

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

| | | |
|---------------------------------------------------------|---|------------------|
| In the matter of the petition of EXTENET |) | |
| SYSTEMS, INC. , to initiate a proceeding for the |) | |
| Commission to issue and make effective rules and |) | Case No. U-20980 |
| regulations implementing Michigan’s regulatory |) | |
| authority over wireless pole attachments. |) | |
| _____ |) | |

At the May 13, 2021 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Tremaine L. Phillips, Commissioner
Hon. Katherine L. Peretick, Commissioner

ORDER AND NOTICE OF OPPORTUNITY TO COMMENT

History of Proceedings

On January 25, 2021, ExteNet Systems, Inc. (ExteNet) filed a petition in this docket requesting that the Commission initiate a “proceeding to clarify its rules and regulations for utility pole attachments and ensure that such rules and regulations apply equally and consistently to the attachment of wireless communications facilities to utility poles.” ExteNet’s petition to establish a proceeding on wireless pole attachments, p. 1 (ExteNet’s petition). ExteNet asserts that the Commission has jurisdiction pursuant to 47 USC 224(c), in place of the Federal Communications Commission (FCC), to regulate pole attachments by telecommunications service providers.

On April 19, 2021, the Telecommunications Association of Michigan filed a petition for leave to intervene and to support ExteNet’s request for the initiation of a proceeding. On April 28, 2021,

CTIA – the Wireless Association filed a petition for leave to intervene and comments in support of ExteNet’s petition.

ExteNet Systems, Inc.’s Petition to Establish a Proceeding on Wireless Pole Attachments

In its petition, ExteNet explains that it “designs, builds, owns, manages and operates indoor and outdoor ‘neutral host’ distributed network systems to help meet the intense demand for improved mobile and wireless broadband coverage and capacity in key strategic markets across the United States and here in Michigan.” ExteNet’s petition, p. 3. ExteNet states that it uses distributed antenna systems, remote radio heads, small cells, Wi-Fi, and distributed core soft-switching technologies to assist wireless service providers, enterprises, and venues to better serve their subscribers, customers, workers, residents, tenants, and communities.

According to ExteNet, its “outdoor distributed network facilities typically consist of: (a) fiber optic cable; and (b) small antennas and supporting equipment that are either attached to municipally owned facilities, investor-owned utility poles and other structures in the public rights-of-way or suspended on cables strung between municipally owned facilities, investor-owned utility poles or wireless support structures.” *Id.*, pp. 3-4. ExteNet asserts that its distributed network facilities are typically installed in public rights-of-way and, therefore, it “has a vital interest in non-discriminatory access to utility poles located in the public rights-of-way in Michigan under the control and jurisdiction of the Commission.” *Id.*, p. 3 (footnote omitted).

ExteNet notes that “[t]he Commission does not have a single repository or document outlining its rules and regulations regarding pole attachments.” *Id.*, p. 5. In addition, ExteNet asserts that the procedural steps for pole attachments, utility pole make-ready, safety measures, and ratemaking have been governed by various Commission orders or, in some cases, have not been addressed by the Commission. ExteNet contends that the Commission should develop a single,

comprehensive set of rules that provides non-discriminatory and equitable access to public rights-of-way and utility poles for attachment because “[t]he ability to deploy [small wireless facilities] efficiently and cost-effectively is critical to ensuring that the investment will be made in Michigan to deliver a world-class mobile and wireless broadband experience to Michiganders.” *Id.*, p. 8.

Accordingly, ExteNet requests that the Commission initiate a new proceeding to clarify and update the historical protections it has provided to some utilities for new pole attachments. ExteNet also asserts that the Commission should ensure that wireless providers are afforded the full protections for pole attachments that are offered by MCL 460.6g and FCC guidance. ExteNet explains that, “[i]n the interest of a broad and technology-neutral promotion of broadband expansion, the Commission should regulate wireless attachments under the same set of rules and policies as wireline pole attachments.” *Id.*, p. 10. Furthermore, ExteNet asserts that the timelines, rules, and ratemaking for pole attachments adopted by the Commission should mirror those implemented by the FCC.

ExteNet also requests:

that the Commission issue an Order declaring that wireless carriers have the right to attach to utility poles, and clarifying, updating, and consolidating its pole attachment regulatory policies to ensure that:

- a. Regulation of pole attachments in Michigan applies with equal force, in a non-discriminatory manner, to wireless facilities attached to utility poles;
- b. Detailed timelines for entering into access agreements, completing the permitting and make-ready review processes, completing make-ready, and granting final approval to attachers will be established and enforced;
- c. Where make-ready is delayed, attachers may perform their own simple make-ready[;]
- d. Disputes regarding the rates, terms, and conditions of pole attachments will be resolved on an expedited basis;

- e. Rate principles for wireless attachments track those in place at other regulatory agencies, including the FCC; and
- f. Other pro-competitive, pro-deployment measures supported by the record are adopted.

