

complaints involving the pole attachment(s) of an incumbent local exchange carrier (ILEC). Verizon points out that Section 224 does not apply to disputes involving the attachments of ILECs. According to Verizon, the Federal Communications Commission (FCC) has no jurisdiction over ILEC pole attachments because Section 224 specifically excludes ILECs from the definition of "telecommunications carriers" with rights as pole attachers (referring to 47 U.S.C. § 224(a)(5), which states, "For purposes of this section, the term 'telecommunications carrier'...does not include any incumbent local exchange carrier...."). As a result, Verizon adds, time limitations under Section 224 are inapplicable to complaints involving ILECs. Verizon states that the language of the proposed rule thus unnecessarily includes ILECs and restricts the Commission and the parties with respect to the resolution of pole attachment complaints involving ILEC attachments. Verizon suggested the proposed rule be rewritten to provide:

Upon receipt of a complaint regarding any individual matter under these rules, other than a complaint involving the attachment(s) of an incumbent local exchange carrier (as defined in Section 251(h) of the Communications Act of 1934, as amended), the Commission shall, within 360 days, issue a final order.

Verizon's proposed modification is consistent with current legislation and should be adopted.

PROPOSED COMMISSION MOTION:

Adopt the proposed rule prescribing a time period for final action in pole attachment complaints, as modified and set forth in Appendix A of the proposed order.

ORDER NO. DRAFT

ENTERED

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 474

In the Matter of a Rulemaking to Adopt a)
Time Period for Final Action in Pole) ORDER
Attachment Complaints.)

DISPOSITION: RULE ADOPTED AS MODIFIED

Section 224 of the Telecommunications Act of 1996 (Section 224) provides:

For purposes of this subsection, a State shall not be considered to regulate the rates, terms, and conditions for pole attachments *** (B) with respect to any individual matter, unless the State takes final action on a complaint regarding such matter –

- (i) within 180 days after the complaint is filed with the State, or
- (ii) within the applicable period prescribed for such final action in such rules and regulation of the State if the prescribed period does not extend beyond 360 days after the filing of such complaint.

At its Regular Public Meeting on October 30, 2003, the Commission, faced with a number of complex pole attachment complaints that would require longer than 180 days to complete, adopted a temporary rule in docket AR 473. The temporary rule prescribed a time period of 360 days for final action in pole attachment complaints. At the same meeting, the Commission voted to initiate a permanent rule in docket AR 474. The wording of the proposed rule was identical to the temporary rule, as follows:

Upon receipt of a complaint regarding any individual matter under these rules, the Commission shall, within 360 days, issue a final order.

ORDER NO. DRAFT

The proposed rule was published in the Secretary of State's Oregon Bulletin, along with a deadline for comments and requests for hearing. Verizon Northwest Inc. (Verizon) was the only entity to file comments. No requests for hearing were received.

Verizon's comments. Verizon does not object to the proposed rule with respect to nonincumbent local exchange carriers, but suggests a modification that would exclude complaints involving the pole attachment(s) of an incumbent local exchange carrier (ILEC). Verizon points out that Section 224 does not apply to disputes involving the attachments of ILECs. According to Verizon, the Federal Communications Commission (FCC) has no jurisdiction over ILEC pole attachments because Section 224 specifically excludes ILECs from the definition of "telecommunications carriers" with rights as pole attachers (referring to 47 U.S.C. § 224(a)(5), which states, "For purposes of this section, the term 'telecommunications carrier'... does not include any incumbent local exchange carrier..."). As a result, Verizon adds, time limitations under Section 224 are inapplicable to complaints involving ILECs. Verizon states that the language of the proposed rule thus unnecessarily includes ILECs and restricts the Commission and the parties with respect to the resolution of pole attachment complaints involving ILEC attachments. Verizon suggests the proposed rule be rewritten to provide:

Upon receipt of a complaint regarding any individual matter under these rules, other than a complaint involving the attachment(s) of an incumbent local exchange carrier (as defined in Section 251(h) of the Communications Act of 1934, as amended), the Commission shall, within 360 days, issue a final order.

We agree with Verizon's comments and will modify the proposed rule as Verizon suggests.

The modified rule is set out in Appendix A and incorporated herein by reference.

At its Regular Public Meeting on February 3, 2004, the Commission considered and adopted the rule as modified, as contained in Appendix A.

ORDER

IT IS ORDERED that:

1. The proposed modified rule, OAR 860-028-0195, attached as Appendix A, is adopted.
2. The rule shall be effective upon filing with the Secretary of State.
3. The temporary rule adopted in AR 473, OAR 860-028-0195, is repealed upon the rule in this docket becoming effective.

Made, entered, and effective _____.

Lee Beyer
Chairman

John Savage
Commissioner

Ray Baum
Commissioner

A person may petition the Commission for the amendment or appeal of a rule pursuant to ORS 183.390. A person may petition the Court of Appeals to determine the validity of a rule pursuant to ORS 183.400

860-028-0195

Time Frame for Final Action by Commission

Upon receipt of a complaint regarding any individual matter under these rules, other than a complaint involving the attachment(s) of an incumbent local exchange carrier (as defined in Section 251(h) of the Communications Act of 1934, as amended in the Telecommunications Act of 1996), the Commission shall, within 360 days, issue a final order.

Stat. Auth.: ORS Ch. 183, 756, 757 & 759, 47 USC § 224(c)(3)(B)(ii)

Stats. Implemented: ORS 756.040, ORS 757.270 through 757.290, ORS 759.045, and ORS 759.650 through 759.675

Hist.: New