants to refer to  
9 that. If anybody needs copies of that, I have a  
10 few copies here, too, but that is the draft, the  
11 only draft really that we have that we're working  
12 off of. And he's just going to provide a brief  
13 overview and this is going to be an informal  
14 discussion. So, please feel free when he's done to  
15 ask any questions that you may have to start off  
16 the discussion. Thank you.

17 MR. WENDEL: Thank you, Adria. Good morning,  
18 everyone. My name is Brandon Wendel, Commission  
19 Technical staff. Before discussing the rule, I  
20 would like to point out that the statute requires  
21 us to propose procedural rules of the rule that  
22 you're looking at. Before you is the proposed  
23 procedure that must be followed to get a pole  
24 attachment complaint addressed by the Commission.  
25 Commission's decision on these complaints are

1           governed by the statute and they're, therefore, not  
2           addressed within the scope of this rule currently.

3           So because we have a fairly short rule in  
4           front of us, I would like to go over the entire  
5           rule briefly then open the floor for interested  
6           parties for comments and suggestions afterwards.  
7           So, getting right into it, subsection one of the  
8           rule details the information that needs to be  
9           contained within a pole attachment complaint at the  
10          time of filing and in order for the Commission to  
11          address it.

12          Subsection two of the rule establishes the  
13          filing date of the complaint. That filing date is  
14          used in conjunction with subsection five.

15          Subsection three of rule establishes the time  
16          frame that a response must be filed from the entity  
17          that is the subject of the complaint.

18          Subsection four of the rule highlights an  
19          additional filing requirement for entities seeking  
20          to propose an alternative cost-based pole  
21          attachment rate to be addressed in an evidentiary  
22          proceeding.

23          And subsection five establishes the time frame  
24          for final action to be taken on a complaint by the  
25          Commission. And, as I stated previously, the time

1 frame is based on the filing date established by  
2 subsection two.

3 So that's the rule as we have it now. I would  
4 turn it back over to Adria and we'll get into a  
5 informal discussion.

6 The floor is open for anybody that has any  
7 questions. Thanks.

8 MR. WAHLEN: Adria, it's Jeff Wahlen for Tampa  
9 Electric. I have a question, please.

10 MS. HARPER: Okay. Go ahead. Thanks.

11 MR. WAHLEN: Thanks. First of all, I think  
12 we're generally okay with the rule as is. We were  
13 curious on line 22 in subsection three when the  
14 rule talks about a response being filed within 30  
15 days, curious what the staff has in mind about the  
16 type of response or the scope of response.

17 Specifically, would the response be akin to an  
18 answer in civil litigation that admits and denies  
19 the allegations in the complaint or is the staff  
20 contemplating something more involved like, you  
21 know, memorandum of law, prefiled testimony? What  
22 are you thinking about in terms of the response?

23 MS. HARPER: Kathryn Cowdery, do you want to  
24 answer that? I remember we talked about it. Was  
25 it an answer in the admit and deny, or did we



1 settle on something more detailed?

2 MS. COWDERY: I don't think we were looking at  
3 it like a civil litigation type situation. I think  
4 what we wanted at that point was any information  
5 that you think you want the Commission to know in  
6 direct response to what's being alleged, you know,  
7 and then this is -- that is not -- if the pole  
8 owner or the attaching entity, as stated in section  
9 four, wants a section 12.569, 120.57 administrative  
10 hearing, then we'll take it from there.

11 As far as I think establishing -- an order  
12 establishing procedure, determining testimony, you  
13 know, prefiled testimony, exhibits, anything like  
14 that, so I would take it sort of like some of the  
15 other things we do at the Commission when you have  
16 an opportunity to respond and you just want to give  
17 all the information you think the Commission ought  
18 to know. So it's sort of up to that entity  
19 responding what they think is important in their  
20 response.

21 MR. WAHLEN: Okay. But I guess the important  
22 thing I'm hearing is that the response would not  
23 include presenting prefiled testimony and evidence?  
24 It would be a pleading that tells a story, not  
25 necessarily the evidence that supports it.

1 MS. COWDERY: That's how I was looking at it  
2 at this point. Since -- if there is going to be a  
3 120 hearing, that decision would be sort of a next  
4 step.

5 MR. WAHLEN: Okay. Well, that's helpful.  
6 Thank you very much.

7 MS. MONCADA: This is Maria from FPL -- go  
8 ahead, Diane.

9 MS. TRIPLETT: Thanks, Maria. This is Diane  
10 Triplett with Duke. Following up on the comments  
11 made in the explanation to Jeff's question, I just  
12 want to make sure. It doesn't seem clear to me.  
13 Certainly if you're the complainant you have the  
14 opportunity to request a 12.569 or 120.57  
15 evidentiary hearing, and then I suppose subsection  
16 four is talking about alternative cost-based pole  
17 attachment rates. So, I suppose if I'm the  
18 respondent and I want to establish an alternative  
19 cost-base pole attachment rate, then I could also  
20 ask for a hearing. But it seems that perhaps  
21 there's a hole in the rule that if I am not asking  
22 for an alternative cost-base pole attachment rate,  
23 and I'm the respondent, and I want an evidentiary  
24 hearing and the complainant has not asked for one,  
25 I want to make sure the rule doesn't preclude

1           requesting that, because it doesn't actually say  
2           specifically that part of the response can be  
3           asking for a hearing.