Id., pp. 8-9.

Discussion

Pursuant to 47 USC 224, the FCC has jurisdiction to regulate the rates, terms, and conditions of pole attachments for cable television systems or telecommunications service providers. However, Subsection (c) of 47 USC 224 states that “[n]othing in this section shall be construed to apply to, or to give the [FCC] jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.”

MCL 460.6g provides the Commission with jurisdiction to regulate the rates, terms, and conditions of pole attachments by attaching parties in Michigan. Subsection (2) of MCL 460.6g states, in relevant part, that “[t]he commission shall ensure that the rates, terms, and conditions are just and reasonable and shall consider the interests of the attaching parties’ customers as well as the utility and its customers.”

In addition, MCL 460.1339 states, in relevant part, that:

Notwithstanding any other provision of this act, pursuant to and consistent with section 6g of 1980 PA 470, MCL 460.6g, the [Commission] has sole jurisdiction over attachment of wireless facilities on the poles, conduits, and similar structures or equipment of any type or kind owned or controlled by an investor-owned utility whose rates are regulated by the [Commission].

Thus, the Commission finds that it has the jurisdiction and authority to address the clarifications and protections requested by ExteNet in its petition and, accordingly, opens this docket to request and receive comments from interested persons on the following topics:

1. Does MCL 460.6g apply to wireless attachments?
2. Are the pole attachment rates specified in tariffs established by providers under the Commission's jurisdiction adequate to recover costs caused by attaching parties?
3. If not, what methodology or methodologies should the Commission consider if undertaking actions to update tariff rate provisions?
4. Are fees assessed by utilities to recover make-ready costs necessary to comply with the National Electric Safety Code standards adopted in the Commission's rules for Electrical Supply and Communication Lines and Associated Equipment, Mich Admin Code, R 460.813? Do these fees vary depending on the type of attachment (i.e., wireline, cable, wireless, or other)?
5. Are the terms and conditions specified in tariffs established by providers under the Commission's jurisdiction adequate to allow for reasonable access to utility poles by attaching parties in a timely, non-discriminatory manner?
6. If necessary, what procedural avenues should the Commission consider employing to update pole attachment tariffs?
7. What requirements, if any, does the Commission have relative to the FCC's One Touch Make Ready rules and the applicability of those rules to attachments to utility poles under the Commission's jurisdiction?
8. Are the procedural avenues available to attaching parties under the Commission's Administrative Hearing Rules, Mich Admin Code, R 792.10439 through R 792.10446, adequate to provide timely resolution of disputes? Is the Commission in compliance with 47 USC 224(c)(3)(b)?
9. Should the Commission consider revisiting prior interpretations of the terms "utility" and "attaching party," as defined in MCL 460.6g, relative to certain telecommunications providers? Why?

The Commission finds that any person may submit written comments in response to the above questions and any additional comments regarding utility pole attachments. The comments should reference Case No. U-20980 and must be received no later than 5:00 p.m. (Eastern time) on June 10, 2021. Address mailed comments to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments may be e-mailed to mpscdockets@michigan.gov. If you require assistance prior to filing, contact the Commission

Staff at (517) 284-8090 or by e-mail at mpscedockets@michigan.gov. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure; and all comments will be filed in Case No. U-20980.

The Commission reserves jurisdiction and may issue further orders as necessary.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Tremaine L. Phillips, Commissioner

Katherine L. Peretick, Commissioner

By its action of May 13, 2021.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

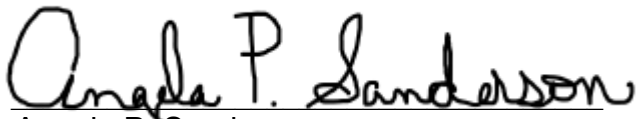
Case No. U-20980

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on May 13, 2021 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).


Brianna Brown

Subscribed and sworn to before me
this 13th day of May 2021.



Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case: U-20980

| Name | Email Address |
|----------------------|--------------------------------|
| ExteNet Systems Inc. | tray@extenetsystems.com |
| Haran C. Rashes | hrashes@extenetsystems.com |
| Matthew DeTura | mdetura@ctia.org |
| Michael A. Holmes | holmes.michael@telecommich.org |