

Before the
Federal Communications Commission
Washington, D.C. 20554

RCN Telecom Services of Philadelphia, Inc.)	
Complainant)	
)	File No. PA 01-003
v.)	
)	
PECO Energy Company and)	
Excelon Infrastructure Services, Inc.)	
Respondent)	

ORDER

Adopted: May 31, 2001

Released: June 1, 2001

By the Deputy Chief, Cable Services Bureau:

1. On March 16, 2001, the above-captioned Complainant filed a pole attachment complaint ("Complaint") with the Federal Communications Commission ("Commission") against the above-captioned Respondent pursuant to Section 224 of the Communications Act of 1934, *as amended* ("Pole Attachment Act")¹ and Subpart J of the Commission's Rules.² Complainant filed an amended complaint on May 4, 2001. In this Order, we consider a motion ("Motion"), filed on May 22, 2001 by Respondent, for an extension of time to file a response to the amended complaint. Under the Commission's rules, a response to a complaint is due within 30 days from the date a complaint is filed.³ Respondent requests that the time for filing a response to the amended complaint be extended to June 18, 2001. In support of its Motion, Respondent argues that it did not receive a copy of the amended complaint until seven days after it was filed. Respondent asserts that the amended complaint raises complicated issues of fact that involve detailed inquiry into systems, policies and practices of the two corporate Respondents. Complainant does not oppose the Motion.

2. Pursuant to the Pole Attachment Act, the Commission has the authority to regulate the rates, terms, and conditions for attachments by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.⁴ The Commission shall provide that such rates, terms and conditions are just and reasonable.⁵ The Commission is authorized to adopt procedures necessary to hear and to resolve complaints concerning such rates, terms, and conditions.⁶ The Commission's rules provide for a response to a complaint and a

¹ 47 U.S.C. §224.

² 47 C.F.R. §§1.1401-1.1418.

³ 47 C.F.R. § 1.1407(a).

⁴ 47 U.S.C. § 224(b)(1) and (2).

⁵ 47 U.S.C. §224 (b) (1).

⁶ 47 U.S.C. § 224(b)(1).

template 060002

ERIDS 0601

reply to that response.⁷ "[N]o other filings and no motions other than for extension of time will be considered unless authorized by the Commission."⁸ The Commission may resolve the complaint based upon the filings, it may meet with the parties to clarify issues, and it may, at its discretion, order evidentiary proceedings.⁹ The Commission may also request additional filings or more information.¹⁰

3. It is the policy of the Commission that extensions of time shall not be routinely granted.¹¹ However, in this instance, Respondent has provided us with a compelling reason that supports an extension of time. Because there was a delay in Respondent receiving a copy of the amended complaint, Respondent requires the extension in order to provide the Commission with a complete and accurate response. Moreover, Complainant does not oppose the extension of time. Therefore, we will extend the time for filing a response to the amended complaint until June 18, 2001.

4. Of more serious concern in this matter is the filing of an amended complaint without leave from the Commission. The Commission's rules provide for a simple, expeditious complaint process that allows for a complaint, response and reply. Occasionally the Commission will receive requests for leave to file supplemental material and considers each request based on the nature of the material. Under the normal course of review, Complainant's amended complaint would be dismissed, without prejudice to Complainant raising the same issues using an appropriate method. If a complainant wishes to introduce new issues in a pole attachment proceeding, two courses are open to it. First, it may file a separate complaint, which will receive its own file number and start the normal pleading cycle. Complainant may request that the second complaint proceeding be consolidated with the first. A second option is to request leave to file an amended complaint. However, if leave were granted, the amended complaint would supercede and moot the original complaint and restart the pleading cycle.

5. Although informed of these two options by Cable Services Bureau staff, Complainant did not comply with either process. Instead, Complainant filed an "amended complaint" which was not sufficient to supercede the original filing. It is not an efficient use of Commission resources to have multiple complaints, responses, replies and pleading cycles in a single proceeding. Filings that do not comply with Commission process will be returned or dismissed. However, because this process may not have been fully understood by Complainant, and in the interest of preserving the Commission's and the parties' resources in this particular matter, we will allow this proceeding to continue with the two complaints being treated as a single complaint once the respective pleading cycles have closed. We find that Respondent has not been prejudiced by the filings. In general, however, it is not efficient to permit complaints to be amended in a way that adds distinct new issues after the initial pleading cycle has closed. We do not intend as a general matter to permit the tacking on of new issues to pending complaints through supplements or amendments and such supplements or amendments are subject to being dismissed or not addressed.

⁷ 47 C.F.R. §1.1407(a).

⁸ *Id.*

⁹ 47 C.F.R. §1.1411.

¹⁰ 47 C.F.R. §1.1409(a).

¹¹ 47 C.F.R. § 1.46(a).

6. Accordingly, IT IS ORDERED, pursuant to Sections 0.321 and 1.1401-1.1418 of the Commission's rules, 47 C.F.R. §§ 0.321 and 1.1401-1.1418, that Respondent's Motion for Extension of Time IS GRANTED TO THE EXTENT INDICATED HEREIN.

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief
Cable Services Bureau