

DPUC proceeding evaluates VRAD cabinet safety issues and rights of adjoining property owners

January 15, 2009 - Connecticut

Many have noted the seemingly overnight proliferation of refrigerator-sized metal cabinets on utility poles in their neighborhoods. These VRAD cabinets (for Video Ready Access Device) were the subject of a recent Connecticut Department of Public Utility Control (DPUC) proceeding in its Docket 07-03-34, wherein the DPUC evaluated VRAD cabinet safety issues, as well as the rights of adjoining property owners with respect to these utility facilities. In its Decision in that proceeding dated September 29, 2008, the DPUC provided a mechanism for notice to adjoining property owners as to the installation of VRAD cabinets, an opportunity to comment on such installations and (perhaps most significantly) the ability to contest such installations.

VRAD cabinets are part of an AT&T infrastructure upgrade which will permit it to offer a new suite of Internet Protocol (IP) services, including voice over IP (VoIP) and IP video. VRAD cabinets contain certain of the electronics needed to provide the new services. VRAD cabinets include a 220-volt electric power meter and a battery back-up; the cabinets can be mounted on utility poles or installed on concrete ground pads. The sizes of the cabinets vary, but both the utility pole and ground pad models can range up to approximately 4 ft. in width and 5 ft. in height.

The DPUC proceeding was instituted in response to a petition by certain Connecticut municipalities for an investigation concerning safety and siting issues of VRAD cabinets. Safety issues raised by the municipalities included the obstruction of motorists' vision, danger to pedestrians and bicyclists, and concerns regarding the cabinets' power supplies and back-up batteries. The municipalities requested that the DPUC require AT&T to comply with certain Connecticut statutory requirements concerning utility fixtures in public rights-of-way. The municipalities also requested that the DPUC study the feasibility of installing pole-mounted cabinets seven ft. off the ground, so as to avoid line-of-sight issues and eliminate the possibility of collisions with pedestrians and bicyclists. Additionally, the municipalities requested that AT&T address graffiti removal, aesthetic factors and screening, in the manner mandated by other states' public utility authorities.

AT&T asserted in Docket 07-03-34 that the municipalities' safety concerns were unwarranted, and that it carefully considers a great many factors when determining the location of VRAD cabinets, including the avoidance of busy intersections and minimizing exposure to the elements.

With respect to the height issue, the DPUC concluded that it would not require AT&T to locate VRAD cabinets seven ft. off the ground, due to a lack of cabinet manufacturers' support for installations above 3 ft. high, and because doing so would raise additional issues such as the need for additional pole bracing and difficulties concerning maintenance. As to issues such as graffiti and the screening of VRAD cabinets, the DPUC ordered AT&T to explore and adopt its "best practices" in other states to address these issues.

Possibly the most significant issues addressed by the DPUC in Docket 07-03-34, were those of

notice and consent as to the placement of VRAD cabinets in public rights-of-way. The Decision directs AT&T to provide municipalities and adjoining landowners with advance notice of its plans to install new VRAD cabinets, including street addresses and the specific utility poles to be used. In addition, AT&T must give adjoining landowners 30 days to consent to the placement of VRAD cabinets, and must employ strategies such as screening and landscaping as a means to obtain consent. In cases where consent is not obtained and landowners object to the placement of VRAD cabinets, the DPUC will consider requests for removal. Objecting parties will have an opportunity to present evidence to the DPUC and offer argument as to why the installation should not go forward or (in cases where installations have already been made), why the offending VRAD cabinets should be removed. The DPUC will entertain requests for removal when landowners present evidence demonstrating that VRAD cabinet placement creates safety and/or other significant issues.

To summarize - the DPUC has provided adjoining landowners with a mechanism to contest the placement of and (in certain cases) to request removal of VRAD cabinets. While the breadth of the rights actually granted to landowners has yet to be determined (as of this writing, at least one post-Decision landowner complaint has been received by the DPUC concerning a VRAD installation); as a practical matter, the DPUC's action has given AT&T a strong incentive to address landowners' concerns ahead of time, so as to minimize adverse impacts of VRAD cabinets in neighborhoods possibly leading to the withholding of consent.

1 Factual matters contained in this article are as in the Decision. It is also noted that judicial appeals of the Decision are ongoing.

Alan Curto is a partner in the Administrative and Regulatory Practice Group at Halloran & Sage LLP, Hartford, Conn.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540