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November 9, 2017

Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington, D.C. 20554

**Re: Ex Parte Notice  
WC Docket No. 17-84**

Dear Ms. Dortch:

On November 7, 2017, Pam Ellis (Utility Business Development Senior Manager, AEP), Tom St. Pierre (Associate General Counsel, AEP), Natalie Beasman (Senior Counsel, Georgia Power), Allen Bell (Distribution Support Manager, Georgia Power) and I met separately with Claude Aiken (Commissioner Clyburn's Legal Advisor, Wireline), Jamie Susskind (Commissioner Carr's Chief of Staff and Wireline Advisor) and Travis Litman (Commissioner Rosenworcel's Chief of Staff and Senior Legal Advisor, Wireline and Public Safety) in connection with the above-referenced docket. Anne Vogel (Director of Federal Energy Policy, AEP) also participated in the meetings with Mr. Aiken and Ms. Susskind.

**Meetings with Mr. Claude Aiken and Mr. Travis Litman**

During the meetings with Mr. Aiken and Mr. Litman, we briefly reviewed the substance of our September meetings (September 13 and 12, respectively) relating to the Commission's proposed revisions to Rule 1.1424 (affecting joint use agreements between ILECs and electric utilities). In the meeting with Mr. Aiken, we reiterated that Commissioner Clyburn correctly concluded in 2011 that "joint use agreements are not just simple pole attachment agreements...." *Implementation of Section 224 of the Act*, WC Docket No. 07-245, Report and Order and Order on Reconsideration; Statement of Commissioner Mignon L. Clyburn, 26 FCC Rcd. 5240 (2011).

The vast majority of both meetings, though, focused on the Commission's proposed revisions to, and inquiries around, the existing pole attachment rate formulas. We explained that the Commission's proposed revision to Rule 1.1409(c) (set forth in the NPRM and in the draft order on the agenda for Thursday, November 16) merely reflects the long-standing regulatory accounting practice of crediting make-ready reimbursements to the appropriate FERC accounts. To this extent, the proposed revision to Rule 1.1409(c) is non-controversial (even if completely unnecessary). We expressed concern, though, with the Commission's inquiries into possible

further reductions in the existing pole attachment rate formulas—specifically the Commission’s inquiries into removing the capital cost elements (taxes, depreciation and rate of return) from the carrying charge.

We explained that the existing rate formulas already yield prices that are inefficiently low, and that further reductions will do nothing to promote broadband deployment. We reiterated, as all commenters seem to acknowledge, that the timing and predictability of infrastructure access (and the front-end costs associated with access), are the real keys to broadband deployment, and that the Commission’s policies should incentivize, rather than discourage, capital investment in infrastructure and innovative make-ready solutions from the providers of pole space. We explained that, while parties are technically free to negotiate “outside the box” deals to streamline broadband deployment, the Commission’s current “sign and sue” policy creates reluctance, if not disinterest, on the part of electric utilities to do so.

The positions and data we discussed were consistent with the positions and data set forth the initial comments (at pp. 50-56) and reply comments (at pp. 36-37) filed by AEP and Southern Company (along with Ameren, Duke Energy, Entergy, Oncor Electric and Tampa Electric) in this proceeding.

#### **Meeting with Ms. Jamie Susskind**

During the meeting with Ms. Susskind, we primarily focused on the Commission’s proposed revisions to Rule 1.1424 (relating to joint use agreements between ILECs and electric utilities). We explained the history, purpose and structure of joint use agreements and further explained why joint use agreements require a different regulatory approach (if any) as compared to plain old pole attachment agreements. Joint use agreements between ILECs and electric utilities were, in essence, the original innovative deployment deal which enabled ubiquitous deployment of communications services. We explained that adoption of the proposed rule would be anti-competitive and disruptive to broadband deployment, particularly in rural areas where ILECs are in the best position to provide high-speed broadband by leveraging the benefits of existing joint use agreements. The positions and data we discussed in connection with the Rule 1.1424 issue were consistent with the positions and data set forth in the initial comments (at pp. 23-34 and 37-40) and reply comments (at pp. 1-5) filed by AEP and Southern Company (along with Ameren, Duke Energy, Entergy, Oncor Electric and Tampa Electric) in this proceeding.

We also very briefly discussed the Commission’s proposed revisions to, and inquiries around, the existing pole attachment rate formulas. We explained that the existing rate formulas already yield prices that are inefficiently low, and that further reductions would do nothing to promote broadband deployment. We reiterated, as all commenters seem to acknowledge, that the timing and predictability of infrastructure access (and the front-end costs associated with access), are the real keys to broadband deployment, and that the Commission’s policies should incentivize, rather than discourage, capital investment in infrastructure and innovative make-ready solutions from the providers of pole space. We urged that, if the Commission is serious about achieving real breakthroughs in deployment solutions for the next generation of advanced communications infrastructure, it will adopt a regulatory approach that enables—rather than stifles—the potential for breakthrough solutions.

The positions and data we discussed in connection with the rate formula issue were consistent with the positions and data set forth the initial comments (at pp. 50-56) and reply comments (at pp. 36-37) filed by AEP and Southern Company (along with Ameren, Duke Energy, Entergy, Oncor Electric and Tampa Electric) in this proceeding.

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This ex parte notice is being filed electronically in the above-referenced docket pursuant to section 1.1206(b) of the Commission's rules. Please let me know if you have any questions.

Very Truly Yours,

*/s/Eric B. Langley*

Eric B. Langley

EBL/lk

cc: VIA EMAIL  
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Ms. Jamie Susskind (jamie.susskind@fcc.gov)  
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