

## FCC Modifies Replacement Pole Order to Address Concerns

The FCC adopted a report and order today that makes it easier to install replacement utility poles by exempting such deployments from historic review when they replace substantially identical poles. The order as adopted unanimously at today's monthly meeting includes modifications from the draft version to address concerns expressed by various stakeholders.

The order follows up on a notice of proposed rulemaking adopted by the FCC in April exploring ways to streamline the deployment of wireless infrastructure (TR Daily, April 20).

"Some of the conditions the replacement pole must meet include that the original pole is not a historic property, that it does not cause new ground disturbance, and that it is consistent with various other size, location, and appearance restrictions detailed in the rule," the FCC said in a news release on the order, which was adopted in WT docket 17-79. "The Order also consolidates the Commission's historic preservation review rules and procedures, currently in a variety of rules and orders, into a single rule, making it simpler to find, understand, and comply with the rules."

The news release noted that "[n]ew infrastructure deployment will be critical to support the small cell technologies needed for the rollout of next generation services. The Commission's decision today will advance the public interest by providing significant efficiencies in the deployment of replacement poles, so that new equipment can be deployed without the delay of unnecessary procedures while still protecting against adverse effects on historic properties."

Specifically, the original version of the order said that the replacement pole had to be put in the same hole as the original pole and that the replacement pole could not exceed the height of the original pole by more than 10%. The industry entities said that replacement poles are not put in the same hole of the pole they replace but nearby, so they asked the Commission to instead allow the replacement poles to be placed nearby. They also asked that replacement poles be permitted to be up to 10% higher or 10 feet higher than the original pole.

The order adopted today permits replacement poles to be put in holes up to 10 feet away and says that replacement poles can be up to 10% higher or five feet higher, whichever is greater.

The FCC also inserted language stressing that parties have to cease the replacement of poles if there is any discovery of historical artifacts. They then have to notify parties of the discovery and consult with them.

FCC Chairman Ajit Pai said the order adopted today "will help pave the way for 5G networks and services, powered as they'll be by small cell antennas and the like attached to poles. Significantly, we provide this relief only where the replacement utility pole won't affect historic properties (thus rendering the review process unnecessary)."

"In this Order, the Commission reaches the reasonable determination that swapping out utility poles for the purpose of adding antennas or other wireless equipment can be done without any impact on historic properties. This determination provides substantial relief by eliminating what would otherwise have been an unnecessary and time-consuming review process for each and every pole replacement," Commissioner Brendan Carr said.

"Moreover, I am glad that my colleagues and I were able to work together and reach consensus on a number of changes to the item," he said. "For instance, the Order now allows a replacement pole to be sited up to 10 feet away from the original pole, provided that there is no new ground disturbance. Similarly, a replacement pole can now be up to 5 feet taller than the original pole, rather than being limited to a 10 percent increase. At the same time, we agreed to add language to the Order that emphasizes the important and long-standing requirement that parties must cease work if they discover any historical artifacts and immediately commence the notification and consultation process. Combined, these changes will expand the practical utility of today's decision while continuing to ensure that there will be no impact on historic properties."

Commissioner Mignon L. Clyburn said that "this Order may seem like a modest first step, but I support the replacement utility pole rules adopted today because, for the most part, we followed the proper collaborative approach. In our initial draft, we identified a few criteria that would exempt replacement utility poles from the historic preservation review process, but industry proposed sensible changes to the location and height criteria. They include exempting replacement utility poles if they are sited in new holes within 10 feet of the original pole, provided that doing so does not result in new ground disturbance and if the heights of replacement poles are no more than 10 percent taller than the poles they replace. Then the staff reached out to the Advisory Council for Historic Preservation for its approval, and while the record is less clear on how much coordination our staff had with Tribal representatives, the infrastructure issues we will face in the future are likely to be more difficult than the one we address today. So, it is critical that we set the stage now for robust coordination with all relevant stakeholders, including Tribal representatives."

"This is a smart and thoughtful effort to update our review practices regarding utility poles," said Commissioner Jessica Rosenworcel. "I appreciate the back and forth in the last few days between my colleagues as well as our work with the Advisory Council for Historic Preservation."

Commissioner Mike O'Rielly said he generally supports the changes made to the order.

"Replacement poles that are within 10 feet of the original will be excluded from historic preservation review, provided that they are in previously disturbed ground. And, the ground in most rights-of-way has been repeatedly disturbed. This also has the added benefit of allowing providers the ability to increase the circumference of their poles," he said. "Further, a replacement pole that is five feet taller than the original and changes in materials, as long as they are consistent in appearance and quality, are also exempted from review. While I would have preferred that a replacement pole could be increased in size by 10 feet without going through historic preservation review, allowing five additional feet is an improvement from the circulated draft."

The item adopted today drew praise from industry entities and an ACHP official.

Scott Bergmann, vice president-regulatory affairs for CTIA, said the group appreciates "the FCC's focus on modernizing wireless infrastructure siting policies."

Will Johnson, Verizon Communications, Inc.'s senior vice president-federal regulatory and legal affairs, said that "today's wireless order will eliminate time-consuming and expensive reviews of some replacement poles without compromising the protection of historic properties, thus facilitating the wireless attachments that are essential for 5G networks."

Joan Marsh, executive vice president-regulatory & state external affairs for AT&T, Inc., said, "AT&T applauds the FCC and the Wireless Bureau Staff for taking action today to streamline the federal regulatory process for replacing utility poles. The Commission rightly recognizes that replacement poles have no reasonable potential to adversely impact historic properties and should therefore not be subject to burdensome rules and a lengthy preservation review process. Today's order gets us one step closer to the rollout of 5G technology by enabling carriers to deploy upgraded utility poles that can hold critical small cell technologies. This is a win for consumers who will benefit from denser network builds that in turn will drive faster network speeds and better coverage."

"If a replacement utility pole uses the same hole and looks like the original, there seems to be little sense in requiring a historic preservation review," said Jonathan Spalter, president and chief executive officer of the U.S. Telecom Association.

"NTCA supports the order adopted today to streamline the historical review process for replacement of utility poles. This common-sense provision will ensure that the wired and wireless infrastructure necessary for the emergence of next-generation services can be built while promoting continued protection of historical properties at the same time," said Michael Romano, NTCA's SVP-industry affairs and business development. "NTCA looks forward to working with the Commission to reduce barriers to the deployment of the underlying infrastructure necessary to make 5G and other advanced services possible." The Internet Innovation Alliance said it "applauds the FCC for today's actions to remove outdated regulations to help accelerate 21st century high-speed wireline and wireless broadband deployment for all Americans."

Charlene Dwin Vaughn, assistant director of the ACHP's Office of Federal Agency Programs, told TR Daily that the order as adopted "reflects the consultation we had with" the FCC and reflects "the preservation community's concerns" with the order.

In particular, she highlighted the language inserted saying that parties have to cease the replacement of poles if there is any discovery of historical artifacts and notify and consult with stakeholders. Similar language was requested by the National Association of Tribal Historic Preservation Officers (TR Daily, Nov. 14).- Paul Kirby, [paul.kirby@wolterskluwer.com](mailto:paul.kirby@wolterskluwer.com)

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