4           MS. COWDERY: I think that's a good point.  
5           And we may want to take a look at that a little bit  
6           close then. And any suggestions you might have in  
7           your written comments or suggested language, we'd  
8           certainly be interested in looking at.

9           MS. TRIPLETT: Okay. That sounds good. Thank  
10          you. And thank you, Maria, and Adria.

11          MS. HARPER: Does anybody else on the phone  
12          line have any questions or comments? How about  
13          anybody here in the room? Questions or comments?  
14          Yes, Mr. Self.

15          MR. SELF: Thanks, Adria. Floyd Self on  
16          behalf of the Florida Internet and Television  
17          Association. We appreciate the opportunity to be  
18          here today to discuss the draft rules, which are a  
19          very good start on a very important subject. At  
20          the outset, we note that the legislature's intent  
21          with the statute is to encourage voluntary pole  
22          attachment agreement. We agree that voluntary  
23          agreements are always preferred outcome. But it's  
24          critical to understand that procedural rules that  
25          provide certainty, clarity and direction regarding

1 the substantive standards will not only streamline  
2 the complaint process, but they will also help to  
3 facilitate those voluntary negotiations. After  
4 having multiple calls and looking at the rule, we  
5 would like to focus on two short additions to the  
6 rule that we believe are consist with the statutory  
7 language and intent. And in briefly raising these  
8 with you today, we would also like to be able to  
9 provide written comments in the next 14 days, or  
10 whatever period of time you authorize, to provide  
11 specific language and basis for them.

12 Like I said, I just have two areas to consider  
13 for changes. First, the rule should expressly  
14 reference the FCC rate formula so that it's clear  
15 that the alternative reference in paragraph four of  
16 the draft is an alternative to the FCC formula. As  
17 you know, the statute says that the Commission  
18 shall apply the decision and orders of the FCC and  
19 the appellate court to determine just and  
20 reasonable rates terms and condition, unless the  
21 pole owner establishes by competent substantial  
22 evidence an alternative cost-based rate that is  
23 just and reasonable and in the public interest.

24 The rule does not expressly state that the FCC  
25 rules are the default or the starting point, then

1 the language regarding an alternative is unclear.  
2 Becomes an alternative to what?

3 So we think it's very necessary and helpful  
4 and, again, very consistent with the statutory  
5 language to set up that it's the FCC rule unless  
6 you're going to be providing an alternative with  
7 competent substantial evidence, et cetera.

8 The reliance on the FCC decisions and orders  
9 is well-placed by the legislature since the FCC  
10 rate formula has been adjudicated many times,  
11 including by the United States Supreme Court. The  
12 reliance on this as the standard helps to provide  
13 the necessary clarity and consistency that will  
14 help to facilitate voluntary agreements. And, if  
15 litigated, it will provide the standard that will  
16 govern the basis for assessing whether a valid  
17 alternative has been presented.

18 Second change goes to paragraph five. As  
19 we've talked about the rule, we all agree that in  
20 an ideal world we would love to see the 360-day  
21 number reduced. But, as someone who's been  
22 practicing here for a long time, we appreciate the  
23 fact that sometimes 360 days would be a good  
24 outcome. I know how long some cases can take.

25 Given that most proceedings are likely to be

1 rate disputes, we've decided that we can live with  
2 the 360 days as the cap, and especially since  
3 that's the number that's stated in the federal  
4 regs, as we're assuming you drew that from. What  
5 we would like to do is encourage a shorter time  
6 frame for complaints that involve a denial of  
7 access. In these cases, which, given our  
8 experience, we would expect to be fairly rare,  
9 because for the most part the different companies  
10 would work together pretty well, I think we're, as  
11 a general proposition asked, having access to  
12 pole-type issues, but on those rare occasions where  
13 there is a denial of access, we think it's  
14 important to have a shorter time period, maybe  
15 something like 90 or 120 days, because these  
16 denials are impeding deployment given the  
17 fundamental policies that are out there, in which  
18 the government is trying to promote broadband  
19 deployment. The denial of access clearly is a game  
20 stopper, whereas a dispute over rates generally  
21 involves ongoing situation where you've already got  
22 access, you already have a pole attachment, it's  
23 just the ultimate, how much are you going to pay  
24 type of situation.

