Socket to Me

**FLORIDA PSC EXERCISES ITS AUTHORITY OVER DISTRIBUTION POLE INTEGRITY**

There is some debate under current federal pole attachments law as to the boundaries between FCC and state jurisdiction over pole attachment safety and reliability issues and whether a state must “reverse preempt” the FCC order to exercise authority over pole attachments. But while federal pole attachments law requires states to certify that they regulate the rates, terms and conditions of pole attachments in order to resolve disputes over those matters, our view is that states do not have to certify that they regulate safety, engineering and reliability issues that relate to pole attachments before they can regulate in this area. We believe that states inherently possess jurisdiction over such intrastate matters pursuant to their police power and authority over intrastate law.

Our view was recently reinforced in a decision by the Florida Public Service Commission. While the FCC has previously issued rulings telling electric utilities how often and on what terms they can perform distribution pole plant inspections and pass proportionate costs on to attaching communications companies, the Florida PSC has now told Florida utilities exactly how often they must perform inspections of wooden poles. On Tuesday, February 7, 2006, the PSC issued an order requiring comprehensive inspections by state utilities of their wooden poles on a cycle that ensures each pole is inspected once at least every eight years, as compared to the ten year standard currently in place. The PSC issued the order in a 4-to-one vote, with FCC Commissioner Lisa Polak Edgar stating: “This is one of a number of initiatives we’ll be taking to reduce our vulnerability to long-term outages. Our ratepayers and our utilities have taken a beating over the last two years and we have to move forward with solutions.” The Associated Press reported that: “Florida Power & Light, the state’s largest utility, and the company that had the majority of the damage in October’s Hurricane Wilma, had already voluntarily agreed to strengthen its infrastructure and increase its pole inspection schedule.”

From a pole attachment perspective, the order was not surprising. It confirms that states already have jurisdiction under current federal pole attachments law over safety and reliability issues that impact poles, their owners and attaching companies, even where a state, like Florida, has not certified to the FCC that it regulates pole attachments per se. Although the FCC has previously held that a five year inspection cycle would be reasonable and that a utility could pass on inspection costs that benefit an attaching entity, it would be hard to justify legally the FCC taking a position on pole inspections. From a pole attachment perspective, the order was not surprising. It confirms that states already have jurisdiction under current federal pole attachments law over safety and reliability issues which impact poles, their owners and attaching companies, even where a state, like Florida, has not certified to the FCC that it regulates pole attachments per se. 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FCC UNLEASHES THE TERMINATOR

On February 1, 2006, the FCC deployed what it calls the “Auto-Term” feature of its Universal Licensing System. This feature can best be described as a computer routine that scours the FCC’s license database, looking for licenses for which construction requirements or coverage requirements have not been timely satisfied. When it finds one, it will generate a letter to the licensee and it will add that license to a weekly public notice of stations that have been placed in “Termination Pending” status. The ULS system presumes that if a timely notice of construction or request for extension has not been filed, the coverage or construction requirement has not been met. A licensee can stave off termination by filing a petition for reconsideration within 30 days showing that the construction or coverage requirement was, in fact, timely met. Otherwise, the license will be “terminated,” effective as of the construction or coverage deadline. This new procedure will apply to deadlines that fall on or after February 1, 2006.

Here is the FCC’s Public Notice: Auto-Term PN.

FCC DESCRIBES PROCEDURES FOR ITS RESOLUTION OF ANY 800 MHZ REBANDING IMPASSE

Yesterday was the deadline for resolution of disputes in Wave 1 of the 800 MHz rebanding process under the mandatory mediation procedures that were established by the Transition Administrator. Anticipating that there might still be unresolved disputes beyond February 8, the FCC, on January 31, 2006, issued a Public Notice outlining the procedures that will govern cases that are referred to its Public Safety and Critical Infrastructure Division for final resolution. The FCC’s Public Notice is available here: DeNovo Review.

Under these procedures, the Transition Administrator will refer the case to the FCC, along with the recommended decision of the Transition Administrator or the mediator.

AUCTION FOR SPECTRUM TO SUPPORT ADVANCED WIRELESS SERVICES SET BY FCC FOR JUNE 29, 2006

In a January 31, 2006, Public Notice, the FCC announced that it has scheduled an auction of spectrum in the 1710-1755 MHz and 2110-2155 MHz bands, to begin June 29, 2006. This spectrum has been earmarked for Advanced Wireless Services (AWS). AWS spectrum can be used to provide a wide range of voice (including third-generation and fourth-generation services), data and broadband services (including Internet browsing, message services and full-motion video) over mobile and/or fixed wireless networks.”
“UPLC argues that declaring BPL to be an information service would be consistent with the FCC’s previous rulings that cable modem and digital subscriber line (DSL) services are information services and not telecommunications services.”

**BPL: INFORMATION SERVICE OR TELECOMMUNICATIONS SERVICE?**

Comments are due tomorrow on the United Power Line Council’s request for an FCC ruling that broadband over power line-enabled Internet access service (BPL) is an “information service” as defined in the Communications Act.

UPLC argues that declaring BPL to be an information service would be consistent with the FCC’s previous rulings that cable modem and digital subscriber line (DSL) services are information services and not telecommunications services. Like both of those services, BPL is a functionally integrated, finished service that inextricably intertwines information-processing capabilities with data transmission to give end users access to information on the Internet.

If the FCC issued the requested ruling, BPL providers would not be subject to mandatory FCC regulation as common carriers under Title II of the Communications Act. Rather, BPL providers would be subject to less stringent regulation under Title I, and avoid rate regulation, open access rules and universal service fund requirements.

An FCC decision is not expected for several months. The text of the FCC’s public notice may be found here: [BPL Public Notice](#)

**FOR MORE INFORMATION**

For more information on these topics, please contact any of the attorneys found at the link below:

**Troutman Sanders LLP Telecommunications & Technology Practice Group**

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