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January 29, 2015

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

Re: Notice of *Ex Parte* Presentation – WC Docket No. 14-115 (City of Wilson, North Carolina) and WCB Docket No. 14-116 (The Electric Power Board of Chattanooga, Tennessee)

Dear Ms. Dortch:

On Wednesday, January 28, 2015, Heather Burnett Gold, President of The Fiber-to-the-Home Council Americas (the “FTTH Council”), and Thomas Cohen and Edward A. Yorkgitis, Jr., of Kelley Drye & Warren, LLP, Counsel for the FTTH Council, met with Richard Welch, Madeleine Findley, Andrew Erber, and Matthew Dunne of the Office of General Counsel as well as Deena Shetler, Randy Clarke, Claudio Pablo, Daniel Kahn, and Brittany Davidson of the Wireline Competition Bureau to discuss the petitions of the City of Wilson, North Carolina, and The Electric Power Board of Chattanooga, Tennessee, in the above referenced dockets for preemption of State laws restricting the deployment of broadband networks by those municipal entities (the “Petitions”). (Ms. Gold participated by telephone.)

In the meeting, the FTTH Council representatives reviewed and reiterated its positions and arguments made in the FTTH Council’s Comments and Reply Comments in support of the

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Petitions.¹ The FTTH Council urged the Commission to make limited decisions focusing on the facts presented by the Petitions and the specific statutory provisions at issue that act as barriers to broadband deployment in unserved areas. The FTTH Council underscored its acknowledgment that states had legitimate interests in ensuring that municipalities and municipal utilities are accountable and responsible to taxpayers. However, where States authorize municipalities/municipal utilities to provide broadband service, but limit the geographic scope of that service in a way that State interests are not furthered by the restriction in question (and which may be antithetical to the interests of managing taxpayer risk) but which prevent unserved areas from being served, the Commission should find the restrictions are a barrier to broadband deployment and are contrary to the federal objectives in Section 706 of the Telecommunications Act of 1996.² In such cases, the Commission must preempt to remove those barriers as directed by Congress in Section 706(b).

The FTTH Council advocated that the Commission refrain from trying to map out the full extent of its preemption authority in reaching a decision, and instead focus on the specific relief requested by the Petitions. In particular, the FTTH Council argues for an order preempting the provision within the Tennessee law that constrains the Electric Power Board (“EPB”) of Chattanooga to providing broadband only within its electric utility service territory, thereby barring it from deploying broadband services in unserved areas using the same fiber network EPB has deployed to provide telecommunications services.³

The FTTH Council also reiterated its argument that the City of Wilson Petition should be granted, at least with respect to the provision that limits the City from obtaining broadband authority in areas other than those unserved by service with downstream broadband speeds of 1.5 Mbps. This North Carolina threshold is only 15% of the speed currently used by the Commission to ascertain whether an area is unserved. It therefore acts as a barrier to the City’s deploying broadband in areas unserved under the Commission’s implementation of the federal objectives in Section 706.

¹ Comments of the Fiber-to-the-Home Council Americas, WC Docket No. 14-115 and WCB Docket No. 14-116 (filed Aug. 29, 2014); Reply Comments of the Fiber-to-the-Home Council Americas, WC Docket No. 14-115 and WCB Docket No. 14-116 (filed Sep. 29, 2014).

² 47 U.S.C. § 1302.

³ See Tenn. Code Ann. § 7-52-601.

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This *ex parte* is being filed according to the Commission's Rules.

Respectfully submitted,

A handwritten signature in blue ink that reads "Thomas Cohen".

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