25 So, we would encourage a separate timing

1 period to address those access issues. And, again,  
2 we haven't ourselves finalized the language for  
3 that, but we'd be happy to provide that in  
4 post-workshop comments. Thank you.

5 MS. HARPER: Anybody else have any comments or  
6 suggestions? We are going to offer a brief comment  
7 period for post-workshop comments, just because  
8 we're on a tight time line. So we are looking at  
9 comments in two weeks, 14 days. So September 15th  
10 is when we would like be able to have comments back  
11 from anybody that wishes to provide them. And we  
12 would appreciate specific statutory language, if  
13 you can come up with some to accompany your  
14 comments. That's always very helpful, especially  
15 on a tight time line for us.

16 MR. HATCH: Quick question. This is Tracy  
17 Hatch on behalf of AT&T. With respect to comments,  
18 how soon are the transcripts going to be available  
19 in case we want to use those for comments? I don't  
20 want to put any rush on anybody, but you're doing  
21 two weeks and if we --

22 MS. HARPER: Yes. That's a good question.  
23 I'm really not sure. I'll have to find out. I  
24 don't know.

25 MS. HELTON: I think the typical time is two

1 weeks, but we can ask for it to be expedited. How  
2 quickly do you need it?

3 MR. HATCH: I haven't drafted my comments yet.  
4 So I have some questions that I want to go back in  
5 the transcripts and perhaps use one of the  
6 questions in terms of the question.

7 MS. HELTON: Would a week be soon enough?

8 MR. HATCH: Oh, yeah, I would expect so.

9 MS. HELTON: Okay. We'll reach out to the  
10 clerk and ask to arrange a week turnaround time.

11 MR. HATCH: The transcript won't be very long.

12 MS. HELTON: Yeah, I don't think so.

13 MS. HUSSEY: Ms. Harper this is Rebecca Hussey  
14 from Crown Castle, LLC. I wondered if I could make  
15 just a couple of brief comments, as well?

16 MS. HARPER: Yes. Go ahead.

17 MS. HUSSEY: Okay. Well, I appreciate the  
18 opportunity to offer comments on the proposed rule.  
19 To provide some clarity, and I think what you'll  
20 hear in the comments is largely that they are  
21 echoing what Mr. Self shared, but we think that for  
22 purposes -- paragraph four, with regard to the  
23 alternative cost-base pole attachment rate, that we  
24 also think that the alternative should be, too,  
25 what the FCC formula provides and 47 CFR 1.14406.



1 And this will be a procedural clarifier.

2 I think also with regard to paragraph five,  
3 that proposed rule directs the commission to take  
4 final action on a complaint within 360 days of the  
5 complaint's filing date. And given the importance  
6 that connectivity and communication capacity are  
7 playing in our ability to work, to learn, to  
8 receive care, and many of our applications, we  
9 believe that pole access complaints should be  
10 considered and final action be taken within 180  
11 days, at maximum. So we'd like to see -- the same  
12 as Mr. Self was describing, a bifurcated approach,  
13 a shorter time frame for consideration of pole  
14 access complaints, versus any other pole attachment  
15 complaints within the 360 days that are provided.  
16 We'll clarify with regard to written comments.

17 MS. HARPER: Okay. Thank you. Anybody else  
18 have any comments?

19 MR. DITURO: Yes, if I can speak quickly.  
20 This is Matt Dituro from CTIA representing wireless  
21 carriers. Thank you, Adria, for having us today.  
22 I won't belabor the point any further. We agree  
23 with the points of -- that Mr. Self who, for  
24 transparency, also represents CTIA -- and Crown  
25 Castle laid out with regard to the FCC rate and the

1 potential shortening of the time frame for  
2 complaints. And as they both explained it rather  
3 simply, I will not repeat it here. All right.  
4 Thank you.

5 MS. HARPER: Okay. Is there any staff on the  
6 phone that likes -- that would like say anything or  
7 any other comments from any parties on the phone,  
8 staff or otherwise?

9 Okay. Anybody else have any comments? If  
10 not, then if everybody is okay with this  
11 September 15th date, please submit comments by that  
12 date to the docket, or you can direct them to me  
13 directly or you can process them through the clerk.  
14 Either way they're going to have to go through the  
15 clerk. So feel free to provide us with those and  
16 we'll try to get a transcript as soon as we can in  
17 the docket. And, with that, we'll go ahead and  
18 conclude. Thank you all for coming.

19 (Whereupon, the proceedings were concluded at  
20 9:35 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA )  
COUNTY OF LEON )

I, DANA W. REEVES, Professional Court Reporter, certify that the foregoing proceedings were taken before me at the time and place therein designated; that my shorthand notes were thereafter translated under my supervision; and the foregoing pages, numbered 3 through 18, are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

DATED this 7th day of September, 2021.



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DANA W. REEVES  
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EXPIRES MARCH 22, 2024