1901 Sixth Avenue North • Suite 1500 • P.O. Box 306 (35201) • Birmingham, AL 35203-4642 www.balch.com

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& BINGHAM LLP

February 11, 2015

Lisa J. Saks
Deputy Chief, Enforcement Bureau
Market Disputes Resolution Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Mike Engel
Enforcement Bureau
Market Disputes Resolution Division
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Fiber Technologies Networks, L.L.C. v. Duke Energy-Indiana, Inc., et al.**
Proceeding No. 14-227; File No. EB-14-MD-015

Dear Ms. Saks and Mr. Engel:

Through its complaint, its January 6, 2015 reply (erroneously dated January 6, 2014), and now its February 10, 2015 letter, Fibertech has "tripled down" on a single, flawed premise: that no pole owner may enforce *any* distribution standards that have the effect of limiting any attachment technique, even when those standards do not operate as a barrier to deployment.

Because the Commission already has clearly addressed the question on which Fibertech's entire complaint now appears to rest, the Bureau can easily dispense with this case by dismissing the complaint and denying Fibertech's requested relief in totality. *See In the Matter of Implementation of Section 224 of the Act A Nat'l Broadband Plan for Our Future*, 26 F.C.C. Rcd. 5240, 5340 (2011) ("A utility may, however, choose to reduce or eliminate altogether the use of a particular method of attachment used on its poles, including boxing or bracketing, which would alter the range of circumstances in which it is obligated to allow future attachers to use the same techniques.")

The February 10, 2015 letter, itself, reveals some of the numerous pitfalls in Fibertech's case:

- Fibertech does not have a pole attachment agreement with Duke Energy to cover wireless antennas in Raleigh, North Carolina. *See* February 10, 2015 Letter, p.2 ("... the only option available to Fibertech in order to avoid further delay in the deployment of its network would be to accept Duke's objectionable pole attachment agreement ...").

- Fibertech has not submitted a single application to Duke Energy for a wireless antenna pole attachment in Raleigh. *See* February 10, 2015 Letter, p.2 ("Fibertech needs to be able to immediately apply to Duke for attachment to those poles.").

- Fibertech has no idea whether the City of Raleigh will allow ground mounted equipment at the particular locations referenced in its letter, presumably because Fibertech has not yet asked. *See* February 10, 2015 Letter, p.2 (". . . again, assuming that the City will even allow ground mounted equipment.").

The flaws in Fibertech's case are even deeper, as revealed by scratching lightly beneath the surface of Fibertech's February 10, 2015 letter:

- The distribution poles on Hillsborough Street near NC State's campus likely are owned by NC State—not Duke Energy. This threshold issue of pole ownership could have been addressed in the normal course had Fibertech first contacted Duke Energy (with specific pole identification information) rather than contacting the Bureau.

- Duke Energy's understanding is that the City of Raleigh, does, in fact, allow ground mounted equipment enclosures (*See,* e.g., Response to Pole Attachment Complaint, Appendix C (Declaration of Scott Freeburn), ¶16 and Attachment 2-C (showing ground mounted equipment enclosures in the Duke Energy Progress, Inc. service area).

- Fibertech *still* has not requested an executive-level meeting with Duke Energy Progress, Inc.—the Duke Energy operating company that serves the City of Raleigh. As Duke Energy explained in pre-complaint correspondence and again in its response to Fibertech's complaint, the executive-level meeting Fibertech previously requested (and that Duke Energy staffed) was with Duke Energy Indiana, Inc.—a separate operating company with different executives.

The fact that Fibertech has put the proverbial cart before the horse in its February 10, 2015 letter—and more generally in its entire case—makes it less surprising that its business plans would follow suit. Fibertech's February 10, 2015 letter reveals that its "contractual commitment with its customer requires these nodes to be completed and operational no later than six months from now." *See* February 10, 2015 Letter, p.2. Yet, Fibertech has neither executed a wireless pole attachment agreement with Duke Energy Progress nor submitted an application for such attachments. Fibertech's unorthodox timing should not create an emergency on the Bureau's part.

Though Duke Energy will gladly participate in any conference the Bureau sees fit to convene, such a conference is unnecessary because Fibertech already has identified the solution to its supposed problem: "accept Duke's [allegedly] objectionable pole attachment agreement, allowing Fibertech to place its antenna on Duke's pole and to place a ground mounted cabinet for the equipment." *See* February 10, 2015 Letter, p.2.

The Bureau can, indeed, resolve Fibertech's complaint swiftly on the record before it by dismissing the complaint and denying the relief sought in the complaint. But if the Bureau is not

inclined to dismiss or deny the complaint at this juncture, it should grant the relief requested in Section VI. e, f, and g of Duke Energy's Response to Fibertech's complaint.

Respectfully submitted,

Eric B. Langley

Counsel for Duke Energy Indiana, Inc., Duke Energy Carolinas, LLC and Duke Energy Progress, Inc.

EBL:lk

cc: T. Scott Thompson
Karol P. Mack
Beth Krogel Roads
North Carolina Utilities Commission
Indiana Utility Regulatory Commission